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Mayor Timothy M. Keller

CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Planning Department

INTER-OFFICE MEMORANDUM

August 16, 2022

TO: Isaac Benton, President, City Council

FROM: Alan Varela, Planning Director [Alan Varela](#)
Alan Varela (Aug 17, 2022 15:26 MDT)

SUBJECT: AC-22-10, PR-2021-006330-VA-2021-00449-VA-2022-00204:

Nob Hill Neighborhood Association appeals the Zoning Hearing Examiner's decision to Approve a permit for a Wall Permit – Major for a courtyard wall for Lot 20, Block 14, Broadmoor Addition located at 4200 Brockmont Ave. NE, zoned R-1B

OVERVIEW

November 2021, Samuel Jacob Reynolds applied for a Wall Permit – Major for a courtyard wall located at 4200 Brockmont Ave NE. The request was scheduled and heard at the January 18, 2022 Zoning Hearing Examiner (ZHE) public hearing.

In the Notice of Decision dated February 2, 2022, the ZHE found that the matter should be continued to allow the Applicant opportunity to supplement the record. The item was continued to February 15, 2022.

February 15, 2022 the request was heard, and on March 2, 2022, the ZHE issued a decision to deny the request. Because only 2 of 12 properties within 330 feet of the subject site counted toward the 20 percent analysis, the ZHE found that the Application did not satisfy the criterion in IDO Subsection 14-16-6-6(H)(3)(a)3.

March 17, 2022 the denial was appealed by the applicant and scheduled for a May 18, 2022 hearing before the Land Use Hearing Officer (LUHO).

May 23, 2022 the LUHO remanded the decision back to the ZHE to determine whether only 11 lots, rather than 12 lots qualified for the 20 percent analysis for the criterion in IDO Subsection 14-16-6-6(H)(3)(a)3.

June 21, 2022 the request was heard by the ZHE, and on July 6, 2022 the ZHE issued a decision to

approve the request. The ZHE found that the Applicant established that of the 11 lots considered, 2 lots have a front yard wall or fence over 3 feet in height, which then satisfies the criterion in IDO Subsection 14-16-6-6(H)(3)(a).

July 20, 2022 Gary Eyster, President of the Nob Hill Neighborhood Association, appealed the July 6, 2022 approval.

BASIS FOR APPEAL

IDO Subsection 14-16-6-4(V)(4) outlines the applicable criteria for the appeal in determining whether the Zoning Hearing Examiner erred in its decision:

6-4(V)(4) Criteria for Decision

The criteria for review of an appeal shall be whether the decision-making body or the prior appeal body made 1 of the following mistakes:

6-4(V)(4)(a) The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.

6-4(V)(4)(b) The decision being appealed is not supported by substantial evidence.

6-4(V)(4)(c) The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

STAFF RESPONSE

The reasons for the appeal, excerpted from Appellant's letter, are listed in quotes below, with bulleted, italicized responses from the Planner for the ZHE. Please see the Appellant's letter and submittal packet for additional details.

Reasons for the appeal:

"The ZHE erred in finding 11(c), which accepts an arbitrary method of calculation proposed by the applicant to meet the criterion in Section 6-6(H)(3)(a)(3)."

- *The ZHE's calculations are listed in Finding 11 below.*
Finding 11: "Based on photographs, maps and oral 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 area.
 - a. As stated, above, there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces.*
 - b. Of these 11 lots, 2 of them have a front yard wall or fence over 3 feet in height.*
 - c. Applicant argues that, to determine how many lots constitute 20% of 11, the number 11 should be multiplied by 20% (which results in a product of 2.2), then rounded down to result in 2 lots required to satisfy the 20%, which would be satisfied by the facts here.*
 - d. Opponent argues that 2 lots constitute only approximately 18.18% of 11, because 2 divided by 11 yields approximately 18.18%, and that therefore IDO Section 14-16-6-6-(H)(3)(a)(3) is not satisfied.*
 - e. The ZHE finds that Applicant's interpretation of rounding down to 2 lots*

required to satisfy 20% of 11 is consistent with the IDO. The IDO discusses rounding down to the nearest integer to determine a standard in several sections (Sections 3-4(J)(3)(a)(3), 4-3(B)(2)(c), 4-3(B)(3)(c)(1)(a), 5-5(C)(1)(c), 5-5(C)(5)(b), and 5-10(C)(1)). The only reference to rounding up in the IDO the ZHE found was in 5-10(C)(1), where numbers were rounded up only if the decimal was 0.9 or more.

f. Here, because 20% of 11 equals 2.2, the requirement should be that to satisfy IDO Section 14-16-6-6-(H)(3)(a)(3), Applicant must establish that 2 lots have a front yard wall or fence over 3 feet in height, which Applicant has done.”

“The second erroneous finding is 14, in which the ZHE concludes the wall complies with other applicable standards. In particular, the ZHE quotes Section 6-6(H)(3)(d)(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”. The ZHE relied on video taken from the sidewalk in front of the house.”

- The ZHE found (Finding 14) that based on evidence presented by the Applicant, 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.*
- 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).*
- Video evidence is admissible as testimony in ZHE hearings.*

/ Lorena Patten-Quintana /

Lorena Patten-Quintana, ZHE Planner
Office of the Zoning Hearing Examiner
City of Albuquerque Planning Department





AC-22-10 memo lpq-MRW-final

Final Audit Report

2022-08-17

Created:	2022-08-17
By:	Lucinda Montoya (lucindamontoya@cabq.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA017S3XQTi4CkP2rlJV923_rfO1dreUnl

"AC-22-10 memo lpq-MRW-final" History

-  Document created by Lucinda Montoya (lucindamontoya@cabq.gov)
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-  Document emailed to Alan Varela (avarela@cabq.gov) for signature
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CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller courtyard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Special Exception No:..... **VA-2021-00449**
Project No: **Project#2021-006330**
Hearing Date: 06-21-22
Closing of Public Record: 06-21-22
Date of Decision: 07-06-22

On the 21st day of June, 2022, Dave Bennett, agent for property owner Samuel Jacob Reynolds (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit for a taller courtyard wall major (“Application”) upon the real property located at 4200 Brockmont Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a permit for a taller court yard wall major.
2. The Application came before the ZHE at the June 21, 2022 ZHE hearing, upon remand from the Land Use Hearing Officer (“LUHO”), pursuant to the “LUHO Remand to ZHE” in AC-22-7, dated May 23, 2022 (the “LUHO Remand”).
3. The LUHO Remand determined that, with respect to IDO Section 14-16-6-6-(H)(3)(a)(3), there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces. It appears from written submittals and testimony that the parties to the appeal do not dispute this determination.
4. 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).
5. The ZHE finds that the Applicant has authority to pursue this Application
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-1B.
11. Based on photographs, maps and oral 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 area.
 - a. As stated, above, there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces.
 - b. Of these 11 lots, 2 of them have a front yard wall or fence over 3 feet in height.
 - c. Applicant argues that, to determine how many lots constitute 20% of 11, the number 11 should be multiplied by 20% (which results in a product of 2.2), then rounded down to result in 2 lots required to satisfy the 20%, which would be satisfied by the facts here.

- d. Opponent argues that 2 lots constitute only approximately 18.18% of 11, because 2 divided by 11 yields approximately 18.18%, and that therefore IDO Section 14-16-6-6-(H)(3)(a)(3) is not satisfied.
 - e. The ZHE finds that Applicant's interpretation of rounding down to 2 lots required to satisfy 20% of 11 is consistent with the IDO. The IDO discusses rounding down to the nearest integer to determine a standard in several sections (Sections 3-4(J)(3)(a)(3), 4-3(B)(2)(c), 4-3(B)(3)(c)(1)(a), 5-5(C)(1)(c), 5-5(C)(5)(b), and 5-10(C)(1)). The only reference to rounding up in the IDO the ZHE found was in 5-10(C)(1), where numbers were rounded up only if the decimal was 0.9 or more.
 - f. Here, because 20% of 11 equals 2.2, the requirement should be that to satisfy IDO Section 14-16-6-6-(H)(3)(a)(3), Applicant must establish that 2 lots have a front yard wall or fence over 3 feet in height, which Applicant has done.
- 12. Based on evidence presented by Applicant, the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Specifically, photographs were submitted showing several walls/fences in the neighborhood. It appears from the evidence that the proposed wall would not be out of character with the surrounding area, but rather would reinforce the architectural character of the neighborhood by being in harmony with the other improvements on the Subject Property.
 - 13. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, that the wall would enhance the safety of both the subject property and neighboring properties by discouraging trespassers and vehicle headlamp light from coming into the subject property.
 - 14. Based on evidence presented by Applicant, 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.

DECISION:

APPROVAL of a permit for a taller court yard wall major.

APPEAL:

If you wish to appeal this decision, you must do so by July 21, 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.

A handwritten signature in blue ink, appearing to read "Robert Lucero".

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Samuel Jacob Reynolds, samueljr1309@gmail.com



Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.

Administrative Decisions	Decisions Requiring a Public Meeting or Hearing	Policy Decisions
<input type="checkbox"/> Archaeological Certificate (Form P3)	<input type="checkbox"/> Site Plan – EPC including any Variances – EPC (Form P1)	<input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)
<input type="checkbox"/> Historic Certificate of Appropriateness – Minor (Form L)	<input type="checkbox"/> Master Development Plan (Form P1)	<input type="checkbox"/> Adoption or Amendment of Historic Designation (Form L)
<input type="checkbox"/> Alternative Signage Plan (Form P3)	<input type="checkbox"/> Historic Certificate of Appropriateness – Major (Form L)	<input type="checkbox"/> Amendment of IDO Text (Form Z)
<input type="checkbox"/> Minor Amendment to Site Plan (Form P3)	<input type="checkbox"/> Demolition Outside of HPO (Form L)	<input type="checkbox"/> Annexation of Land (Form Z)
<input type="checkbox"/> WTF Approval (Form W1)	<input type="checkbox"/> Historic Design Standards and Guidelines (Form L)	<input type="checkbox"/> Amendment to Zoning Map – EPC (Form Z)
	<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)	<input type="checkbox"/> Amendment to Zoning Map – Council (Form Z)
		Appeals
		<input checked="" type="checkbox"/> Decision by EPC, LC, ZHE, or City Staff (Form A)

APPLICATION INFORMATION

Applicant: <u>Nob Hill Neighborhood Association (NHNA)</u>		Phone: <u>505 515 6334</u>
Address: <u>PO Box 4875</u>		Email: <u>vghens@gmail.com</u>
City: <u>Albuquerque</u>	State: <u>NM</u>	Zip: <u>87196</u>
Professional/Agent (if any): <u></u>		Phone: <u></u>
Address: <u></u>		Email: <u></u>
City: <u></u>	State: <u></u>	Zip: <u></u>
Proprietary Interest in Site: <u>in NHNA boundary</u>		List all owners: <u>Reynolds</u>

BRIEF DESCRIPTION OF REQUEST

APPR ZHE NOD dtd 07/06/22

SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)

Lot or Tract No.: <u>20</u>	Block: <u>14</u>	Unit: <u>-</u>
Subdivision/Addition: <u>Broadmoor Addition</u>	MRGCD Map No.: <u>na</u>	UPC Code: <u>na</u>
Zone Atlas Page(s): <u>na</u>	Existing Zoning: <u>R-1B</u>	Proposed Zoning: <u>na</u>
# of Existing Lots: <u>1</u>	# of Proposed Lots: <u>-</u>	Total Area of Site (acres): <u>-</u>

LOCATION OF PROPERTY BY STREETS

Site Address/Street: <u>4200 Brockmont Ave NE</u>	Between: <u>Montclair</u>	and: <u>Washington St.</u>
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CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)

VA 2021 00449 PR 2021 006330 (attached)

Signature: <u>[Signature]</u>	Date: <u>7/20/2022</u>
Printed Name: <u>Gamp Exter, President NHNA</u>	<input checked="" type="checkbox"/> Applicant or <input type="checkbox"/> Agent

FOR OFFICIAL USE ONLY

Case Numbers	Action	Fees	Case Numbers	Action	Fees

Meeting/Hearing Date: <u></u>	Fee Total: <u></u>
Staff Signature: <u></u>	Date: <u></u> Project # <u>114</u>

FORM A: Appeals

Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.

- ☐ APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)
- ☐ APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)
- ☒ APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)
- ☒ Interpreter Needed for Hearing? no if yes, indicate language: _____
- ☐ A Single PDF file of the complete application including all documents being submitted must be emailed to PLNDRS@cabq.gov prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD. PDF shall be organized with the Development Review Application and this Form A at the front followed by the remaining documents in the order provided on this form.
- ☒ Project number of the case being appealed, if applicable: PR 2021 006330
- ☒ Application number of the case being appealed, if applicable: VA 2021 00449
- ☒ Type of decision being appealed: Permit Wall Major
- ☒ Letter of authorization from the appellant if appeal is submitted by an agent na
- ☒ Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2) within NHNA boundary
- ☒ Reason for the appeal identifying the section of the IDO, other City regulation, or condition attached to a decision that has not been interpreted or applied correctly, and further addressing the criteria in IDO Section 14-16-6-4(U)(4) attached
- ☒ Copy of the Official Notice of Decision regarding the matter being appealed

I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.

Signature:

[Signature]

Date:

7/20/2022

Printed Name:

Gary Eyster, President, NHNA

☒ Applicant or ☐ Agent

FOR OFFICIAL USE ONLY

Case Numbers:

Project Number:

Staff Signature:

Date:



CASE HISTORY

VA-2021-00449 Project# PR-2021- 006330 Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

September 9, 2021

A neighbor calls Nob Hill Neighborhood Association (NHNA) president saying there is a tall wall under construction at 4200 Brockmont and they have called 311 to report it. They email the reference number.

September 16, 2021

A second neighbor emails NHNA saying, "I was out walking tonight and spotted what I think may be an illegal wall under construction at 4200 Brockmont NE.....The Montclair side is a good 6' high. The Brockmont side, which is the front of the house, is even higher. And at the corner where the two wall meet it is perhaps 8' high."

October 20, 2021

Wall contractor David Bennett emails NHNA offering a meeting.

November 29, 2021

A public, facilitated meeting is attended by David Bennett.

January 6, 2022

At the regular public NHNA Board Meeting, the Board adopts a position to on the special exception request, which is then sent as input to the ZHE.

January 18, 2022

First ZHE hearing on VA-2021-00449 Project# PR-2021- 006330

February 2, 2022

(First) ZHE Notice of Decision.

Decision: Continuance, since yellow signs publicizing the ZHE hearing were not posted as required by the IDO.

February 15, 2022

Second ZHE hearing on VA-2021-00449 Project# PR-2021- 006330

March 2, 2022

(Second) ZHE Notice of Decision.

Decision: Denial of a permit for a taller courtyard wall major.

Excerpts from the Notice of Decision:

Regarding IDO Section 6-6(H)(3)(a), the Subject Property is not at least ½ acre, and the Subject Property does not front a street designated as a collector, arterial, or interstate highway.

3/14
01/4

14. Consequently, to be entitled to approval, the Application must satisfy the requirement that "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."

Based on photographs, maps and oral evidence submitted, it does not appear that 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.

There are 12 lots aside from the Subject Property along Brockmont, which the Subject Property fronts. Therefore, 3 of those 12 properties must have a front yard wall or fence over 3 feet to satisfy the 20 percent criteria.....it appears that only two properties can be counted toward the 20 percent criteria, resulting in a percentage of only approximately 16.7 percent.

The Application does not satisfy the criterion in IDO Section 6-6(H)(3)(a). Because the criterion in IDO Section 6-6(H)(3)(a) is not satisfied as to the front yard wall and all criteria of IDO 6-6-(H)(3) must be satisfied, the Application must fail as to the front yard wall.

For the sake of administrative and quasi-judicial economy, the ZHE will not examine the remainder of the criteria of IDO 6-6-(H)(3), because they are moot in light of the failure to satisfy IDO Section 6-6(H)(3)(a), which is dispositive of the Application.

17. As to the street side yard wall, the ZHE has granted approval of the companion application to the Application, which requested a variance for the street side yard wall. The ZHE therefore will not examine the IDO 6-6-(H)(3) criteria regarding the street side yard, because they, too, are moot.

March 17, 2022

Applicant appeals the (second) Notice of Decision of the ZHE.

May 18, 2022

LUHO hearing of the applicant's appeal

May 23, 2022

LUHO Notice of Decision

Decision: Remand to ZHE

June 21, 2022

Third ZHE hearing on VA-2021-00449 Project# PR-2021- 006330

July 6, 2022

(Third) ZHE Notice of Decision

Decision: Approval of a permit for a taller court yard wall major.

Excerpts from the Notice of Decision:

11. Based on photographs, maps and oral 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 area.

a. As stated, above, there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces.

b. Of these 11 lots, 2 of them have a front yard wall or fence over 3 feet in height.

c. Applicant argues that, to determine how many lots constitute 20% of 11, the number 11 should be multiplied by 20% (which results in a product of 2.2), then rounded down to result in 2 lots required to satisfy the 20%, which would be satisfied by the facts here.

d. Opponent argues that 2 lots constitute only approximately 18.18% of 11, because 2 divided by 11 yields approximately 18.18%, and that therefore IDO Section 14-16-6-6-(H)(3)(a)(3) is not satisfied.

e. The ZHE finds that Applicant's interpretation of rounding down to 2 lots required to satisfy 20% of 11 is consistent with the IDO. The IDO discusses rounding down to the nearest integer to determine a standard in several sections (Sections 3-4(J)(3)(a)(3), 4-3(B)(2)(c), 4-3(B)(3)(c)(1)(a), 5-5(C)(1)(c), 5-5(C)(5)(b), and 5-10(C)(1)). The only reference to rounding up in the IDO the ZHE found was in 5-10(C)(1), where numbers were rounded up only if the decimal was 0.9 or more.

f. Here, because 20% of 11 equals 2.2, the requirement should be that to satisfy IDO Section 14-16-6-6-(H)(3)(a)(3), Applicant must establish that 2 lots have a front yard wall or fence over 3 feet in height, which Applicant has done.

