



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

Albuquerque Monthly Meeting Religious Society (Minor Morgan) requests a Variance of 3ft to the allowed 3ft tall fence height in front and street side yard for Lot 19A, Block 2, Ives Addn, located at 1600 5th St NW, zoned R-1A [Section 14-16-5-7(D)(1) Table 5-7-1]	Special Exception No:.....	VA-2024-00264
	Project No:	PR-2024-010862
	Hearing Date:	10-15-24
	Closing of Public Record: ..	10-15-24
	Date of Decision:	10-30-24

On the 15th day of October, 2024, property owner Albuquerque Monthly Meeting Religious Society (Minor Morgan) (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3ft to the allowed 3ft tall fence height in front and street side yard (“Application”) upon the real property located at 1600 5th St NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3ft to the allowed 3ft tall fence height in front and street side yard.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. All property owners within 100 feet and affected neighborhood association(s) were notified.
4. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(J)(4).
5. The City of Albuquerque Integrated Development Ordinance (“IDO”), 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 a single lot 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, physical characteristics, natural forces or government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic 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.”*

6. 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).
7. 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).
8. Applicant appeared and gave evidence in support of the application.
9. The Subject Property is currently zoned R-1A. However, it is not used for single-family home purposes.
10. 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, the unique location of the property creates special circumstances that result in practical difficulties in complying strictly with IDO requirements without the requested variance. Although opponents pointed out that certain of Applicant's practices, such as allowing unhoused persons access to Applicant's water spigot, have created a self-imposed condition, it is clear from the record that the location of the property creates special circumstances even in the absence of Applicant's practices. Moreover, Applicant has committed to end access to the spigot and the proposed wall would keep trespassers from accessing the Subject Property.
11. 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, Applicant stated that no negative impacts would result. The City Traffic Engineer submitted a report stating no objection to the Application provided that any portions of the wall within the clear site triangle and over 3-feet in height would be view fencing. Applicant confirmed this would be the case. Opponents complained of problems caused by the unhoused population who have accessed Applicant's property; however, such trespassing aims to cure these harms, not to make them worse.
12. 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). The proposed wall would not create any view obstructions or traffic or transit problems.
13. 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). The wall will be built pursuant to IDO requirements.
14. Based on evidence submitted by or on behalf of Applicant, the variance 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 testified that any lower fence would not be sufficient to provide the needed security.

DECISION:

APPROVAL of a variance of 3ft to the allowed 3ft tall fence height in front and street side yard.

APPEAL:

If you wish to appeal this decision, you must do so by November 14, 2024 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
Minor Morgan, PO BOX 25462, 87125, minormorgan@northvalleyorganics.com
Sara Keeney 1112 La Font Road SW, 87105
Ema Tanigaki 1612 5th St, 87102
John Healey 416 Aspen Ave, 87102
Suzanne Jones 1601 and 1603 5th Street, 87102
Doreen McKnight 1426 7th St, 87102