



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

Jesus Dominguez requests a variance of 3ft to the 3ft maximum wall height for Lot 15a, Block 2, New Era Fruit Addn, located at 1400 William ST SE, zoned R-1A [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00318**
Project No: **Project#2019-002895**
Hearing Date: 11-19-19
Closing of Public Record: 11-19-19
Date of Decision: 12-04-19

On the 19th day of November, 2019, property owner Jesus Dominguez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3ft to the 3ft maximum wall height (“Application”) upon the real property located at 1400 William ST SE (“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. Jesus Dominguez, property owner appeared and gave evidence in support of the application.

5. The address of the subject property is 1400 William St. SE.
6. The subject property is currently zoned R-1A.
7. The request is for a variance from Section 14-16-5-7(D)(1): ***DEVELOPMENT STANDARDS; Walls and Fences; Table 5-7-1: Maximum Wall Height.***
8. The wall is already constructed of steel posts and chain link, see through fencing, which was built without a permit.
9. All property owners within 100 feet and affected neighborhood association were notified of the application.
10. South Broadway Neighborhood Association is the affected neighborhood association.
11. The neighborhood association was notified by e-mail dated August 29, 2019.
12. No response nor request for meeting has been submitted.
13. Frances Armijo, 915 Williams SE, appeared and gave testimony in support of the Application.
14. She is an officer in the South Broadway Neighborhood Association.
15. She met with Applicant and discussed the fence with him.
16. She stated she had no objection to the fence.
17. She expressed one concern on behalf of nearby property owners, which is one of safety.
18. Because of the location of the fence, she is concerned for pedestrians walking by, especially younger children.
19. Even though the fence is chain link fencing, she is concerned Applicant might inset privacy slates into the fencing and that would create a pedestrian safety concern.
20. She acknowledged Transportation's Conditional Approval, stated Applicant cannot block the visibility above 3 feet as a condition of the approval, and stated it would mitigate her concerns.
21. Gabriela Pena, 2119 William St. SE., appeared and gave testimony in support of the Application.
22. Transportation issued a report indicating Conditional Approval of the Application.
23. The existing fence is within the clear sight triangle, however since it is chain link and is see through, it does not violate the clear sight triangle as required by Transportation.
24. Applicant responded to the safety concerns and agreed to not block the visibility above 3 feet.
25. No one appeared in opposition to the Application.
26. The fence would strengthen or reinforce the architectural character of the surrounding area as required by Section 14-16-6-6(N)(3)(c)(1).
27. The fence is not injurious to adjacent properties, the surrounding neighborhood, or the larger community as required by Section 14-16-6-6(N)(3)(c)(2).
28. A proximity map (showing properties within 330 feet of the subject property), photographs of properties (with addresses) within 330 feet showing walls taller than 3 feet in front yard set-backs, in support of criteria required by Section 14-16-4-3(C)(3)c are submitted by Applicant.
29. 14 properties are shown on the map requiring 3 to show at least 20 percent, and Applicant submitted 8 photographs with addresses, showing 55 per cent.
30. 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.

31. 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).
32. 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 IDO are satisfied.

DECISION:

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

CONDITIONS:

Applicant shall not block the visibility above 3 feet, by any alterations, modifications, additions, amendments, as instructed in the Transportation report.

APPEAL:

If you wish to appeal this decision, you must do so by December 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
Jesus Dominguez, 1406 William ST SE, 87102
Frances Armijo, 915 William ST SE, 87102
Gabriela Pena, 2119 William ST SE, 87102