



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

GUADALUPE CHAVEZ requests a special exception to Section 14-16-3-19(A)(2)(a) : a VARIANCE request of 3 ft to the 3 ft maximum wall height to allow an existing 6 ft wall in the front setback area for all or a portion of Lot 24, Block J, Desert Springs Unit 5 zoned R-LT, located on 7609 DESERT MORNING RD SW (M-10)

Special Exception No:..... ***IR* 16ZHE-80059**
Project No:..... **Project# 1010760**
Hearing Date:..... 11-17-16
Closing of Public Record:..... 11-17-16
Date of Decision: 11-30-16

On the 17th day of November, 2016, GUADALUPE CHAVEZ (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft maximum wall height to allow an existing 6 ft wall in the front setback (“Application”) upon the real property located at 7609 DESERT MORNING RD SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the 3 ft maximum wall height to allow an existing 6 ft 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: “*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 Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. This matter was remanded from the Board of Appeals to make a full record and provide findings of fact based on the record.

5. The ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
6. Specifically, the wall is designed to coordinate with the house and otherwise be harmonious with the Subject Property. The wall does not interfere with the views, light or access of other residents or detrimentally impact neighborhood character or security. The ZHE finds that there will be no significant increase in intensity of use, noise or traffic related to the wall.
7. The ZHE finds that the wall as built the wall as currently built does not comply with the requirements for mini clear sight triangles of Section 8-2-2-15: "Unobstructed vision for traffic safety shall be strictly and solely maintained by the property owner and occupant on all corner lots regardless of the zone classification with reference to any vehicle, trailer, sign, fence, ornament, hedge, shrub, tree, display, or any other obstruction, but not including buildings. No such obstruction to view between three and eight feet above the gutter line shall be placed or maintained within the clear sight triangle which is a triangular area at the street corner..."
8. The purpose of the clear sight triangle requirement is to ensure traffic safety. Violation of the clear sight triangle is necessarily contrary to the public interest and injurious on that basis.
9. The Traffic Engineer has reviewed the Application and determined that it violates the clear sight triangle. The Traffic Engineer has also indicated that an 11' mini clear sight triangle is appropriate for the Subject Property, rather than a full clear sight triangle.
10. The Traffic Engineer has also has stated that the fence must be modified to comply with the mini clear sight triangle, specifically by reducing the size of the corner posts to a maximum of 8" is width.
11. The ZHE accepts the Traffic Engineer's recommendations as reasonable and necessary to ensure traffic safety.
12. The ZHE finds that 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, as required by Section 14-16-4-2(C)(2)(b).
13. The Applicant states that the special circumstances associated with the Subject Property are that there is a high incidence of vandalism, that there is fast moving traffic on the street in front of the house that poses a danger to children playing on the Subject Property, that there are a lot of car thefts in the area and that the Applicant stays alone and is concerned for her safety.
14. The ZHE finds that 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 district, as required by Section 14-16-4-2(C)(2)(c).
15. Specifically, the ZHE finds that Applicant did not create the special circumstances, and that denial of the variance request would unreasonably limit use of the Subject Property by making it less suited for its current uses.

16. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
17. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
18. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL WITH CONDITIONS of a variance of 3 ft to the 3 ft maximum wall height to allow an existing 6 ft wall in the front setback.

CONDITIONS OF APPROVAL:

The wall must be no more than 3 ft. in height, unless a “see through material” is used for additional height (wrought iron, etc.) at the gate mounting post. The mounting post should be no greater than 8 inches square.

If you wish to appeal this decision, you must do so by December 15, 2016, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department’s Land Development Coordination counter and is required at the time the Appeal is filed.

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.

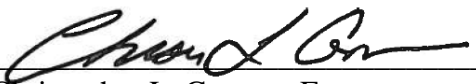
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of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

A handwritten signature in black ink, appearing to read "Chris L. Graeser", is written over a horizontal line.

Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File