



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

BENITO AVILA CRUZ AND GILBERT AVILA requests a special exception to Section 14-16-3-19(A)(2)(a): a VARIANCE of 4 ft. to 6 ft. to the maximum 3 ft. height to allow an existing 7' 6" fence in the front yard setback area for all or a portion of Lot 23, Block 4, TAFOYA-ROSS ADDN zoned R-1, located on 5801 SUNSET GARDENS RD SW (K-11)

Special Exception No:..... \*IR\* 15ZHE-0161  
Project No:..... Project# 1010490  
Hearing Date:..... 07-21-15  
Closing of Public Record:..... 07-21-15  
Date of Decision: ..... 07-31-15

On the 21st day of July, 2015 (hereinafter "**Hearing**") BENITO AVILA CRUZ AND GILBERT AVILA (hereinafter "**Applicants**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 4 ft. to 6 ft. to the maximum 3 ft. height to allow an existing 7' 6" fence in the front yard setback area (hereinafter "**Application**") upon the real property located at 5801 SUNSET GARDENS RD SW ("**Subject Property**"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 4 ft. to 6 ft. to the maximum 3 ft. height to allow an existing 7' 6" fence 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 the wall for which they seek approval is part of a significant effort to clean up and improve the Subject Property, which effort is supported by numerous neighbors and the Alamosa Neighborhood Association. Further the wall is constructed to be attractive and “elegant” and rather than being injurious or contrary to the public interest is a benefit to the nearby vicinity and 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 Due to past break-ins and destruction and ongoing security concerns, as well as safety for the small children resident in the house while allowing adequate exterior play space, particularly given the corner lot location, there exist special circumstances [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 Applicant did not create the conditions given rise to the need for a variance 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 provided evidence 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 4 ft to 6 ft to the maximum 3 ft. height to allow an existing 7’ 6” fence in the front yard setback area.

#### **CONDITIONS OF APPROVAL:**

- A. The Applicant shall ensure that the wall will be reduced in height to at or below 36” along the Sunset Gardens/Dolores Road intersection to comply with Traffic Engineer requirements for 35 ft. clear sight triangle.

- | B. The Applicant shall ensure that the wall will be reduced in height to at or below 36” at the driveway and street intersection to comply with Traffic Engineer requirements for an 11 ft. mini clear sight triangle.
- C. The Applicant shall adhere to the *design guidelines* for walls and fences as set forth in the City of Albuquerque Zoning Code.

If you wish to appeal this decision, you may do so 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.



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