



CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

BERNARD AND LAURIE FORBES (KEN DUCK, AGENT) request(s) a special exception to Section 14-16-3-19(A)(1)(a): a VARIANCE of 10" to the maximum 8' height for an existing wall in the rear yard setback area for all or a portion of Lot(s) 66, QUAIL RIDGE zoned SU-1 PRD, located on 1011 PAWNEE ST NE (J-22)

Special Exception No:..... **12ZHE-80323**
Project No: **Project# 1009467**
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. Ken Duck (hereinafter "**Agent**") acting as agent on behalf of the property owner, Mr. and Mrs. Bernard and Laurie Forbes (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 10" to the maximum 8' height for an existing wall in the rear yard setback area (hereinafter "**Application**") upon the real property located at 1011 PAWNEE ST NE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Variance of 10" to the maximum 8' height for an existing wall in the rear 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 Land in this development slopes from high on the East side to low on the West Side, and therefore the lot is on the high side of the drainage pond area and there is a drop from the rear patio slab to the drainage area.
 - b. Exceptionality Reason #2: The property has topography challenges that render it exceptional.
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 (topographical) that the City of Albuquerque Code of Ordinances Section § 14-16-3-19(A)(1)(a) creates a (wall height requirement) regulation that

produces an unnecessary hardship upon the Applicant and the Subject Property.

6. 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.”*
7. Applicant testified at the Hearing that the variance Application (10 inches above the 8 foot requirement), if approved, would be appropriate to prevent the unnecessary hardship.
8. 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.”*
9. 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.
10. The Application, File and testimony of the Applicant at the Hearing suggest that there is neighborhood opposition from some of the surrounding neighbors. Specifically, Ms. Sharon Clarke the President of the Quailridge Neighborhood Association drafted a letter of November 16, 2012 that stated that the wall’s height - 10” above the 8’ wall - was created “by adding to and on top of an existing wall (without a permit or permission from the Neighborhood Association).” Ms. Clarke added that “Ms. Smith (neighbor) has a patio that has the appearance of a cave, and that the only way out for Ms. Smith would be to climb up the 4.5 feet drop off and try to exit the 2 foot spillway into the street.” Ms. Sharon Clarke also spoke at the public hearing in opposition to the Application repeating many of the concerns laid out in the letter dated November 16, 2012.
11. At the hearing the Applicant countered by indicating that the 19 year old wall was built on top of the existing retaining wall. The Applicant’s letter also stated that the wall does not harm neighboring properties because it does not block any views.
12. Whether or not the Applicant obtained approval from the neighborhood association to construct the wall is not relevant for consideration by the ZHE pursuant to City Ordinance.
13. 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.
14. 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.

DECISION:

APPROVAL of a VARIANCE of 10" to the maximum 8' height for an existing wall in the rear yard setback area upon the real property located at 1011 PAWNEE ST NE.

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
Ken Duck, 4605 Plume Rd NW, 87107
Don Lukens, 11012 Pawnee St, 87107
Ailean McDavid, 13127 Alice Ave NE, 87107
Sharon Clarke, 13124 Alice Ave NE, 87107
Harold Lukens, 13104 Alice Ave NE, 87107
Constance Smith, 13123 Alice Ave NE, 87107
Joseph M. Hamling, 13125 Alice Ave NE, 87107
Bernard and Laurie Forbes, 1011 Pawnee St NE, 87107