



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

Mitchell Turbov requests a variance of 3 ft to the maximum 3 ft wall height in the front yard of Lot 18, Block 3, Mile Hi Court, located on 1709 Cardenas DR NE, zoned R1-C [Section 14-16-5-7(D)]

Special Exception No:.....**VA-2018-00020**
Project No:**Project#2018-001238**
Hearing Date:08-21-18
Closing of Public Record:08-21-18
Date of Decision:09-05-18

On the 21st day of August, 2018, property owner Mitchell Turbov (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the maximum 3 ft wall height in the front yard (“Application”) upon the real property located at 1709 Cardenas DR NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the maximum 3 ft wall height in the front yard.
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. Mitchell Turbov, owner, appeared and gave evidence in support of the application.
5. Property owners within 100 feet of the subject address and the affected neighborhood association were notified of the application.
6. No meeting was requested by property owners or the affected neighborhood.
7. Transportation has no objections to the application based upon the proposed wall design, provided that the clear sight triangle shall not be obscured by alteration of the proposed wall design or by landscaping.

8. The proposed wall will be built of materials and textures reinforcing the architectural character of the surrounding area.
9. The purpose of the wall is to provide safety and security of the property, and enhancing the safety of the surrounding neighborhood.
10. Photographic evidence was submitted documenting that at least 20% of the properties within 330 feet of the subject property have a wall or fence over 3 feet tall in the front yards.
11. The proposed wall design complies with applicable standards of the IDO for Wall Design and Walls and Fences.
12. 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).
13. 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).
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. 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).
16. 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).
17. 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 of a variance of 3 ft to the maximum 3 ft wall height in the front yard.

If you wish to appeal this decision, you must do so by September 20, 2018 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 be filed within 15 days of the decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, on the west side of the lobby.
Please present this letter of notification when filing an appeal.

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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Mitchell Turbov, 1709 Cardenas NE, 87110
Allison Fleming, 1709 Cardenas NE, 87110