



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

Lee Rosner requests a variance of 3 ft to the max 3 ft wall in the front yard for Lot 2, Block 16, Roachs, located at 342 Washington St NE, zoned R-1B [Section 14-16-5-7(D)]

Special Exception No:.....**VA-2018-00088**
Project No:**Project#2018-001516**
Hearing Date:10-16-18
Closing of Public Record:10-16-18
Date of Decision:.....10-31-18

On the 16th day of October, 2018, property owner, Lee Rosner (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the max 3 ft wall in the front yard (“Application”) upon the real property located at 342 Washington St NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the max 3 ft wall in the front yard.
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 14-16-6-6(N)(3)(c).
4. Lee Rosner, owner appeared and gave evidence in support of the application.
5. All property owners within 100 feet and affected neighborhood association were notified of the application.

6. The subject property is currently zoned R-1B.
7. Nob Hill Neighborhood Association and Highland Business Neighborhood Association are the affected NA's.
8. Applicant appeared at meetings for the Nob Hill NA.
9. Applicant appeared at a Board of Directors meeting of the NA, September 10th and October 8th, 2018 to present his application to the NA.
10. A letter dated October 8, 2018 was submitted in support of the application.
11. Applicant appeared and presented his application to the Highland Business NA September 6, 2018.
12. A letter from the Highland Business NA was submitted in support of the application.
13. Gary Eyster from the Nob Hill NA appeared and gave evidence in support of the application.
14. Transportation reported conditional approval for the application, as long as the proposed wall does not alter the proposed plan to encroach on the clear sight triangle.
15. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
16. The proposed wall will be constructed of adobe materials and will serve as a backdrop of an extensive planting of native plant landscaping.
17. The proposed wall will enhance the architectural character of the neighborhood and surrounding community.
18. The proposed wall will be attractively rendered and unobtrusive.
19. The subject property lot is fronted by Washington, designated a collector street in the LRTS guide, as required by Section 14-16-4-2(C)(2)(b).
20. The proposed wall would strengthen or reinforce the architectural character of the surrounding area as required by Section 14-16-4-2(C)(2)(a).
21. The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community as required by Section 14-16-4-2(C)(2)(b).
22. 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.
23. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4(K)(3).
24. 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 3 ft to the max 3 ft wall in the front yard.

The design of the fence shall comply with the Specific-use standards for walls and fences, Section 14-16-5-7(A) through (E).

If you wish to appeal this decision, you must do so by November 15, 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 must be filed with the Planning Department within 15 days after the decision. The appeal shall specifically state the section of the Integrated Development Ordinance, City regulation, or condition attached to a decision that has not been interpreted correctly, as required by Section 14-16-6-4(U)(3)(a)(3) of the Integrated Development Ordinance. 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.

Once an appeal is accepted by the Planning Department, it shall prepare and transmit a record of the appeal together with all appeal material received from the appellant to impacted parties and to the Land Use Hearing Officer (LUHO) through the Clerk of the City Council.

The LUHO shall then schedule a hearing on the matter within 30 consecutive days of receipt and notify the parties, pursuant to Section 14-16-6-4(U)(3)(d).

The Planning Department 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 14-16-6-4(U), of the Integrated Development Ordinance, 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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Lee Rosner, 342 Washington ST NE, 87108
Gary Eyster, 316 Amherst DR NE, 87106