

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

EMILIANO GONZALEZ request(s) a special exception to Section 14-16-3-19(A)(2)(a): a VARIANCE of 3'4" to the allowed 3' in height to allow an existing wall in the front yard setback area for all or a portion of Lot(s) 6, Block(s) W, EASTERN ADDN zoned SU-2 MR, located on 101 LEWIS AV SE (L-14)

Special Exception No:..... *IR* 12ZHE-80299
Project No: Project# 1009448
Hearing Date: 11-19-12
Closing of Public Record: 11-19-12
Date of Decision: 12-06-12

On the 19th day of November, 2012 (hereinafter "**Hearing**") Mr. Emiliano Gonzalez (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 3'4" to the allowed 3' in height to allow an existing wall in the front yard setback area (hereinafter "**Application**") upon the real property located at 101 Lewis Avenue SE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 3'4" to the allowed 3' in height to allow an existing wall in the front yard setback area.
2. 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*"
3. Applicant testified at the Hearing that the Subject Property is exceptional for the following reasons:
 - a. Exceptionality Reason #1: The property is a front corner lot.
 - b. Exceptionality Reason #2: The property is an oddly shaped rhomboid parcel, and the house was build with the main entrance facing Commercial Street, and the back yard facing Lewis Avenue. Additionally there are abandoned homes adjacent to the Subject property.
4. 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*"
5. Applicant testified at the Hearing that as a result of the exceptionality (the oddly shaped corner lot) that the City of Albuquerque Code of Ordinances Section § 14-16-3-19(A)(2)(a) creates a front yard wall height regulation that produces an unnecessary hardship upon the Applicant and the Subject Property.

6. In May 2012, the applicant applied for a permit to build a cinder block fence and they obtained a permit from the City.
7. 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.*"
8. Applicant testified at the Hearing that the variance Application (3 feet and four inches height of the wall), if approved, would be appropriate to prevent the unnecessary hardship of keeping the wall at a height to strictly comply with the Zoning Code.
9. 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.*"
10. The Application and the testimony provided by the Applicant at the Hearing both suggest that financial gain/loss was not the sole determining factor of the Application.
11. The Application, File and testimony of the Applicant at the Hearing suggest that there is no neighborhood opposition to the Application. In fact the Applicant indicated that Rafael and Maribel both support the variance Application.
12. Applicant testified at the Hearing that 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.
13. The Applicant has adequately justified the variance Application upon the Subject Property pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS: a Variance of of 3'4" to the allowed 3' in height to allow an existing wall in the front yard setback area for all or a portion of Lot(s) 6, Block(s) W, EASTERN ADDN zoned SU-2 MR, located on 101 LEWIS AV SE (L-14).

DECISION:

APPROVAL of a VARIANCE of of 3'4" to the allowed 3' in height to allow an existing wall in the front yard setback area for all or a portion of Lot(s) 6, Block(s) W, EASTERN ADDN zoned SU-2 MR, located on 101 LEWIS AV SE (L-14)

If you wish to appeal this decision, you may do so by 5:00 p.m., on December 21, 2012 in the manner described below:

Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$50.00 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**

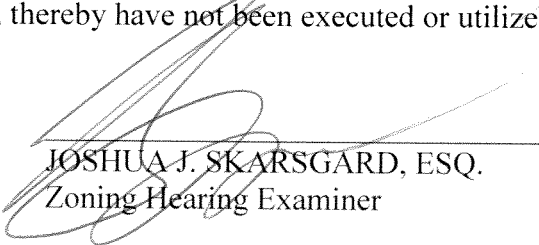
letter of notification when filing an appeal. When an application is withdrawn, the fee shall not be refunded.

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, ESQ.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Emiliano Gonzalez, 101 Lewis Ave SE, 87102