



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

James Villalobos requests a variance of 3 ft to the 3 ft maximum wall height for Lot 24, Block 7, La Reina De Los Altos Unit 1, located at 3213 Reina DR NE, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00210**
Project No: **Project#2019-002548**
Hearing Date: 08-20-19
Closing of Public Record: 08-20-19
Date of Decision: 09-04-19

On the 20th day of August, 2019, property owner James Villalobos (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft maximum wall height (“Application”) upon the real property located at 3213 Reina DR 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 3 ft maximum wall height.
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 14-16-6-4(N)(1).

4. James and Luz Adriana Villalobos, property owners appeared and gave evidence in support of the application.
5. The address of the subject property is 3213 Reina Dr. NE.
6. All property owners within 100 feet and affected neighborhood association were notified of the application.
7. The subject property is currently zoned R-1C.
8. District 8 Coalition of Neighborhood Associations is the affected Neighborhood Association.
9. Applicant notified the affected NAs by e-mail dated June 5, 2019.
10. No response nor request for meeting has been submitted.
11. The wall was already constructed, without a permit, of concrete block, which is proposed to be covered by stucco to match the existing primary house.
12. The proposed finish is color stucco to match the house and placement of brick covering on the pilasters, which will match the architectural character of the house and the surrounding neighborhood.
13. The house sits on a slightly elevated grade and the middle of the street is visible from all front windows, because of this drop in elevation.
14. Applicants submitted the proximity map with photographs showing 7 of the total of 17 properties within 330 feet of the subject property have walls or fences taller than 3 feet in the front yard setbacks.
15. Photographs submitted by applicant show 7 properties on the map satisfy the requirement in support of this required criteria.
16. Transportation originally issued a report indicating conditional approval, however, Applicant met with Ernest Armijo, Sr. Engineer and presented photographs of the existing wall, and after review, Mr. Armijo gave no objections to the Application, "So long as no new wall is added which would fall within the clear sight triangle".
17. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
18. A letter from Madelyn Novick, 3209 Reina Dr. NE, dated August 13, 2019, was submitted in opposition to the Application.
19. Her primary objections to the Application are that the wall was built without a permit and questions the structural soundness of the wall; that she must pull into the street in order to safely exit her driveway; that a driveway to accommodate large vehicles was installed and the loss of her view of the mountains from her front porch.
20. Owners responded that her driveway is 35 feet from their closest wall, and therefore there is no clear sight triangle violation, in her inability to get out of her driveway.
21. Applicants also responded that other neighbors have complemented them on the wall and had expressed no opposition.
22. No one appeared in opposition to the Application.
23. The proposed wall would strengthen or reinforce the architectural character of the surrounding area as required by Section 14-16-6-6(N)(3)(c)(1).
24. The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community as required by Section 14-16-6-6(N)(3)(c)(2).
25. 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 as required by Section 14-16-6-6(N)(3)(c)(3)c.

26. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
27. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(c) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 3 ft to the 3 ft maximum wall height.

CONDITIONS:

The design of the fence shall comply with any applicable design standards in Sections 14-16-5-7 (Walls and Fences); 7-7(E)(2) (Articulation and Alignment); 5-7(E)(3) (Wall Design) and Section 14-16-6-6(N)(3)(c)4 a and b.

APPEAL

If you wish to appeal this decision, you must do so by September 19, 2019 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.

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:

ZHE File
Zoning Enforcement
James Villalobos, 3213 Reina DR NE, 87111