



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

Ginger Sosa requests a variance of 3 ft to the required 3 ft maximum wall height to allow a 6 ft solid wall in the front yard for Lot 3, Block H, Eastern Addn, located at 1105 Broadway BLVD SE, zoned MX-L [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2022-00011**
Project No: **Project#2021-006430**
Hearing Date: 02-15-22
Closing of Public Record: 02-15-22
Date of Decision: 03-02-22

On the 15th day of February, 2022, property owner Ginger Sosa (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the required 3 ft maximum wall height to allow a 6 ft solid wall in the front yard (“Application”) upon the real property located at 1105 Broadway BLVD SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the required 3 ft maximum wall height to allow a 6 ft solid wall in the front yard.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(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. City Transportation submitted a report stating no objection.
7. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
8. The Applicant has authority to pursue this Application
9. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
10. The subject property is currently zoned MX-L.
11. Applicant has failed to establish that there are special circumstances applicable to the Subject Property, as would be required to satisfy Section 14-16-6-6(O)(3)(a)(1). Applicant's written justification states in response to this criterion that the Subject Property sits on a major busy street that is very noisy, that the rear of the Subject Property abuts a public park, and that there are a lot of transients in the area. The location along a busy street and the existence of transients appear to apply to any other property along Broadway in this vicinity and are not special circumstances uniquely applicable to the Subject Property. Although the Subject Property does abut a public park at its rear, such abutment also applies to any other similarly situated property and appears to have no bearing on the proposed wall, which is placed along the side boundaries of the lot, not the rear. The ZHE finds that the criteria in IDO Section 6-6(O)(3)(a)(1) are not met.
12. Because the criteria in IDO Section 6-6(O)(3)(a)(1) are not satisfied and all criteria of IDO 6-6(O)(3)(a)(1) through -(5) must be satisfied to qualify for a variance, the Application must fail. For the sake of administrative and quasi-judicial economy, the ZHE will not examine the remainder of the criteria of IDO 6-6(O)(3)(a), because they are moot in light of the failure to satisfy IDO Section 6-6(O)(3)(a)(1), which is dispositive of the Application.

DECISION:

DENIAL of a variance of 3 ft to the required 3 ft maximum wall height to allow a 6 ft solid wall in the front yard.

APPEAL:

If you wish to appeal this decision, you must do so by March 17, 2022 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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cc:

ZHE File
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