



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

Cyprian Devine Perez requests a variance of 3 ft to the maximum 3 ft wall height for Lot 13, Block 51, University Heights, located at 323 Amherst SE, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00118**
Project No: **Project# 2019-002279**
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 Cyprian Devine Perez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the maximum 3 ft wall height (“Application”) upon the real property located at 323 Amherst 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 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. Javid Jalili, agent for Cyprian Devine-Perez, property owner appeared and gave evidence in support of the application.
5. The address of the subject property is 323 Amherst SE.
6. All property owners within 100 feet and affected neighborhood association were notified of the application.
7. The subject property is currently zoned R-1C.
8. Nob Hill Neighborhood Association and Southeast Heights Neighborhood Association are the affected Neighborhood Associations.
9. A letter from Gary Eyster, President Nob Hill Neighborhood Association, dated May 15, 2019, stating the Board was opposing the request, was submitted in opposition to the Application.
10. He states the Applicant has failed to satisfy criteria 6-6(N)(3)(c)(3), since: the subject property is not greater than ½ acre in size; is not on a street designated as a collector or above; and does not satisfy the requirement of 20 percent of properties within 330 feet of the lot have a wall or fence over 3 feet in the front yard.
11. The letter was accompanied by research material evidencing inability of Applicant to satisfy 3c, submitting an inventory of all properties 330 feet surrounding subject property indicating only 12 percent with walls greater than 3 feet in front yards.
12. The wall is a pre-existing solid wooden wall, constructed of coyote fencing (wooden poles) which was constructed without a permit.
13. The wall is 10 feet from the front property line.
14. A site plan and photographs were submitted in support of the request.
15. An e-mail from Beth Silbergleit, dated May 9, 2019, indicating her disapproval of the request, was submitted in opposition to the Application.
16. An e-mail from Dennis Trujillo, dated May 9, 2019, indicating his disapproval of the request, was submitted in opposition to the Application.
17. An e-mail from Tom Simic, dated May 9, 2019, indicating his disapproval of the request, was submitted in opposition to the Application.
18. An e-mail from Darby Sais, 321 Amherst, dated May 14, 2019 was submitted in support of the Application.
19. Agent testified the fence was constructed without a permit, due to a mistaken understanding that since the wall was built 10 feet from the front property line, owner did not need a permit to build the wall.
20. The wall is built of natural materials and fits the architectural nature of the area.
21. It provides security and blocks the traffic noise from Coal.
22. The fence was modified to satisfy Transportation and is now see through.
23. Gary Eyster appeared and gave testimony in opposition to the Application.
24. He is the President of the Nob Hill Neighborhood Association.
25. Nob Hill has been recognized by City Planning as an “Early Automobile Suburb” located on the east mesa, and was developed near the beginning of the 20th Century.
26. The development was constructed of unifying architectural design principals of that period.
27. One strong principal was no tall fences in front yard setbacks.
28. The Nob Hill NA does not oppose approval of variance requests when they satisfy the criteria required for approval.
29. He restates the evidence contained in his previously submitted letter indicating that the Application fails to satisfy any of the requirements of criteria 6(N)(3)(c)3c.

30. Jim Roche, 401 Amherst SE, appeared and gave testimony in support of the Application.
31. He feels it looks fine and is a unique property in the neighborhood.
32. Applicant responded to the opposition by restating the fence was necessary for security and noise control.
33. Photographs of houses with existing walls over 3 feet in the front yard setback were submitted by Applicant to satisfy criteria 6(N)(3)(c)(3)c.
34. Transportation initially issued a report indicating the existing wall was Not Allowed, due to obstruction of required clear sight triangle requirements.
35. Applicant subsequently met with Ernest Armijo, Senior PE, Transportation Division, and made modifications by removing every other fence post, allowed it to be viewed as a see through fencing design, and on that basis, Transportation reported a Conditional Approval of the fence.
36. Applicant has failed to satisfy criteria required by Section 14-16-6-6(N)(3)(c)(3)c.
37. Evidence submitted show 12 percent of properties within 330 feet meet this requirement.
38. 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).
39. 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:

The request for a variance of 3 ft to the 3 ft maximum wall height is DENIED.

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
Cyprian Devine-Perez, 6128 Fieldston Road, NY, 10471
Javid Jalili, 502 Girard, 87106