

CITY OF ALBUQUERQUE  
PLANNING DEPARTMENT  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

SONNY PADILLA request(s) a special exception to Section 14-16-3-3(A)(4)(a)(1): a VARIANCE of 3' to the 3' height maximum to allow an existing 6' wall for all or a portion of Lot(s) 3, Block(s) 1, GARCIA ADDN zoned SU-2 MR, located on 1808 WILLIAMS ST SE (L-14)

Special Exception No: .....12ZHE-80226  
Project No:.....Project#1009370  
Hearing Date: .....10-16-12  
Closing of Public Record: .....10-16-12  
Date of Decision:.....12-10-12

On the 16th day of October, 2012 (hereinafter “**Hearing**”) Mr. Sonny Padilla (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 3' to the 3' height maximum to allow an existing 6' wall (hereinafter “**Application**”) at 1808 WILLIAMS ST SE (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant requests a Variance of 6' to the allowed 3' height for an existing wall in the front yard setback area at 1808 WILLIAMS ST SE.
2. Applicant testified at the public hearing that he bought the property 14 years ago.
3. 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*”
4. Mr. Padilla testified at the public hearing that his property is exceptional as compared with other land in the vicinity subject to the same regulations by reason of government action and the rate of criminal activity in the area (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
5. 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*”
6. Applicant testified at the public hearing that the wall regulations produce an unnecessary hardship if he were not allowed to have a wall six feet in height (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
7. Mr. Padilla testified at the public hearing that he wants to build the wall to prevent threats to safety and personal property. He also wants it to create a sound barrier from a nearby rail yard.

8. 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.*"
9. The Application did demonstrate that a variance is needed to prevent the unnecessary hardship.
10. The Applicant after the hearing met with the City of Albuquerque and remedied the clear line of sight concerns by changing the design and construction of the wall to preserve a safe line of sight.
11. 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.*"
12. Both the application and testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
13. 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 adequately justified the Variance request pursuant to City of Albuquerque Code of Ordinances Section § 14-16-4-2 SPECIAL EXCEPTIONS.

**DECISION:**

APPROVAL WITH CONDITIONS of a Variance of 3' to the 3' height maximum to allow an existing 6' wall at 1808 WILLIAMS ST SE.

**CONDITIONS OF APPROVAL:**

- The Applicant shall ensure that the clear sight triangle is preserved at all times.
- The Applicant shall comply with the design standards for walls as promulgated in the City of Albuquerque Zoning Code.
- The Applicant shall ensure that the entire length of the wall does not exceed six feet (6') in height.

**If you wish to appeal this decision, you may do so by 5:00 p.m., on December 26, 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.

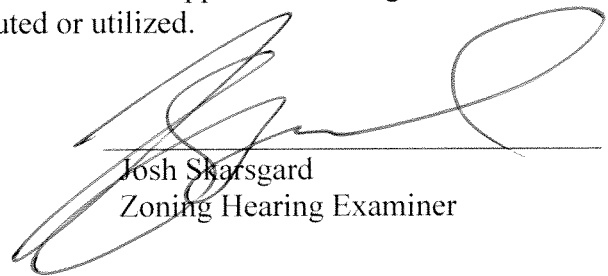
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice

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.



Josh Skarsgard  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Sonny Padilla, 1808 Williams St SE, 87102