



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

M & S Investment Properties (Shannon) requests a Variance of 3 ft to the allowed 3 ft wall height in the street side yard for Lot 23A, Block 11, University Heights, located at 303 Stanford Dr SE, zoned MX-L [Section 14-16-5-7(D)(1) Table 5-7-1]

Special Exception No: **VA-2024-00201**
Project No: **PR-2024-010621**
Hearing Date: 08-20-24
Closing of Public Record: 08-20-24
Date of Decision: 09-04-24

On the 20th day of August, 2024, property owner M&S Investment Properties (Shannon) (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the allowed 3 ft wall height in the street side yard (“Application”) upon the real property located at 303 Stanford 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 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(K)(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 district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by 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 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.”*

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. 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, the layout of the property as developed under prior zoning regulations in relation to existing structures and infrastructure creates special circumstances that result in practical difficulties in complying strictly with IDO requirements without the requested variance.
10. 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, Applicant stated that no negative impacts would result – the fence is wrought iron and provides clear views through the fencing for motorists and pedestrians. A neighbor expressed concerns that the existing fence, which is not view fencing, makes entering and exiting the driveway of the neighboring property dangerous. Applicant affirmed a willingness to make the wall view fencing, as defined in the IDO, to preserve views for the safety of pedestrians and motorists.
11. 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 it would help keep the neighborhood safe because the protection of the proposed fence would be more secure.
12. 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 intends to comply with all IDO requirements.
13. 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(O)(3)(a)(5). Specifically, Applicant testified that any lesser variance would be impracticable.
14. The City Traffic Engineer submitted a report stating no objection to the Application, provided that the fence is not solid, will not negatively impact driveway sight distance, and will meet the requirements of clear sight triangles. The ZHE finds that the proposed wrought iron fence is view fencing that meets these requirements.

DECISION:

APPROVAL WITH CONDITION of a variance of 3 ft to the allowed 3 ft fence height in the street side yard.

CONDITION:

The approved taller fence must be constructed of view fencing.

APPEAL:

If you wish to appeal this decision, you must do so by September 19, 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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