



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

Terry Stein requests a variance of 3 ft to the 3 ft maximum wall height for Lot 9, Block 87, Westgate Heights Addn Unit 4, located at 9212 Camino San Martin SW, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00146**
Project No: **Project# 2019-002325**
Hearing Date: 06-19-19
Closing of Public Record: 06-19-19
Date of Decision: 07-03-19

On the 18th day of June, 2019, property owner Terry Stein (“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 9212 Camino San Martin SW (“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 for an existing chain link fence that has been in place for over ten years.
2. The subject property is currently zoned R-1C.
3. Applicant has authority to pursue this Application.
4. The City of Albuquerque Integrated Development Ordinance (“IDO”) 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.”*

5. 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(F)(2).
6. Applicant appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
7. Applicant testified at the hearing that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
8. Applicant testified at the hearing that all property owners and neighborhood association entitled to notice were notified of the Application.
9. Applicant has met its burden of providing evidence that establishes that the existing fence would strengthen or reinforce the architectural character of the surrounding area. Specifically, the Applicant provided testimony that the existing fence is constructed of chain link, consistent with many similar walls in the surrounding area.
10. Applicant has met its burden of providing evidence that establishes that the existing fence would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, the Applicant provided testimony that the existing fence would not negatively impact views or aesthetic enjoyment.
11. As shown by the buffer map and pictures of walls with addresses submitted by Applicant, 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.
12. Applicant has met its burden of providing evidence that establishes that the design of the existing fence 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 that: (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; and (b) the design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area. Specifically, the Applicant provided testimony that the existing fence would not negatively impact views or aesthetic enjoyment, as well as that the existing fence is constructed of chain link, consistent with many similar walls in the surrounding area.
13. The City Traffic Engineering Division stated that the existing fence is within the clear sight triangle, but based on the descriptions and plans included in the application the fence is completely chain link. This design is acceptable so far as the fence is see through higher than 3 ft. So long as the applicant does not alter the design to one that would impair the view above 3 ft. within the clear sight triangle Transportation does not object.
14. The criteria within Section 14-16-6-6(N)(3)(c) of the Albuquerque Zoning Code are satisfied.

DECISION:

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

CONDITIONS:

A. 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.

B. The fence shall not violate the clear sight triangle as required by the City Traffic Engineering Division.

APPEAL

If you wish to appeal this decision, you must do so by July 18, 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.



Robert L. Lucero, Jr., Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Terry Stein, 9212 Camino San Martin SW, 87121