

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

ANTONIO RODRIGUEZ request(s) a special exception to Section 14-16-3-19(A)(2)(a): a VARIANCE of 2' to the 3' height to allow an existing wall in the front yard setback area for all or a portion of Lot(s) C, OTC 3 zoned RA-2, located on 612 MONTOYA RD NW (J-12)

Special Exception No: **12ZHE-80266**
Project No: **Project# 1009413**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, Antonio Rodriguez appeared before Zoning Hearing Examiner, Joshua J. Skarsgard, requesting a Variance of 2' to the 3' height to allow an existing wall in the front yard setback area at 612 Montoya Rd NW. Below are the findings of facts:

FINDINGS:

1. Mr. Rodriguez requests a variance of 2' to the required 3' height to allow an existing wall in the front yard setback area at 612 Montoya Rd NW.
2. Mr. Rodriguez testifies that he applied for and was granted a wall permit by the City Zoning Department on July 20, 2012, to build a wall up to 6' high on his property.
3. Mr. Rodriguez testified that he built the wall with the help of friends.
4. Mr. Rodriguez testified that he received a letter from the City Zoning Department stating that he was in violation because he built the wall over 3' in the front and front side yard setback area. This letter from the City of Albuquerque was the reason why the Applicant submitted the special exception request.
5. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (a) "SPECIAL EXCEPTIONS" reads in part: "*Variance. A variance shall be approved if and only if the following tests are met: (a) The property is exceptional*"
6. Mr. Rodriguez testified that the property is exceptional as compared with other land in the vicinity subject to the same regulations by reason that there is a grade difference that runs from north to south by the wall on the east end of the property (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
7. Mr. Rodriguez stated at the public hearing that the wall starts off at 5' on the far end and goes to 6' towards the front of the property as a result of the grade difference.
8. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (b) "SPECIAL EXCEPTIONS" reads in part: "*A variance shall be approved if and only if the following tests are met: (b) as a result of the exceptional aspect of the property, the regulations produce unnecessary hardship*"
9. Mr. Rodriguez testified that as a result of his exceptionality (grade change) the City of Albuquerque Code of Ordinances Section 14-16-3-19(A)(2)(a) presents an unnecessary hardship upon the Applicant (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).

10. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (c) “SPECIAL EXCEPTIONS” reads in part: “*A variance shall be approved if and only if the following tests are met: (c) a particular variance is appropriate to prevent the unnecessary hardship.*”
11. Both the application and testimony provided at the hearing demonstrate that the variance is needed to prevent the unnecessary hardship.
12. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (2) (d) “SPECIAL EXCEPTIONS” reads in part: “*A variance shall be approved if and only if the following tests are met: (d) financial gain or loss shall not be the sole determining factor in deciding a variance.*”
13. Both the application and testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
14. Mr. Rodriguez testified that if he were forced to amend the wall height (or take it down) that it would be a detriment to the safety and protection of his family and property.
15. Mr. Rodriguez testified that the previous owner of the property was a known drug dealer in the area, and people still come over to his house at all hours of the night looking for the previous owner, who is now serving time in prison for drug offenses.
16. Mr. Rodriguez testified that people would drive on his property and even park in his property without hesitation.
17. Mr. Rodriguez testified that his house was broken into while his wife and newborn child were still in the house. Mr. Rodriguez corroborated this story by submitting a police report to the file.
18. Mr. Rodriguez testified that keeping the wall at its current height would be substantially beneficial to deterring the recent crime that has taken place on the property and minimally ease the unnecessary hardship that would result from reducing the height of the wall consistent with the City of Albuquerque Code of Ordinances.
19. Mr. Rodriguez testified that he has spoken to all of his neighbors surrounding the home, and has not had any opposition to this request submitted to the file either verbally or in writing.
20. There are two letters of support in the file, from Ms. Maria Castellano and Mr. Vincent Valdez.
21. The City Traffic Engineer communicated that he does not have a problem with the clear sight triangle of the wall.
22. The yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
23. The Applicant has adequately justified the Variance request pursuant to City of Albuquerque Code of Ordinances: a VARIANCE of 2' to the 3' height to allow an existing wall in the front yard setback area for all or a portion of Lot(s) C, OTC 3 zoned RA-2, located on 612 MONTOYA RD NW (J-12)

DECISION:

APPROVAL of a VARIANCE of 2' to the 3' height to allow an existing wall in the front yard setback area for all or a portion of Lot(s) C, OTC 3 zoned RA-2, located on 612 MONTOYA RD NW (J-12).

CONDITION OF APPROVAL:

The applicant will adhere to the *design guidelines* for walls and fences as set forth in the City of Albuquerque Zoning Code.

