



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

Gabriel Gonzalez requests a variance of 1 ft to the 3 ft max wall height for Lot 10, Block 3, Katherine Village, located at 3405 Nova CT NW, zoned R-T [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00034**
Project No: **Project# 2019-002004**
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, Property owner Gabriel Gonzalez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 1 ft to the 3 ft max wall height (“Application”) upon the real property located at 3405 Nova CT NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 1 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. 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. Gabriel Gonzalez, owner appeared and gave evidence in support of the application.

5. All property owners within 100 feet and affected neighborhood association were notified of the application.
6. The subject property is currently zoned R-T.
7. West Bluff Neighborhood Association is the affected Neighborhood Association.
8. Applicant notified the affected NAs by e-mail dated December 5, 2018.
9. Applicant's mother resides at the subject property, is disabled and the requested variance would give her peace of mind.
10. Applicant indicated several of his adjacent neighbors have shown support for the request.
11. The existing fence is constructed of wood and corrugated steel sheeting.
12. Its unique construction enhances the architectural character of the surrounding area.
13. It does not injure adjacent properties or the surrounding community.
14. Transportation initially issued a report indicating "Not Allowed".
15. Ernest Armijo, Sr. Engineer for Transportation, met with Applicant, and Applicant agreed to cut a hole in the corrugated sheet metal in the existing fence, below the top rail down to 3 feet above grade, which would remove obstruction of the clear sight triangle caused by the current fence design.
16. Applicant submitted photographs, with accompanying addresses to show evidence to support satisfaction of criteria Section 14-16-6-6(N)(3)(c)(3)c.
17. 15 of 105 properties within 330 feet of the subject property currently have walls/fences over 3 feet tall in the front yard setback, resulting, which does not satisfy the requirement of Section 14-16-6-6(N)(3)(c)(3)c.
18. 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).
19. 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, specifically Applicant has failed to satisfy Section 14-16-6-6(N)(3)(c)(3)c.

DECISION:

The requested 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
Gabriel Gonzalez, 3405 Nova CT NW, 87120