



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

ADRIANA ANDREW requests a special exception to Section 14-16-3-19(A)(2)(a) : a VARIANCE of 3 ft 8 in to the 3 ft max height to allow an existing wall in the front setback for all or a portion of Lot 51, Vista Alta Addn zoned R-1, located on 5701 ALTA VISTA CT SW (L-11)

Special Exception No:..... \*IR\* 15ZHE-80183  
Project No:..... Project# 1010515  
Hearing Date:..... 08-18-15  
Closing of Public Record:..... 08-18-15  
Date of Decision: ..... 08-27-15

On the 18th day of August, 2015 (hereinafter “**Hearing**”) ADRIANA ANDREW (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 3 ft 8 in to the 3 ft max height to allow an existing wall in the front setback (hereinafter “**Application**”) upon the real property located at 5701 ALTA VISTA CT SW (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 3 ft 8 in to the 3 ft max height to allow an existing wall in the front setback.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) “SPECIAL EXCEPTIONS – VARIANCE” reads in part: “A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds **all** of the following:  
(a) The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;  
(b) There are special circumstances applicable to the subject property which 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;  
(c) Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and  
(d) Substantial justice is done.”
3. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: **(i)** contrary to the public interest, **(ii)** injurious to the community; or **(iii)** injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony as required pursuant to Section § 14-16-4-2 (C) (2) (a), specifically:

A primary purpose of the new wall is to ensure that the Applicant's children remain in the yard when they are playing and do not stray into the sidewalk or street. An additional purpose is to protect Applicant's belongings, pets and vehicles from property crimes that have previously occurred and may well occur again in the absence of the wall. Reducing such crimes would be beneficial to the community and nearby vicinity.

The abutting neighbor to the East testified and expressed several concerns. His concerns, as related to the wall itself, were threefold. First, the wall will be unattractive. Second, the wall will devalue properties in the area. Third, the wall blocks the view from his driveway of children and other pedestrians on the sidewalk, stating that the Applicant's children tend to play in the sidewalk adjacent to his driveway.

The ZHE accepts that an unattractive wall could be considered injurious or contrary to public interest, although that would be the case only in certain limited contexts. The ZHE has reviewed photographs of the constructed portion of the wall, which is made of colored CMU's forming a low wall and higher pilasters. The infill between the pilasters will be wrought iron. The ZHE cannot say that the wall as it will be constructed is particularly unsightly or that it is not consonant with other walls on the streetscape. Although a condition to stucco the wall the same color of the house is a possibility, allowing the raw brick-colored CMU's seems reasonable in light of other finishes visible in the area.

The partially constructed state of the wall does make it unattractive to an extent, and this approval will be conditioned on completing the wall within a reasonable time.

Maintaining property values is a longstanding aspect of land use regulation, and is a reasonable inquiry when determining if a particular application is contrary to the public interest or injurious. However, the ZHE's decision must be based on substantial evidence in the record, and there is no evidence that the wall in question would reduce property values in the area surrounding it. To the contrary, conventional wisdom would indicate that a properly constructed improvement increases the value of the subject property, which has a spillover effect on surrounding properties. Moreover, there was testimony regarding litter and inoperable vehicles in Applicant's yard. A wall would provide some screening from that sort of unattractive feature.

The applicant addressed the neighbor concern regarding children playing in the sidewalk and street by explaining that one of the purposes of the new wall is to keep his children within the yard. That said, the concern regarding limiting his ability to see pedestrians on the sidewalk is a valid one. The purpose of the 11.0 foot mini clear sight triangle is to ensure adequate sight distance of both the sidewalk and the street. The City traffic engineer has determined that proposed wall will not impact the required mini clear sight triangle.

4. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no other neighborhood opposition to the Application.
5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are “special circumstances” applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony regarding significant security risks to the occupants’ vehicles, possessions and pets as shown by past criminal activity [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that the current property layout allows for the children to play in the sidewalk and/or road because there is no separation from the house yard, and also that the wall will allow Applicant to protect the family’s property, pets and vehicles which constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
8. Applicant testified at the Hearing that the yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

**CONCLUSIONS OF LAW:**

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

**DECISION:**

**APPROVAL WITH CONDITIONS** of a VARIANCE of 3 ft 8 in to the 3 ft max height to allow an existing wall in the front setback.

**CONDITIONS OF APPROVAL:**

- A. The Applicant shall complete construction of the wall within 90 days.

If you wish to appeal this decision, you may do so in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are

taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.

  
Christopher L. Graeser, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
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