



CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

MHP, LLC (Agent, Fritz Eberle) requests a variance of 3 ft to the 3 ft maximum wall height for Lot 17B, MRGCD Map 35, located at 2211 Rio Grande Blvd NW, zoned R-MH [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00402**
Project No: **Project#2019-003060**
Hearing Date: 01-21-20
Closing of Public Record: 01-21-20
Date of Decision: 02-05-20

On the 21st day of January, 2020, Fritz Eberle, agent for property owner MHP, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft maximum wall height (“Application”) upon the real property located at 2211 Rio Grande Blvd NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the 3 ft maximum wall height.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(3)(a) (Variance-Review and Decision Criteria) reads: “... an application for a Variance-ZHE shall be approved if it meets all of the following criteria:
 - (1) *There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.*
 - (2) *The Variance will not be materially contrary to the public safety, health, or welfare.*
 - (3) *The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.*
 - (4) *The Variance will not materially undermine the intent and purpose of the IDO or the applicable zone district.*
 - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.”*
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-4(N)(1).
4. Agent for property owner appeared and gave evidence in support of the application.
5. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
6. The subject property is currently zoned R-MH.

7. Based on evidence submitted by the Applicant, there are special circumstances applicable to the Subject Property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-6-6(N)(3)(a)(1). Namely, the size of the lot in comparison to neighboring lots has significant frontage on Rio Grande Blvd. and was developed by prior owners as a higher density residential property, in comparison to primarily lower density properties in the area. Because of the need for screening for safety and noise mitigation, practical difficulties would result from strict compliance with the minimum standards.
8. Based on evidence submitted by the Applicant, the variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6(N)(3)(a)(2). Opponents argued that the proposed variance would impose on the clear sight triangle. However, City Transportation issued a report stating that, based on the drawings included in the application, as to any portion of the proposed wall to be within both the clear sight triangle and mini clear sight triangle, so long as the wall/fence is see through or it is a combination of block wall/fence that is clear above 3 ft. within the clear sight triangles, Transportation does not object. Agent testified that all portions of the proposed wall within any clear sight triangle would be see-through or a combination of block wall/fence that is clear above 3 ft.
9. Based on evidence submitted by the Applicant, the variance will not cause significant adverse material impacts on surrounding properties or infrastructure improvements in the vicinity as required by Section 14-16-6-6(N)(3)(a)(3). Applicant, after meeting with community members, provided for additional design elements and landscape buffer to be in harmony with the Rio Grande Blvd. streetscape and the character of surrounding properties. There appear to be no impacts on infrastructure.
10. Based on evidence submitted by the Applicant, the variance will not materially undermine the intent and purpose of the IDO or applicable zone district as required by Section 14-16-6-6(N)(3)(a)(4).
11. Based on evidence submitted by the Applicant, the variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5).
12. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
13. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a variance of 3 ft to the 3 ft maximum wall height.

CONDITIONS:

- A. The design of the wall shall comply with any applicable design standards in Sections 14-16-5-7 (Walls and Fences); 7-7(E)(2) (Articulation and Alignment); 5-7(E)(3) (Wall Design) and Section 14-16-6-6(N)(3)(c)4 a and b.

B. Any proposed wall or fence design shall not violate the clear sight triangle as required by the City Traffic Engineering Division.

APPEAL:

If you wish to appeal this decision, you must do so by February 20, 2020 pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed, or utilized.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
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