



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

Silvia Amaya requests a variance of 3 ft the allowed 3 ft for a 6 ft wall in the front yard setback for Lot 6, Block M, Eastern Add, located at 1619 Broadway SE, zoned MX-L [Section 14-16-5-7(D)1]

Special Exception No:..... **VA-2018-00137**
Project No:..... **Project# 2018-001659**
Hearing Date: 11-20-18
Closing of Public Record: 11-20-18
Date of Decision: 12-05-18

On the 20th day of November, 2018, property owner Silvia Amaya (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft the allowed 3 ft for a 6 ft wall in the front yard setback (“Application”) upon the real property located at 1619 Broadway SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft the allowed 3 ft for a 6 ft wall in the front yard setback.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(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.”*
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 14-16-6-6(N)(3)(c).
4. All property owners within 100 feet and affected neighborhood association were notified of the application.
5. The subject property is currently zoned MX-L.
6. South Broadway Neighborhood Association is the affected NA.

7. The NA did not request a meeting.
8. Nothing was submitted in opposition to the application.
9. Silvia Anaya, owner appeared and gave evidence in support of the application.
10. The present fence is a chain link fence.
11. The proposed fence would be a 3 feet tall adobe wall with 3 feet of wrought iron view fencing on top.
12. There are other walls of similar design in the surrounding neighborhood.
13. Applicant is a senior citizen, living alone.
14. She has been the victim of recent burglaries.
15. The added height would provide her with greater security.
16. The subject property is designated a collector street by the LRST guide.
17. The proposed wall would enhance the architectural character of the neighborhood as walls of similar design are throughout the neighborhood.
18. Transportation reported conditional approval of the application, as long as Applicant does not build the block portion of the proposed wall where the design will impair the view above 3 feet within the clear site triangle.
19. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
20. No one appeared in opposition to the application.
21. 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(N)(3)(a)(1).
22. The variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6(N)(3)(a)(2).
23. 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(N)(3)(a)(3).
24. 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(N)(3)(a)(4).
25. The variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5).
26. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
27. The Applicant has authority to pursue this Application.
28. 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).
29. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(c) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 3 ft the allowed 3 ft for a 6 ft wall in the front yard setback.

The design of the fence shall comply with the Specific-use standards for walls and fences, Section 14-16-5-7(A) through (E).

If you wish to appeal this decision, you must do so by December 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 must be filed with the Planning Department within 15 days after the decision. The appeal shall specifically state the section of the Integrated Development Ordinance, City regulation, or condition attached to a decision that has not been interpreted correctly, as required by Section 14-16-6-4(U)(3)(a)(3) of the Integrated Development Ordinance. 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.

Once an appeal is accepted by the Planning Department, it shall prepare and transmit a record of the appeal together with all appeal material received from the appellant to impacted parties and to the Land Use Hearing Officer (LUHO) through the Clerk of the City Council.

The LUHO shall then schedule a hearing on the matter within 30 consecutive days of receipt and notify the parties, pursuant to Section 14-16-6-4(U)(3)(d).

The Planning Department 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 14-16-6-4(U), of the Integrated Development Ordinance, 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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Silvia Amaya, 1619 Broadway Blvd SE, 87102