



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

Laura Musuvathy requests a variance of 3 ft to the maximum 3 ft wall height for Lot 12, Block 42, University Heights, located at 224 Bryn Mawr DR SE, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00276**  
Project No: ..... **Project#2019-002779**  
Hearing Date: ..... 10-15-19  
Closing of Public Record: ..... 10-15-19  
Date of Decision: ..... 10-30-19

On the 15th day of October, 2019, property owner Laura Musuvathy (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the maximum 3 ft wall height (“Application”) upon the real property located at 224 Bryn Mawr DR SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the 3 ft maximum wall height.
2. The City of Albuquerque Integrated Development Ordinance Section 14-16-6-6(N)(3)(c) Variance for a Taller Front or Side Yard Wall reads: “*A variance application for a taller front or side yard wall shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:*”
  - (1) *The proposed wall would strengthen or reinforce the architectural character of the surrounding area;*
  - (2) *The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community;*
  - (3) *The wall is proposed on a lot that meets any of the following criteria:*
    - a. *The lot is at least ½ acre;*
    - b. *The lot fronts a street designated as a collector or above in the LRTS guide;*
    - c. *At least 20 percent of the properties within 330 feet of the lot where the wall or fence is being requested have a wall or fence over 3 feet in the front yard.*
  - (4) *The design of the wall complies with any applicable standard in Section 14-16-5-7 (Walls and Fences), including, but not limited to Subsection 14-16-5-7(E)(2) (Articulation and alignment) and Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following:*
    - a. *The wall or fence shall not block the view of any portion of any window on the front façade of the primary building when viewed from 5 feet above ground level at the centerline of the street in front of the house.*
    - b. *The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area.*
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-4(N)(1).

4. Laura Musuvathy, property owner appeared and gave evidence in support of the application.
5. The address of the subject property is 224 Bryn Mawr SE.
6. The subject property is currently zoned R-1C.
7. The request is for a variance from Section 14-16-5-7(D)(1): ***DEVELOPMENT STANDARDS; Walls and Fences; Table 5-7-1: Maximum Wall Height.***
8. A site plan, with accompanying photographs was submitted in support of the Application.
9. All property owners within 100 feet and affected neighborhood association were notified of the application.
10. Nob Hill Neighborhood Association, Southeast Heights Neighborhood Association and District 6 Coalition of Neighborhood Associations are the affected neighborhood associations.
11. The neighborhood associations were notified by e-mail dated August 15, 2019.
12. Applicant attended a meeting with the NA, August 16, 2019 and testified the board indicated they could support the taller fence along Lead Ave, and had no objections to the request. However, they stated there were technical issues related to notice of the hearing that they raised questions about, so for that reason, they could not take an official position on the request at this time.
13. The subject property is a corner lot located Bryn Mawr and Lead SE.
14. Lead Ave is an Arterial as defined in the *LRTS Guide*.
15. The proposed fence will be constructed of horizontal wood panels, stained with a “cherry-wood“ stain.
16. The proposed fence will only be on the side yard of the property, parallel to Lead Ave.
17. Applicant is requesting the taller fence to begin 25 feet from the front property line, with a 3 foot fence beginning at the property line
18. The subject property has areas presently up to 13 inches below the sidewalk, as a result of the Coal-Lead Project (2010-2012), which creates a potential fall hazard to the public.
19. The proposed fence would protect the walking public from the potential hazard.
20. The wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community as required by Section 14-16-6-6(N)(3)(c)(2).
21. No one appeared in opposition to the Application.
22. The proposed wall is within the clear sight triangle.
23. Transportation initially issued a report indicating Not Allowed after a review of the Application design.
24. Applicant met with Ernest Armijo, Sr. Engineer Transportation Dept., and presented an amended site plan, with modifications as requested by transportation.
25. Transportation issued an amended report indicating Conditional Approval, the condition being Applicant will comply with the changes on the revised site drawing.
26. Any final wall design shall not violate the clear sight triangle as required by Transportation.
27. The proposed wall would strengthen or reinforce the architectural character of the surrounding area as required by Section 14-16-6-6(N)(3)(c)(1).
28. A proximity map (showing properties within 330 feet of the subject property), photographs of properties (with addresses) within 330 feet showing walls taller than 3 feet in front yard set-backs, in support of criteria required by Section 14-16-4-3(C)(3)c are submitted by Applicant
29. 32 properties are shown on the map requiring 6.4 to show at least 20 percent, and Applicant submitted 7 photographs with addresses, showing 22 per cent.

30. At least 20 percent of the properties within 330 feet of the lot where the wall or fence is being requested have a wall or fence over 3 feet in the front yard as required by Section 14-16-6-6(N)(3)(c)(3)c.
31. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
32. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(c) of the Albuquerque Zoning Code are satisfied.

DECISION:

APPROVAL of a variance of 3 ft to the 3 ft maximum wall height.

CONDITIONS:

The design of the fence shall comply with any applicable design standards in Sections 14-16-5-7 (Walls and Fences); 7-7(E)(2) (Articulation and Alignment); 5-7(E)(3) (Wall Design) and Section 14-16-6-6(N)(3)(c)4 a and b.

APPEAL:

If you wish to appeal this decision, you must do so by November 14, 2019 pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

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.



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Stan Harada, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
Laura Musuvathy, 224 Bryn Mawr DR SE, 87106