



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

Ariel Cano & Donna T requests a variance for a 6 foot wall Lot 3, Block 9, Mandell Addn No 2, located at 2800 4TH ST NW, zoned MX-M [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2021-00120**
Project No: **Project#2021-005413**
Hearing Date: 08-17-21
Closing of Public Record: 08-17-21
Date of Decision: 09-01-21

On the 17th day of August, 2021, property owners Ariel Cano & Donna T (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance for a 6-foot wall (“Application”) upon the real property located at 2800 4TH ST NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance for a 6-foot wall.
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 providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
4. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
5. Applicant appeared and gave evidence in support of the application.

6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
7. The subject property is currently zoned MX-M.
8. Neighborhood Association representatives were generally supportive of the proposed fence. However, concerns were raised regarding the location of the proposed fence and applicability of potential street-tree and setback requirements in relation to the Fourth Street right-of-way.
9. Applicant was granted a deferral to address the applicability of such potential requirements discussed in the immediately previous paragraph, including by showing the location of the proposed fence in relation to the Fourth Street right-of-way.
10. Applicant engaged a professional surveyor to survey the Subject Property, and the resulting improvement location report was submitted into the record.
11. Based on the improvement location report and evidence submitted by applicant, it appears that the proposed wall will be located entirely on the Subject Property.
12. Based on evidence submitted by or on behalf of Applicant, it appears that 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). Specifically, Applicant testified and provided written evidence that, the Subject Property has special circumstances because of its location as a corner lot along busy 4th Street NW and next to a transit stop, which makes security of the Subject Property challenging. These special circumstances create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the Subject Property, because compliance with the minimum standards would provide neither sufficient protection for the Subject Property nor a sufficient buffer for the Subject Property.
13. Based on evidence submitted by or on behalf of 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). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the wall in a manner that is consistent with the IDO and the Development Process Manual (DPM). The wall will be constructed of wrought iron in the same manner and as a continuation of Applicant's adjacent property to the south of the Subject Property. This construction will provide for eyes on the street to promote safety.
14. Based on evidence submitted by or on behalf of 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). Specifically, the proposed wall is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by photographic evidence and oral testimony. Photographs were submitted showing the Subject Property and neighboring sites. The proposed wall would not be out of character with the surrounding area, but rather would reinforce the architectural character of the neighborhood by being in harmony with the other improvements existing and proposed for the Subject Property and existing on the adjacent lot to the south.
15. Based on evidence submitted by or on behalf of 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). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will be used in compliance with the IDO, and the

proposed variance would merely add to the safety and usability of the site and as a protective buffer to protect Applicant's merchandise and property.

16. Based on evidence submitted by or on behalf of 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). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the safety, security, privacy, buffering, and usability of the site. Thus, Applicant is not requesting more than what is minimally necessary for a variance.
17. City Transportation submitted a report stating no objection.
18. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
19. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a variance for a 6-foot wall.

CONDITIONS:

1. All portions of the wall must be constructed on the Subject Property, such that no portion of the wall may be constructed on City right of way.
2. The wall will be constructed of wrought iron in a manner that provides transparent views into and out of the Subject Property.

APPEAL:

If you wish to appeal this decision, you must do so by September 16, 2021 pursuant to Section 14-16-6-4(V), 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.



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