



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

Daniel Gaillour requests a variance of 3 feet to the 3 foot maximum wall height for Lot 2, Block 16, Santa Fe Addn, located at 917 8<sup>th</sup> ST SW, zoned R-1A [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2020-00060**  
Project No: ..... **Project#2020-003438**  
Hearing Date: ..... 07-21-20  
Closing of Public Record: ..... 07-21-20  
Date of Decision: ..... 08-05-20

On the 21st day of July, 2020, property owner Daniel Gaillour (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 feet to the 3 foot maximum wall height (“Application”) upon the real property located at 917 8<sup>th</sup> ST SW (“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. All property owners within 100 feet and affected neighborhood association were notified of the application.
5. The subject property is currently zoned R-1A.
6. Applicant appeared and gave evidence in support of the application.
7. City Transportation issued a report stating that it does not object to the proposed variance.
8. Applicant asserts that the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Specifically, Applicant testified that the wall is constructed in harmony with the home on site and neighboring properties. However, the Barelás Neighborhood Association (“BNA”) submitted written evidence that it held a vote and voted not to support the requested variance because of the BNA’s position that the proposed variance would not “meet the guidelines and character of the neighborhood set out in the Barelás sector development plan and adapted by the IDO.” Further, the BNA asserts the importance of “eyes-on-the-street,” stating that “[w]hen a house has such a high fence it is hard for people to see in and out. When there are more eyes on the street it creates for a safer neighborhood.” Also, the photos of neighboring properties submitted by Applicant do not show any completely opaque fences or walls over 3-feet in height in any front yard setback. Rather those fences are chain link and the walls are wrought iron with block or cement pilasters or bases. On balance, the ZHE finds that the proposed wall would strengthen or reinforce the architectural character of the surrounding area; provided that any portion of the proposed wall above 3-feet in height were transparent in construction, such as wrought iron or chain link.
9. Applicant presented evidence that the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, Applicant stated that the wall would enhance the safety of both the subject property and neighboring properties by discouraging vagrants and trespassers from coming into the community, as has been common. A neighbor testified in support of the variance, affirming the need for a higher wall for security and safety. However, the BNA submitted written evidence that it held a vote and voted not to support the requested variance because of the BNA’s position that the proposed variance would not “meet the guidelines and character of the neighborhood . . . .” Further, the BNA asserts the importance of “eyes-on-the-street,” stating that “[w]hen a house has such a high fence it is hard for people to see in and out. When there are more eyes on the street it creates for a safer neighborhood.” On balance, the ZHE finds that the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community; provided that any portion of the proposed wall above 3-feet in height were transparent in construction, such as wrought iron or chain link.
10. Based on evidence presented by Applicant, 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. No evidence to the contrary was submitted.
11. Applicant presented evidence that 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; and (b) The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area. However, Applicant also stated that a portion of a front wall window of

the house would be partially obstructed. Further, photos submitted by Applicant show that a portion of a window on the front façade is obstructed from view. On balance, the ZHE finds that it would be appropriate to impose a condition of approval that 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.

12. 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).
13. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a variance of 3 feet to the 3 feet maximum wall height.

CONDITIONS:

1. Any portion of the proposed wall above 3-feet in height must be constructed so as to be transparent, such as out of wrought iron, chain link, or other such see-through material.
2. 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

APPEAL:

If you wish to appeal this decision, you must do so by August 20, 2020 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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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File

Zoning Enforcement  
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