



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

Joaquin Cenicerros requests a variance of 3 ft to the 3 ft maximum wall height for Lot 28, Block 1, Tapia Meadows, located at 1014 Rigel St SW, zoned R-T [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00052**
Project No: **Project# 2019-002097**
Hearing Date: 05-21-19
Closing of Public Record: 05-21-19
Date of Decision: 06-05-19

On the 21st day of May, 2019, property owner Joaquin Cenicerros (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft maximum wall height (“Application”) upon the real property located at 1014 Rigel St SW (“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 were notified of the application.

5. The subject property address is 1014 Rigel SW.
6. The subject property is currently zoned R-T.
7. There is no affected Neighborhood Association.
8. Joaquin Cenicerros, owner appeared and gave evidence in support of the application.
9. The wall is a pre-existing solid wooden wall, with a wrought iron gate which was constructed without a permit.
10. The wall was constructed to replace a previous older fence.
11. Transportation reported that the present design was not allowed as the wall is located within the clear sight and mini clear sight triangles, and obstructed the view in both these areas.
12. Transportation issued a report dated April 9, 2019, indicating the proposed/existing wall was Not Allowed, as it obstructed and thereby violated both the clear sight triangle and the mini clear sight triangle.
13. Applicant agreed to meet with transportation and make the modifications necessary to remove the obstructions.
14. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
15. Applicant submitted photographs with addresses of houses with existing walls over 3 feet in the front yard setback located on the buffer map to satisfy criteria 6(N)(3)(c)(3)c.
16. A letter from Terri Gallegos, 1042 Draco Ave SW, dated February 28, 2019, was submitted in opposition to the request.
17. The letter enclosed photographs of the existing wall on the subject property.
18. Ms. Gallegos, stated that the existing wall does not strengthen or reinforce the architectural character of the surrounding area
19. She states that the design and placement of the existing wall/fence creates and traffic hazard and danger by permitting vehicles to illegally park on the side yard setback, and these vehicles obstruct the stop sign at Goff Blvd SW and Rigel SW.
20. Ms. Gallegos appeared and gave testimony in opposition to the request.
21. She restated the objections she raised in her letter and added a complaint of Applicant operating and parking food trucks on his property.
22. Janie Bishop, 1041 Rigel SW, appeared and gave testimony in opposition to the request.
23. Her complaints appeared to be primarily related to commercial vehicles on Applicant's property, and multiple vehicles making it seem like a parking lot.
24. She does not like the design of the wall.
25. Applicant responded that he would meet with Transportation and modify the wall as required, and insure that vehicles are parked legally and safely.
26. The solid block wall which curves around the subject property on Goff SW, is an existing CMU block fence which was not modified.
27. 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).
28. 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).
29. 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.
30. 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).

31. 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 ft to the 3 ft maximum wall height.

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.

APPEAL

If you wish to appeal this decision, you must do so by June 20, 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
Joaquin Cenicerros, 1014 Rigel ST SW, 87105
Terri Gallegos, 1042 Draco Ave SW, 87105
Janie Bishop, 1042 Rigel SW, 87105