



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

Ben and Lynn Wilson a variance of 3.5 ft to the 8 ft max wall height to allow for an 11.5 ft wall in the rear yard for Lot C, Block 21, Mesa Del Norte Addn, located at 1505 Mesilla St NE, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00003**
Project No: **Project# 2019-001933**
Hearing Date: 03-19-19
Closing of Public Record: 03-19-19
Date of Decision: 04-03-19

On the 19th day of March, 2019, Charles Knoblauch, Esq, attorney for property owner's Ben and Lynn Wilson ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 3.5 ft to the 8 ft max wall height to allow for an 11.5 ft wall in the rear yard ("Application") upon the real property located at 1505 Mesilla St NE ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3.5 ft to the 8 ft max wall height to allow for an 11.5 ft wall in the rear yard.
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 14-16-6-4(N)(1).
4. All property owners within 100 feet and affected neighborhood association were notified of the application.

5. Albuquerque Park NA and Winrock South NA are the affected Neighborhood Associations.
6. Applicant notified the affected NAs by e-mail dated December 15, 2018.
7. An e-mail from James Sundsmo, President of the Albuquerque Park NA, dated December 21, 2018, indicating the NA has “No Opinion” on the proposed wall, was submitted in support of the application.
8. The subject property is currently zoned R-1C.
9. Charles Knoblauch, esq., attorney for owners, appeared and gave evidence in support of the application.
10. The 11.5 foot wall is already built several years past and is constructed of various types of concrete blocks placed at various times.
11. The subject property is located in an older neighborhood.
12. There is a long, depression, swale located on the rear property lines of all the houses in the neighborhood.
13. This topographical change of elevation is a physical characteristic and constitutes a special circumstance.
14. This results in a grade/elevation change from the front property line to the rear property line.
15. Most of the houses in the neighborhood, already have taller, existing rear walls, which are taller than the 8 foot rear wall height limits.
16. The applicant would encounter practical difficulties resulting from strict compliance with the minimum standards.
17. The original separation walls were 2-3 foot in height, constructed of cinder blocks, built when the development was first constructed.
18. 2 additional courses of blocks of a darker color were added at various times in the 1970’s.
19. 8 additional courses of different color and texture were added in 2018, resulting in the 11.5 foot wall presently existing.
20. John and Virginia Kinney, 1509 Mesilla NE, rear adjacent property owners, submitted a number of photographs showing a number of possible safety concerns.
21. Exhibit 8 (photograph) submitted allegedly shows the 11.5 foot wall leaning towards 1509 Mesilla.
22. The Kinney’s question the engineering safety of the existing wall building on a foundation originally designed for a 2 foot high “garden wall” (photograph Exhibit 9).
23. They show a number of courses not properly plumbed. (Exhibits 3,4 and 5).
24. They show courses not properly staggered. (Exhibit 2 and 3).
25. They show an uneven wall and cracking foundation. (Exhibit 6).
26. They filed an Affidavit (Exhibit 7), which requests a structural engineering evaluation/assessment to determine whether the existing footing for the original “garden wall is sufficient to support the 11.5 foot wall requested.
27. Applicants stipulated and agreed to this request during the public hearing.
28. A letter from Paul Crickard, 1501 Mesilla St. NE, dated February 6, 2019, an adjacent property owner, was submitted in support of the application.
29. A letter from Linda Mayo, 1305 Mesilla St. NE, dated February 7, 2019, another neighborhood property owner, was submitted in support of the application.
30. A letter from Daniel McGregor, 1207 Mesilla, dated February 5, 2019, another property owner, was submitted in support of the application.
31. Ramona Moseley, 1509 Mesilla appeared and gave testimony regarding the application.
32. She is the adjacent property owner to the rear of applicant.

33. She agrees that it would enhance the character of the neighborhood.
34. She is not opposed to the wall, however, she wants it to be safe and aesthetically pleasing.
35. She also requested a structural evaluation of the presently existing wall.
36. Transportation issued a report indicating no objection to the application.
37. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
38. John and Virginia Kinney,
39. 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).
40. 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).
41. 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).
42. 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).
43. 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).
44. 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).
45. 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 3.5 ft to the 8 ft max wall height to allow for an 11.5 ft wall in the rear yard.

CONDITIONS:

The design of the fence 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.

The applicant shall request a structural or engineering evaluation of the presently existing wall, which shall determine whether the wall meets minimum safety standards.

APPEAL

If you wish to appeal this decision, you must do so by April 18, 2019 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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Ben and Lynn Wilson, 1505 Mesilla ST NE, 87110
Ramona Moseley, 1509 Mesilla, 87110