



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

GENE NEWSOME request(s) a special exception to Section 14-16-3-3(A)(4)(a)(1): a VARIANCE of 9' 6" to the 8' rear yard wall height allowance to allow for an existing 17' 6" high wall on all or a portion of Lot(s) 7, DESERT RIDGE AT LA CUEVA zoned R-D, located at 8635 DESERT DAWN NE (C-19)

Special Exception No:..... **09ZHE-80327**
Project No: **Project# 1008000**
Hearing Date: 11-17-09
Closing of Public Record: 11-17-09
Date of Decision: 12-02-09

STATEMENT OF FACTS: The applicant, Gene Newsome, requests a variance of 9' 6" to the 8' rear yard wall height allowance to allow for an existing 17' 6" high wall. Mr. Newsome testified that they have owned and resided on this property for approximately 5 years. The applicant indicates that his property has a slope which he argues is sufficient to warrant the 17' 6" high wall. Mrs. Hatlee, who is the next door neighbor, argues that the applicant's parcel is not exceptional, that there are numerous parcels in the vicinity which have similar slopes all of which comply with the maximum height to walls. The applicant has undertaken to build this wall without obtaining the proper permits and apparently the wall has created structural damage which has caused damage to the adjacent property.

An on-sight inspection reveals that there are numerous parcels in the vicinity with the same elevations and therefore the applicant's parcel is not exceptional as compared to other parcels in the vicinity. The code provides that a variance is to be granted if the applicant is able to demonstrate that the parcel has some exceptional qualities as compared to other parcels in the vicinity. Furthermore, Mr. Newsome has not been able to demonstrate that his parcel is exceptional as compared to other parcels in the vicinity.

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

FINDINGS AND CONCLUSIONS: I find that this parcel is not exceptional as compared to other parcels in the vicinity and, therefore, it does not meet the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that the regulations do not produce an unnecessary hardship in that it will not limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Finally, the variance will significantly interfere with the enjoyment of other land in the vicinity and is inconsistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on December 17, 2009 in the manner described below:

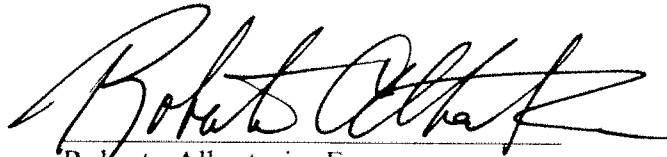
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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', with a stylized flourish at the end.

Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Gene & Carol Newsom, 8635 Desert Dawn Court NE, 87113
Kathy Schwendenman
Arsenio Sanchez, 8640 Desert Dawn Court NE, 87113
Kristin Hatlee, 8636 Desert Dusk Court NE, 87113
Kristina Pulliam, 8631 Desert Dusk Court NE, 87113