



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

Mylo Moraga requests a variance of 3 ft to the 3 ft maximum wall height for Lot 160B1B11, MRGCD Map 32, located at 4801 Teodocio RD NW, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00153**  
Project No: ..... **Project#2019-002359**  
Hearing Date: ..... 07-16-19  
Closing of Public Record: ..... 07-16-19  
Date of Decision: ..... 07-31-19

On the 16th day of July, 2019, property owner Mylo Moraga (“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 4801 Teodocio RD NW (“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. The address of the subject property is 4801 Teodocio RD. NW.

5. All property owners within 100 feet and affected neighborhood association were notified of the application.
6. The subject property is currently zoned R-1C.
7. Greater Gardner & Monkbridge Neighborhood Association; North Valley Coalition and South Guadalupe Trail Neighborhood Association are the affected Neighborhood Associations.
8. Applicant notified the affected NAs by e-mail dated, April 4, 2019.
9. No response or request for a meeting has been submitted.
10. Mylo Moraga, owner appeared and gave evidence in support of the application.
11. The proposed wall will be constructed of 4" X 4" iron posts on 8-foot centers, supporting 4" X 4" square, welded wire, filled with stacked brown, cracked, natural rock.
12. This type of fencing is called "Gabion" fencing.
13. Applicant's proposed wall would be constructed inside the block wall, now on the south side of the subject property facing Griegos NW.
14. The existing 3-foot block wall is a retaining wall and would be left in place.
15. Applicant appears to also request the extension of an existing 5 foot 6 inch in height CMU block wall on the north side of the subject property, to extend to Teodocio RD NW, also constructed of a Gabion style fence.
16. This existing common wall is the boundary between subject property and 4803 Teodocio RD NW.
17. Transportation initially issued a report indicating not approved, due to obstruction of the required clear sight triangle.
18. This appears to concern the extension of the existing common wall on the north boundary of the subject property.
19. Applicant met with Ernest Armijo, P.E., Transportation Senior Engineer, and presented an amended site plan, and Armijo, issued a change to Conditionally Approved.
20. Any final wall shall not obstruct any clear sight triangle as required by transportation.
21. Applicant stated this type of wall would provide beautification as well as safety.
22. Applicant submitted photographs with addresses of houses with existing walls over 3 feet in the front yard setback to satisfy criteria 14-16-6(N)(3)(c)(3)c.
23. A letter from Kristin Hardin and Jo Romero, 4803 Teodocio Rd. NW, dated Jun 11, 2019, stating objections to the request, was submitted in opposition to the request.
24. They are adjacent neighbors to the north of the subject property.
25. There is an existing 5 foot 6 inch tall cinder masonry units (CMU) wall on their shared property line.
26. They do not object to the extension of that wall to Teodocio Rd. NW, however, they object to the use of Gabion style fencing for that extension.
27. They are concerned about safety issues related to the wall blocking the view of traffic on Teodocio.
28. They are concerned that this type of wall produces maintenance and repair issues, due to possible accumulation of soil and plant material, such as Chinese Elm seeds.
29. Natural conditions may lead to accumulation of soil, water and plant material in the voids of the natural stone, allowing pockets of nuisance vegetation to establish.
30. This could lead to potential health, safety and fire dangers.
31. They point out that most of the walls in the surrounding neighborhood are constructed of CMU blocks and Gabion style fencing would not fit in architecturally.

32. Kristin Hardin, 4803 Teodocio Rd. NW, appeared and gave evidence in opposition to the request.
33. Joseph Romero, 4803 Teodocio Rd. NW, appeared and gave evidence in opposition to the request.
34. They restated the points and objections submitted in their letter.
35. 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).
36. 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).
37. 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.
38. 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).
39. 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.

The use of Gabion style wall is approved for the wall facing Griegos Rd. NW., however Applicant shall maintain the wall and prevent any adverse impacts to public health, safety or fire dangers.

The variance allows an extension to the existing common black wall on the north side of the subject property. Since the existing block wall is constructed of CMU material, Gabion style fencing is not approved for this portion on the north side of the property.

#### APPEAL

If you wish to appeal this decision, you must do so by August 15, 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: Zoning Enforcement  
ZHE File  
Mylo Moraga, 4801 Teodocio RD NW, 87107  
Kristin Hardin, 4803 Teodocio Rd. NW, 87107  
Joseph Romero, 4803 Teodocio Rd. NW, 87107