Roger Avants requests a variance of 3 feet to the 3 feet maximum wall height for Lot 8, Executive Hills, located at 605 Executive Hills LA SE, zoned R-1D [Section 14-16-5-7(D)]

Special Exception No: .......... VA-2020-00036
Project No: .................. Project#2020-003348
Hearing Date: .................. 06-16-20
Closing of Public Record: ....... 06-16-20
Date of Decision: ............... 07-01-20

On the 16th day of June, 2020, property owner Roger Avants (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 feet to the 3 feet maximum wall height (“Application”) upon the real property located at 605 Executive Hills LA 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. All property owners within 100 feet and affected neighborhood association were notified of the application.

5. The subject property is currently zoned R-1D.

6. Applicant appeared and gave evidence in support of the application.

7. City Transportation issued a report stating that it does not object.

8. Based on evidence presented by Applicant, the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Specifically, the wall is constructed of materials and workmanship that are in harmony with the home on site and with other properties in the surrounding area. While an opponent to the requested variance testified that the wall was out of character, no specific evidence was submitted as to why exactly that would be. Executive Hills Owners Association submitted written evidence and oral testimony in support of the proposed variance, stating that the proposed wall has been approved by its architectural committee as in harmony with applicable covenants meant to harmonize architecture in the surrounding area. The ZHE finds that substantial evidence weighs in favor of the conclusion that the proposed wall would strengthen or reinforce the architectural character of the surrounding area.

9. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, the wall would serve as a boundary between the subject property and adjacent property and is located entirely on the subject property. The subject property is located at the end of a cul-de-sac in a gated community and the proposed wall therefore has almost no impact on traffic. Executive Hills Owners Association submitted written evidence and oral testimony in support of the proposed variance, citing no adverse impacts and stating that feedback received by the association board have been “unanimously positive.” However, an opponent to the requested variance testified that the wall may not have been constructed with proper footings and to building code requirements. A condition is therefore appropriate to require that the proposed wall comply with all applicable building code requirements. The ZHE finds that, with this condition, substantial evidence weighs in favor of the conclusion that the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community.

10. Based on evidence presented 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. No evidence to the contrary was submitted.

11. Based on substantial evidence presented by Applicant, 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; and (b) The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area. The wall is primarily along the side-yard boundary line, and therefore blocks no view of any portion of any window on the front façade of the primary building when viewed from the street in front of the house. Executive Hills Owners Association submitted written evidence and oral testimony in support of the proposed variance, stating
that the proposed wall has been approved by its architectural committee as in harmony with applicable covenants meant to harmonize architecture in the surrounding area.

12. 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).

13. The ZHE finds that the Applicant has authority to pursue this Application.

**DECISION:**

APPROVAL WITH CONDITION of a variance of 3 feet to the 3 foot maximum wall height.

**CONDITION:**

The subject wall must comply with all applicable building code requirements.

**APPEAL:**

If you wish to appeal this decision, you must do so by July 16, 2020 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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Zoning Hearing Examiner

cc:
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