12. Based on evidence presented by Applicant, the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Specifically, photographs were submitted showing several walls/fences in the neighborhood. It appears from the evidence that the proposed wall would not be out of character with the surrounding area, but rather would reinforce the architectural character of the neighborhood by being in harmony with the other improvements on the Subject Property.

13. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, that the wall would enhance the safety of both the subject property and neighboring properties by discouraging trespassers and vehicle headlamp light from coming into the subject property.

14. Based on evidence presented by Applicant, 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.

REASON FOR APPEAL

NOTIFICATION OF DECISION, ZONING HEARING EXAMINER

VA-2021-00449 Project# PR-2021- 006330 Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Hearing Date: 06-21-20225

Date of Decision: 07-06-22

Deadline for Appeal: 07-21-22

The Nob Hill Neighborhood Association appeals the ZHE Notice of Decision dated 07-06-22.

Nob Hill residents regularly state that the pedestrian-friendly environment is a great asset and one of the main reasons they choose to live in the neighborhood. While tall front yard walls limit visibility down the street and lead to a sense of walking through a canyon, open front yards support this pedestrian-friendly environment. Open front yards enhance the sense of community by fostering conversations with passers-by, almost always other neighborhood residents. Open front yards are an essential component of “eyes-on-the-street”, a well-established principle of Crime Prevention Through Environmental Design. Tall front yard walls allow intruders to work undetected by traffic, whether vehicular or pedestrian, or nearby residents. For these reasons, the Nob Hill Neighborhood Association (NHNA) has worked to protect its streetscape for over two decades.

It is in this broad context that the NHNA appeals the decision of the ZHE for case VA-2021-00449 Project#2021-006330. The NHNA asserts that in the July 6th, 2022 Notice of Decision on this case, the ZHE has erred on two crucial findings and the decision is consequently in error.

The ZHE erred in finding 11(e), which accepts an arbitrary method of calculation proposed by the applicant to meet the criterion in Section 6-6(H)(3)(a)(3). This criterion is:

*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.*

This section plainly states the criterion as a percentage, above which 6-6(H)(3)(a) is met. As support for the applicant’s proposal, examples of alternative calculation methods in the IDO are cited in the Notice of Decision. However, these examples are definitions of how the calculation should be made for their specific regulations; nowhere are they proposed as a method for computing a criterion stated as a percentage. Furthermore, each of the examples cited are narrowly defined to apply to the specific calculation for that specific regulation, and not more generally. For determining if the criteria in Section 6-6(H)(3)(a)(3) are met, the ZHE should apply the calculation stated in Section 6-6(H)(3)(a)(3). Note that in the first hearing of this request (January 18, 2022), the ZHE

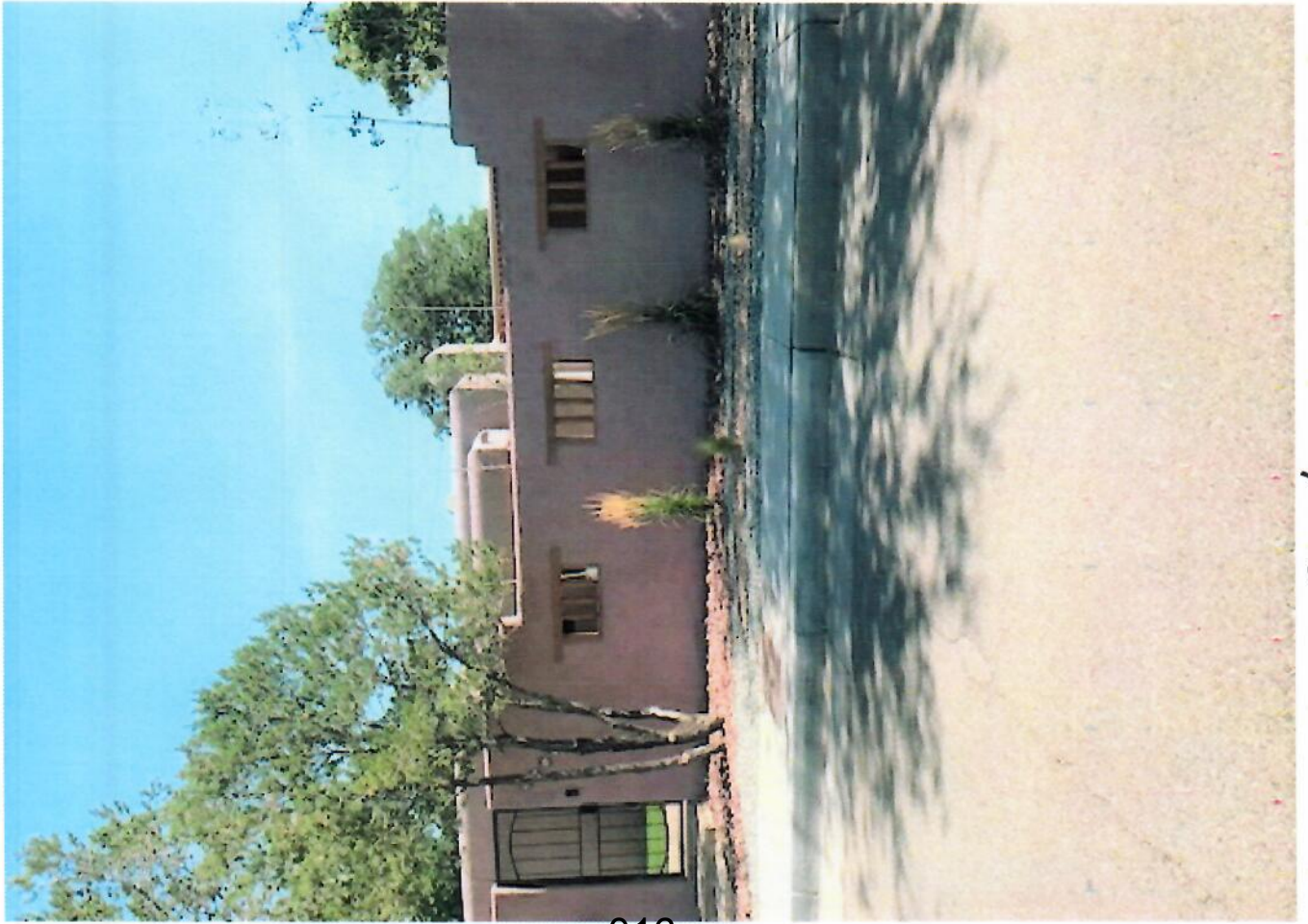
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did just that and found the criterion was not met. On appeal, the applicant did not raise the calculation method for that criterion their arguments; only on remand from the LUHO back to the ZHE did the applicant seek an alternative calculation method. For some of the examples cited, detailed arguments against their relevance are provided in the Appendix.

The second erroneous finding is 14, in which the ZHE concludes the wall complies with other applicable standards. In particular, the ZHE quotes Section 6-6(H)(3)(d)(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”. The ZHE relied on video taken from the sidewalk in front of the house. In fact, the subject wall does not meet this standard, as shown in these photographs taken from 5 feet above ground level in the center of Brockmont Ave. on July 19, 2022. No windows are visible through the wall, much less the entirety of all the windows, and clearly this criterion is not met.



The ZHE did not consider this criterion in their first Notice of Decision, since it had already failed to meet 6-6(H)(3)(a).



7a/14 Photos 13 Head & enlarged

Appendix to Reason for Appeal

The key point of the ZHE's decision is Finding 11:

7. *Based on photographs, maps and oral 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 area.*
 - a. *As stated, above, there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces.*
 - b. *Of these 11 lots, 2 of them have a front yard wall or fence over 3 feet in height.*
 - c. *Applicant argues that, to determine how many lots constitute 20% of 11, the number 11 should be multiplied by 20% (which results in a product of 2.2), then rounded down to result in 2 lots required to satisfy the 20%, which would be satisfied by the facts here.*
 - d. *Opponent argues that 2 lots constitute only approximately 18.18% of 11, because 2 divided by 11 yields approximately 18.18%, and that therefore IDO Section 14-16-6-6-(H)(3)(a)(3) is not satisfied.*
 - e. *The ZHE finds that Applicant's interpretation of rounding down to 2 lots required to satisfy 20% of 11 is consistent with the IDO. The IDO discusses rounding down to the nearest integer to determine a standard in several sections (Sections 3-4(J)(3)(a)(3), 4-3(B)(2)(c), 4-3(B)(3)(c)(1)(a), 5-5(C)(1)(c), 5-5(C)(5)(b), and 5-10(C)(1)). The only reference to rounding up in the IDO the ZHE found was in 5-10(C)(1), where numbers were rounded up only if the decimal was 0.9 or more.*
 - f. *Here, because 20% of 11 equals 2.2, the requirement should be that to satisfy IDO Section 14-16-6-6-(H)(3)(a)(3), Applicant must establish that 2 lots have a front yard wall or fence over 3 feet in height, which Applicant has done.*

Section 6-6(H)(3)(a) states:

Review and Decision Criteria

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. (See figure below for an illustration of this measurement.)

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. (See figure below for an illustration of this measurement.)*

The NHNA asserts that in 11(e), the ZHE has erred in applying methods of calculation cited in other sections of the IDO. As highlighted in bold above, the criterion of interest is clearly stated as a percentage. None of the examples cited in the ZHE's finding 11(e) are examples of how to compute a criterion expressed as a percentage; instead, they are simply statements of how the criterion is computed for that specific regulation. Each of the regulations cited will be reviewed in turn.

Section 3-4(J) covers CPO-9, the character protection overlay zone for the North 4th Corridor. Section 3-4(J)(1) states that CPO-9 standards apply in the mapped area that is included as part of that section of the IDO, and does not include the subject property. Section 3-4(J)(3)(a) defines regulation for Maximum Building Height:

3-4(J)(3)(a) Maximum Building Height

1. *The maximum building height for properties zoned MX-M or higher is 55 feet.*
2. *No height bonuses allowed by Table 5-1-2 for Workforce Housing or Structured Parking are allowed.*
3. ***If more than 165 feet of frontage along 4th Street is being developed or redeveloped, 1/3 of the new development, with any fractions rounded down to the nearest foot, is limited to 45 feet in height.***

which has no bearing on the Review and Decision Criteria for a Permit — Wall or Fence — Major in a low density residential zone. Finally, as an example of a relevant computation, Section 3-4(J)(3)(a)(3) does not state the criterion as a percentage, and then the method for computing that percentage; it simply states the method of computation the criterion. As such it is not an example for computing a criterion stated as a percentage. Even if it were, the rounding, in terms of percentage, cannot affect the calculation by more than $1/165 = 0.0061\%$, and the rounding would result in a more restrictive criterion.

Section 4-3(B)(2) concerns use regulations for Dwellings, Cluster Development.

Section 4-3(B)(2)(c)

The number of dwelling units is determined by dividing the area of the project site by the minimum lot size allowed in the zone district, rounded down to the nearest whole number.

1. *Cluster developments comprised of more than 20 dwelling units shall be comprised of cluster groups.*
 - a. *A cluster group shall not exceed 15 dwelling units.*
 - b. *Each cluster group shall be separated by common open space or usable open space at least 50 feet in length and width.*
2. *In the Los Duranes – CPO-6, the number of dwelling units in a cluster development shall not exceed 20.*

This section does not apply to the Review and Decision Criteria for a Permit — Wall or Fence — Major in a low density residential zone. It does not state the criterion as a percentage, and then state a particular way of computing the criterion to meet that percentage; it simply states the method of computation of the criterion. Furthermore, as an example of a rounding calculation, it suggests a more restrictive criterion, not a more permissive one.

Section 4-3(B)(3) concerns use regulations for Dwellings, Cottage Development

Section 4-3(B)(3)(c)(1)

In all zone districts, a cottage development shall have no more than the total residential gross floor area that would be allowed on an equal size property in the same zone district for single-family detached development. This is calculated by first determining the number of lots that would be allowed in that zone district, assuming the minimum lot size established in Table 5-1-1. That number is then multiplied by 2,000 square feet, an assumed size of a typical single-family dwelling, to determine the maximum residential gross floor area.

- a. ***When the calculation of the number of lots that would be allowed on the site based on the minimum lot size for the zone district results in a fraction of a lot, the number of lots used to calculate the maximum total residential gross floor area shall be rounded down to the nearest whole number.***

(Sections 4-3(B)(3)(c)(1)(b) and 4-3(B)(3)(c)(1)(c) are not shown because they do not refer to any calculations involving rounding.)

This section does not apply to the Review and Decision Criteria for a Permit — Wall or Fence — Major in a low density residential zone. It does not state the the criterion as a percentage; it simply states the method of computation for the criterion. As an example of a rounding calculation, the rounding results in a more restrictive criterion, not a more permissive one.

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

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller courtyard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Special Exception No:..... **VA-2021-00449**
Project No: **Project#2021-006330**
Hearing Date: 06-21-22
Closing of Public Record: 06-21-22
Date of Decision: 07-06-22

On the 21st day of June, 2022, Dave Bennett, agent for property owner Samuel Jacob Reynolds ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a permit for a taller courtyard wall major ("Application") upon the real property located at 4200 Brockmont Ave NE ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a permit for a taller court yard wall major.
2. The Application came before the ZHE at the June 21, 2022 ZHE hearing, upon remand from the Land Use Hearing Officer ("LUHO"), pursuant to the "LUHO Remand to ZHE" in AC-22-7, dated May 23, 2022 (the "LUHO Remand").
3. The LUHO Remand determined that, with respect to IDO Section 14-16-6-6(H)(3)(a)(3), there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces. It appears from written submittals and testimony that the parties to the appeal do not dispute this determination.
4. 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).
5. The ZHE finds that the Applicant has authority to pursue this Application
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-1B.
11. Based on photographs, maps and oral 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 area.
 - a. As stated, above, there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces.
 - b. Of these 11 lots, 2 of them have a front yard wall or fence over 3 feet in height.
 - c. Applicant argues that, to determine how many lots constitute 20% of 11, the number 11 should be multiplied by 20% (which results in a product of 2.2), then rounded down to result in 2 lots required to satisfy the 20%, which would be satisfied by the facts here.

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- d. Opponent argues that 2 lots constitute only approximately 18.18% of 11, because 2 divided by 11 yields approximately 18.18%, and that therefore IDO Section 14-16-6-6-(H)(3)(a)(3) is not satisfied.
 - e. The ZHE finds that Applicant's interpretation of rounding down to 2 lots required to satisfy 20% of 11 is consistent with the IDO. The IDO discusses rounding down to the nearest integer to determine a standard in several sections (Sections 3-4(J)(3)(a)(3), 4-3(B)(2)(c), 4-3(B)(3)(c)(1)(a), 5-5(C)(1)(c), 5-5(C)(5)(b), and 5-10(C)(1)). The only reference to rounding up in the IDO the ZHE found was in 5-10(C)(1), where numbers were rounded up only if the decimal was 0.9 or more.
 - f. Here, because 20% of 11 equals 2.2, the requirement should be that to satisfy IDO Section 14-16-6-6-(H)(3)(a)(3), Applicant must establish that 2 lots have a front yard wall or fence over 3 feet in height, which Applicant has done.
12. Based on evidence presented by Applicant, the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Specifically, photographs were submitted showing several walls/fences in the neighborhood. It appears from the evidence that the proposed wall would not be out of character with the surrounding area, but rather would reinforce the architectural character of the neighborhood by being in harmony with the other improvements on the Subject Property.
13. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, that the wall would enhance the safety of both the subject property and neighboring properties by discouraging trespassers and vehicle headlamp light from coming into the subject property.
14. Based on evidence presented by Applicant, 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.

DECISION:

APPROVAL of a permit for a taller court yard wall major.

