



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

DHS Properties LLC requests a variance of 3 ft to the maximum 3 ft wall height for Lot 1, Block 6, Heights Reservoir Addn Tr 6, located 220 Quincy ST NE, zoned R-MH [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00272**
Project No: **Project#2019-002755**
Hearing Date: 10-15-19
Closing of Public Record: 10-15-19
Date of Decision: 10-30-19

On the 15th day of October, 2019, Dave Slade, agent for property owner DHS Properties LLC (“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 220 Quincy ST NE (“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. Dave Slade, agent, for DHS Properties, LLC, property owner appeared and gave evidence in support of the application.
5. The address of the subject property is 220 Quincy St. NE.
6. The subject property is currently zoned R-MH.
7. The request is for a variance from Section 14-16-5-7(D)(1): **DEVELOPMENT STANDARDS; Walls and Fences; Table 5-7-1: Maximum Wall Height.**
8. The request is for an existing fence constructed without a permit on the subject lot.
9. The wall is a courtyard fence, constructed of see-through 50% opaque cedar fencing.
10. The fence is located 16 feet from front property line and 34 feet from outside sidewalk edge.
11. A site plan, with accompanying photographs was submitted in support of the Application.
12. All property owners within 100 feet and affected neighborhood association were notified of the application.
13. Highland Business and Neighborhood Association, Inc. and District 6 Coalition of Neighborhood Associations are the affected neighborhood associations.
14. The neighborhood associations were notified by e-mail dated August 14, 2019.
15. No response, nor request for meeting has been submitted.
16. ZHE stated that property owners at 403 Quincy NE, Kiichi Harada and Heather Seibold, are his son and daughter in law.
17. ZHE stated owners do not reside at that address, live in Bremerton, Washington, and have not expressed any statement regarding the Application.
18. Agent waived any conflict created by this relationship and permitted ZHE to complete the hearing.
19. Transportation issued a report indicating No Objection to the Application, as the fence is not located within the clear sight triangle.
20. The fence does not violate the clear sight triangle as required by Transportation.
21. No one appeared in opposition to the Application.
22. 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).
23. The 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).
24. A proximity map (showing properties within 330 feet of the subject property), photographs of properties (with addresses) within 330 feet showing walls taller than 3 feet in front yard set-backs, in support of criteria required by Section 14-16-4-3(C)(3)c are submitted by Applicant.
25. 32 properties are shown on the map requiring 6 to show at least 20 percent, and Applicant submitted 4 photographs with addresses, showing 12 percent.
26. Applicant does not satisfy Section 14-16-6-6(N)(3)(c)(3)c.
27. Ambiguities exist as to the proximity map submitted, and interpretation of streets included in the calculation of the percentages required and submitted in this Application.
28. Subject property is located in a multi-family high density Zone District (R-MH)
29. R-MH is further defined in Section 14-16-2-3(F): **RESIDENTIAL – MULTI-FAMILY HIGH DENSITY ZONE DISTRICT (R-MH)**: “...The primary land use is multi-family dwellings, ...”
30. City of Albuquerque Integrated Development Ordinance Section 14-16-6-6(N)(3)(c) Variance for a Taller Front or Side Yard Wall reads in part: “An Application for a Variance

for a wall in the front yard or street side yard of a lot in a Residential zone district *or on a lot with low density residential development ...*” (emphasis added).

31. The subject lot has an accessory “casita”, which qualifies it as a multi-family use.
32. Applicant submitted photographs and addresses of a total of 7 properties within a 330 foot radius of the subject property, and an additional 12 properties in the general surrounding R-MH zone district.
33. A majority of the properties submitted, appeared to be multi-family uses.
34. Applicant has satisfied the intent of the IDO.
35. 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).
36. 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 November 14, 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:

ZHE File

Zoning Enforcement

Dave Slade, 2719 Bosque Del Sol LN NW, 87120

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