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

Raul Artalejo requests a variance of 3 ft 4 inches to the required 3 ft wall height in the front yard for Lot 477, Block 20, Atrisco Village Unit 2, located at 1424 Delgado Dr SW, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:.....**VA-2018-00081**
Project No: .....**Project#2018-001451**
Hearing Date: 10-16-18
Closing of Public Record: 10-16-18
Date of Decision:.....10-31-18

On the 16th day of October, 2018, property owner Raul Artalejo ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 3 ft 4 inches to the required 3 ft wall height in the front yard ("Application") upon the real property located at 1424 Delgado Dr SW ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft 4 inches to the required 3 ft wall height in the front yard.
2. The City of Albuquerque Integrated Development Ordinance Section 14-16-6-6(N)(3)(c) Variance for a Taller Front or Side Yard Wall reads: "*A variance application for a taller front or side yard wall shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*
   (1) The proposed wall would strengthen or reinforce the architectural character of the surrounding area;
   (2) The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community;
   (3) The wall is proposed on a lot that meets any of the following criteria:
      a. The lot is at least ½ acre;
      b. The lot fronts a street designated as a collector or above in the LRTS guide;
      c. At least 20 percent of the properties within 330 feet of the lot where the wall or fence is being requested have a wall or fence over 3 feet in the front yard.
   (4) The design of the wall complies with any applicable standard in Section 14-16-5-7 (Walls and Fences), including, but not limited to Subsection 14-16-5-7(E)(2) (Articulation and alignment) and Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following:
      a. The wall or fence shall not block the view of any portion of any window on the front façade of the primary building when viewed from 5 feet above ground level at the centerline of the street in front of the house.
      b. The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area.
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. Raul Artalejo, owner appeared and gave evidence in support of the application.
5. An inperpretor was sworn in and provided translation for Mr. Artalejo.

6. All property owners within 100 feet and affected neighborhood association were notified of the application.
7. The subject property is currently zoned R-1C.
8. Westgate Height Neighborhood Association is the affected NA.
9. No meeting was requested by the NA.
10. 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.
11. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
12. Applicant stated the current existing wall is old, worn and is in a dilapidated state.
13. The proposed wall would not injure and actually enhance the neighborhood and surrounding community by upgrading his fence and making it nicer.
14. The proposed wall would also keep his dogs safe on his property.
15. This would also enhance the public safety.
16. No one appeared in opposition to the application.
17. The proposed wall would strengthen or reinforce the architectural character of the surrounding area as required Section 14-16-6-6(N)(3)(c)(1).
18. The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community as required by Section 14-16-6-6(N)(3)(c)(2).
19. At least 20 percent of the properties within 330 feet of the lot where the wall or fence is being requested have a wall or fence over 3 feet in the front yard as required by Section 14-16-6-6(N)(3)(c)(3).
20. Photographs were submitted by applicant in support of this factor.
21. The design of the wall complies with any applicable standard in Section 14-16-5-7 (Walls and Fences) including, but not limited to Subsection 14-16-5-7(E)(2) (Articulation and alignment) and Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following:
    a. The wall or fence shall not block the view of any portion of any window on the front façade of the primary building when viewed from 5 feet above ground level at the centerline of the street in front of the house.
    b. The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area.
22. 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).
23. 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 4 inches to the required 3 ft wall height in the front yard.

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 November 15, 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
Raul Artalejo, 1424 Delgado DR SW, 87121