APPEAL:

If you wish to appeal this decision, you must do so by July 21, 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

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022

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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Samuel Jacob Reynolds, samueljr1309@gmail.com

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023

REQUEST FOR SPECIAL EXCEPTION

☐ Variance ☐ Conditional Use ☐ Other

Interpreter: ☐ Yes ☐ No

VA# 2021-00449 PR# PR-2021-006330

Date: 11/1/2021		Received By: Concetta Trujillo	
Address of Request: 4200 Brockmont Ave NE			
City: Albuquerque		State: NM	Zip: 87108
Lot: 20	Block: 14	Zone: R-1B	Map pg. K17
Subdivision: Broadmoor Addn		UPC# 101705720148923020	
Property Owner(s): Samuel Jacob Reynolds			
Mailing Address: 4200 Brockmont Ave NE			
City: Albuquerque		State: NM	Zip: 87113
Phone: 505-720-5322		Email: samueljr1309@gmail.com	
Agent: Dave Bennett			
Mailing Address: 8100 Wyoming Blvd NE #M4			
City: Albuquerque		State: NM	Zip: 87113
Phone: 505-681-0191		Email: Landconm@gmail.com	
Fee Total: \$ 214.20			

Completed Application Requirements:

- ☐ Copy of relevant IDO section
- ☐ Letter of authorization (if agent representation)
- ☐ Proof of Pre-application Meeting (not required for a variance)
- ☐ Proof that neighborhood meeting requirements were met
- ☐ Proof that public notice requirements were met
- ☐ Photos (site and existing structures)
- ☐ Sketch plan
- ☐ Justification letter
- ☐ Sign posting

Approved for acceptance by:	Date:	Hearing Date:
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ZONING OFFICIAL USE ONLY			
Request for exception to IDO Section: 14-16-5-7(D)(3)(g) Table 5-7-2			
Description of request: a permit for a TALLER COURT YARD WALL - MAJOR			
<input type="checkbox"/> Ownership verified on AGIS <input type="checkbox"/> Proof of ownership included <input type="checkbox"/> Letter of authorization included			
Case history number(s) from AGIS:			
APO:	CPO#	HPO#	VPO#
Wall variances not allowed in low-density residential development in these 2 areas per 5-7(D)(3)(e):			
1) CPO 3 and 2) Monte Vista / College View Historic Dist. - Mapped Area			
2) CPO-8 states walls no more than 3 feet high, but may request a variance 2nd check Initials _____			

REQUEST FOR SPECIAL EXCEPTION

☐ Variance ☐ Conditional Use ☐ Other

Interpreter: ☐ Yes ☐ No

VA# VA-2022-00016 PR# PR-2021-006330

Date: 11/1/2021		Received By: Concetta Trujillo	
Address of Request: 4200 Brockmont Ave NE			
City: Albuquerque		State: NM	Zip: 87108
Lot: 20	Block: 14	Zone: R-1B	Map pg. K17
Subdivision: Broadmoor Addn		UPC# 101705720148923020	
Property Owner(s): Samuel Jacob Reynolds			
Mailing Address: 4200 Brockmont Ave NE			
City: Albuquerque		State: NM	Zip: 87113
Phone: 505-720-5322		Email: samueljr1309@gmail.com	
Agent: Dave Bennett			
Mailing Address: 8100 Wyoming Blvd NE #M4			
City: Albuquerque		State: NM	Zip: 87113
Phone: 505-681-0191		Email: Landconm@gmail.com	
Fee Total: \$ 214.20			

Completed Application Requirements:

- ☐ Copy of relevant IDO section
- ☐ Letter of authorization (if agent representation)
- ☐ Proof of Pre-application Meeting (not required for a variance)
- ☐ Proof that neighborhood meeting requirements were met
- ☐ Proof that public notice requirements were met
- ☐ Photos (site and existing structures)
- ☐ Sketch plan
- ☐ Justification letter
- ☐ Sign posting

Approved for acceptance by:	Date:	Hearing Date:
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ZONING OFFICIAL USE ONLY			
Request for exception to IDO Section: 14-16-5-7(D)(1) Table 5-7-1			
Description of request: a VARIANCE of 2 feet 9 inch to allow for a Court yard wall in the side yard setback.			
<input type="checkbox"/> Ownership verified on AGIS <input type="checkbox"/> Proof of ownership included <input type="checkbox"/> Letter of authorization included			
Case history number(s) from AGIS:			
APO:	CPO#	HPO#	VPO#
Wall variances not allowed in low-density residential development in these 2 areas per 5-7(D)(3)(e):			
1) CPO 3 and 2) Monte Vista / College View Historic Dist. - Mapped Area			
2) CPO-8 states walls no more than 3 feet high, but may request a variance 2nd check Initials _____			

5-7(C) WALL LOCATION

- 5-7(C)(1) Walls may be constructed anywhere on a lot, including but not limited to any front, side, or rear setback area, unless otherwise prohibited by this IDO, by with Articles 14-1, 14-2, and 14-3 of ROA 1994 (Uniform Administrative Code and Technical Codes, Fire Code, and Uniform Housing Code), or by clear sight triangle requirements.
- 5-7(C)(2) Walls may be constructed without any setback from a property line, unless otherwise prohibited by this IDO, by Articles 14-1, 14-2, and 14-3 of ROA 1994 (Uniform Administrative Code and Technical Codes, Fire Code, and Uniform Housing Code), or by the DPM, including but not limited to, clear sight triangle requirements or standards for alignments and easements. Walls may not encroach into any public right-of-way without the prior written approval from the City Engineer and may not encroach onto any adjacent property without prior written approval of that property owner.

5-7(D) MAXIMUM WALL HEIGHT

5-7(D)(1) Maximum Wall Height Table

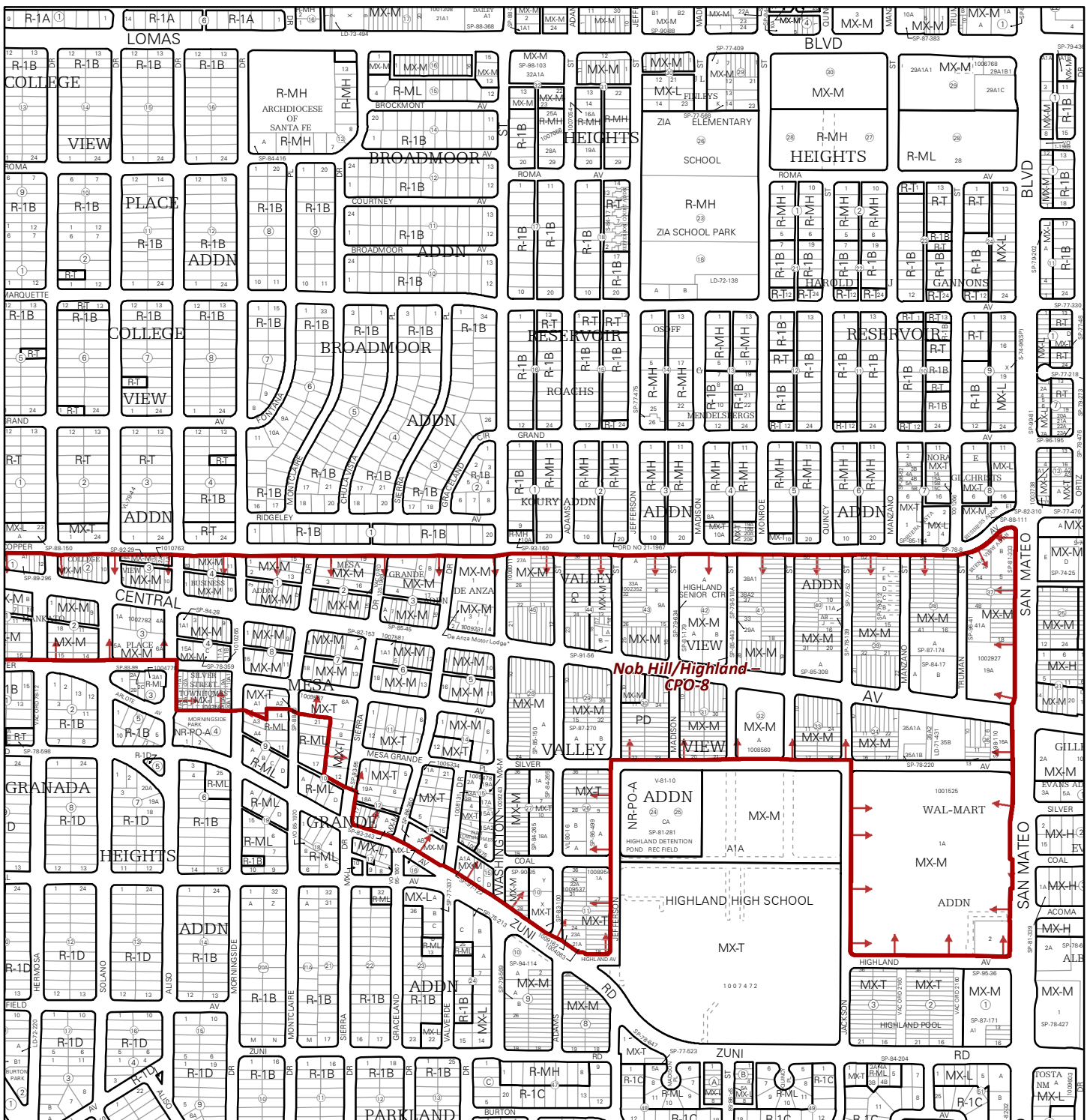
Unless specified otherwise in Subsection 14-16-5-7(D)(3) (Exceptions to Maximum Wall Height) or elsewhere in this IDO, walls shall comply with the height standards in Table 5-7-1.

Table 5-7-1: Maximum Wall Height					
Zone Category	Residential	Mixed-use	Non-residential (NR-C, NR-BP) ⁽¹⁾	Non-residential (NR-LM, NR-GM)	See also:
Standard Wall Height					
Wall in the front yard or street side yard ⁽²⁾⁽³⁾⁽⁴⁾	3 ft.	3 ft.	3 ft.	6 ft.	5-7(D)(2)
Wall in other locations on the lot ⁽⁵⁾⁽⁶⁾	8 ft.	8 ft.	8 ft.	10 ft.	5-7(D)(2)
Corner Lot Abutting Residential Zone District					
Any portion of a wall in the rear yard abutting the front yard of a Residential zone district.					
<10 ft. from the lot line abutting the street ⁽³⁾	3 ft.	3 ft.	3 ft.	6 ft.	5-7(D)(2) 5-7(D)(3)(g)
≥10 ft. from the lot line abutting the street	6 ft.	8 ft. Low-density residential: 6ft.	8 ft.	8 ft.	5-7(D)(2)
Walls Abutting Major Arroyos and Major Public Open Space					
Wall in a rear or interior side yard abutting a major arroyo	6 ft.	8 ft.	8 ft.	8 ft.	5-7(D)(2) 5-7(E)(4)
Wall in a rear or interior side yard abutting Major Public Open Space	6 ft.	6 ft.	6 ft.	10 ft.	5-7(D)(2) 5-7(E)(4)
⁽¹⁾ In the NR-BP zone district, wall heights shall be specified in the Master Development Plan. If no Master Development Plan exists or if no wall heights are specified in the Master Development Plan, then the wall height requirements in this table apply. ⁽²⁾ Taller walls may be approved for multi-family residential development pursuant to Subsection 14-16-5-7(D)(3)(c). ⁽³⁾ Taller walls may be approved for low-density residential development pursuant to Subsections 14-16-5-7(D)(3)(d) or 14-16-5-7(D)(3)(g). ⁽⁴⁾ Taller walls may be approved in any NR-C or NR-BP zone district pursuant to Subsection 14-16-5-7(D)(3)(e). ⁽⁵⁾ Portions of walls in the rear yard of a corner lot abutting the front yard of a Residential zone district are treated differently, with provisions later in this table. ⁽⁶⁾ Where the rear yard of a through lot abuts at least 1 lot with any residential development that faces the second public street, the rear and side walls shall be subject to the same height restrictions applicable within the required front setback of the abutting residential property.					

- 5-7(D)(3)(e) For development in any NR-C or NR-BP zone district, the maximum height of walls in any front or street side yard is 6 feet if the wall is set back at least 5 feet from the property line and if view fencing that is at most 50 percent opaque to perpendicular view is used for portions of a wall above 3 feet.
- 5-7(D)(3)(f) Except where a Permit – Wall or Fence – Major is required pursuant to Subsection (g) below or where prohibited pursuant to Subsection (h) below, the Zoning Enforcement Officer (ZEO) may make an exception to the height standards in Table 5-7-1 for security reasons due to specific site conditions or the nature of the land use or related materials and facilities on the site, pursuant to Subsection 14-16-6-5(F) (Permit – Wall or Fence – Minor).
- 5-7(D)(3)(g) For low-density development in or abutting a Residential zone district where wall height in any front or street side yard is restricted to 3 feet by Table 5-7-1, a request for a taller wall that meets the height and location standards in Table 5-7-2 shall require Permit – Wall or Fence – Major pursuant to Subsection 14-16-6-6(H), except where a taller wall is prohibited pursuant to Subsection (h) below.

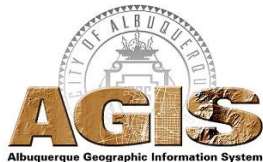
Table 5-7-2: Options for a Taller Front or Side Yard Wall^[1]

Wall Type and Location	Maximum Wall Height	Illustration
View Fencing		
View fencing at most 50 percent opaque may be added above 3 ft. to increase the total height of the wall as follows:		
<10 ft. from lot line abutting the street	5 ft.	0
≥10 ft. from lot line abutting the street	6 ft.	0
Courtyard Walls		
≥10 ft. from lot line abutting the street or edge of the sidewalk closest to the primary building, whichever is more restrictive	6 ft.	5-7(D)(3)(g)2
Corner Lots		
On a corner lot where the rear yard abuts the front yard of a residentially zoned lot, a taller wall enclosing the rear yard may be approved as follows:		
<10 ft. from the lot line abutting the street	5 ft.	5-7(D)(2)
[1] The maximum wall heights in this table require an approval pursuant to the standards in Subsections 14-16-5-7(D)(3)(g) and 14-16-6-6(H) (Permit – Wall or Fence – Major).		

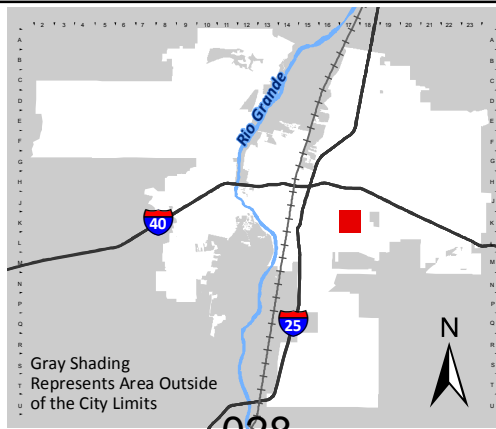


For more details about the Integrated Development Ordinance visit: <http://www.cabq.gov/planning/codes-policies-regulations/integrated-development-ordinance>

IDO Zone Atlas May 2018



IDO Zoning information as of May 17, 2018
The Zone Districts and Overlay Zones
are established by the
Integrated Development Ordinance (IDO).



Zone Atlas Page:
K-17-Z

- Easement
- Escarpment
- Petroglyph National Monument
- Areas Outside of City Limits
- Airport Protection Overlay (APO) Zone
- Character Protection Overlay (CPO) Zone
- Historic Protection Overlay (HPO) Zone
- View Protection Overlay (VPO) Zone

0 250 500 1,000 Feet

Letter of Authorization

To: Zoning Hearing Examiner

Date: _____

Project # _____

ZHE# _____

I, Samuel Reynolds hereby authorize
David Bennett to act on my behalf in all matters relating to this
application for Special Exception filed for my property located at
4200 Brockmont Ave NE, Albuquerque NM 87108.

Property Owner(s)* (Applicant) Printed Name

Samuel Reynolds

Property Owner(s)* (Applicant) Signature

[Signature]

Mailing Address

4200 Brockmont Ave NE, Albuquerque NM 87108

* Where a property has more than one owner, all owners must consent in writing to the filing of the application to the maximum extent practicable. In the case that not all of the property owners have consented in writing to the application, or when the ownership status of some parties is unclear (as shown on a title abstract or title insurance commitment), the owner shall attest in writing that all of the property owners shown on a title abstract or title insurance commitment have been notified of the application in writing at their last known address as shown on the property tax records of Bernalillo County.

Sanchez, Suzanna A.

From: Sanchez, Suzanna A.
Sent: Wednesday, October 20, 2021 11:40 AM
To: 'landconm@gmail.com'
Subject: ZHE Information for 4200 Brockmont Ave
Attachments: STEPS TO APPLY FOR A SPECIAL EXCEPTION APRIL 2021.pdf; 1. Letter to Neighborhood Association.pdf

Dear Applicant,

Attached are forms and instructions to complete your application. Please pay special attention to Step 3 in the "STEPS TO APPLY" document. These materials are required for a complete submittal. Requests will not be set for a hearing or reviewed for compliance until the application submittal is complete.

1. Please fill in and forward the attached Letter to Neighborhood Association to the list of neighborhood association contacts below. It is recommended that the neighborhood associations be notified 45 days prior to application submittal. Per Section 14-16-6-4(C)(3) of the Integrated Development Ordinance, a meeting request must be sent to the 2 representatives of all applicable Neighborhood Associations via Certified Mail, return receipt requested, or via email. (Please include project information such as renderings, a site plan and/or a photo in the notice).

Association Name	First Name	Last Name	Email	Address Line 1
Nob Hill NA	Gary	Eyster	meyster1@me.com	316 Amherst Drive
Nob Hill NA	David	Garcia	david@halflifedigital.com	316 Tulane SE
District 6 Coalition of Neighborhood Associations	Mandy	Warr	mandy@theremedydayspa.com	119 Vassar Drive
District 6 Coalition of Neighborhood Associations	Patricia	Willson	info@willsonstudio.com	505 Dartmouth Street SE

Thank you,

Suzie



SUZIE SANCHEZ-FLORES
zhe administrative assistant
o 505.924.3894
e suzannasanchez@cabq.gov
cabq.gov/planning

REQUEST FOR NEIGHBORHOOD MEETING

Date: 10-20-2021

To Whom This May Concern:

I am requesting approval from the Zoning Hearing Examiner within the City of Albuquerque for a conditional use or variance to allow an extension of existing courtyard wall to match the existing height, color, texture and style.

_____ (summary of request).

Property owner Samuel Reynolds

Agent if applicable Dave Bennett

Property Address 4200 Brockmont ave ne, Albuquerque, NM, 87108 (zip code).

This letter is an offer to meet with you to provide additional information. If you wish to meet, please respond within 15 days. If you do not want to meet, or you support the proposal, please let me know.

Thank you,

Applicant Name Dave Bennett

Email Landconm@gmail.com

Phone Number 505-681-0191

The City may require the applicant to attend a City-sponsored facilitated meeting with the Neighborhood Associations whose boundaries include or are adjacent to the proposed project, based on the complexity and potential impacts of a proposed project. For more information, please contact the ZHE Administrative Assistant Suzie Sanchez at 505-924-3894 or suzannasanchez@cabq.gov.

Please note: "You may submit written comments to the Zoning Hearing Examiner up to 6 days before the hearing (5pm on the Wednesday before the hearing). Written comments received after that deadline will not be taken into consideration for this application.

[Note: Items with an asterisk (*) are required.]

