

CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

ASEF SHARIFI request(s) a special exception to Section 14-16-3-19(A)(1)(a): a VARIANCE of 3' to the 8' wall height allowance for an existing 11' high wall in the rear yard setback area on all or a portion of Lot(s) 8, Block(s) C, PARADISE SKIES UNIT 4 zoned SU-1 R-T, located at 10524 CASSIOPEIA ST NW (A-11)

Special Exception No:..... **11ZHE-80056**
Project No: **Project# 1008722**
Hearing Date: 04-19-11
Closing of Public Record: 04-19-11
Date of Decision: 06-29-11

This matter was heard on April 19, 2011.

STATEMENT OF FACTS: The applicant, Asef Sharifi, requests a variance of 3' to the 8' wall height allowance for an existing 11' high wall in the rear yard setback area. Mr. Sharifi testified, at the hearing, that he has owned and resided on this property for approximately three years. He indicated that his lot is exceptional because of elevation differences. He stated that the wall was built by a licensed contractor and is 5' tall on his side of the property and 11' tall on his neighbors' to the rear side.

Jessica Marshall, the adjacent neighbor to the rear, testified at the hearing. She is concerned of the safety and integrity of the wall as there are already some vertical and hairline cracks in the wall. She worries that if the wall were to fall, it could possibly cause injury to her family or property.

Mr. Sharifi was asked to provide this office with a report from either a building inspector or the contractor who constructed the wall to ensure that the existing wall is well constructed and safe.

An e-mail from Ramon Andrade, a building and safety officer for the City of Albuquerque, indicates that the existing wall does not have any "major defects except a slight change on the angle of the retaining wall causing it to be slightly leaning towards the property on the lower grade." (See attached Exhibit A) Mr. Andrade spoke to the homeowner and was told that the garden wall is properly rebar reinforced at the pilasters.

Based on all of the testimony and a review of the entire file and the recordings, it is determined that there is substantial evidence to make the following findings and conclusions:

FINDINGS AND CONCLUSIONS: I find that this parcel is exceptional as compared to other parcels in the vicinity because of elevation differences and, therefore, it meets the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that, as a result of the exceptional aspect of the property, the regulations produce an unnecessary hardship in that it will limit the owner's reasonable use of the property

and/or deprive the owner of a reasonable return on the property. Furthermore, I find that the particular variance is appropriate to prevent the unnecessary hardship and further find that the variance will differ from development which will be permitted under the existing regular zoning regulations no more than what is necessary to overcome the unnecessary hardship. Finally, the variance will not significantly interfere with the enjoyment of other land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Approved.

The approval is subject to the submitted site plan, as required. Any substantial changes to the site plan, as determined by the Zoning Enforcement Division, shall require the scheduling of an additional Public Hearing.

A Building Permit must be applied for at the Building Permit Desk which is located at the Plaza del Sol Building, Ground Level on the east side of the lobby.

If you wish to appeal this decision, you may do so by 5:00 p.m., on July 14, 2011 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.

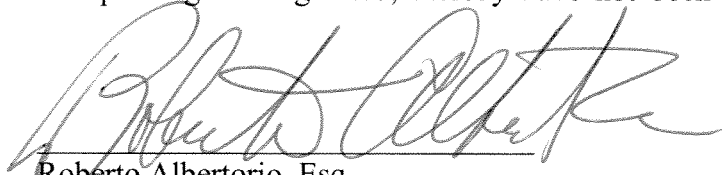
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of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

A handwritten signature in black ink, appearing to read 'Roberto Albertorio', written over a horizontal line.

Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Asef Sharifi, 10524 Cassiopea Street NW, 87114
Jessica Marshall, 10527 Gallileo Street NW, 87114

Garcia, Andrew B.

From: Andrade, Ramon
Sent: Tuesday, June 21, 2011 11:42 AM
To: Garcia, Andrew B.
Subject: 10524 cassiopeeie NW
Attachments: 0614111246.jpg; 0614111244.jpg; 0614111244a.jpg

As per your request for an inspection at 10524 Cassiopeeie NW.

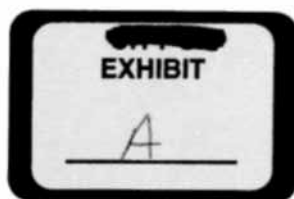
It is my opinion that the retaining wall that is supporting the new garden wall was built at the time the subdivision was developed. The difference in grade is about 6 ft between properties, for this reason this wall had to be built and designed under an engineered footing design

At the time of inspection I did not find any mayor defects on this wall except for a slight change on the angle of the retaining wall causing it to be slightly leaning towards the property on the lower grade.

After speaking to the homeowner, he states that their garden wall is properly rebar reinforced at the pilasters. Please let me know if I can help any further

Ramon Andrade

P.S please see pictures attached



6/22/2011



