



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

ELAINE AARON (KAY BEASON, AGENT) requests a special exception to Section 14-16-3-19(A)(2)(a): a VARIANCE of 5 ft to the maximum 3 ft wall height in the front yard setback for all or a portion of Lot 1, Cox-Ross & Joyce zoned R-1, located on 601 CAMINO ESPANOL NW (E-14)

Special Exception No:..... **18ZHE-80042**
Project No:..... **Project# 1011529**
Hearing Date: 04-17-2018
Closing of Public Record: 04-17-2018
Date of Decision: 05-02-2018

On the 17th day of April, 2018, KAY BEASON (“Agent”) acting as agent on behalf of the property owner ELAINE AARON (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 5 ft to the maximum 3 ft wall height in the front yard setback (“Application”) upon the real property located at 601 CAMINO ESPANOL NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 ft to the maximum 3 ft wall height in the front 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 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).
5. The fence does not interfere with the views, light or access of other residents or detrimentally impact neighborhood character or security, and as built is approximately 19 feet back from the curb.

6. The fence, with the conditions included below, may assist in deterring criminal activity, which will benefit the neighborhood as a whole.
7. Approval of the Application, with the conditions included below, will allow a fence with an opaque portion that is the same height as, and adjacent to, the existing adobe wall on the neighboring property. This will allow for a consistent streetscape.
8. Comments were received from a concerned resident expressing concerns both about the unsightly and dangerous fencing material and about the nonconforming fencing surrounding the Subject Property.
9. The conditions of approval include a requirement that all barbed wire or razor wire on the Subject Property be removed. This is a reasonable condition of approval and is related to the impact of allowing a variance to standards that would otherwise apply to fencing on the Subject Property.
10. The approval, as noted in the conditions, is only for the small portion of the fencing within the front setback. No other variance from the requirements of the code is allowed by this approval.
11. The conditions also limit the height of the latilla portion of the fence to that of the yard wall surrounding the abutting property, which appears reasonable in height and impact on the viewscape.
12. With the concerns addressed in this manner, there appears to be no remaining injury posed by the fence.
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 the Subject Property is located so that it is staggered with respect to the lot in front. A significant portion of the front lot line actually abuts the side lot line of the property to the south and not the street. This results in the front yard functioning as a side yard for the portion of the property on which the fence that is the subject of this Application is located. This location is a special circumstance and does not apply generally to other property in the same zone or vicinity.
15. Additionally, the lot is sloped down toward the street, which is not generally applicable to other properties and results in the fence, if level at the top, being significantly shorter close to the house.
16. 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).
17. Specifically, the ZHE finds that Applicant did not create either the locational or topographical special circumstances. Denying the fence as approved with conditions would remove the Applicant's ability to safely retain children and pets in the back yard of the house and protect them from intrusions.
18. 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).

19. 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).
20. 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 WITH CONDITIONS of a variance of 5 ft to the maximum 3 ft wall height in the front yard setback.

CONDITIONS OF APPROVAL:

1. The latilla portion of the fence shall be no greater than the existing average height of the adjacent adobe wall at 607 Camino Espanol.
2. Any portion of the fence higher than the latilla portion shall be constructed only of smooth, horizontal metal cable, spaced at least one foot apart.
3. No barbed wire or razor wire may be used anywhere on the Subject Property and any existing barbed wire or razor wire shall be removed.
4. This variance applies only to the ~14’ portion of the fence on the Subject Property located within the front yard setback.

If you wish to appeal this decision, you must do so by May 17, 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 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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