



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

Carlos Hernandez requests a permit-wall or fence-major for Lot 8, Highland Place, located at 621 Santa Fe Ave SE, zoned R-1A [Section 14-16-5-7-D]

Special Exception No:..... **VA-2021-00360**
Project No: **Project#2021-006085**
Hearing Date: 01-18-22
Closing of Public Record: 01-18-22
Date of Decision: 02-02-22

On the 18th day of January, 2022, property owner Carlos Hernandez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit-wall or fence-major (“Application”) upon the real property located at 621 Santa Fe Ave SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a Permit-Wall or Fence-Major.
2. The Application first came before the ZHE at the November 2021 ZHE hearing, after Applicant was cited by the City for having erected an unpermitted fence in violation of the IDO. At the November 2021 Applicant requested additional time to supplement the record with evidence. The ZHE granted a continuance to the December 2021 hearing to allow applicant additional time.
3. As of the December 2021 ZHE hearing, Applicant had failed to submit any additional evidence. However, Applicant again requested additional time to submit further justification and evidence supporting the Application. Given the COVID pandemic and other considerations, the ZHE again granted a continuance, this time to the January 18, 2022 ZHE hearing.
4. As of the January 18, 2022 ZHE hearing, Applicant had still failed to submit any additional evidence. Further, Applicant failed to appear at the January 18, 2022 hearing.
5. Applicant has now had three months of ZHE hearings at which to submit evidence. The ZHE finds that the Application is ready for decision and has closed the record in this matter.
6. The City of Albuquerque Integrated Development Ordinance Section 14-16-6-6(H)(3) Permit-Wall or Fence-Major reads: *“An application for a Permit – Wall or Fence – Major for a wall in the front or street side yard of a lot with low-density residential development in or abutting any Residential zone district that meets the requirements in Subsection 14-16-5-7(D)(3)(g) (Exceptions to Maximum Wall Height) and Table 5-7-2 shall be approved if the following criteria are met:*
 - 6-6(H)(3)(a) *The wall is proposed on a lot that meets any of the following criteria:*
 1. *The lot is at least ½ acre.*
 2. *The lot fronts a street designated as a collector, arterial, or interstate highway.*

3. *For a front yard wall taller than allowed in Table 5-7-1, at least 20 percent of the properties with low-density residential development with a front yard abutting the same street as the subject property and within 330 feet of the subject property along the length of the street the lot faces have a front yard wall or fence over 3 feet. This distance shall be measured along the street from each corner of the subject property's lot line, and the analysis shall include properties on both sides of the street.*
 4. *For a street side yard wall taller than allowed in Table 5-7-1, at least 20 percent of the properties with low-density residential development with a side yard abutting the same street as the subject property and within 330 feet of the subject property along the length of the street the lot faces have a street side yard wall or fence over 3 feet. This distance shall be measured along the street from each corner of the subject property's lot line, and the analysis shall include properties on both sides of the street.*
- 6-6(H)(3)(b) *The proposed wall would strengthen or reinforce the architectural character of the surrounding area.*
- 6-6(H)(3)(c) *The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community.*
- 6-6(H)(3)(d) *The design of the wall complies with any applicable standards in Section 14-16-5-7 (Walls and Fences), including but not limited to Subsection 14-16-5-7(E)(2) (Articulation and Alignment), Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following:*
1. *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.*
 2. *The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area.*
7. The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
 8. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
 9. All property owners within 100 feet and affected neighborhood associations were notified of the application.
 10. The subject property is currently zoned R-1A.
 11. City Transportation issued a report stating that it does not object.
 12. In response to IDO criteria 6-6(H)(3)(a), Applicant contends that 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 area. However, while Applicant submitted four photos purporting to show five parcels that have a front yard wall or fence over 3 feet. However, Applicant's written submittals do not indicate whether these pictured properties are within 330 feet of the Subject Property as would be required for approval. The 330-foot buffer map prepared by the Planning Department and submitted with the Application

is not marked to indicate the location of the pictured properties. The ZHE finds that the criteria in IDO Section 6-6(H)(3)(a) are not met.

13. In response to IDO criteria 6-6(H)(3)(b), Applicant argues that the proposed wall would strengthen or reinforce the architectural character of the surrounding area, in particular with reference to a corrugated metal wall depicted in a picture purportedly of a neighboring property. However, the South Broadway Neighborhood Association submitted written evidence stating that the wall on the subject property is out of character with the neighborhood and surrounding area, stating that “this is not a fence that any one of us would want near our residences.” In his written justification, Applicant addresses this criteria by stating that the fence is to “contain dog in yard – dog was jumping 4ft fence,” and makes reference to crime and security as well as property value. None of these address architectural character. On balance, the ZHE finds that the criteria in IDO Section 6-6(H)(3)(b) are not met.
14. In response to IDO criteria 6-6(H)(3)(c), Applicant states in his written justification that “all sharp edges of metal panels will be framed in,” and that the wall does not block view of neighbors. However, submittals from the South Broadway Neighborhood Association state that the fence may have a negative aesthetic effect on the neighborhood, which can be construed as being injurious to adjacent properties and the surrounding neighborhood. On balance, the ZHE finds that the criteria in IDO Section 6-6(H)(3)(c) are not met.
15. Applicant failed to establish that the wall or fence does 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. No photos make this clear, and in fact the top photo of the three on a page submitted by Applicant appear to show the window blocked. As stated above, Applicant did not establish that the design and materials proposed for the wall or fence reflect the architectural character of the surrounding area. The ZHE finds that the criteria in IDO Section 6-6(H)(3)(d) are not met.
16. 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).
17. The ZHE finds that the Applicant has authority to pursue this Application..

DECISION:

DENIAL of a Permit-Wall or Fence-Major.

APPEAL:

If you wish to appeal this decision, you must do so by February 17, 2022 pursuant to Section 14-16-6-4(V), 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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cc:

ZHE File
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