Neighborhood Meeting Request for a Proposed Project in the City of Albuquerque

Date of Request*: 10-20-2021

This request for a Neighborhood Meeting for a proposed project is provided as required by Integrated Development Ordinance (IDO) [Subsection 14-16-6-4\(K\) Public Notice](#) to:

Neighborhood Association (NA)*: Nob Hill NA

Name of NA Representative*: Gary Eyster

Email Address* or Mailing Address* of NA Representative¹: meyster1@me.com

The application is not yet submitted. If you would like to have a Neighborhood Meeting about this proposed project, please respond to this request within 15 days.²

Email address to respond yes or no: Landconm@gmail.com

The applicant may specify a Neighborhood Meeting date that must be at least 15 days from the Date of Request above, unless you agree to an earlier date.

Meeting Date / Time / Location:

Project Information Required by [IDO Subsection 14-16-6-4\(K\)\(1\)\(a\)](#)

1. Subject Property Address* 4200 Brockmont ave NE, Albuquerque NM 87108
Location Description Corner of Brockmont and Monthclaire
2. Property Owner* Samuel Reynolds
3. Agent/Applicant* [if applicable] Dave Bennett
4. Application(s) Type* per IDO [Table 6-1-1](#) [mark all that apply]
 - ☐ Conditional Use Approval
 - ☐ Permit _____ (Carport or Wall/Fence – Major)
 - ☐ Site Plan
 - ☐ Subdivision _____ (Minor or Major)

¹ Pursuant to [IDO Subsection 14-16-6-4\(K\)\(5\)\(a\)](#), email is sufficient if on file with the Office of Neighborhood Coordination. If no email address is on file for a particular NA representative, notice must be mailed to the mailing address on file for that representative.

² If no one replies to this request, the applicant may be submitted to the City to begin the review/decision process.

[Note: Items with an asterisk (*) are required.]

- ☐ Vacation _____ (Easement/Private Way or Public Right-of-way)
☒ Variance
☐ Waiver
☐ Zoning Map Amendment
☐ Other: _____

Summary of project/request^{3*}:

Extension of existing courtyard wall to enclose front door area and to match existing color, stucco, texture and style.

5. This type of application will be decided by^{*}: ☐ City Staff
OR at a public meeting or hearing by:
☒ Zoning Hearing Examiner (ZHE) ☐ Development Review Board (DRB)
☐ Landmarks Commission (LC) ☐ Environmental Planning Commission (EPC)
☐ City Council
6. Where more information about the project can be found^{*4}:

Project Information Required for Mail/Email Notice by [IDO Subsection 6-4\(K\)\(1\)\(b\)](#):

1. Zone Atlas Page(s)^{*5} K-17-Z
2. Architectural drawings, elevations of the proposed building(s) or other illustrations of the proposed application, as relevant^{*}: Attached to notice or provided via website noted above
3. The following exceptions to IDO standards will be requested for this project^{*}:
☐ Deviation(s) ☒ Variance(s) ☐ Waiver(s)

Explanation:

Wall that is higher than 3 feet but not exceeding 6 feet

4. An offer of a Pre-submittal Neighborhood Meeting is required by [Table 6-1-1](#)^{*}: ☐ Yes ☒ No

³ Attach additional information, as needed to explain the project/request. Note that information provided in this meeting request is conceptual and constitutes a draft intended to provide sufficient information for discussion of concerns and opportunities.

⁴ Address (mailing or email), phone number, or website to be provided by the applicant

⁵ Available online here: <http://data.cabq.gov/business/zoneatlas/>

[Note: Items with an asterisk (*) are required.]

5. **For Site Plan Applications only***, attach site plan showing, at a minimum:

- ☐ a. Location of proposed buildings and landscape areas.*
- ☐ b. Access and circulation for vehicles and pedestrians.*
- ☐ c. Maximum height of any proposed structures, with building elevations.*
- ☐ d. **For residential development***: Maximum number of proposed dwelling units.
- ☐ e. **For non-residential development***:
 - ☐ Total gross floor area of proposed project.
 - ☐ Gross floor area for each proposed use.

Additional Information:

1. From the IDO Zoning Map⁶:

- a. Area of Property [typically in acres] _____
- b. IDO Zone District _____
- c. Overlay Zone(s) [if applicable] _____
- d. Center or Corridor Area [if applicable] _____

2. Current Land Use(s) [vacant, if none] _____

Useful Links

Integrated Development Ordinance (IDO):

<https://ido.abc-zone.com/>

IDO Interactive Map

<https://tinyurl.com/IDOzoningmap>

Cc: _____ [Other Neighborhood Associations, if any]

⁶ Available here: <https://tinurl.com/idozoningmap>

Sanchez, Suzanna A.

From: D <landconm@gmail.com>
Sent: Monday, December 06, 2021 11:26 PM
To: Sanchez, Suzanna A.
Subject: Fwd: Request for meeting
Attachments: 1. Letter to Neighborhood Association nhge.pdf; IDOZoneAtlasPage_K-17-Z.pdf; 12.png; 19.pdf; Before.png

----- Forwarded message -----

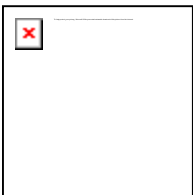
From: D <landconm@gmail.com>
Date: Wed, Oct 20, 2021 at 2:36 PM
Subject: Request for meeting
To: <meyster1@me.com>

Hello,

My name is Dave. Our company is installing some landscaping for our customer who lives at 4200 Brockmont ave NE, Albuquerque NM 87108. We made a plan for him to xeriscape his front yard and to extend his existing courtyard wall so that it encloses his front door instead of just his side door. Upon his approval, we proceeded with the project including the wall (plan and constructed wall attached) but I mistakenly overlooked the rule of front yard walls no taller than 3 ft without a variance. I went to the planning and zoning department and they've given me the instructions on obtaining a variance which includes the attached request for a meeting. If you have some time to respond to the attached request, that would be great. Also, if you have any questions that I can answer or if you would like to come by and see the wall and project, I would be more than happy to meet you there to show you everything if you'd like. The wall itself is just under 6ft, is reinforced with rebar, filled with cement, and matches the existing wall and house.

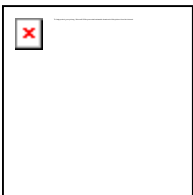
Thank you for your time,

--



Dave Bennett
Landco Landscape Development & Supply
5901 Carmel Ave NE
Albuquerque, NM 87113
Office: 505-681-0191
www.landconm.com

--



Dave Bennett
Landco Landscape Development & Supply
5901 Carmel Ave NE
Albuquerque, NM 87113
Office: 505-681-0191
www.landconm.com

Sanchez, Suzanna A.

From: Gary Eyster <meyster1@me.com>
Sent: Wednesday, October 20, 2021 4:14 PM
To: 'D'
Cc: Sanchez, Suzanna A.; Greg Weirs; 'Jeff Hoehn'; Gary and Melodie Eyster
Subject: RE: Request for meeting, 4200 Brockmont NE

Follow Up Flag: Follow up
Flag Status: Completed

Yes, Dave. We would like a meeting.

It's not clear from the materials you sent if you are applying for a wall permit-major or a variance. Would you please clear that up with Ms. Sanchez or Ms. Patten Quintana at the ZHE office?

Kind regards, Gary Eyster, President
Nob Hill NA

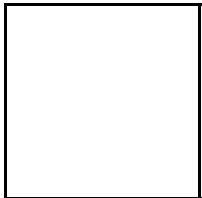
From: D [<mailto:landconm@gmail.com>]
Sent: Wednesday, October 20, 2021 2:37 PM
To: meyster1@me.com
Subject: Request for meeting

Hello,

My name is Dave. Our company is installing some landscaping for our customer who lives at 4200 Brockmont ave NE, Albuquerque NM 87108. We made a plan for him to xeriscape his front yard and to extend his existing courtyard wall so that it encloses his front door instead of just his side door. Upon his approval, we proceeded with the project including the wall (plan and constructed wall attached) but I mistakenly overlooked the rule of front yard walls no taller than 3 ft without a variance. I went to the planning and zoning department and they've given me the instructions on obtaining a variance which includes the attached request for a meeting. If you have some time to respond to the attached request, that would be great. Also, if you have any questions that I can answer or if you would like to come by and see the wall and project, I would be more than happy to meet you there to show you everything if you'd like. The wall itself is just under 6ft, is reinforced with rebar, filled with cement, and matches the existing wall and house.

Thank you for your time,

--



Dave Bennett
Landco Landscape Development & Supply
5901 Carmel Ave NE
Albuquerque, NM 87113
Office: 505-681-0191
www.landconm.com

CITY OF ALBUQUERQUE
LAND USE FACILITATION PROGRAM PROJECT MEETING REPORT
4200 Brockmont NE - Facilitated Meeting of November 29, 2021

Project: 4200 Brockmont NE, ABQ, NM 87108

Property Description/Address: Same

Date Submitted: November 30, 2021

Submitted By: Philip Crump and Jocelyn M. Torres

Meeting Date/Time: November 29, 2021, 5:30-7:30 pm

Meeting Location: Via Google

Facilitator: Philip Crump

Co-facilitator: Jocelyn M. Torres

Applicant: Samuel Reynolds

Agent: David Bennett, Landco Landscape Development Design and Supply

Neighborhood Associations/Interested Parties: Nob Hill NA; Neighbors

Background Summary:

Applicant filed for a front and side wall ZHE variance on November 1, 2021, after the walls had already been constructed. The Nob Hill NA and neighbors oppose the existing front wall height on the basis that it does not meet either the Nob Hill NA Policy on Walls and Fences¹ or the Integrated Design Ordinance (IDO) height requirements. The side wall height may meet an IDO exception.

Outcomes:

- **Areas of Agreement:**
- There was no agreement regarding the existing height and construction of the front wall.
- The Nob Hill NA President voiced that the height of the side wall may meet the 20% IDO variance standard.²
- **Areas of Concern:**
- Neighbors are opposed to the existing walls.
- **Areas for Further Discussion:**
- The Nob Hill NA will further discuss this matter at their meeting of December 9, 2021.
- The side wall height may meet an IDO exception.

¹ See: <http://www.nobhill-nm.com/resources/modifying-your-property/walls-and-fences/>.

² IDO §6-6(H) (3) (a) (4): "For a street side yard wall taller than allowed in Table 5-7-1, at least 20% 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."

CITY OF ALBUQUERQUE
LAND USE FACILITATION PROGRAM PROJECT MEETING REPORT
4200 Brockmont NE - Facilitated Meeting of November 29, 2021

Meeting Specifics: *Neighbor Questions and Comments are Italicized.* Agent's comments and answers are not.

1) History of Brockmont/Montclair Wall Design and Construction.

- a) C: The home owner wanted a front wall. The original design was shorter. Because of the owner's concerns about strangers and trash dumping, we decided to make the wall higher and extend it to the Montclair side yard. We have gotten compliments on this wall. I have since reviewed the guidelines on wall height and design that Gary sent me and would like to hear from neighbors regarding the wall.

Q: So the front yard faces Brockmont and the side yard faces Montclair?

A: Yes. Also, the driveway and garage door are on Montclair.

- b) *Q: What is the current condition of the wall on the front and side yards? Can you distinguish between the front and side walls?*

A: We've already extended the wall on the side yard to where it meets the neighbor's back yard. There is a security door. There is xeriscaping throughout. The trees provide privacy. Vegetation includes original crabapple, aspen, elm and pine trees, plus agave.

We raised the inside height (of the side wall) 1.5 feet in order to construct a back patio. The inside height is not as high as the outside. The corner of the two walls is rounded not jagged. The front gate is permeable, so you could see through it. Maybe we should change that gate so it meets the standard requiring that the front door and window be seen from five feet away.

2) Neighbor Comments and Concerns.

- a) *C: It would have been nice if we could have had this meeting before the construction. We are not here to bully, but to share what we know about the system, process and necessary qualifications for a wall permit.*
- b) *C: I'm really opposed to the height of that wall. It's totally obtrusive. I don't live on that street but walking down Brockmont, that is what is seen bolting out from the house. I think it is illegal, unpermitted and sets a really bad precedent. If it is allowed to stand, everyone else will think that they can do what they want.*
- c) *C: I've been a realtor for 40 years. Part of my job is to advise buyers and sellers of rules involving wall additions. The wall height rule applies to the entire City, not just Nob Hill. Since August, I have seen four walls of four to six feet constructed within a half mile of Carlisle and Lomas. Any contractor, plumber, electrician or wall builder should know the City rules and regulations. I feel bad because I told some clients living near Roma and Montclair that they couldn't build a wall over three feet in the front. They have big dogs and would have preferred a taller wall.*
- d) *Q: Were any of those walls located in Nob Hill?*

A: No. Two were on Wellesley near Constitution. There is another one on Morningside. There was one on Mackland that just got shortened.

- e) *C: The process requires that you get the permit before you build the wall.*

CITY OF ALBUQUERQUE
LAND USE FACILITATION PROGRAM PROJECT MEETING REPORT
4200 Brockmont NE - Facilitated Meeting of November 29, 2021

- f) *C: This is about asking for permission, not forgiveness. Things like this would approach a crisis status for our City if people did not stand up, as they have done tonight, to say things that are uncomfortable and unpleasant to enforce community form. I want this stated in the record.*

3) History of Nob Hill Wall Design Standards.

- a) *C: This is not a new issue. It is one the Neighborhood Association has considered for 15 years. This is not about aesthetics. It is a matter of process and permitting. It also pertains to our pedestrian friendly neighborhood, streetscape and crime prevention. Owners want a higher wall for safety. That is counterproductive because once criminals are behind the fence, no one on the street can see them.*

- b) *Q: So you are saying that it's not about aesthetics, it's about process, walkability and eyes on the street safety, right?*

A: Yes.

- c) *C: I'm going to read some excerpts from the Integrated Development Ordinance. This came about in 2017 after enormous public input and comment. Our association was one of about six others that asked the council to regulate front yard walls. There are three areas on a lot; the side, back and front yards. It's a city-wide ordinance.*

Subsection six says a public meeting is required when you apply for a major wall permit on the front or side street, which is what you have here. You don't have ½ acre or face a collector street. This section requires that at least, 20% of the residential properties abutting Brockmont within 330 feet, have a front yard wall over three feet.³

We've done a survey and there are 12 houses east of the house on Brockmont. Two of them have the wall over three feet. So that's 16%. Your wall does not meet that (IDO) requirement.

- d) *C: Our Neighborhood Association supports front walls meeting IDO Sections 6-6(H) (3) (a) (1) through (3) requirements. If they don't, we oppose them. This wall does not meet those requirements.*
- e) *C: Also, the front wall blocks the window view from the street.⁴*
- f) *A: We did not intend to violate any requirements when we built that wall. I accept the blame. I did recommend a Ring camera to see street activity, which the home owner got right away.*
- g) *C: Regarding the side yard application, we are not sure whether that meets the IDO's applicable 20% requirement. [See second footnote on page one].*
- h) *Q: Will the (Nob Hill) Board oppose both applications?*

³ IDO §6-6(H) (3) (a) (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 IDO §6-6(H) (3)(d): "The design of the wall complies with any applicable standards in section 5-7 (walls and fences) including but not limited to §(3) articulation and alignment and 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 ft. above the ground level at the centerline of the street in front of the house."

CITY OF ALBUQUERQUE
LAND USE FACILITATION PROGRAM PROJECT MEETING REPORT
4200 Brockmont NE - Facilitated Meeting of November 29, 2021

A: We have a policy requiring opposition of the front wall because it does not meet IDO requirements. We are not sure about the side wall. Only two of eleven board members are here tonight. The others must be included in that decision.

- i) C: We didn't intend anything malicious. A neighbor informed us that he just got permission from other neighbors when he built his wall.

C: That wall on Montclair and Roma has been there at least 15 years. The permitting and Neighborhood Association's view may have been different at that time. We adopted our current position at least five years ago.

C: The three foot front wall requirements were in place in the 80's and 90's. When requesting a variance, it may be good to go door to door asking neighbors. In this case, the wall is already built, so that reasoning doesn't apply.

C: Many people support the appearance of the wall.

C: This is not based on popularity; it is based on the IDO's permitting requirements.

4) Variance Applications.

- a) Q: Did you file both applications on November 1, 2021?

A: Yes.

- b) C: In that case, the ZHE meeting will be published in the Journal on December 6, 2021 and the Nob Hill NA will consider this matter in its December 9, 2021 meeting. The ZHE hearing will be held on December 21, 2021.

Projected Publication and Hearing timetable:

Both applications were filed November 1, 2021.

Journal Publication anticipated for December 6, 2021.

ZHE Hearing anticipated for December 21, 2021.

Names & Affiliations of Attendees and Interested Parties:

Samuel J Reynolds	Property Owner
David Bennett	Landco Landscape Dev. & Supply
Gary Eyster	Nob Hill NA
Greg Weirs	Nob Hill NA
Susan Beard	Neighbor
Marshall Mourar	Neighbor
Lorena Patten-Quintana	ZHE Planner
Suzie Sanchez-Flores	ZHE Administrative Assistant
Tyson Hummell	CABQ ADR Coordinator

















Only submit photos of properties that are within the linear area up to 330 feet. (Only properties in green, along the yellow lines).

Take a picture of any side yard fence/wall that is over 3 feet.

Write the address on the front.

Mark the address off on the map.

Print all and submit to the ZHE.

