



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

R1 Temple, LLC (Agent, Santos Rodriguez) request a variance of 3 FT to the allowed 3 FT wall height in the front and street-side yards for Lot 2, Block 10, Virginia Place Addn, located at 1258 Ortiz Drive SE, zoned MX-L [Section 14-16-5-7(D)(1)]

Special Exception No: ..... **VA-2024-00022**  
Project No: ..... **Project#2024-009918**  
Hearing Date: ..... 3-19-24  
Closing of Public Record: ..... 3-19-24  
Date of Decision: ..... 04-03-24

On the 19<sup>th</sup> day of March, 2024, agent for property owner Santos Rodriguez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 FT to the allowed 3 FT wall height in the front and street-side yards (“Application”) upon the real property located at 1258 Ortiz Dr 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 wall height in the front and street-side yards.
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.
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 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.”*

7. 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). Application stated that due to vandalism and vagrancy they've spent a lot of money to fix vandalism and break-ins that have occurred on Subject Property.
8. 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).
9. District 6 Coalition is the affected neighborhood association.
10. The subject property is currently zoned MX-L.
11. 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 stated that, because of the Subject Property's unique location and surroundings, there are severe vandalism issues that have occurred and with people jumping over the 3 foot fence and gone into the building. Applicant states that the special exception of a 6-foot fence would help deter vandalism and people hopping into the fence.
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). 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).
13. 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, Applicant stated that the fence will be constructed of wrought iron and will provide sufficient visibility for pedestrians and vehicle traffic on and near the Subject Property.
14. 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). 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.
15. 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(O)(3)(a)(5). Applicant submitted evidence indicating that any lesser variance would be insufficient for the security of property and any occupants within property.
16. The City Traffic Engineer submitted a report stating no objection to the Application.
17. Kirtland Air Force Base submitted correspondence stating no objection to the Application.

DECISION:

APPROVAL of a variance of 3 ft to the allowed 3 ft wall height in the front and street-side yards.

APPEAL:

If you wish to appeal this decision, you must do so by April 19<sup>th</sup>, 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.



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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement