



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

Patricia Derrick requests a variance of 3 ft to the 3 ft max wall height for Lot 12, Block 12, Mesa Arriba Subd, located at 3100 Betts Dr NE, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00014**
Project No: **Project# 2019-001941**
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, Mandy Matthew, agent for property owner Patricia Derrick (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft max wall height (“Application”) upon the real property located at 3100 Betts 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 3 ft max 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. All property owners within 100 feet and affected neighborhood association were notified of the application.
4. The subject property is currently zoned R-1C.

5. No Neighborhood Association is affected by the requested variance.
6. 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).
7. Mandy Matthews, authorized agent for Patricia Derrick, property owner, appeared and gave evidence in support of the application.
8. Applicant has applied for the variance under criteria (N)(3)(3)(c), and submitted photographs with addresses, in support of this requirement
9. Transportation issued a report indicating the proposed wall was not allowed.
10. The property owner met with Ernest Armijo, Sr. Engineer for Transportation Dept., and amended the design for the proposed wall.
11. The amended design will reduce by one block course (8") to lower the wall height that is within the clear sight triangle, and to top the wall to 6 feet in wrought iron, see through fencing.
12. Transportation reported no objection to the requested variance, with this amendment to the proposed wall.
13. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
14. Long Range Planning reported that only 3 houses of 25 within the 330 foot radius qualified with fences greater than 3 feet in the front yard setback, resulting in 12%.
15. ZHE gave Applicant an opportunity to supplement her Application following the hearing.
16. Nothing further has been submitted by Applicant.
17. Geneva Sachs, 3104 Betts NE, 87110, appeared and gave evidence in partial opposition to the request.
18. She stated she had no objection to the wall height variance request, but was primarily objecting to the manner of post construction clean-up and destruction of trees on her property, during the construction of the wall.
20. Application has failed to satisfy Section 14-16-6-6(N)(3)(c)3c.
21. 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).
22. 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 not satisfied.

DECISION:

The request for a variance of 3 ft to the 3 ft max wall height is DENIED.

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
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Mandy Matthew, 3100 Betts DR NE, 87111
Geneva Sachs, 3104 Betts DR NE, 87111