About 22 Properties = 5 Photos

4201 Roma



4216 Brockmont



4201 Brockmont

4201
Brockmont



4204 Roma



528 Montclair DR NE

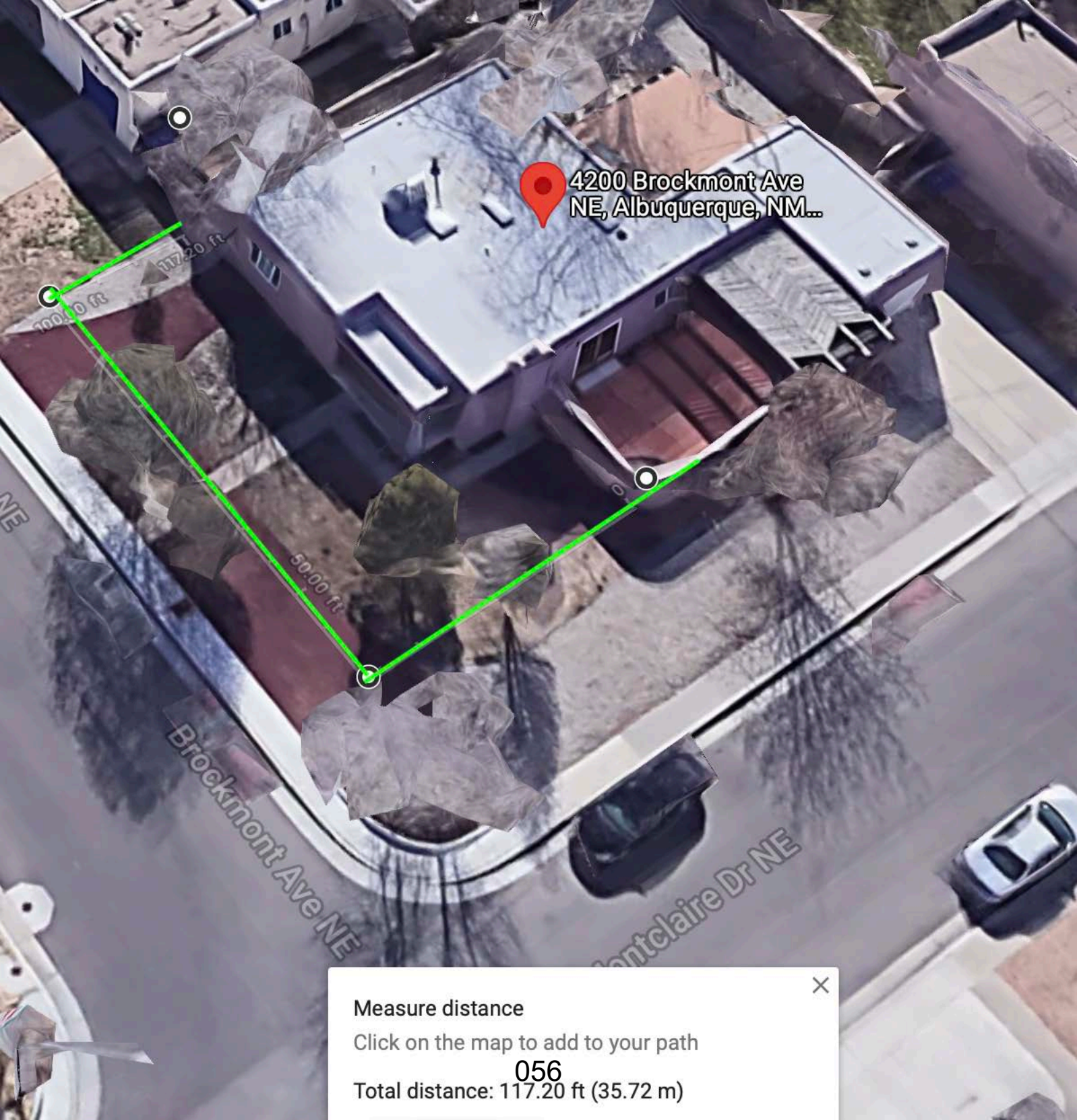


525 Montclair



522 Montclair





4200 Brockmont Ave
NE, Albuquerque, NM...

100.00 ft

117.20 ft

50.00 ft

Brockmont Ave NE

Montclair Dr NE

Measure distance

Click on the map to add to your path

056

Total distance: 117.20 ft (35.72 m)



4200 BrockMont
Albuquerque NM 87108



New Wall

Original Wall

New Wall

New Wall

Brockmont

Montclair

* Height of wall is 5'11" with (3) step up decorative accents in corners

057

**YOU MAY USE THE FORM BELOW TO ENSURE ALL ITEMS
ARE ADDRESSED**

PERMIT JUSTIFICATION LETTER – WALL OR FENCE

Zoning Hearing Examiner City of Albuquerque
600 2nd Street NW, 3rd Floor Albuquerque, NM 87102

RE: Request for Wall Permit of over 3'
at 4200 Brockmont Ave NE Albuquerque NM 87108 (address of the
subject property).

(a) The wall is proposed on a lot that meets any of the following criteria:

1. The lot is at least 1/2 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. (See figure below for an illustration of this measurement.)
 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. (See figure below for an illustration of this measurement.)
-

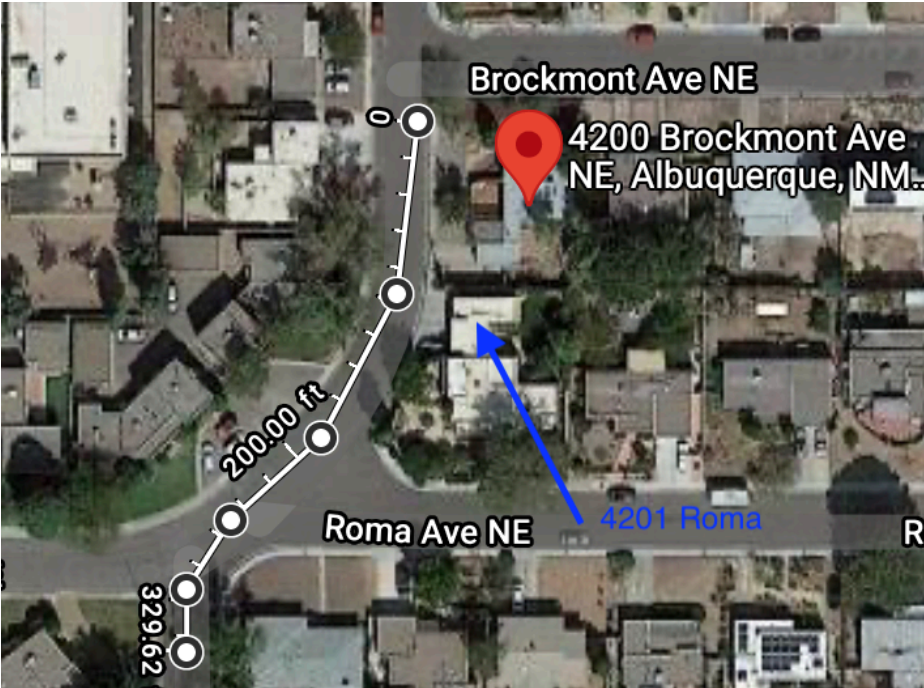


I MEET CRITERIA 2,3 and 4. IF 3 OR 4, YOU MUST INCLUDE PHOTOGRAPHS WITH

ADDRESSES AS PROOF THAT THE 20% REQUIREMENT IS MET.

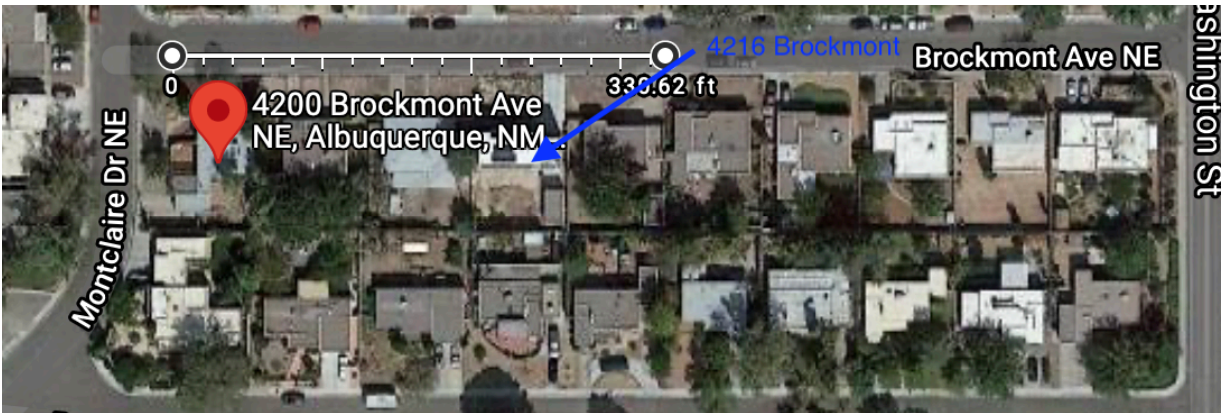
1. House directly next door who's wall is higher than 3': 4201 Roma ave NE Albuquerque NM 87108





2. 3 houses down: 4216 Brockmont Ave NE, Albuquerque NM 87108





(b) The proposed wall would strengthen or reinforce the architectural character of the surrounding area **BECAUSE**: The majority of the neighborhood has a southwestern style. Since the wall is new and remains the same style, it might encourage other neighbors to add something new and shows that the southwestern style is or can be a timeless enhancement, could and may eventually raise the value of the homes in the neighborhood. The location of the home and the proposed wall is somewhat of a first impression upon entering the neighborhood and coupled with the new landscaping would enhance the overall look of the area.

(c) The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the **BECAUSE**: The location of the wall still allows enough space for drivers on both Brockmont and Montclair to see and safely stop, proceed forward or turn in either direction. The wall doesn't prevent any walkways/paths and does not impose any other type of hazard directly or indirectly.

(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. **PLEASE EXPLAIN**: Because in the front yard, there is one window at the front porch and the front door. The proposed wall

includes a perforated gate directly in the centerline of the street in front of the house that would allow some privacy, but still gives visibility if it was needed for some reason.

2. The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area. **PLEASE EXPLAIN:** Yes. The wall was designed using the same style of stucco, shape of the top of the wall and a southwestern theme. The wall was designed to match the existing wall and to extend the existing wall which already matched the home and the style of the neighborhood.

Signature 

Date 11/08/2021

VARIANCE JUSTIFICATION LETTER GUIDELINES - GENERAL

Per Integrated Development Ordinance 16-14-6-4(E)(3): **The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence.**

Per Integrated Development Ordinance 14-16-6-4(E)(4) **The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary.**

Because the burden of evidence is borne by the applicant, you may choose to retain the services of a development professional that is knowledgeable in land use matters to guide your application and represent you at the public hearing.

To justify your request and aid our review, please provide a detailed response to items 1-5.

6-6(O) VARIANCE – ZHE

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(O) or the DPM.

6-6(O)(3) Review and Decision Criteria

6-6(O)(3)(a) General

An application for a Variance – ZHE shall be approved if it meets all of the following criteria:

1. There are special circumstances applicable to a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical

difficulties result from strict compliance with the minimum standards.

2. The Variance will not be materially contrary to the public safety, health, or welfare. 3. The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.

4. The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district.

5. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.

YOU MAY USE THE FORM BELOW TO ENSURE ALL ITEMS ARE ADDRESSED

VARIANCE JUSTIFICATION LETTER - GENERAL

Zoning Hearing Examiner City of Albuquerque

600 2nd Street NW, 3rd Floor Albuquerque, NM 87102

RE: Request for Variance of 4200 Brockmont Ave NE, Albuquerque NM 87108 (address of the subject property).

1) There are special circumstances applicable to a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical difficulties

result from strict compliance with the minimum standards. **PLEASE EXPLAIN:**

The front yard, located on a corner lot, has a significant amount of both vehicle traffic and foot traffic. More so than any of the nearby neighbors as it is exposed to both Brockmont and Montclair. This is fine, except for the below factors:

1. Frequent loitering/trespassing & transient activity

2. Limited privacy
3. Excess trash accumulation as a result of said loitering.

2) The Variance will not be materially contrary to the public safety, health, or welfare **BECAUSE**:

The proposed location of the wall still allows enough space for drivers on both Brockmont and Montclair to see and safely stop, proceed forward or turn in either direction. The wall doesn't prevent any walkways/paths and does not impose any other type of hazard directly or indirectly.

3) The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity **BECAUSE**:

The proposed wall not only matches the home, it also flows with the same look and feel for the entire neighborhood by way of the design, materials used and style.

4) The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district **BECAUSE**:

The proposed wall was not only designed to preserve enough space in front of it to include landscaping (xeriscaping) that is esthetically pleasing to the outside of the wall area, it was also designed so that it wouldn't protrude, to blend in, and with wooden window openings to allow people on the inside and the outside to still have some kind of minimal visibility through the wall.

5) The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties **BECAUSE**:

The alternative solution would be to place signs, put a dog on a leash outside, or to hire a security guard, all of which would impose some kind of nuisance more so than the proposed wall.

Signature_____

Date_____



CITY OF ALBUQUERQUE INVOICE

DAVE BENNETT

8100 WYOMING BLVD NE #M4

Reference NO: VA-2021-00449

Customer NO: CU-150008417

Date	Description	Amount
12/10/21	2% Technology Fee	\$4.20
12/10/21	Application Fee	\$100.00
12/10/21	Facilitated Meeting Fee	\$50.00
12/10/21	Posted Sign Fee	\$10.00
12/10/21	Published Notice Fee	\$50.00

Due Date: **12/10/21**

Total due for this invoice:

\$214.20

Options to pay your Invoice:

1. Online with a credit card: <http://posse.cabq.gov/posse/pub/lms/Default.aspx>
2. In person: Plaza Del Sol, 600 2nd St. NW, Albuquerque, NM 87102

PLEASE RETURN THE BOTTOM PORTION OF THIS INVOICE NOTICE WITH PAYMENT



City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

Date: 12/10/21
Amount Due: **\$214.20**
Reference NO: VA-2021-00449
Payment Code: 130
Customer NO: CU-150008417

DAVE BENNETT
8100 WYOMING BLVD NE #M4
ALBUQUERQUE, NM 87113



130 0000VA20210044900102546715000839400000000000002142CU150008417

SIGN POSTING AGREEMENT

REQUIREMENTS

POSTING SIGNS ANNOUNCING PUBLIC HEARINGS

All persons making application to the City under the requirements and procedures established by the Integrated Development Ordinance are responsible for the posting and maintaining of one or more signs on the property which is subject to the application, as shown in Table 6-1-1. Vacations of public rights-of-way (if the way has been in use) also require signs. Waterproof signs are provided at the time of application for a \$10 fee per sign. If the application is mailed, you must still stop at the Development Services Front Counter to pick up the sign(s).

The applicant is responsible for ensuring that the signs remain posted throughout the 15-day period prior to any public meeting or hearing. Failure to maintain the signs during this entire period may be cause for deferral or denial of the application. Replacement signs for those lost or damaged are available from the Development Services Front Counter.

1. LOCATION

- A. The sign shall be conspicuously located. It shall be located within twenty feet of the public sidewalk (or edge of public street). Staff may indicate a specific location.
- B. The face of the sign shall be parallel to the street, and the bottom of the sign shall be at least two feet from the ground.
- C. No barrier shall prevent a person from coming within five feet of the sign to read it.

2. NUMBER

- A. One sign shall be posted on each paved street frontage. Signs may be required on unpaved street frontages.
- B. If the land does not abut a public street, then, in addition to a sign placed on the property, a sign shall be placed on and at the edge of the public right-of-way of the nearest paved City street. Such a sign must direct readers toward the subject property by an arrow and an indication of distance.

3. PHYSICAL POSTING

- A. A heavy stake with two crossbars or a full plywood backing works best to keep the sign in place, especially during high winds.
- B. Large headed nails or staples are best for attaching signs to a post or backing; the sign tears out less easily.

4. TIME

Signs must be posted from Jan 31 To Mar 17

5. REMOVAL

- A. The sign is not to be removed before the initial hearing on the request.
- B. The sign should be removed within five (5) days after the initial hearing.

I have read this sheet and discussed it with the Development Services Front Counter Staff. I understand (A) my obligation to keep the sign(s) posted for (15) days and (B) where the sign(s) are to be located. I am being given a copy of this sheet.

[Signature]
(Applicant or Agent)

1-19-22
(Date)

I issued 2 signs for this application, 1/19/22 [Signature]
(Date) (Staff Member)

PROJECT NUMBER: VA-2021-00449

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
INTER-OFFICE MEMORANDUM

January 7, 2022

To: Lorena Patten-Quintana, ZHE Planner

From: Matt Grush, P.E. Senior Engineer

Subject: COMMENTS FOR THE ZHE HEARING OF December 18, 2022

The Transportation Development Review Services Section has reviewed the zone hearing requests, and submits the attached comments.

VA-2021-00449

PR-2021-006330

Address: 4200 Brockmont Ave NE

Transportation Review: No objections

After review of the provided application, Transportation has no objection to the request for a permit for a TALLER COURT YARD WALL – MAJOR. The wall will not negatively affect the driveway or intersection sight distance.

City of Albuquerque ZHE – January 18, 2022

Agenda Item #8

VA-2021-00449

PR-2021-006330

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Ownership: **Owner:** REYNOLDS SAMUEL JACOB

Zone District/Purpose: R-1/The purpose of the R-1 zone district is to provide for neighborhoods of single-family homes on individual lots with a variety of lot sizes and dimensions. Primary land uses include single-family detached homes on individual lots, with limited civic and institutional uses to serve the surrounding residential area.

Allowable Use: n/a

Applicable Comp Plan Designation(s): Area of Consistency; Lomas MT

Applicable Overlay Zones: None listed

Applicable Use-Specific Standard(s): n/a

Applicable Dimensional/Development Standards:

5-7(D)(3)(g) For low-density residential development in or abutting a Residential zone district where wall height in any front or street side yard is restricted to 3 feet by Table 5-7-1, a request for a taller wall that meets the height and location standards in Table 5-7-2 shall require Permit – Wall or Fence – Major pursuant to Subsection 14-16-6-6(H), except where a taller wall is prohibited pursuant to Subsection (h) below.

