



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

Journey NM LLC (Agent, Ray Tavarez/Amanda Tavarez) request a variance of 2 ft 2 in to the allowed 3 ft wall height in the front yard for Lot 9A, Block 22, Terrace Addn, located at 541 Cedar ST SE, zoned MX-M [Section 14-16-5-7(D)(1)

Special Exception No: ....

Project No: .....

Hearing Date:.....

Closing of Public Record:

.....

Date of Decision: .....

**VA-2023-00373**

**Project#2023-009709**

02-20-2024

02-20-2024

03-06-2024

On the 20th day of February 2024, Patricia Wright (“Agent”) and Journey NM LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting variance of 2 ft. 2 in. to the allowed 3 ft. wall height in the front yard (“Application”) upon the real property located at 541 Cedar St. SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2 ft. 5 in. to the allowed 3 ft. wall height in the front yard.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. Applicant has duly authorized Agent to act on Applicant’s behalf regarding the Application. Applicant duly authorized Agent Patricia Wright during ZHE Hearing on February 20, 2024 to serve as Agent, replacing Ray Tavarez and Amanda Tavarez as agents.
4. All property owners within 100 feet and affected neighborhood association(s) were notified.
5. 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(K)(3).
6. 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.”*

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. 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. The subject property is currently zoned MX-M
6. Based on evidence submitted by 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). Applicant showed through evidence of the zoning map that there is additional traffic near the location of Subject Property, particularly because of its location near public parks and transit, and stated that there has been theft to Applicant’s property and in neighborhood and that there is access to additional theft to Subject Property, which the variance would resolve.
7. 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). Applicant submitted evidence that no harm would result and 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).
8. 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, Applicant stated that the fence will be *constructed of wood* and will provide sufficient visibility for pedestrians and vehicle traffic on and near the Subject Property. An adjacent neighbor appeared at the hearing and asked questions regarding the Application, and was ultimately satisfied that no harm would result from the proposed variance.
9. 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). Applicant submitted evidence that no harm would result and supporting 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 development in the area.
10. Based on evidence submitted by or on behalf of Applicant, the variance approved meets the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5). Applicant submitted evidence indicating that any lesser variance would be insufficient for the security of property and any occupants within property.
11. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a variance of 2 ft 2 in to the allowed 3 ft wall height in the front yard.

APPEAL:

If you wish to appeal this decision, you must do so by March 21, 2024 pursuant to Section 14-16-6-4(V), of the IDO, 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.

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Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement