



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

Mario Valencia requests a variance of 3 feet to the 3 feet maximum wall height for Lot 8, Atlantic and Santa Fe, located at 216 Atlantic Ave SW, zoned R-ML [Section 14-16-5-7-D]

Special Exception No:..... **VA-2020-00389**
Project No: **Project#2020-004672**
Hearing Date: 01-19-21
Closing of Public Record: 01-19-21
Date of Decision: 02-02-21

On the 19th day of January, 2021, property owner Mario Valencia (“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 216 Atlantic Ave SW (“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 associations were notified of the application.
5. The subject property is currently zoned R-ML.
6. City Transportation issued a report stating that it does not object.
7. This matter was deferred from the December 15, 2020 ZHE hearing to allow Applicant to confer with representatives of the Barelas Neighborhood Association.
8. Evidence was submitted indicating that Applicant did communicate with the Barelas Neighborhood Association between the December 2020 and January 2021 ZHE hearings.
9. Barelas Neighborhood Association representatives submitted correspondence into the record stating that the Association opposed Applicant proposal of a 6-foot wall having 4 feet of concrete block base and 2 feet of wrought iron on top.
10. Barelas Neighborhood Association correspondence further stated that the Association would be supportive of a fence up to 6 feet tall, provided that it had a 3-foot base of concrete block and up to 3 feet of wrought iron on top.
11. Applicant stated at the January 19, 2021 ZHE hearing that he is amenable to a wall up to 6 feet in height that has a 3 foot base of concrete block and up to 3 feet of wrought iron on top, as would be favored by the Barelas Neighborhood Association.
12. The Barelas Neighborhood Association requested clarification of whether Applicant's property line extends all the way to his neighbor's property to the south. Applicant submitted written evidence and confirmed in testimony at the January 19, 2021 ZHE hearing that his property does indeed extend all the way to his neighboring property to the South and that no easement or right of way exists in the area adjacent to such southern neighbor.
13. Two neighboring property owners submitted evidence indicating their support of Applicant's Application.
14. 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/fences in the neighborhood. It appears from the evidence that the proposed wall would not be out of character with the surrounding area, but rather would reinforce the architectural character of the neighborhood by being in harmony with the other improvements on the Subject Property.
15. 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 enhance the safety of both the subject property and neighboring properties by discouraging trespassers from coming into the community and property.
16. 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 area.
17. 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.

18. 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).
19. 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:

1. The wall must be constructed of a concrete block base up to 3 feet in height, topped with wrought iron up to 3 feet in height.

APPEAL:

If you wish to appeal this decision, you must do so by February 17, 2021 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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cc:

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