Table 5-7-2: Options for a Taller Front or Side Yard Wall ⁽¹⁾		
Wall Type and Location	Maximum Wall Height	Illustration
View Fencing		
View fencing at most 50 percent opaque may be added above 3 ft. to increase the total height of the wall as follows:		
<10 ft. from lot line abutting the street	5 ft.	0
≥10 ft. from lot line abutting the street	6 ft.	0
Courtyard Walls		
≥10 ft. from lot line abutting the street or edge of the sidewalk closest to the primary building, whichever is more restrictive	6 ft.	5-7(D)(3)(g)2
Corner Lots		
On a corner lot where the rear yard abuts the front yard of a residentially zoned lot, a taller wall enclosing the rear yard may be approved as follows:		
<10 ft. from the lot line abutting the street	5 ft.	5-7(D)(2)
<small>[1] The maximum wall heights in this table require an approval pursuant to the standards in Subsections 14-16-5-7(D)(3)(g) and 14-16-6-6(H) (Permit – Wall or Fence – Major).</small>		

Traffic Recommendations: No objections

Planning Recommendation: This matter should proceed to a public hearing where the Zoning Hearing Examiner will hear additional evidence and make a written decision pursuant to applicable provisions of Section 14-16-6-4.



Sanchez, Suzanna A.

From: David Bennett <landconm@gmail.com>
Sent: Monday, January 10, 2022 1:22 PM
To: Sanchez, Suzanna A.
Subject: Fwd: USPS eReceipt

Hi Suzi,

The forwarded message is the receipt that I received for the postage.

Thank you,

Dave Bennett

Landco Landscape Development & Supply

5901 Carmel Ave NE

Albuquerque NM 87113

505-681-0191

<https://ddec1-0-en-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=www.landconm.org&umid=4974ee96-96f6-4cbc-bdc1-f96dc167f0d3&auth=307405480ca3e49a8b1deb4e49ca5cd244e7e096-c25259e2814702e6d9acad996ef64ebb93fdf517>

Begin forwarded message:

From: DoNotReply@ereceipt.usps.gov
Date: January 10, 2022 at 1:16:45 PM MST
To: landconm@gmail.com
Subject: USPS eReceipt



LAS CRUCES
201 E LAS CRUCES AVE
LAS CRUCES, NM 88001-9998
(800)275-8777

01/10/2022

01:16 PM

Product	Qty	Unit Price	Price
\$1.16 Postage Stamp	15	\$1.16	\$17.40
Grand Total:			\$17.40
Debit Card Remitted			\$17.40
Card Name: VISA			

Account #: XXXXXXXXXXXX3167

Approval #: 001415

Transaction #: 022863

Receipt #: 022863

AID: A0000000980840

Chip

AL: US DEBIT

PIN: Not Required

USPS is experiencing unprecedented volume
increases and limited employee
availability due to the impacts of
COVID-19. We appreciate your patience.

Preview your Mail
Track your Packages
Sign up for FREE @
[https://ddec1-0-en-
ctp.trendmicro.com:443/wis/clicktime/v1/query?url=https%3a%2f%2finformeddelivery.u](https://ddec1-0-en-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=https%3a%2f%2finformeddelivery.u)
[bdc1-f96dc167f0d3&auth=307405480ca3e49a8b1deb4e49ca5cd244e7e096-327aa31d385a282708](https://ddec1-0-en-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=https%3a%2f%2finformeddelivery.u)

All sales final on stamps and postage.
Refunds for guaranteed services only.
Thank you for your business.

Tell us about your experience.
Go to: [https://ddec1-0-en-
ctp.trendmicro.com:443/wis/clicktime/v1/query?url=https%3a%2f%2fpostalexperience.c](https://ddec1-0-en-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=https%3a%2f%2fpostalexperience.c)
[96f6-4cbc-bdc1-f96dc167f0d3&auth=307405480ca3e49a8b1deb4e49ca5cd244e7e096-dcac936d](https://ddec1-0-en-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=https%3a%2f%2fpostalexperience.c)

UFN: 344788-9550

Receipt #: 840-18520522-1-2290175-1

Clerk: 00

Privacy Act Statement: Your information will be used to provide you with an electronic receipt for your purchase transaction via email. Collection is authorized by 39 USC 401, 403, and 404. Providing the information is voluntary, but if not provided, we will be unable to process your request to receive an electronic receipt. We do not disclose your information to third parties without your consent, except to facilitate the transaction, to act on your behalf or request, or as legally required. This includes the following limited circumstances: to a congressional office on your behalf; to financial entities regarding financial transaction issues; to a U.S. Postal Service auditor; to entities, including law enforcement, as required by law or in legal proceedings; to contractors and other entities aiding us

to fulfill the service (service providers); to process servers; to domestic government agencies if needed as part of their duties; and to a foreign government agency for violations and alleged violations of law. For more information on our privacy policies visit www.usps.com/privacypolicy.

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Sanchez, Suzanna A.

From: Gary Eyster <meyster1@me.com>
Sent: Monday, January 10, 2022 11:35 AM
To: Sanchez, Suzanna A.
Cc: 'TheBoard NobHill-NM'; 'David Bennett'
Subject: 4200 Brockmont NE, Statement of Position, Nob Hill Neighborhood Association
Attachments: 4200 Brockmont NE Letter to ZHE Final.pdf; Inventory of Walls Within 330 ft. of 4200 Brockmont NE.xlsx

Good morning, Suzie.

Please enter this statement into the record for the subject request.

Kind regards, Gary Eyster

Nob Hill Neighborhood Association, Inc.

PO Box 4875, Albuquerque, NM 87196

TheBoard@NobHill-NM.com

10 January 2022

Robert Lucero, Esq, Zoning Hearing Examiner

By email to suzannasanchez@cabq.gov

Re: VA-2021-00449 Project# PR-2021- 006330 Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Dear Mr. Lucero,

Thank you for arranging a facilitated meeting on the request attended by Mr. Bennett, two Directors of the NHNA, and two members of the public on November 29th, 2021. Most of the discussion took place at the facilitated meeting. Mr. Bennett presented the request at the NHNA regular Board meeting on January 6th. Except for the facilitators, all the participants at the facilitated meeting attended the Board meeting. Both meetings were announced to the public on our NHNA email list and website.

The request is for a stuccoed CMU wall in the front and side yards of the subject. The wall has already been built, and is 6' high except at corners and decorative elements, where it is up to 8' high. The wall is approximately 16' from the sidewalk on Montclair NE (side yard) and 8' from the sidewalk on Brockmont NE (front yard, residence faces north). While under construction in the summer of 2021 we understand members of the public reported its construction to CABQ code compliance via 311. Apparently, the process for notification of non-compliance requires several months. During this time the wall was completed.

Two primary goals identified in our bylaws are to *uphold efficient and beneficial community planning* and to *preserve Nob Hill's historic character*. Because they negatively impact the streetscape and eyes-on-the-street our association has long discouraged fences or walls higher than 3 ft. in front and street side setbacks. The NHNA consistently hears from its residents that they highly value the pedestrian friendly quality of their neighborhood, and preserving the streetscape is the foundation of that quality. "Eyes on the street" refers to open front yards with clear visibility from windows to sidewalks and vehicles and vice versa. This concept is well-documented in the public safety literature as a deterrent to crime and high walls in front and street side yards remove this deterrent.

Notwithstanding that, it is our NHNA policy, adopted April 8, 2021, that we may support a request that meets the criteria IDO 6-6(H) (3) (a) 1, 2, 3, or 4. That is, the lot is at least ½ acre or the lot fronts a street designated as a collector or above or at least 20% of the properties within 330 ft. of the lot have a wall or fence over 3 ft. in the front yard for a front yard request or street side yard for a street side yard request.

Our Board considered the requests for front and street side yards separately. The lot is less than ½ acre and Brockmont and Montclair are not collectors, so the subject property fails the first two criteria. Our analysis (attached) indicates that the request for the front yard wall permit does not meet the 20% criterion. On the side yard, our analysis indicates the street side yard does meet that criterion, but some of the assumptions in the analysis were controversial. In particular, there is only one other lot with a street side yard facing Montclair within the specified distance; there are many other residential lots within the 330 foot distance, but their front yards face Montclair (and notably, with no walls over 3' high) , so these were not considered. Finally the other property with the street side yard does have a 6' high wall, but it borders a non-standard intersection which in the past (pre-IDO) zoning may have been used as the basis for a special exception.

At the January 6 meeting the Board voted 8-0 to **(1) oppose the request for Permit-Wall-Major for the front yard**, noting that the front yard includes portions of the wall that face Montclair and 4204 Brockmont but are in the front yard area defined by IDO 5-7(D)(2), Residential Corner; and **(2) not to oppose the request for the Permit-Wall-Major for the street side yard**.

We note that during the facilitated meeting there was a request for a variance. The current agenda makes no mention of a variance, only a permit. We argue against a variance as none of the five criteria in IDO 6-6(O)(3)(a) are met. In particular, a variance would undermine the intent and purpose of the IDO. A variance should not be available for any issue that the IDO clearly addresses, and the applicability of the Permit-Wall-Major and associated decision criteria for walls over 3' are clearly described in the IDO as we have cited above. Additionally, there is no basis for exceptionality of the subject property; it is a standard corner lot on a standard residential intersection that does not impose hardships different than others in Nob Hill.

Board members noted opposition from two community members at both meetings who expressed the notion that construction without a permit undermines the legitimacy of the zoning process and that the Planning Department should proactively publicize the IDO process and sections on walls to the landscaping and construction communities and the public.

Respectfully yours,
Gary Eyster, President
Nob Hill Neighborhood Association

**Inventory of Walls in Front Yards on Properties on Brockmont NE
Within 330 ft. of 4200 Brockmont NE**

East and West 330 ft. on the North side of Brockmont

	Count	Wall >3ft? 1 is yes
4201 Brockmont NE	1	1
4207 and 4209	1	
4215	1	
4219 and 4221	1	
4223 and 4225	1	
4227 and 4231	1	

East and West 330 ft. on the South side of Brockmont

4200 Brockmont NE (Applicant)			
4204	1		
4212	1		
4216	1	1	
4220	1		
4224	1		
4228	1		
	<hr/> 12	<hr/> 2	16.7%

**Inventory of Walls in Street Side Yards on Properties on Montclair NE
Within 330 ft. of 4200 Brockmont NE**

4201 Roma NE	1	1	
4201 Brockmont NE	1		
	<hr/> 2	<hr/> 1	50%

Sanchez, Suzanna A.

From: David Bennett <landconm@gmail.com>
Sent: Saturday, January 08, 2022 1:49 PM
To: Sanchez, Suzanna A.
Subject: Re: 4200 Brockmont
Attachments: image0.png; image1.png; ATT00001.txt

Good afternoon Suzi!

I hope your enjoying your weekend so far.

There is one house that I might have missed, it's a green wall at 4220 Brockmont (picture attached).

I will have those mailings done and ready on Monday.



Google



4219 Brockmont Ave NE

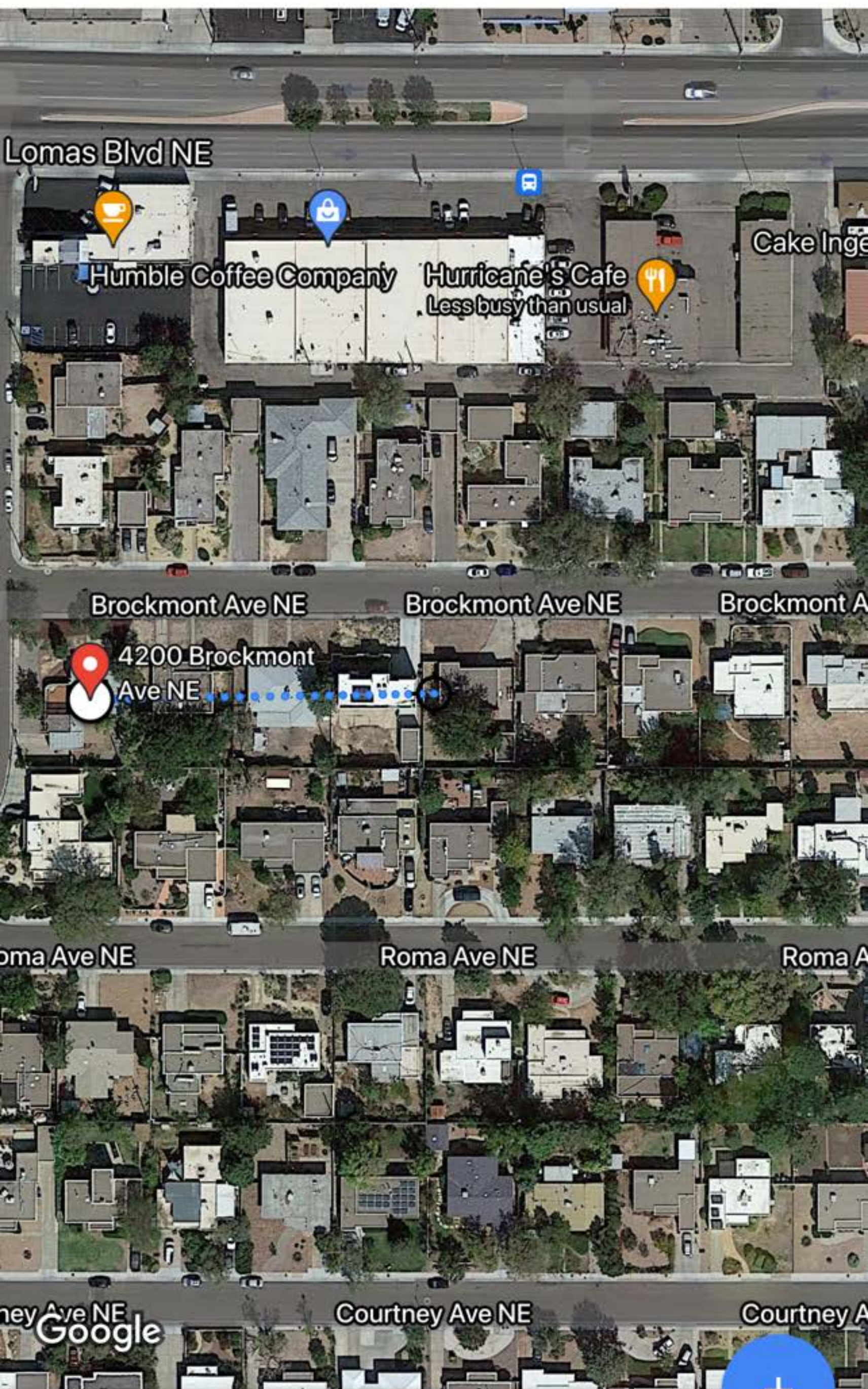




Measure distance



Drag the map and tap "Add point."



239.501 ft

Add point

Sanchez, Suzanna A.

From: Samuel Reynolds <samueljr1309@gmail.com>
Sent: Wednesday, February 16, 2022 1:55 PM
To: Sanchez, Suzanna A.
Cc: D
Subject: Additional information for Variance applications at 4200 Brockmont Ave NE

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.

Hi again Suzanna,

I just saw on the Zoning Hearing agenda that correspondence to Mr. Lucero should be addressed to you. Can you please ensure that Mr. Lucero receives the following note (as well as attached photograph)? Thanks so much! -Sam Reynolds



IMG_0455.HEIC

Dear Mr. Lucero,

I wanted to send you a note summarizing the case for my Variance at 4200 Brockmont, following the Hearing yesterday, as follows:

First and foremost let me quickly address the fact that we are applying for this Variance after the work has been mostly completed. Please be assured that this was simply an error on our part, based on a misinterpretation of the city codes (I believe Mr. Bennet thought that expanding a pre-existing wall, in combination with the fact that it would be set back from the street, did not require a Variance), and not in any way done with the intention of circumventing the lawful process for such work. Obviously my property is in a very visible location where the work was never going to escape notice, and I would not have knowingly invested so much time and money into this project if I thought that it was going to be wasted.

1) This is a corner lot in a heavily trafficked area. As I showed in my photographs yesterday, both street-facing sides of my property (which is only one short block off Lomas) are surrounded by multi-unit rental properties, and in immediate proximity (60 second walk) to Lomas shopping centers. Furthermore, the longest street-facing side of my property line is on Montclair, which is the main ingress/egress point from Lomas into this part of Nob Hill. My understanding was that this was a designated "collector" street, and though this was contradicted by Gary yesterday, I'm not sure why. It is a high-traffic tributary of Lomas with frequent speeding cars and no police traffic enforcement that I have ever witnessed in 8 years. I also showed yesterday the photograph of the permanent dumpster that is in the street immediately outside of my front door, which serves one of the multi-unit rental properties. I don't think that dumpsters are a common feature of the Nob Hill "streetscape", and as an aside, I strongly feel that if the city is going to allow a permanent dumpster on a residential street, they should also allow the surrounding houses to make reasonable accommodations to their yards to remove it from their sightlines. So to summarize, the combination of my proximity to Lomas and its commercial properties, the abundant surrounding multi-unit rentals, the fact that I am adjacent to this highly-trafficked tributary off Lomas, and the fact that I occupy the corner lot, all add up to my lot being subject to abundant car and pedestrian traffic (including people cutting across my property, littering, etc.), frequent transient individuals and panhandlers, frequent loud noises, and a general absence of privacy and tranquility for my home. These facts served as the motivation for this project.

2) My project has had overwhelmingly positive neighborhood support. Given how many compliments the work receives from passers-by on a daily basis, I was gratified but not surprised by how many residents showed up at the Variance hearing yesterday to voice their support for the project. I think it is very meaningful that folks would take time out of their days for this, to no benefit for themselves. This, in combination with the additional letters of neighborhood support that were submitted, and in addition to the fact that NO neighboring residents showed up at the meeting to oppose the project, clearly demonstrates how well-received this work has been in the neighborhood.

