



CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

DENA JARAMILLO AND JOSEPH ESQUIBEL request(s) a special exception to Section 14-16-3-19(2)(a): a VARIANCE of 2'1" to allow an existing block wall within the front yard setback area for all or a portion of Lot(s) 6, Block(s) 5, AZTEC ADDITION NO. 1 zoned R-1, located on 9010 COTTONWOOD RD NE (G-20)

Special Exception No: **12ZHE-80286**
Project No: **Project# 1009428**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, Dena Jaramillo and Joseph Esquibel appeared before Zoning Hearing Examiner, Joshua J. Skarsgard, requesting a Variance of 2'1" to allow an existing block wall within the front yard setback area at 9010 Cottonwood Rd. NE. Below are the findings of facts:

FINDINGS:

1. Dena Jaramillo and Joseph Esquibel are requesting a variance of 2'1" to allow an existing wall in the front yard setback area located at 9010 Cottonwood Road NE.
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. Ms. Jaramillo testified that the property is exceptional as compared with other land in the vicinity subject to the same regulations by reason that the lot is rectangular, and has a sloped grade that is higher than the adjacent sidewalk (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
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. Mr. Jaramillo testified that Section 14-16-3-19(2)(a) provides wall regulations that result in an unnecessary hardship upon the Applicant as a result of the sloped grade (exceptionality) of his property (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).
6. Ms. Jaramillo testified that the variance is necessary to provide privacy and safety for his children and dogs.
7. Ms. Jaramillo testified that the wall will not interfere with the enjoyment with other land in the vicinity, and feels it will enhance the area.
8. Mr. Jaramillo stated on the record that his intention is to stucco the wall the same color as the residence to provide harmonious architecture.
9. Ms. Jaramillo testified that the wall will meet the design guidelines set forth in the City of Albuquerque Zoning Code Guidelines for walls and fences that face a right of way.
10. Ms. Jaramillo and Mr. Esquibel have owned the property for 2 years.

11. The City Traffic Engineer communicated that he does not have a problem with the clear sight triangle measurement for the wall.
12. 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.*"
13. Both the application and testimony provided at the hearing demonstrate that the variance is needed to prevent the unnecessary hardship.
14. 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.*"
15. Both the application and testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
16. There are no letters of opposition to this request, nor were there anyone to speak in opposition to the variance application at the hearing.
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 Variance request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS: a VARIANCE of 2'1" to allow an existing block wall within the front yard setback area for all or a portion of Lot(s) 6, Block(s) 5, AZTEC ADDITION NO. 1 zoned R-1, located on 9010 COTTONWOOD RD NE (G-20)

DECISION:

APPROVAL of a a VARIANCE of 2'1" to allow an existing block wall within the front yard setback area for all or a portion of Lot(s) 6, Block(s) 5, AZTEC ADDITION NO. 1 zoned R-1, located on 9010 COTTONWOOD RD NE (G-20).

CONDITIONS OF APPROVAL:

1. The Applicant shall adhere to the design guidelines for walls and fences 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 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.

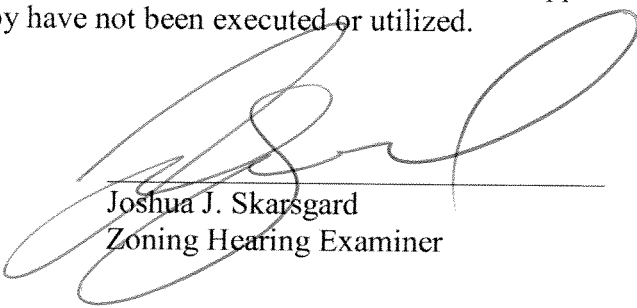
Please present this letter of notification when filing an appeal. When an application is withdrawn, the fee shall not be refunded.

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.

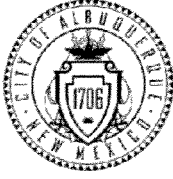
Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for 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

Dena Jaramillo and Joseph Esquibel, 9010 Cottonwood Rd NE, 87111



CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

DENA JARAMILLO AND JOSEPH ESQUIBEL request(s) a special exception to Section 14-16-3-19(2)(a): a CONDITIONAL USE to allow a proposed 4' chain link fence in the front yard setback area for all or a portion of Lot(s) 6, Block(s) 5, AZTEC ADDITION NO. 1 zoned R-1, located on 9010 COTTONWOOD RD NE (G-20)

Special Exception No: **12ZHE-80287**
Project No: **Project# 1009428**
Hearing Date: 10-16-12
Closing of Public Record: 10-16-12
Date of Decision: 10-31-12

On October 16, 2012, Dena Jaramillo and Joseph Esquibel appeared before Zoning Hearing Examiner, Joshua J. Skarsgard, requesting a Conditional Use to allow a proposed 4' chain link fence in the front yard setback area at 9010 Cottonwood Rd. NE. Below are the findings of facts:

FINDINGS:

1. Dena Jaramillo and Joseph Esquibel are requesting a conditional use to allow a proposed 4' chain link fence within the front yard setback area.
2. 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.*"
3. Ms. Jaramillo testified that the chain link fence 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).
4. 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.*"
5. Ms. Jaramillo testified that the chain link fence 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).
6. Ms. Jaramillo testified that the conditional use will enhance the area and provide safety and security for the neighborhood.
7. Ms. Jaramillo testified that the fence will meet the design guidelines set forth in the City of Albuquerque Zoning Code Guidelines for walls and fences that face a right of way.
8. Ms. Jaramillo and Mr. Esquibel have owned the property for 2 years.
9. The City Traffic Engineer does not have a problem with the clear sight triangle measurement for the chain link fence.
10. There are no letters of opposition to this request, nor were there anyone to speak in opposition at the hearing.

19. 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.
20. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances: a CONDITIONAL USE to allow a proposed 4' chain link fence in the front yard setback area for all or a portion of Lot(s) 6, Block(s) 5, AZTEC ADDITION NO. 1 zoned R-1, located on 9010 COTTONWOOD RD NE (G-20)

DECISION:

APPROVAL of a CONDITIONAL USE to allow a proposed 4' chain link fence in the front yard setback area for all or a portion of Lot(s) 6, Block(s) 5, AZTEC ADDITION NO. 1 zoned R-1, located on 9010 COTTONWOOD RD NE (G-20).

CONDITIONS OF APPROVAL:

3. The Applicant shall adhere to the *design guidelines* for walls and fences as set forth in the City of Albuquerque Zoning Code.
4. 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:

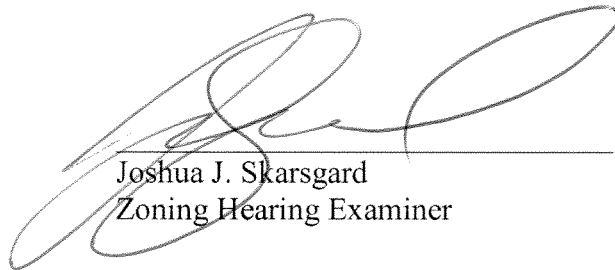
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An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place 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

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