



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

Eva and Greg Montoya request a variance of 3 ft to the 3 ft maximum wall height for Lot 26, Block 25A, Elder Homestead Addn, located at 1109 Arizona ST SE, zoned R-MH [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00080**
Project No: **Project# 2019-002180**
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 owners Eva and Greg Montoya (“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 1109 Arizona ST 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-MH.
6. Elder Homestead Neighborhood Association is the affected Neighborhood Association.
7. Applicant notified the affected NA's by e-mail dated February 12, 2019.
8. Nothing was submitted in support or opposition to the request.
9. Greg Montoya, agent for Montoya Family SC Land Holdings LLC, owner appeared and gave evidence in support of the Application.
10. A site plan was submitted in support of the Application.
11. The subject property is a 12 unit, 2 story apartment complex, situated on 3 combined lots.
12. The subject property is located on Zuni SE, between Wyoming SE and Louisiana SE.
13. The property is within a high volume pedestrian transit area.
14. This has created a significant health and safety issue caused by this pedestrian traffic, included discarded needles, trash, vandalism, property damage and assaults on residents.
15. The health and welfare of the residents of the apartment complex have been adversely impacted by these issues.
16. The fence would help insure the safety of its residents.
17. The subject property is within the Airport Protection Overlay Zone and the KAFB zone.
18. An e-mail from Jim Hinde, Deputy Director of the ABQ Sunport, dated March 29, 2019, indicating no objection to the request was submitted in support of the Application.
19. The proposed wall would be constructed of wrought iron fencing to surround the apartment complex.
20. 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 14-16-6-6(N)(3)(c)(3)c.
21. Transportation issued a report indicating Conditional Approval of the request, the condition being any proposed wall design shall not violate the clear sight triangle as required by transportation.
22. The proposed wall will be constructed of wrought iron, see-through fencing, supported by steel posts.
23. 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).
24. 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).
25. 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.
26. 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).
27. 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 max 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
Eva and Greg Montoya, 1109 Arizona ST SE, 87108