



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

Fabian Acosta requests a variance of 3 ft to the 3 ft max wall height for Lot 20, Block 14, Baron Burg Heights Mendelsbergs Replat, located at 612 Valencia DR SE, zoned R-1B [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00072**
Project No: **Project# 2019-002167**
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 Fabian Acosta (“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 612 Valencia DR SE (“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. 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. The subject property is currently zoned R-1B.
6. South San Pedro Neighborhood Association is the affected Neighborhood Association.
7. Applicant notified the affected NA's by e-mail dated February 1, 2019.
8. Nothing was submitted in support or opposition to the Application.
9. Fabian Acosta, owner appeared and gave evidence in support of the application.
10. The pre-existing wall is 4 foot in height and 80 feet long, and is topped by a 2 foot wrought iron see through fencing.
11. The subject property is located within the Airport Protection Overlay Zone, and is regulated by 14-16-3-3 of the IDO.
12. An e-mail from James Hinde, Deputy Director of the ABQ Sunport, dated March 29, 2019, indicating no objection to the request, was submitted in support of the Application.
13. Transportation issued a report indicating the existing wall is Not Allowed due to obstruction of the clear sight triangle.
14. Applicant stated he was unable to locate any other properties within 330 feet that already had a wall taller than 3 feet in the front yard setback and was therefore unable to satisfy the criteria.
15. Applicant has failed to submit evidence to support satisfaction of 6(N)(3)(C)(3)c.
16. 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).
17. 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:

DENIAL of the request for a variance of 3 ft to the 3 ft max wall height.

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
Fabian Acosta, 612 Valencia DR SE, 87108