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

ROBERT AND JANICE BATE requests a special exception to Section 14-16-3-19(A)(2)(a)2 : A VARIANCE of 2 ft 4 in to the maximum 6 ft height allowed to raise an existing wall for all or a portion of Lot 18, The Champions at Tanoan zoned R-D, located on 10004 WELLINGTON NE (E-21)

Special Exception No:..... **15ZHE-80275**
Project No:..... **Project# 1010639**
Hearing Date:..... 11-17-15
Closing of Public Record:..... 11-17-15
Date of Decision: 12-02-15

On the 17th day of November, 2015 (hereinafter "**Hearing**") ROBERT AND JANICE BATE (hereinafter "**Applicants**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 2 ft 4 in to the maximum 6 ft height allowed to raise an existing wall (hereinafter "**Application**") upon the real property located at 10004 WELLINGTON NE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicants are requesting a Variance of 2 ft 4 in to the maximum 6 ft height allowed to raise an existing wall.
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 Applicants have met their 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, as required pursuant to Section § 14-16-4-2 (C) (2) (a). Specifically, the Applicants provided testimony and evidence that the residence is adjacent to Academy Boulevard and suffers from lights, noise and intrusion on privacy. Increasing the wall height would address these issues while having no deleterious effect on surrounding properties or the community. The increase height would be of the same construction and would blend with similar walls in the area. Further, the Application and testimony of the Applicants at the Hearing suggest that there is no neighborhood opposition to the Application, and that the application has been approved by the homeowners association, conditional on receiving approval from the ZHE.

4. The ZHE finds that the Applicants has met their 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 Applicants provided testimony that the existing wall is only 3.5 feet high on the interior side due to differential heights, so that it does not serve its intended function of providing light and noise protection as well as providing privacy and security [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
5. The ZHE finds that the Applicants have met their 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 Applicants provided testimony that Applicants did not create the current situation but would suffer from diminished utility of their 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 Applicants have met their 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. Applicants 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 Applicants have 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 of a VARIANCE of 2 ft 4 in to the maximum 6 ft height allowed to raise an existing wall.

If you wish to appeal this decision, you may do so in the manner described below:

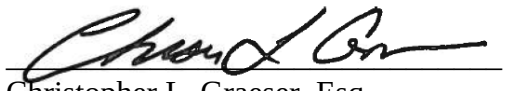
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of $105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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