3) The Nob Hill Association objection to the front wall Variance seems based on two factors: 1) the "eyes on the street" concept, and 2) the "preservation of the Nob Hill streetscape" concept. First, I believe that this "eyes on the street" is clearly a theoretical, untestable concept. But even if we consider it legitimate, as I stated yesterday such a concept really only makes sense in single-family neighborhoods where you know your neighbors, and life follows predictable, known patterns. Due to the high-traffic and high density of multi-unit rental properties which surround my home, this concept simply does not apply - I am not going to notice anything out of the ordinary, because there is no "ordinary" here. Nevertheless, I have made multiple concessions to this objection, including installing a video doorbell which will keep a recording of all motion in the street outside my house, as well as retrofitting the North and East walls with multiple windows for additional sightlines, at significant cost to myself. Gary's assertion that these modifications do "nothing to ameliorate" their Eyes on the Street concern is frankly nonsensical. Secondly is the "Nob Hill streetscape" concept. This one makes a lot more sense to me, as there ARE areas of Nob Hill that have great aesthetic and historical appeal. However, 4200 Brockmont is NOT one of them. I have already referenced all of the multi-unit rental properties surrounding me, which are clearly not prioritizing aesthetics, as well as the permanent dumpster in the street. And as I showed in a Brockmont streetscape photograph yesterday (also included in the PP presentation that Mr. Bennett forwarded to your office), even most of the single-family homes on this segment of Brockmont are lacking in this historic appeal, with plain, unlandscaped dirt yards. This is probably part of the reason WHY my project has received such wide local support - because it has significantly improved the overall aesthetic of the area. So to summarize #3, I do not believe that either of the Nob Hill Association objections have any validity, and I think they simply have a blanket objection to ANY front wall, which they are inappropriately applying to my project. I will say that I had never heard of the "Nob Hill Association" prior to this process, and they have certainly never provided me with any services or benefits that I am aware of, so the idea that a tiny group of men with a lot of extra time on their hands can show up and oppose very reasonable modifications that I want to make to my own property is somewhat infuriating.

The subsequent points are ones that I did NOT make at the Hearing yesterday, as I was not comfortable presenting them in a public forum.

4) The past few years of the pandemic have been difficult for everyone, but I believe in particular for healthcare workers and first responders. I am a physician working at UNM Hospital and the pandemic has been an exhausting and frightening time for those in my line of work. What little time I have to myself has been compromised these last few years by the relative absence of peace and tranquility at my home (for the aforementioned reasons), which was the catalyst for this project. Since the work has been completed, I have felt happier at home, more well-rested, and more at peace. I do not want to lose this, and I feel that given my service to the community I am deserving of a home that feels like a true refuge from my work at the hospital.

5) I am also a veteran of the United States Marine Corps (photo of discharge certificate attached) and although I do not like to discuss it, I have some residual psychological trauma which has made the challenges of 4200 Brockmont's location harder than they might otherwise be. Loud noises from cars, unexpected activity, etc., can be challenging for me. When I saw this property 8 years ago and was also considering more remote properties, I was balancing these concerns against the desire to be within bicycle-commuting distance of work, and prioritized the latter. The work to my front yard has made a drastic improvement in facing the challenges of this particular location.

In summary, I hope that I have made the motivation for this project, and the reasons I think it is reasonable and justifiable, clear for your consideration. Because I am proud of my neighborhood despite its challenges, and because I respect my neighbors, while accomplishing my own goals I have also made every effort and spared no expense to concurrently improve the aesthetic of the neighborhood (firstly by constructing a visually appealing, southwestern-style wall with numerous decorative touches, and secondly by extensively landscaping the property on the wall's exterior with intricate stonework and numerous indigenous plants and trees). I think I have succeeded on both counts, I know that the project is widely supported by my neighbors, and I hope with all of my heart that the City will support me.

Thank you sincerely for your consideration and time.

Best,
Sam Reynolds
4200 Brockmont Ave

P.S. You should have received from Mr. Bennett the Power Point presentation that I showed at the Hearing yesterday, which contains the photos of the project as well as the photo of the Brockmont streetscape that you requested.

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES		THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.		ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID																																					
CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY																																									
1. NAME (Last, first, middle) REYNOLDS, Samuel Jacob		2. DEPARTMENT, COMPONENT AND BRANCH USMC-R1		3. SOCIAL SECURITY NO. 379 02 9998																																					
4.a. GRADE, RATE OR RANK PEC	4.b. PAY GRADE E-2	5. DATE OF BIRTH (YYMMDD) 720817		6. RESERVE OBLIG. TERM. DATE Year 00 Month 03 Day 05																																					
7.a. PLACE OF ENTRY INTO ACTIVE DUTY MEPS, DETROIT, MI 48084		7.b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) TRENTON, MI 48170																																							
8.a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND MCES, MCB, CAMLEJ, NC 28542-5040		8.b. STATION WHERE SEPARATED (RUC 31400) MCES, MCB, CAMLEJ, NC 28542-5040																																							
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11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 1345 - ENGINEER EQUIPMENT OPERATOR 00 YRS 00 MOS		12. RECORD OF SERVICE <table border="1"> <thead> <tr> <th></th> <th>Year(s)</th> <th>Month(s)</th> <th>Day(s)</th> </tr> </thead> <tbody> <tr> <td>a. Date Entered AD This Period</td> <td>92</td> <td>03</td> <td>23</td> </tr> <tr> <td>b. Separation Date This Period</td> <td>92</td> <td>10</td> <td>28</td> </tr> <tr> <td>c. Net Active Service This Period</td> <td>00</td> <td>07</td> <td>06</td> </tr> <tr> <td>d. Total Prior Active Service</td> <td>00</td> <td>00</td> <td>00</td> </tr> <tr> <td>e. Total Prior Inactive Service</td> <td>00</td> <td>00</td> <td>17</td> </tr> <tr> <td>f. Foreign Service</td> <td>00</td> <td>00</td> <td>00</td> </tr> <tr> <td>g. Sea Service</td> <td>00</td> <td>00</td> <td>00</td> </tr> <tr> <td>h. Effective Date of Pay Grade</td> <td>92</td> <td>09</td> <td>01</td> </tr> </tbody> </table>					Year(s)	Month(s)	Day(s)	a. Date Entered AD This Period	92	03	23	b. Separation Date This Period	92	10	28	c. Net Active Service This Period	00	07	06	d. Total Prior Active Service	00	00	00	e. Total Prior Inactive Service	00	00	17	f. Foreign Service	00	00	00	g. Sea Service	00	00	00	h. Effective Date of Pay Grade	92	09	01
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13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) RIFLE EXPERT BADGE NATIONAL DEFENSE SERVICE MEDAL																																									
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15.a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERAN EDUCATIONAL ASSISTANCE PROGRAM		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	15.b. HIGH SCHOOL GRADUATE OR EQUIVALENT		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>																																				
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18. REMARKS NOT A FINAL DISCHARGE RESERVE SPECIAL ENLISTMENT																																									
19.a. MAILING ADDRESS AFTER SEPARATION (Include Zip Code) 11905 BECK RD PLYMOUTH, MI 48170		19.b. NEAREST RELATIVE (Name and address - include Zip Code) EDWARD REYNOLDS (FATHER) SAME AS BLOOD #19A																																							
20. MEMBER REQUESTS COPY 4 BE SENT TO <input type="checkbox"/> MT <input type="checkbox"/> DIR. OF VET AFFAIRS <input type="checkbox"/> Yes <input type="checkbox"/> No		22. OFFICIAL AUTHORITY SIGN (Typed name, grade, title and signature) G. T. WHITTEN, CWO2, USMC, PERSO																																							
21. SIGNATURE OF MEMBER BEING SEPARATED Samuel J. Reynolds																																									
SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)																																									
23. TYPE OF SEPARATION RELEASED FROM IADT		24. CHARACTER OF SERVICE (Include upgrades) HONORABLE																																							
25. SEPARATION AUTHORITY MARCORSEPMAN PAR 1005		26. SEPARATION CODE MBK1		27. REENTRY CODE N/A																																					
28. NARRATIVE REASON FOR SEPARATION COMPLETION OF REQUIRED ACTIVE SERVICE (USMCR) IADT																																									
29. DATES OF TIME LOST DURING THIS PERIOD NONE				30. MEMBER REQUESTS COPY 4 <input type="checkbox"/> (Initials)																																					

DD Form 214, NOV 88 5/N 0102-LF-006-5500 Previous editions are obsolete

SERVICE 2

Sanchez, Suzanna A.

From: David Bennett <landconm@gmail.com>
Sent: Tuesday, February 15, 2022 10:21 AM
To: Sanchez, Suzanna A.
Subject: Fwd: The wall on Brockmont and Montclair

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.

Hi Suzanna!

Below is the letter from a neighbor in support of the wall at 4200 Brockmont ave.

Dave Bennett
Landco Landscape Development & Supply
5901 Carmel Ave NE
Albuquerque NM 87113
505-681-0191
www.landconm.org

Begin forwarded message:

From: DIANE AND CHARLES MCCASH <sewellpics@aol.com>
Date: February 14, 2022 at 2:19:02 PM MST
To: landconm@gmail.com
Subject: The wall on Brockmont and Montclair

To Whom it May Concern,

My husband and I have been following the progress of the project at Montclair and Brockmont. It is a wonderful project in its aesthetics and workmanship and we have enjoyed seeing it's progress. It was surprising to us that anyone in the neighborhood might object. First of all because it looks great and secondly because there are a number of properties within a block in two directions with walls of similar height. We hope that the variance that is necessary for this project is granted.

Thank you,
Diane and Charles McCash
505-269-4932
sewellpics@aol.com

Sent from my iPhone

Sanchez, Suzanna A.

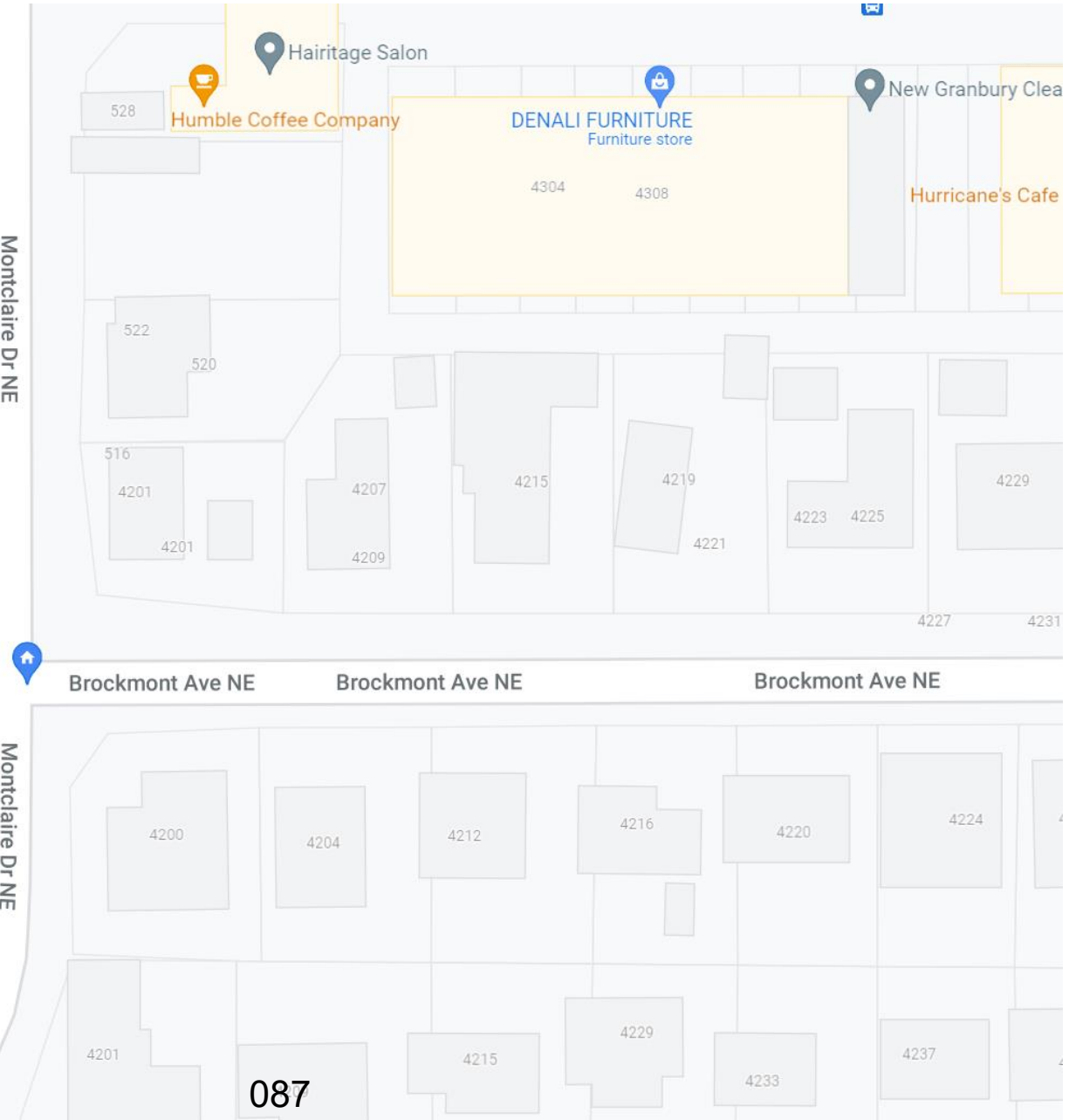
From: David Bennett <landconm@gmail.com>
Sent: Tuesday, February 15, 2022 1:33 PM
To: Sanchez, Suzanna A.
Subject: Images from homeowner presentation 4200 Brockmont
Attachments: IMG_7015.jpg; ATT00001.txt; IMG_7016.jpg; ATT00002.txt; IMG_7017.jpg; ATT00003.txt

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.

Hi Suzi,

I tried sending the file as it was from Sam but it was too large and would bounce back so hopefully these images come through:







089









093



Sanchez, Suzanna A.

From: David Bennett <landconm@gmail.com>
Sent: Tuesday, January 18, 2022 10:57 AM
To: Sanchez, Suzanna A.
Subject: See through front gate 4200 Brockmont
Attachments: IMG_6500.jpg; ATT00001.txt; IMG_6502.jpg; ATT00002.txt

Follow Up Flag: Follow up
Flag Status: Completed

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.
Hi Suzie,

It occurred to me that I should send this to you as well. Im not sure if I ever sent you this side of the wall.







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

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Special Exception No:..... **VA-2021-00449**
Project No: **Project#2021-006330**
Hearing Date: 02-15-22
Closing of Public Record: 02-15-22
Date of Decision: 03-02-22

On the 15th day of February, 2022, Dave Bennett, agent for property owners Samuel Jacob Reynolds (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit for a taller court yard wall major (“Application”) upon the real property located at 4200 Brockmont Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a permit for a taller courtyard wall major.
2. This matter was continued from the ZHE’s January 18, 2022 hearing, because of evidence that the “Notice of Hearing” signage was not posted in accordance with IDO requirements.
3. Applicant testified at the February 15, 2022 ZHE hearing that the necessary signage was posted in accordance with IDO requirements. The ZHE finds that the proper “Notice of Hearing” signage was posted as required by Section 14-16-6-4(K)(3).
4. The ZHE finds that the Applicant has authority to pursue this Application.
5. 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.*
6. 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).
7. 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).
8. All property owners within 100 feet and affected neighborhood associations were notified of the application.
9. The subject property is currently zoned R-1B.
10. City Transportation issued a report stating that it does not object.
11. The Nob Hill Neighborhood Association submitted evidence and testimony in opposition to the Application.
12. Several neighbors in the vicinity of the Subject Property submitted evidence and testimony in favor of the application.
13. Regarding IDO Section 6-6(H)(3)(a), the Subject Property is not at least ½ acre, and the Subject Property does not front a street designated as a collector, arterial, or interstate highway.
14. Consequently, to be entitled to approval, the Application must satisfy the requirement that “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.”
15. Based on photographs, maps and oral evidence submitted, it does not appear that 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. There are 12 lots aside from the Subject Property along Brockmont, which the Subject Property fronts. Therefore, 3 of those 12 properties must have a front yard wall or fence over 3 feet to satisfy the 20 percent criteria. Applicant and opponents agree that 4201 Brockmont and 4216 Brockmont have a front yard wall or fence over 3 feet and are located within the pertinent area of review. However, while Applicant maintains that 4220 Brockmont has a front yard wall or fence over 3 feet, opponents argued that the wall at 4220 Brockmont is not located in the front yard area, as “front yard” is defined by Section 7-1 of the IDO (see diagram on page 592). Opponents appear to be correct, because the wall at 4220 Brockmont runs contiguous with the primary structure on that lot and parallel with the front yard lot line. 4220 Brockmont does not count toward the 20 percent requirement. Therefore, it appears that only two properties can be counted toward the 20 percent criteria, resulting in a percentage of only approximately 16.7 percent. The Application does not satisfy the criterion in IDO Section 6-6(H)(3)(a).

16. Because the criterion in IDO Section 6-6(H)(3)(a) is not satisfied as to the front yard wall and all criteria of IDO 6-6-(H)(3) must be satisfied, the Application must fail as to the front yard wall. For the sake of administrative and quasi-judicial economy, the ZHE will not examine the remainder of the criteria of IDO 6-6-(H)(3), because they are moot in light of the failure to satisfy IDO Section 6-6(H)(3)(a), which is dispositive of the Application.
17. As to the street side yard wall, the ZHE has granted approval of the companion application to the Application, which requested a variance for the street side yard wall. The ZHE therefore will not examine the IDO 6-6-(H)(3) criteria regarding the street side yard, because they, too, are moot.

DECISION:

DENIAL of a permit for a taller courtyard wall major.

