



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

Dark Horse Investments Inc. requests a variance of 4 ft to the allowed 3 ft front yard wall height in an MX-L zone for Lot 19-22, Enchanted Mesa, located at 2423 Chelwood Park BLVD NE, zoned MX-L [Section 14-16-5-7(D)(1)]

Special Exception No: **VA-2023-00179**
Project No: **Project#2023-008903**
Hearing Date: 08-15-23
Closing of Public Record: 08-15-23
Date of Decision: 08-30-23

On the 15th day of August, 2023, property owner Dark Horse Investments Inc. (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 4 ft to the allowed 3 ft front yard wall height in an MX-L zone (“Application”) upon the real property located at 2423 Chelwood Park BLVD NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 4 ft to the allowed 3 ft front yard wall height in an MX-L zone.
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 this IDO, the applicable zone district, or any applicable Overlay Zone.*
 - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*”
3. 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. 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. Agent appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
6. Applicant established that the proper "Notice of Hearing" signage was posted for the required time period.
7. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
8. Applicant established that proper notice was provided pursuant to IDO requirements.
9. Applicant has authority to pursue this Application.
10. The subject property is currently zoned MX-L.
11. 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(O)(3)(a)(1). Specifically, Applicant confirmed in oral testimony and submitted evidence that, the Subject Property's unique layout based on historic platting and development under prior approval regimes, as well as the location of existing public and private improvements, create special circumstances. Also, the Subject Property's location within a mixed-use zone and surrounded by a variety of uses increases the need for a taller wall or fence for safety and security reasons. 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 not allow for the reasonably proposed use, which otherwise would be in compliance with the IDO.
12. 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(O)(3)(a)(2). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the proposed project in a manner that is consistent with the IDO and the Development Process Manual (DPM).
13. The City Traffic Engineer initially submitted a report stating an objection to the Application, because opaque portions of the proposed wall would be over 3-feet high within the mini clear sight triangle. However, Applicant agreed to construct the wall to have view fencing on all portions of the wall over 3 feet high located within the mini clear sight triangle. Based on this redesign, the City Traffic Engineer submitted a revised report stating no objection to the proposed wall.
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(O)(3)(a)(3). Specifically, the proposal is designed to be in harmony and consistency with prior approvals, what currently exists in the neighborhood, rights of way and infrastructure.
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(O)(3)(a)(4). Specifically, Applicant confirmed in written submittals that the intent of IDO will still be met in that the subject site will be in harmony with existing uses and the proposed variance would merely add to the useability of the site in line with prior approvals.
16. Regarding whether the proposed variance is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5), the Application

states that the IDO requires a wall or fence that is at least 7 feet and no more than 8 feet high for screening of outdoor storage. However, outdoor storage is not a permissive use of the Subject Property, because of its zoning designation. Nonetheless, based on evidence presented in the record, it appears that a taller wall would be warranted, and that a 6-foot-tall wall would be more in line with the character of the neighborhood, while still providing the sought-after protection.

17. The requirements of IDO Section 14-16-6-6(O)(3)(a) are satisfied.

DECISION:

APPROVAL WITH CONDITIONS of a variance of 4 ft to the allowed 3 ft front yard wall height in an MX-L zone.

CONDITIONS:

- A. Applicant must construct the wall such that either: (i) no opaque portions of the wall exist within the mini clear sight triangle, or (ii) the wall has view fencing on all portions of the wall over 3 feet tall located within the mini clear sight triangle
- B. The height of the wall must not exceed six (6) feet.

APPEAL:

If you wish to appeal this decision, you must do so by September 14, 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Adam Thomas admantechno@yahoo.com