Eric Neill requests a variance of 2.5 ft to the 3 ft max wall height in the front yard for Lot 12, Block C, Lavaland Addn, located at 231 57th ST NW, zoned R-1B [Section 14-16-5-7(D)]

Special Exception No:.......... VA-2018-00211
Project No:.................. Project# 2018-001860
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 Eric Neill (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2.5 ft to the 3 ft max wall height in the front yard (“Application”) upon the real property located at 231 57th ST NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2.5 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. West Mesa Neighborhood Association is the affected NA.
7. A letter dated November 16, 2019 notifying the NA was submitted.
8. Nothing has been submitted from the NA.
9. A site plan has been submitted.
10. Eric Neill, owner appeared and gave evidence in support of the application.
11. The proposed wall would be see-thru and constructed of wrought iron.
12. The surrounding neighborhood is mature and the subject property was vacant for a period of time.
13. The subject property was burglarized and vandalized a couple of times in a short period of time.
14. The proposed fence would match a number of similar fences in the surrounding neighborhood.
15. Nearly half of the existing fences in this neighborhood are at least 6 feet tall.
16. The proposed fence would enhance the safety and the value of the subject property and surrounding neighborhood.
17. Adjacent neighbors have expressed support verbally for the Application.
18. No one appeared in support or opposition to the Application.
19. Transportation issued a report stating Conditional Approval of the proposed wall.
20. Any proposed wall design shall not violate the clear sight triangle as required by transportation.
21. 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).
22. 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).
23. 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)(3c).
24. A number of photographs with addresses were submitted in support of these criteria.
25. 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).
26. 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 2.5 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.

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Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
    ZHE File
    Eric Neill, 231 57th St, 87105