



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

Benigno Toppe requests a variance of 3 feet to the 3 feet maximum wall height for Lot 41, Block 44, Snow Heights Addn, located at 9901 Menaul Blvd NE, zoned R-1B [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00396**
Project No: **Project#2019-003050**
Hearing Date: 12-17-19
Closing of Public Record: 12-17-19
Date of Decision: 01-01-20

On the 17th day of December, 2019, property owner Benigno Toppe (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 feet to the 3 feet maximum wall height (“Application”) upon the real property located at 9901 Menaul Blvd 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 3 ft maximum wall height.
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 14-16-6-4(N)(1).

4. All property owners within 100 feet and affected neighborhood association were notified of the application.
5. The subject property is currently zoned R-1B.
6. East Gateway Coalition and District 8 Coalition of Neighborhood Associations are the affected Neighborhood Associations (“NAs”).
7. Applicant timely notified the affected NAs by e-mail.
8. Applicant appeared and gave evidence in support of the application.
9. Transportation issued a report indicating that, based on the drawings included in the application, the proposed wall is appears to be within the clear sight triangle, but the application also shows the wall will be block topped with see through fence. As long as the fence portion of the wall is see-through above 3 ft., this is allowed. So long as the applicant does not alter the design of the wall to where it would be opaque above 3 ft, Transportation does not object.
10. The proposed wall will be constructed of a 3-foot block-wall base and pilasters, with wrought iron above the 3-foot base.
11. The proposed wall would strengthen or reinforce the architectural character of the surrounding area as required by Section 14-16-6-6(N)(3)(c)(1). Namely, Applicant submitted evidence that the proposed wall is similar to many other walls in the surrounding community.
12. 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). Namely, Applicant submitted evidence that the proposed wall has no negative impact on any neighbor.
13. 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)c.
14. Based on the evidence submitted by Applicant, 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 that: (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; and (b) the design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area. 6of concrete block with wrought iron on top, consistent with many similar walls in the surrounding area.
15. 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).
16. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a variance of 3 ft to the 3 ft maximum wall height.

CONDITIONS:

A. The design of the wall shall comply with any applicable design standards in Sections 14-16-5-7 (Walls and Fences); 7-7(E)(2) (Articulation and Alignment); 5-7(E)(3) (Wall Design) and Section 14-16-6-6(N)(3)(c)4 a and b.

B. Any proposed wall or fence design shall not violate the clear sight triangle as required by the City Traffic Engineering Division.

APPEAL:

If you wish to appeal this decision, you must do so by January 16, 2020 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.

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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
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