



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

Brenda Andrade requests a variance of 2 ft to the 3 ft maximum wall height for Lot 71-P1, El Rancho Grande Unit 10, located at 2124 Fence Rail St SW, zoned R-ML [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00246**
Project No: **Project#2019-002681**
Hearing Date: 09-17-19
Closing of Public Record: 09-17-19
Date of Decision: 10-02-19

On the 17th day of September, 2019, property owner Brenda Andrade (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2 ft to the 3 ft maximum wall height (“Application”) upon the real property located at 2124 Fence Rail St SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2 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. Brenda Andrade, property owner appeared and gave evidence in support of the application.

5. The address of the subject property is 2124 Fence Rail St. SW.
6. The subject property is currently zoned R-ML.
7. The proposed wall would constructed of concrete CMU blocks, stucco coating to match color and texture of primary residence, topped with see through, wrought iron fencing to a height of 5 feet.
8. The blocks are 3 courses tall to 3 feet, with the wrought iron fencing on top of the block courses.
9. All property owners within 100 feet and affected neighborhood association were notified of the application.
10. Westgate Heights Neighborhood Association is the affected Neighborhood Association.
11. Applicant notified the affected NAs by e-mail dated July 26, 2019.
12. No response or request for meeting has been submitted.
13. The subject property is located on a corner of Fence Rail Road SW and Range Road SW
14. The proposed wall is within both the clear sight triangle and mini clear sight triangle.
15. Transportation issued a report indicating Conditionally Approval of the request, with the condition that no portion of the block walls are taller that 3-feet.
16. Applicant agreed to remove any blocks which obstruct any portion of the clear sight triangle.
17. Any final wall design shall not violate the clear sight triangle as required by transportation.
18. Several neighbors in the surrounding area have verbally expressed support for the Application.
19. No one appeared in opposition to the Application.
20. 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).
21. 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).
22. A proximity map (showing properties within 330 feet of the subject property), photographs of properties (with addresses) showing walls taller than 3 feet in front yard set-backs within 330 feet, in support of criteria required by Section 14-16-4-3(C)(3)c are submitted by Applicant .
23. 40 properties are shown on the map requiring 8 to show at least 20 percent, and Applicant submitted 8 photographs with addresses, showing 20 per cent.
24. 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.
25. The design of the wall complies with any applicable standard in Section 14-16-5-7 (Walls and Fences) as required by Section 14-16-6-6(N)(3)(c)(4).
26. 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).
27. 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 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.

APPEAL:

If you wish to appeal this decision, you must do so by October 17, 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
Brenda Andrade , 2124 Fence Rail St SW, 87121