



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

City of Albuquerque (Dept of Family and Community Svcs) requests a variance of 3 ft to the allowed 3 ft maximum wall height on the street side for Lot 1, Swift Addn, located at 5006 Gibson BLVD SE, zoned MX-H [Section 14-16-5-7(D)(1)]

Special Exception No: ..... **VA-2023-00156**  
Project No: ..... **Project#2021-005834**  
Hearing Date: ..... 07-18-23  
Closing of Public Record: ..... 07-18-23  
Date of Decision: ..... 08-02-23

On the 18th day of July, 2023, Dept of Family and Community Svcs, agent for property owner, City of Albuquerque (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the allowed 3 ft maximum wall height on the street side (“Application”) upon the real property located at 5006 Gibson 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 allowed 3 ft maximum wall height on the street side.
2. The subject property is currently zoned MX-H.
3. The Applicant has authority to pursue this Application.
4. 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.”*
5. 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).

6. 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).
7. Representatives of the City of Albuquerque Department of Family and Community Services, agent for property owner, as well as other City staff, appeared and gave evidence in support of the application.
8. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
9. Applicant has met the burden of providing evidence 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). The lot has much more street frontage than surrounding properties which requires a taller wall or fence to provide safety and security for the community, clients and staff. These special circumstances create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use of the property, and practical difficulties result from strict compliance with the minimum standards.
10. 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). Applicant states that the proposal will enhance public safety by controlling access and will provide better traffic flow from pedestrians that cross a high-traffic intersection and will discourage illegal jaywalking across high-traffic thoroughfares. Applicant provided testimony that rendering showing no sidewalk entries at vehicular access points are incorrect. Applicant proposes pedestrian sidewalks at all vehicular access points, with which access the proposed taller variance would not interfere.
11. Applicant states that the proposal will not cause significant adverse material impacts on surrounding properties or infrastructure improvements in the vicinity. The proposal will not encroach upon surrounding properties or interfere with any public right of way or infrastructure.
12. The variance will not materially undermine the intent and purpose of the IDO or applicable zone district. Applicant states that the variance will provide fencing that surrounds the property, the fence will be no higher than 6 feet and will be in compliance with all IDO requirements.
13. Applicant states that the variance requested is the minimum necessary to improve security and safety for customers and the public. Any shorter wall would not provide the necessary deterrent.
14. A community member opposed the proposal and stated that a fence would discourage visitors.
15. A community member suggested that the Applicant move the proposed fence into the median, such as a similar fence built by CNM. Applicant's agent stated that moving the proposed fence into the median is not an option, because Applicant does not build fences on medians throughout the city as they provide no benefit to traffic safety. Applicant stated that fences located in the median are built by third party public entities and not the City of Albuquerque.
16. A community member suggested that the Applicant setback the proposed fence 100 feet. Applicant's agent stated that doing so would interrupt the property parking and may create areas that may allow for encampments.

17. Applicant's agent stated that the fence would be designed in a way that would allow security surveillance on both sides.
18. Applicant's agent stated the wall would have pilasters and design elements consistent with IDO Standards. Applicant's agent stated that Applicant will add decorative pieces to the proposed fence and will collaborate with neighbors to select the decorative pieces. Applicant's agent also stated these pieces would not be extravagant, but would be attractive and architecturally consistent.
19. Applicant's agent stated that there would be an entrance for pedestrians separate from vehicular access to avoid overuse of one entrance during time of high traffic.
20. The City Traffic Engineer submitted a report stating no objection to the Application.
21. The Albuquerque Sunport Planning Manager stated no objection to the Application.

DECISION:

APPROVAL of a variance of 3 ft to the allowed 3 ft maximum wall height on the street side.

APPEAL:

If you wish to appeal this decision, you must do so by August 17, 2023 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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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
Salas-Ramos, Charley [csalas@cabq.gov](mailto:csalas@cabq.gov)  
Peter Kalitsis [peterkalitsis@gmail.com](mailto:peterkalitsis@gmail.com)  
DougGMC [DougGMC@cabq.gov](mailto:DougGMC@cabq.gov)  
LeonGMC [LeonGMC@cabq.gov](mailto:LeonGMC@cabq.gov)

Pierce, Carol M. [cpierce@cabq.gov](mailto:cpierce@cabq.gov)  
Moreno, Jazmin [jazminmoreno@cabq.gov](mailto:jazminmoreno@cabq.gov)  
Khadijah Bottom, [khadijahasili@vizionz.org](mailto:khadijahasili@vizionz.org)  
Rachel Baca [rachelbacabiz@gmail.com](mailto:rachelbacabiz@gmail.com)  
Janet Simon [phnacommunications@gmail.com](mailto:phnacommunications@gmail.com)  
P. Davis Willson [info@willsonstudio.com](mailto:info@willsonstudio.com)  
sp-wonderwoman [sp-wonderwoman@comcast.net](mailto:sp-wonderwoman@comcast.net)



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ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

City of Albuquerque (Dept of Family and Community Svcs) requests a variance of 3 ft to the allowed 3 ft maximum wall height on the street side for Lot A1A1A/Lovelace, Lovelace Hospital, located at 5400 Gibson BLVD SE, zoned MX-H [Section 14-16-5-7(D)(1)]

Special Exception No: ..... **VA-2023-00157**  
Project No: ..... **Project#2021-005834**  
Hearing Date: ..... 07-18-23  
Closing of Public Record: ..... 07-18-23  
Date of Decision: ..... 08-02-23

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**FINDINGS:**

1. Applicant is requesting a variance of 3 ft to the allowed 3 ft maximum wall height on the street side.
2. The subject property is currently zoned MX-H.
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  - (3) *The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.*
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8. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
9. Applicant has met the burden of providing evidence 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). The lot has much more street frontage than surrounding properties which requires a taller wall or fence to provide safety and security for the community, clients and staff. These special circumstances create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use of the property, and practical difficulties result from strict compliance with the minimum standards.
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DECISION:

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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
Salas-Ramos, Charley [csalas@cabq.gov](mailto:csalas@cabq.gov)  
Peter Kalitsis [peterkalitsis@gmail.com](mailto:peterkalitsis@gmail.com)

DougGMC [DougGMC@cabq.gov](mailto:DougGMC@cabq.gov)  
LeonGMC [LeonGMC@cabq.gov](mailto:LeonGMC@cabq.gov)  
Pierce, Carol M. [cpierce@cabq.gov](mailto:cpierce@cabq.gov)  
Moreno, Jazmin [jazminmoreno@cabq.gov](mailto:jazminmoreno@cabq.gov)  
Khadijah Bottom, [khadijahasili@vizionz.org](mailto:khadijahasili@vizionz.org)  
Rachel Baca [rachelbacabiz@gmail.com](mailto:rachelbacabiz@gmail.com)  
Janet Simon [phnacommunications@gmail.com](mailto:phnacommunications@gmail.com)  
P. Davis Willson [info@willsonstudio.com](mailto:info@willsonstudio.com)  
sp-wonderwoman [sp-wonderwoman@comcast.net](mailto:sp-wonderwoman@comcast.net)