CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

BEN PORTILLO request(s) a special exception to Section 14-16-3-19(A)(2)(a): a VARIANCE of 6' to the allowed 3' height for an existing wall in the front yard set back area for all or a portion of Lot(s) 8, Block(s) 14, EASTERN ADDITION zoned SU-2 DR of the SOUTH BROADWAY SECTOR DEVELOPMENT PLAN, located on 1004 EDITH BLVD SE (K-14)

Special Exception No: **12ZHE-80235**
Project No: ..... **Project#1009380**
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. Ben Portillo (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Variance of 6' to the allowed 3' height for an existing wall in the front yard setback area (hereinafter "**Application**") at 1004 Edith Blvd SE ("**Subject Property**"). Below are the findings of facts:

FINDINGS:

1. Ben Portillo requests a Variance of 6' to the allowed 3' height for an existing wall in the front yard setback area at 1004 Edith Blvd SE.
2. Mr. Portillo testified at the public hearing that he bought the property 14 years ago, which was a crack house at the time.
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. Portillo 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 it having a large grade difference from the rear of the yard to the front yard and that his property is a corner lot (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. Mr. Portillo testified at the public hearing that the wall regulations produce an unnecessary hardship if he were not allowed to keep the wall in its current height (as required by City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS).

7. Mr. Portillo testified at the public hearing that he wants to build a privacy courtyard wall because he does not want to see his neighbors. He also wants to keep his dogs from leaving the yard.
8. Mr. Portillo testified at the public hearing that he did not know that he needed a permit to construct the wall prior to commencing construction.
9. Mr. Portillo testified at the public hearing that he is seeking a building permit for the wall in conjunction with the Variance Application before the Zoning Hearing Examiner.
10. 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.*"
11. The Application did demonstrate that a variance is needed to prevent the unnecessary hardship.
12. 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 between his residence and the neighbor.
13. 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.*"
14. Both the application and testimony provided at the hearing suggest that financial gain/loss is not the sole determining factor of the Variance Application.
15. Mr. Portillo testified at the public hearing that there are other walls and fences in the neighboring area that were not permitted prior to construction.
16. Mr. Portillo testified at the public hearing that his wall is over 6' in height from the sidewalk level.
17. Charles Grandberry testified at the public hearing in opposition to the Variance request. Mr. Grandberry's mother lives at 1015 Edith SE.
18. Mr. Granberry testified that the wall is already close to 7 ½ feet in height as measured from the sidewalk in front of the house, and that the wall is a safety concern for pedestrians and vehicles in the area (line of sight issues).
19. Mike Reynolds testified at the public hearing in opposition to the Variance request.
20. Mr. Reynolds testified that the wall poses a safety hazard for kids and the general public because of poor visibility as a result of the height of the wall.
21. Mr. Reynolds testified that he was almost struck by an adjacent neighbor who was driving out of her property and did not see him walking by as a result of the height of the wall and the fact that the drive could not see through the wall.
22. Mr. Reynolds testified that he is 6'2" and the wall is taller than him.
23. There is a letter of support in the file from Ms. Patricia Ridout, who lives at 1006 Edith Blvd SE.
24. There is also a letter of support from Dianna Dorn Jones, who is the Chair of the Zoning & Code enforcement Committee with the South Broadway Neighborhood Association.

25. The City of Albuquerque Traffic Engineer reviewed the wall design and found that it no longer violates the City of Albuquerque Code of Ordinances as a result of the clear sight triangle issue.
26. The Zoning Hearing Examiner provided the Applicant one week after the public hearing to get with the Traffic Engineer to come up with a solution to the clear sight triangle problem. The Applicant, as of the date of this Notice of Decision, has **adequately** provided approval from the Traffic Engineer.
27. 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.
28. 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 6' to the allowed 3' height for an existing wall in the front yard setback area for all or a portion of Lot(s) 8, Block(s) 14, and EASTERN ADDITION.

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.

Joshua J. Skarsgard
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Ben Portillo, 1004 Edith Blvd SE, 87102
Jeff Hartzer, 1005 Edith SE, 87102
Charles Grandberry, 1015 Edith SE, 87102
Mike Reynolds, 1015 Edith SE, 87102
Patricia Ridout, 1006 Edith SE, 87102