If you wish to appeal this decision, you may do so by 5:00 p.m., on November 16, 2012 in the manner described below:

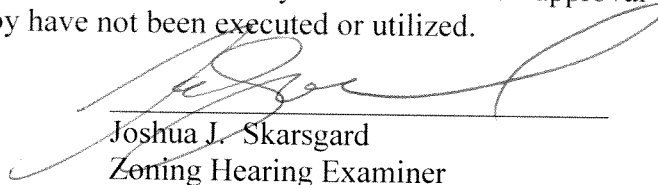
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14.16.4.4.(B)., of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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.



Joshua J. Skarsgard
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Antonio Rodriguez, 612 Montoya Rd, 87104
Vincent Valdez, 619 Montoya Rd, 87104



CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

ANTONIO RODRIGUEZ request(s) a special exception to Section 14-16-2-5(B)(1), 14-16-2-4(B)(1) and 14-16-2-6(B)(14): a CONDITIONAL USE to allow an existing 5' wall in the side yard which is contiguous to a front yard for all or a portion of Lot(s) C, OTC 3 zoned RA-2, located on 612 MONTOYA RD NW (J-12)

Special Exception No: **12ZHE-80267**
Project No: **Project# 1009413**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, Antonio Rodriguez appeared before Zoning Hearing Examiner, Joshua J. Skarsgard, requesting a Conditional Use to allow an existing 5' wall in the side front yard setback area at 612 Montoya Rd NW. Below are the findings of facts:

FINDINGS:

1. Mr. Rodriguez requests a conditional use to allow a 5' wall in the side yard which is contiguous to a front yard at 612 Montoya Rd NW.
2. Mr. Rodriguez testifies that he applied for and was granted a wall permit by the City Zoning Department on July 20, 2012, to build a wall up to 6' high on his property.
3. Mr. Rodriguez testified that he built the wall with the help of friends.
4. Mr. Rodriguez testified that he received a letter from the City Zoning Department stating that he was in violation because he built the wall over 3' in the front and front side yard setback area. This is the reason for the special exception request.
5. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*"
6. Mr. Rodriguez testified that the wall and the use of his property will not be injurious to the surrounding community (as required to be proven pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
7. Mr. Rodriguez testified that his conditional use request is within the spirit of the community architecture, and the wall will not cause harm to the neighbors and that the wall will not be significantly damaged by surrounding structures or activities (as required to be proven pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
8. Mr. Rodriguez testified that the hardship of not being able to have the wall remain would be a detriment to the safety and protection for his family and property.
9. Mr. Rodriguez testified that the previous owner of the property was a known drug dealer in the area, and people still come over to his house at all hours of the night looking for the previous owner, who is now serving time in prison for drug offenses.

10. Mr. Rodriguez testified that people would drive on his property and even park in his property without hesitation.
11. Mr. Rodriguez testified that his house was broken into while his wife and newborn child were still in the house. Mr. Rodriguez submitted a police report to corroborate this story to the file.
12. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities.*"
13. Mr. Rodriguez testified that the use will not be damaged by surrounding structures or activities.
14. Mr. Rodriguez testified that he has spoken to all of his neighbors surrounding the home, and has not had any opposition to this Conditional Use request submitted to the file either verbally or in writing.
15. There are two letters of support in the file, from Ms. Maria Castellano and Mr. Vincent Valdez.
16. The City Traffic Engineer communicated that he does not have a problem with the clear sight triangle of the wall.
17. The yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
18. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances: a CONDITIONAL USE to allow an existing 5' wall in the side yard which is contiguous to a front yard for all or a portion of Lot(s) C, OTC 3 zoned RA-2, located on 612 MONTOYA RD NW (J-12)

DECISION:

APPROVAL of a CONDITIONAL USE to allow an existing 5' wall in the side yard which is contiguous to a front yard for all or a portion of Lot(s) C, OTC 3 zoned RA-2, located on 612 MONTOYA RD NW (J-12).

CONDITIONS OF APPROVAL:

1. The Applicant shall adhere to the *design guidelines* for walls and fences as set forth in the City of Albuquerque Zoning Code.
2. The Applicant shall abide by the City of Albuquerque Traffic Engineer approval to keep the wall's clear sight triangle free of obstructions.

If you wish to appeal this decision, you may do so by 5:00 p.m., on November 16, 2012 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby.

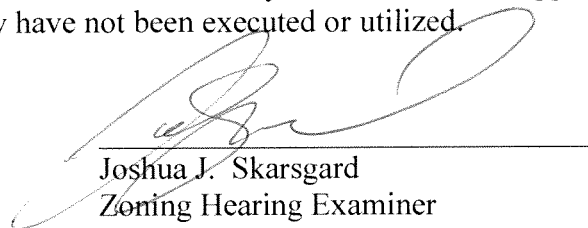
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Please note that pursuant to Section 14. 16. 4. 4. (B)., of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

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