



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

Russell Wynn requests a variance of 2 ft 11 inches to the allowed 8 ft wall height in the rear yard setback of Lot 12, Block 20, Loma Del Norte Addn Unit 7, located on 8209 Curry Ave NE, zoned R-1 [Section 14-16-3-19(A)(1)(a)]

Special Exception No:**18ZHE-80129**
Project No:**Project# 1011640**
Hearing Date:07-23-18
Closing of Public Record:07-23-18
Date of Decision:08-07-18

On the 23rd day of July, 2018, property owner Russell Wynn (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2 ft 11 inches to the allowed 8 ft wall height in the rear yard setback (“Application”) upon the real property located at 8209 Curry Ave NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2 ft 11 inches to the allowed 8 ft wall height in the rear yard setback.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “*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 Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. The Applicant presented testimony supporting his request.
5. The subject property is zoned R-1.
6. The North Wyoming Neighborhood Association was notified.
7. An e-mail in support of the Application was submitted by Frances Gurule, a neighbor located at 8213 Curry Ave NE.
8. Her letter also discusses the significant grade / elevation change between adjacent properties.

9. She feels that enhanced safety and privacy for the vicinity will result by the granting of the request.
10. No one appeared in opposition to the request.
11. The ZHE finds that Application is not: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).
12. Specifically, the ZHE finds that the proposed application enhances safety to the subject property, as well as the adjacent neighboring property to the rear; and would also provide additional privacy to the subject and adjacent properties; thereby enhancing the community and the vicinity.
13. The ZHE finds that 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, as required by Section 14-16-4-2(C)(2)(b).
14. Specifically, the ZHE finds that there is a significant elevation / grade change between Applicant's property and the adjacent property to the rear of the subject property.
15. The ZHE finds that 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 district, as required by Section 14-16-4-2(C)(2)(c).
16. Specifically, the ZHE finds that the special properties of the subject property are not self-imposed.
17. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2 (C)(2)(d).
18. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
19. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 2 ft 11 inches to the allowed 8 ft wall height in the rear yard setback.

If you wish to appeal this decision, you must do so by August 23, 2018 in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

Appeal is to be filed within 15 days of the decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, on the west side of the lobby.
Please present this letter of notification when filing an appeal.

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: Zoning Enforcement
ZHE File