Valerie James requests a variance of 3 ft to the 3 ft max wall height in the front yard for Lot 10, Block 21, Harold J. Gannons, located at 410 Monroe ST NE, zoned R-1B [Section 14-16-5-7(D)]

Special Exception No:............. VA-2018-00192
Project No:.......................... Project# 2018-001801
Hearing Date:....................... 01-15-19
Closing of Public Record:....... 01-15-19
Date of Decision:............... 01-30-19

On the 15th day of January, 2019, property owner Valerie James (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft max wall height in the front yard (“Application”) upon the real property located at 410 Monroe 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 3 ft max wall height 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 14-16-6-4(N)(1).
4. All property owners within 100 feet and affected neighborhood association were notified of the application.
5. The subject property is currently zoned R-1B.
6. Highland Business and Neighborhood Association, Inc. is the affected NA.
7. Valerie James, owner appeared and gave evidence in support of the application.
8. Site plans were submitted.
9. The proposed fence is set back 5 feet 6 inches from the front yard property line.
10. The proposed fence is set back 5 feet from the sidewall property line.
11. The proposed fence material is cedar fencing with landscaping in the setback areas.
12. Numerous safety issues were raised regarding the subject property.
13. There have been several burglaries near the subject property.
14. A printout of incident reports was submitted.
15. Applicant has a home business teaching music to children in the residence.
16. Applicant has a valuable collection of musical instruments in the residence to enable her to teach music.
17. There is a high vagrant and transient population problem in the surrounding area.
18. The proposed fence will be constructed of wood and natural materials, which will enhance the architectural character of the surrounding neighborhood.
19. Natural landscaping will complement the proposed fence.
20. A letter dated 11-15-2018, signed by Omar Durant, Highland Business and NA Board Treasurer, was submitted showing unanimous Board approval of the application.
21. A letter dated January 15, 2019, signed by the Highland Business and Board of Directors amended the HBANA position to opposition to the Application.
22. Its primary objection to the Application is in the board’s opinion, the proposed wall/fence did not meet the specific requirements of the IDO regulations.
23. Gary Eyster, 316 Amherst NE, signed in and appeared in partial opposition of the application.
24. He is a member of the Highland Business and NA but, is not a member of the board.
25. He submitted a letter dated January 14, 2019, expressing some opposition to the Application.
26. He is primarily objecting to planning staff interpretation of Section 14-16-6(N)(3)c3c. “…within 330 foot” rule as a 330 foot circle from the subject lot which he asserts should be interpreted as 330 feet in both directions on the same side of the street.
27. He raised issue of public safety and the need for “eyes on the street,” requiring open front yards in order to deter crime.
28. He objects to allowing any front yard fencing over 3 feet in height.
29. He objects that the existing fence is solid wood and is not “see-thru” fencing and would violate the IDO regs.
30. He also raises an exploration of possible future application by the Nob Hill Neighborhood to obtain a listing in the New Mexico Register of Cultural places, which could be negatively impacted by the granting of the Application.
31. Nothing was submitted showing this potential listing had progressed beyond the “exploration” stage.
32. An e-mail dated January 15, 2019, sent by Madelyn Brazis, RN, MA, CCRA was submitted in support of the Application.
33. Ms. Barzis is a Senior Clinical Associate at the UNM School of Medicine and the next door neighbor of Applicant, who lives at 414 Monroe NE.
34. She also raises the issue of personal safety and crime in their neighborhood.
35. She supports the Application for safety and privacy reasons.
36. She states many homes in the surrounding community already have 6 foot fences around their properties.
37. Steve Lujan, 1403 Barelas Rd, signed in and gave testimony in favor of the Application.
38. He is a friend of Applicant and also a fellow musician.
39. He has witnessed incidents with Applicant involving public safety concerns.
40. There is a 40 unit lower rent apartment complex directly across the street for the subject property.
41. Applicant has no privacy in her front yard, since it is highly visible from the apartment complex.
42. Transportation initially issued a report dated January 11, 2019 stating “Not Allowed”.
43. Applicant submitted additional details to Transportation and Ernest Armijo, PE for Planning inspected the subject property and the existing and proposed fencing and issued and submitted an amended report dated January 14, 2019 stating application is “Conditionally Approved.”
44. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
45. 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).
46. 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).
47. 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.
48. A number of photographs with addresses were submitted in support of these criteria.
49. The design of the wall complies with all applicable development standards, specifically 5-7 (WALLS AND FENCES); 5-7(E)(1) (Material and Texture); 5-7(E)(2) (Articulation and Alignment); and 5-7(E)(3) (Wall Design).
50. 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).
51. 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 max wall height in the front yard.

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 February 14, 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.

cc:  Zoning Enforcement  
     ZHE File  
     Valerie James, 410 Monroe ST NE, 87108  
     Gary Eyster, 316 Amherst NE, 87106  
     Steve Lujan, 1403 Barelas Rd, 87102

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Stan Harada, Esq.  
Zoning Hearing Examiner