



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

BRITTNEY TURNBOUGH requests a special exception to Pg 45, II. SU-2 LCR, SOUTH BROADWAY SDP and 14-16-3-19(A)(2)(a): a VARIANCE of 3' to the allowed 3' maximum height for a proposed wall in the front yard setback area for all or a portion of Lot 7, Block 30, HUNING HIGHLAND ADDN zoned SU-2 LCR, located on 608 COAL AVE SE (K-14)

Special Exception No:.....14ZHE-80275
Project No:Project# 1010260
Hearing Date:January 23, 2015
Closing of Public Record:January 23, 2015
Date of Decision:.....02-06-15

On the 23rd day of January, 2015 (hereinafter “Hearing”) BRITTNEY TURNBOUGH (hereinafter “Applicant”) appeared before the Zoning Hearing Examiner (hereinafter “ZHE”) requesting a Variance of 3' to the allowed 3' maximum height for a proposed wall in the front yard setback area (hereinafter “Application”) upon the real property located at 608 COAL AVE SE (“Subject Property”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 3' to the allowed 3' maximum height for a proposed wall in the front yard setback area.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) “SPECIAL EXCEPTIONS – VARIANCE” reads in part: “A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:
 - a. The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;
 - b. There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;
 - c. Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and
 - d. Substantial justice is done.
3. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious

to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided testimony that she was denied in a prior application to the ZHE because the wall was 6' with no "visibility through the wall". The Applicant researched the historic designs of walls in this community and sought the help of neighbor Ms. Ann Carson. Ms. Carson attended the hearing as Agent for the Applicant and provided a photograph of a home in the early 1900's that had a beautiful fence that had panels spaced such that you could have visibility through the fence. The Applicant and her Agent design the NEW wall to match this 1900 themed wall and it now aesthetically matches the neighborhood and will not be injurious to the community [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. Further, the Application and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application.

4. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the age and location of the home directly on top of the adjacent public right of way (the windows from the home are perilously close to the public road) are special circumstances that need to be considered by the ZHE. The ZHE agrees with the Applicant that the location of this home directly adjacent to the public right of way is a unique element on the Subject Property that not many homes in Albuquerque are faced with [as required pursuant to Section § 14-16-4-2 (C) (2) (b)].
5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not "self-imposed", and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that if the ZHE did not grant the variance the 3' tall wall would be insufficient to protect the home from motorists and pedestrians walking along the public right of way adjacent to the Subject Property which constitutes an "*unjustified limitation on the reasonable use of the Subject Property*" [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
7. Applicant testified at the Hearing that the yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 (B) (4).

CONCLUSIONS OF LAW:

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

DECISION:

APPROVAL WITH CONDITIONS of a **VARIANCE** of of 3' to the allowed 3' maximum height for a proposed wall in the front yard setback area.

CONDITIONS OF APPROVAL:

- A. The Applicant shall ensure that the wall is constructed in conformity with the design submitted by Ms. Ann Carson (Agent).
- B. The Applicant shall not have any portion of the wall that exceeds 6'.
- C. The Applicant shall ensure that there is some visibility and spacing between the panels above 3' of the wall height (consistent with the design presented by the Agent Ms. Ann Carson).
- D. The Applicant shall ensure that the wall does not create any "clear sight triangle" concerns with the Dept. of Municipal Development.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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