



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

Chappell Family requests a variance of 2 ft to the 3 ft max wall height for Lot 24, Block B, Branson Addn, located at 1249 7TH ST NW, zoned R-1 [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00047**
Project No: **Project# 2019-002066**
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 Chappell Family (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2 ft to the 3 ft max wall height (“Application”) upon the real property located at 1249 7TH ST NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2 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. Cara Chappell, agent for Chappell Family, 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-1A.
7. Wells Park Neighborhood Association and Sawmill CLT are the affected NAs
8. An e-mail from Doreen McKnight, President Wells Park NA, dated March 19, 2019, indicating the NA supports the variance, when modifications requested by the Traffic Engineer.
9. The subject property is located within a Character Protection Overlay zone, and is subject to the provisions contained in CPO-11.
10. The wall presently exists and is 5 feet tall, constructed of cedar posts and fencing.
11. It replaced a rusty, damaged chain link fence.
12. The cedar fence is considered an improvements to neighbors who have commented to her.
13. The neighbor directly across 7th St. has told her the cedar fence was an improvement over the old chain link fence.
14. Applicant submitted photographs of other houses in the area, which already have walls or fences greater than 3 feet in the front yard setback area in support of criteria 6(N)(3)(c)3c.
15. Transportation issued a report indicating not allowed as presently constructed.
16. Applicant has discussed with Ernest Armijo, Sr. Engineer modifications required to remove obstructions from the required clear sight triangle.
17. Applicant agreed on the record, to modify the existing wall to modify the wall to remove obstructions to the clear sight triangle on the record as required by Transportation.
18. ZHE will grant the variance, with a condition being the obstruction shall be removed as soon as possible.
19. Any final wall shall not violate the clear sight triangle as required by transportation.
20. A letter from Catherine Mexal, Wells Park, stating she did not object to the request, but wanting to insure that the fence was modified to remove any obstructions to the required clear sight triangle required by Transportation.
21. Mel Chappell, 6001 Indian School NE, appeared and gave evidence in support of the request.
22. He is Cora's father and wished to place factors for support of the request in the record.
23. She is a single woman, living alone and working late hours, often returning home well after dark.
24. She owns two large dogs, which have escaped by jumping over the chain link fence and attacked a neighbor's cat.
25. They have not escaped since construction of the cedar fence.
26. The primary residence is located on the rear of the subject property.
27. As a result there is only a small 5 foot private space behind the house.
28. The larger than average front yard is Cora's only space for private activities.
29. Because a homeless shelter is in the surrounding community, she was constantly having to endure scrutiny while working in her front yard.
30. The cedar fence has provided her more security and safety.
31. 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).
32. 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).

33. 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.
34. 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).
35. 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 2 ft to the 3 ft max wall height.

CONDITIONS:

Applicant shall remove any and all obstructions to the clear sight triangle as required by Transportation as soon as possible.

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.

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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