



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

Marcia Rae Cubra requests a variance of 3 feet to the 3 feet maximum wall height for Lot 3, Block 5, Victory Addn No 2, located at 1309 Vassar DR SE, zoned R-1B [Section 14-16-5-7-D]

Special Exception No:..... **VA-2020-00298**
Project No: **Project#2020-004372**
Hearing Date: 10-20-20
Closing of Public Record: 10-20-20
Date of Decision: 11-04-20

On the 20th day of October, 2020, property owner Marcia Rae Cubra (“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 1309 Vassar DR SE (“Subject Property”). Below are the ZHE’s finding 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 R1-B.
6. City Transportation issued a report stating that it does not object.
7. Based on evidence presented by Applicant, the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Specifically, photographs were submitted showing several walls and homes in the neighborhood of similar concrete block construction.
8. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, applicant provided testimony that the wall would not harm any adjacent properties, the neighborhood, or community. The ZHE received written opposition from the Applicant's neighbor next door, alleging that the wall was not constructed in a safe manner or in compliance with code; however, Applicant maintains that the wall was constructed to code and is safe. It appears that any risk of unsafe or out of code construction can be mitigated by requiring that the wall be inspected and required to be built to code.
9. Based on photographs, maps and oral 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. 7 such properties would be 20 percent, and applicant provided evidence of 9 such properties.
10. Based on 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 located along the side yard boundary and does not obstruct the front façade. See also finding 7.
11. 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).
12. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

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

CONDITION:

Applicant must pass any necessary inspections required by the IDO to verify the wall is built to code.

APPEAL:

If you wish to appeal this decision, you must do so by November 19, 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:

ZHE File
Zoning Enforcement
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