

CITY OF ALBUQUERQUE  
PLANNING DEPARTMENT  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

MAURITA SLADE (ABOVE & BEYOND, SHAI SHELVAV, AGENT) request(s) a special exception to Section 14-16-3-19(A)(2)(a): a VARIANCE of 5' to the allowed 3' in a side yard setback for a proposed wall for all or a portion of Lot(s) 41, ALTAMIRA zoned SU-1 PRD, located on 1601 PROPPS ST NE (J-21)

Special Exception No: ..... **12ZHE-80292**  
Project No: ..... **Project# 1009433**  
Hearing Date: ..... 10-16-12  
Closing of Public Record: ..... 10-16-12  
Date of Decision: ..... 10-31-12

On October 16, 2012, Shai Shelhav, agent for Maurita Slade appeared before Zoning Hearing Examiner, Joshua J. Skarsgard, requesting a Variance of 5' to the allowed 3' in a side yard setback for a proposed wall at 1601 Propps St NE. Below are the findings of facts.

**FINDINGS:**

1. Shai Shelhav, Agent for Maurita Slade, requests a variance of 5' to the allowed 3' in a side yard setback at 1601 Propps St 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. Mr. Shelhav testified that the exceptionality of the lot is that there is a grade difference on the lot and it is a corner lot (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) (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. Both the application and testimony provided at the hearing demonstrate that as a result of the exceptionality of the lot (grade change and corner lot), the City of Albuquerque regulations produce an unnecessary hardship upon the Applicant.
6. Mr. Shelhav testified that the hardship incurred on his client is that the wall is not high enough and does not give enough visible protection.
7. Mr. Shelhav testified that the property will not interfere with the enjoyment of other land in the vicinity, and will actually be an improvement to the community.
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. Both the application and testimony provided at the hearing demonstrate that the variance is needed to prevent the unnecessary hardship.

10. 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.*”
11. Both the application and testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
12. 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. Mr. Shelhav testified that the wall will meet the City of Albuquerque Zoning guidelines for walls and fences that face a right of way.
14. Mr. Shelhav testified the wall will be built with split face CMU.
15. Mr. Shelhav testified that his client has owned the property since August 2010.
16. The City of Albuquerque Traffic Engineer does not have a problem with the clear sight triangle measurement.
17. There are no letters of opposition in the file, and there was no one at the hearing to speak in opposition.
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 5' to the allowed 3' in a side yard setback for a proposed wall for all or a portion of Lot(s) 41, ALTAMIRA zoned SU-1 PRD, located on 1601 PROPPS ST NE (J-21).

**DECISION:**

**APPROVAL** of a VARIANCE of 5' to the allowed 3' in a side yard setback for a proposed wall for all or a portion of Lot(s) 41, ALTAMIRA zoned SU-1 PRD, located on 1601 PROPPS ST NE (J-21).

**CONDITION:**

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:**

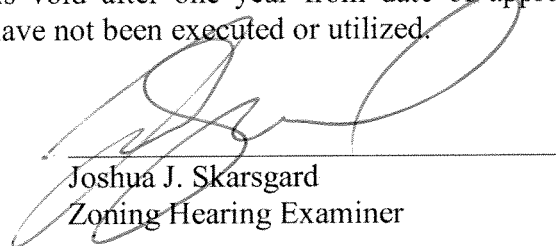
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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  
Maurita Slade, 1601 Propps St NE, 87112  
Shai Shelvav, 11024 Montgomery Blvd NE, 87111