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

Justin Lial requests a variance of 3 ft to the 3 ft maximum wall height for Lot 1-P1, Block 1, Tompiro, located at 5920 Gran Quivira Rd NW, zoned R-1B [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2020-00133**
Project No: ..... **Project#2020-003889**
Hearing Date: 08-18-20
Closing of Public Record: 08-18-20
Date of Decision: 09-02-20

On the 18th day of August, 2020, property owner Justin Lial ("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 5920 Gran Quivira Rd NW ("Subject Property"). Below are the ZHE's finding 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 and affected neighborhood association were notified of the application.
5. The subject property is currently zoned R-1B.
6. A representative of the S. R. Marmon Neighborhood Association provided written evidence and testimony pointing out that the initial construction of the wall appeared to obstruct views within the clear sight triangle, but that the Association could be supportive if the wall were redesigned to comply with clear sight triangle requirements. Applicant redesigned the wall accordingly.
7. City Transportation issued a report stating that it does not object, based on the fact that under Applicant's new design, the wall would not obstruct view within the clear sight triangle.
8. Based on evidence presented by Applicant, the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Specifically, the wall is constructed in harmony with the home on site and neighboring properties. No evidence to the contrary was submitted.
9. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, the wall does not protrude into the right-of-way, and applicant provided testimony that the wall would enhance the safety of both the subject property and neighboring properties by discouraging vagrants and trespassers from coming into the community, as apparently has been occurred. No evidence to the contrary was submitted.
10. Based on evidence presented by Applicant, 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. No evidence to the contrary was submitted.
11. Based on evidence presented by Applicant, 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; and (b) The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area. No evidence to the contrary was submitted.
12. 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).
13. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITION of a variance of 3 feet to the 3 feet maximum wall height.

CONDITION:

In accordance with City Transportation requirements, no portion of the wall may obstruct views within the clear sight triangle.

APPEAL:

If you wish to appeal this decision, you must do so by September 17, 2020 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.

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
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