APPEAL:

If you wish to appeal this decision, you must do so by March 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Dave Bennett, landconm@gmail.com
Samuel Jacob Reynolds, samueljr1309@gmail.com
Gary Eyster, meyster1@me.com
Diane and Charles McCash, sewellpics@aol.com
Erick Seelinger, 4201 Roma Ave NE, 87108
Carolyn Richter, 405 Montclair DR NE
Jennifer Prakash, 437 Montclair NE, 87108

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CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Planning Department

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

April 27, 2022

TO: Isaac Benton, President, City Council

FROM: Alan Varela, Planning Director Alan Varela
Alan Varela (Apr 27, 2022 15:27 MDT)

SUBJECT: AC-22-7, PR-2021-006330-VA-2021-00449-VA-2022-00068:

Rodey, Dickason, Sloan, Akin, & Robb, P.A. c/o Paul M. Roybal, agent for Samuel J. Reynolds, appeals the Zoning Hearing Examiner's decision to Deny a Permit – Wall or Fence – Major for a courtyard wall for Lot 20, Block 14, Broadmoor Addition located at 4200 Brockmont Ave. NE, zoned R-1B

OVERVIEW

Samuel Jacob Reynolds through his Agent, Dave Bennett requested a Permit – Wall or Fence – Major for a courtyard wall for Lot 20, Block 14, Broadmoor Addition located at 4200 Brockmont Ave. NE.

The request was scheduled and heard at the January 18, 2022 Public Hearing by the Zoning Hearing Examiner (ZHE).

On February 2, 2022 the ZHE continued the matter to allow the Applicant the opportunity to supplement the record.

The matter was heard at the February 15, 2022 public hearing, and the ZHE found that the applicant did not satisfy the IDO requirement in Subsection 14-16-6-6(H)(3)(a)3 that “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.” The request was denied, and the Notice of Decision was issued March 2, 2022.

The Applicant timely filed an appeal of the ZHE's decision on March 17, 2022.

BASIS FOR APPEAL

IDO Subsection 14-16-6-4(V)(4) outlines the applicable criteria for the appeal in determining whether the Zoning Hearing Examiner erred in its decision:

6-4(V)(4) Criteria for Decision

The criteria for review of an appeal shall be whether the decision-making body or the prior appeal body made 1 of the following mistakes:

6-4(V)(4)(a) The decision-making body or the prior appeal body acted fraudulently, arbitrarily, or capriciously.

6-4(V)(4)(b) The decision being appealed is not supported by substantial evidence.

6-4(V)(4)(c) The decision-making body or the prior appeal body erred in applying the requirements of this IDO (or a plan, policy, or regulation referenced in the review and decision-making criteria for the type of decision being appealed).

STAFF RESPONSE

The reasons for the appeal, excerpted from Appellant's letter, are listed below, followed by a bulleted, italicized response from the Planner for the ZHE. Please see the Appellant's letter and submittal packet for additional details.

ZHE erred in finding that Mr. Reynolds did not satisfy IDO § 6-6(H)(3)(a)'s 20 percent requirement. The ZHE's decision is incorrect because 4220 Brockmont's wall is a "front yard wall" under the plain language of the IDO.

- *Finding 15 in the Notice of Decision states: "Based on photographs, maps and oral evidence submitted, it does not appear that 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. There are 12 lots aside from the Subject Property along Brockmont, which the Subject Property fronts. Therefore, 3 of those 12 properties must have a front yard wall or fence over 3 feet to satisfy the 20 percent criteria. Applicant and opponents agree that 4201 Brockmont and 4216 Brockmont have a front yard wall or fence over 3 feet and are located within the pertinent area of review. However, while Applicant maintains that 4220 Brockmont has a front yard wall or fence over 3 feet, opponents argued that the wall at 4220 Brockmont is not located in the front yard area, as "front yard" is defined by Section 7-1 of the IDO (see diagram on page 592). Opponents appear to be correct, because the wall at 4220 Brockmont runs contiguous with the primary structure on that lot and parallel with the front yard lot line. 4220 Brockmont does not count toward the 20 percent requirement. Therefore, it appears that only two properties can be counted toward the 20 percent criteria, resulting in a percentage of only approximately 16.7 percent. The Application does not satisfy the criterion in IDO Section 6-6(H)(3)(a)."*

At least one other property in the area of analysis has a front yard wall that is over 3 feet. A wall over 3 feet separates 4219 Brockmont and 4223 Brockmont. This wall extends past the front facades of both 4219 and 4223 Brockmont into the front yards of both properties and is over 3 feet high. The portion of this wall within the front yard is a "front yard wall" under the IDO and therefore is the third property that satisfies the 20 percent requirement under IDO § 6-6(H)(3)(a).

- *The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Subsection 14-16-6-4(E)(3).*
- *The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Subsection 14-16-6-4(E)(4).*
- *This argument represents new testimony not provided to the ZHE during the hearings on this application. Analysis, exhibits, or illustrations of the wall between 4219 and 4223 Brockmont were not submitted for ZHE consideration.*

/ Lorena Patten-Quintana /
Lorena Patten-Quintana, ZHE Planner
Office of the Zoning Hearing Examiner
City of Albuquerque Planning Department





AC-22-7 Memo-MRW

Final Audit Report

2022-04-27

Created:	2022-04-27
By:	Lucinda Montoya (lucindamontoya@cabq.gov) Signed
Status:	CBJCHBCAABAAkcf9a_1W9V67TNAC57SCwbxQoDdKU3eK
Transaction ID:	

"AC-22-7 Memo-MRW" History

-  Document created by Lucinda Montoya (lucindamontoya@cabq.gov)
2022-04-27 - 9:09:36 PM GMT - IP address: 98.48.4.34
-  Document emailed to Alan Varela (avarela@cabq.gov) for signature
2022-04-27 - 9:09:53 PM GMT
-  Document e-signed by Alan Varela (avarela@cabq.gov)
E-signature obtained using URL retrieved through the Adobe Acrobat Sign API
Signature Date: 2022-04-27 - 9:27:39 PM GMT - Time Source: server
-  Agreement completed.
2022-04-27 - 9:27:39 PM GMT



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

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Special Exception No:..... **VA-2021-00449**
Project No: **Project#2021-006330**
Hearing Date: 02-15-22
Closing of Public Record: 02-15-22
Date of Decision: 03-02-22

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FINDINGS:

1. Applicant is requesting a permit for a taller courtyard wall major.
2. This matter was continued from the ZHE’s January 18, 2022 hearing, because of evidence that the “Notice of Hearing” signage was not posted in accordance with IDO requirements.
3. Applicant testified at the February 15, 2022 ZHE hearing that the necessary signage was posted in accordance with IDO requirements. The ZHE finds that the proper “Notice of Hearing” signage was posted as required by Section 14-16-6-4(K)(3).
4. The ZHE finds that the Applicant has authority to pursue this Application.
5. 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.*
6. 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).
7. 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).
8. All property owners within 100 feet and affected neighborhood associations were notified of the application.
9. The subject property is currently zoned R-1B.
10. City Transportation issued a report stating that it does not object.
11. The Nob Hill Neighborhood Association submitted evidence and testimony in opposition to the Application.
12. Several neighbors in the vicinity of the Subject Property submitted evidence and testimony in favor of the application.
13. Regarding IDO Section 6-6(H)(3)(a), the Subject Property is not at least ½ acre, and the Subject Property does not front a street designated as a collector, arterial, or interstate highway.
14. Consequently, to be entitled to approval, the Application must satisfy the requirement that “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.”
15. Based on photographs, maps and oral evidence submitted, it does not appear that 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. There are 12 lots aside from the Subject Property along Brockmont, which the Subject Property fronts. Therefore, 3 of those 12 properties must have a front yard wall or fence over 3 feet to satisfy the 20 percent criteria. Applicant and opponents agree that 4201 Brockmont and 4216 Brockmont have a front yard wall or fence over 3 feet and are located within the pertinent area of review. However, while Applicant maintains that 4220 Brockmont has a front yard wall or fence over 3 feet, opponents argued that the wall at 4220 Brockmont is not located in the front yard area, as “front yard” is defined by Section 7-1 of the IDO (see diagram on page 592). Opponents appear to be correct, because the wall at 4220 Brockmont runs contiguous with the primary structure on that lot and parallel with the front yard lot line. 4220 Brockmont does not count toward the 20 percent requirement. Therefore, it appears that only two properties can be counted toward the 20 percent criteria, resulting in a percentage of only approximately 16.7 percent. The Application does not satisfy the criterion in IDO Section 6-6(H)(3)(a).

16. Because the criterion in IDO Section 6-6(H)(3)(a) is not satisfied as to the front yard wall and all criteria of IDO 6-6-(H)(3) must be satisfied, the Application must fail as to the front yard wall. For the sake of administrative and quasi-judicial economy, the ZHE will not examine the remainder of the criteria of IDO 6-6-(H)(3), because they are moot in light of the failure to satisfy IDO Section 6-6(H)(3)(a), which is dispositive of the Application.
17. As to the street side yard wall, the ZHE has granted approval of the companion application to the Application, which requested a variance for the street side yard wall. The ZHE therefore will not examine the IDO 6-6-(H)(3) criteria regarding the street side yard, because they, too, are moot.

DECISION:

DENIAL of a permit for a taller courtyard wall major.

APPEAL:

If you wish to appeal this decision, you must do so by March 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Dave Bennett, landconm@gmail.com
Samuel Jacob Reynolds, samueljr1309@gmail.com
Gary Eyster, meyster1@me.com
Diane and Charles McCash, sewellpics@aol.com
Erick Seelinger, 4201 Roma Ave NE, 87108
Carolyn Richter, 405 Montclair DR NE
Jennifer Prakash, 437 Montclair NE, 87108



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

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Special Exception No:..... **VA-2021-00449**
Project No: **Project#2021-006330**
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, Dave Bennett, agent for property owners Samuel Jacob Reynolds (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit for a taller court yard wall major (“Application”) upon the real property located at 4200 Brockmont Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a permit for a taller courtyard wall major.
2. Evidence was submitted that the yellow notice sign was not posted on the Subject Property pursuant to the sign posting agreement and IDO requirements.
3. Applicant requested additional time to submit further justification and evidence supporting the Application, including without limitation evidence of proper notice posting.
4. This matter should be continued to allow Applicant such opportunity to supplement the record.

DECISION:

CONTINUANCE of the Application to be heard at the February 15, 2022, ZHE hearing.

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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Dave Bennett, landconm@gmail.com



Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.					
Administrative Decisions		Decisions Requiring a Public Meeting or Hearing		Policy Decisions	
<input type="checkbox"/> Archaeological Certificate (Form P3)		<input type="checkbox"/> Site Plan – EPC including any Variances – EPC (Form P1)		<input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)	
<input type="checkbox"/> Historic Certificate of Appropriateness – Minor (Form L)		<input type="checkbox"/> Master Development Plan (Form P1)		<input type="checkbox"/> Adoption or Amendment of Historic Designation (Form L)	
<input type="checkbox"/> Alternative Signage Plan (Form P3)		<input type="checkbox"/> Historic Certificate of Appropriateness – Major (Form L)		<input type="checkbox"/> Amendment of IDO Text (Form Z)	
<input type="checkbox"/> Minor Amendment to Site Plan (Form P3)		<input type="checkbox"/> Demolition Outside of HPO (Form L)		<input type="checkbox"/> Annexation of Land (Form Z)	
<input type="checkbox"/> WTF Approval (Form W1)		<input type="checkbox"/> Historic Design Standards and Guidelines (Form L)		<input type="checkbox"/> Amendment to Zoning Map – EPC (Form Z)	
		<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)		<input type="checkbox"/> Amendment to Zoning Map – Council (Form Z)	
				Appeals	
				<input checked="" type="checkbox"/> Decision by EPC, LC, ZHE, or City Staff (Form A)	
APPLICATION INFORMATION					
Applicant: Samuel J. Reynolds				Phone: 505-720-5322	
Address: 4200 Brockmont Ave NE				Email: samueljr1309@gmail.com	
City: Albuquerque		State: New Mexico		Zip: 87113	
Professional/Agent (if any): Rodey, Dickason, Sloan, Akin & Robb, P.A. (Paul M. Roybal)				Phone: 505-766-7510	
Address: 201 3rd St. NW, Suite 2200				Email: proybal@rodey.com	
City: Albuquerque		State: New Mexico		Zip: 87102	
Proprietary Interest in Site: Applicant is property owner.				List all owners: Samuel J. Reynolds	
BRIEF DESCRIPTION OF REQUEST					
Appeal from ZHE Decision, Special Exception No. VA-2021-00449, Project No. 2021-006330, wherein the ZHE denied a permit for a taller courtyard wall major for failure to satisfy IDO					
Section 6-6(H)(3)(a). Applicant believes that he has satisfied IDO Section 6-6(H)(3)(a) and that, therefore, his application for a permit for a taller courtyard wall major should be granted.					
SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)					
Lot or Tract No.: 20		Block: 14		Unit:	
Subdivision/Addition: Broadmoor Addn		MRGCD Map No.:		UPC Code: 101705720148923020	
Zone Atlas Page(s): K17		Existing Zoning: R-1B		Proposed Zoning: N/A	
# of Existing Lots: 1		# of Proposed Lots: N/A		Total Area of Site (acres): 0.1768	
LOCATION OF PROPERTY BY STREETS					
Site Address/Street: 4200 Brockmont Ave NE		Between: Montclair Dr NE		and: Washington St. NE	
CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)					
N/A					
Signature:				Date: March 17, 2022	
Printed Name: Paul M. Roybal				<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent	
FOR OFFICIAL USE ONLY					
Case Numbers	Action	Fees	Case Numbers	Action	Fees
Meeting/Hearing Date:				Fee Total:	
Staff Signature:			Date:	Project #	

FORM A: Appeals

Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.

- ☐ APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)
- ☐ APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)
- ☒ APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)

Interpreter Needed for Hearing? No if yes, indicate language: _____

☒ A Single PDF file of the complete application including all documents being submitted must be emailed to PLNDRS@cabq.gov prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD. PDF shall be organized with the Development Review Application and this Form A at the front followed by the remaining documents in the order provided on this form.

☒ Project number of the case being appealed, if applicable: 2021-006330

☒ Application number of the case being appealed, if applicable: VA-2021-00449

☒ Type of decision being appealed: Denial of Permit for Taller Courtyard Wall Major

☒ Letter of authorization from the appellant if appeal is submitted by an agent

☒ Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2)

☒ Reason for the appeal identifying the section of the IDO, other City regulation, or condition attached to a decision that has not been interpreted or applied correctly, and further addressing the criteria in IDO Section 14-16-6-4(U)(4)

☒ Copy of the Official Notice of Decision regarding the matter being appealed

I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.

Signature: _____

Date: March 17, 2022

Printed Name: Paul M. Roybal

☐ Applicant or ☒ Agent

FOR OFFICIAL USE ONLY

Case Numbers:

Project Number:



Staff Signature: _____

Date: _____


Development Review Services Division
Planning Department
City of Albuquerque
600 2nd Street NW
Albuquerque, NM 87102

Re: Appeal from ZHE Decision (4200 Brockmont Ave. NE)
Special Exception No.: VA-2021-00449
Project #2021-006330

To Whom It May Concern:

This is to advise you that Rodey, Dickason, Sloan, Akin & Robb, P.A. (Jenica L. Jacobi and Paul M. Roybal) has been appointed as my agent to represent me in connection with the referenced appeal and all matters related thereto.

Sincerely,



Samuel J. Reynolds
Appellant/Property Owner
4200 Brockmont Ave. NE
Albuquerque, NM 87108

BRUCE HALL
JOHN P. SALAZAR
CATHERINE T. GOLDBERG
EDWARD RICCO
CHARLES K. PURCELL
ANDREW G. SCHULTZ
HENRY M. BOHNHOFF
NELSON FRANSE
THERESA W. PARRISH
PAUL R. KOLLER
CHARLES J. VIGIL
DAVID W. BUNTING
LESLIE MCCARTHY APODACA
JEFFREY M. CROASDELL
SUNNY J. NIXON
R. TRACY SPROULS
SETH L. SPARKS
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MICHAEL J. BRESCIA
RICK BEITLER
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JENICA L. JACOBI
ABIGAIL M. YATES
PATRICK A. CORONEL
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NOELL SAUER HUFFMYER
PETER M. KELTON
ANGELICA M. LOPEZ
RANDY TAYLOR
ALEXANDRA R. WALEKO
LAUREN T. KEDGE
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MEGHAN M. O'NEIL
KATERI GARCIA WEST

RODEY, DICKASON, SLOAN, AKIN & ROBB, P. A.

ATTORNEYS AT LAW
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March 17, 2022

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LINDA M. VANZI
SAMANTHA M. HULTS
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BERNARD S. RODEY (1856-1927)
PEARCE C. RODEY (1889-1958)
DON L. DICKASON (1906-1999)
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JACKSON G. AKIN (1919-2010)
JOHN D. ROBB (1924-2014)

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WRITER'S DIRECT NUMBER
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PROYBAL@RODEY.COM

Land Use Hearing Officer
Planning Department
City of Albuquerque
600 2nd Street NW
Albuquerque, NM 87102
PLNDRS@cabq.gov

**RE: Appeal from ZHE Decision 4200 Brockmont Ave. NE
Special Exception No. VA-2021-00449
Project No. 2021-006330**

Dear Land Use Hearing Officer:

This letter identifies the basis of standing for Appellant, Samuel J. Reynolds, for his appeal of the Zoning Hearing Examiner's ("ZHE") March 2, 2022 decision in the referenced case ("Decision") and Mr. Reynold's reason for the appeal. Mr. Reynolds believes that the Decision was not supported by substantial evidence and that the ZHE erred in applying the requirements of the Integrated Development Ordinance ("IDO") under IDO § 6-4(V)(4).

STANDING

Mr. Reynolds is the owner of 4200 Brockmont Ave. NE, Albuquerque, New Mexico 87113 ("Property"), which is the property listed in his application for a permit for a taller courtyard wall major ("Application"). Therefore, Mr. Reynolds has standing to appeal the ZHE's Decision under IDO § 6-4(V)(2)(a).

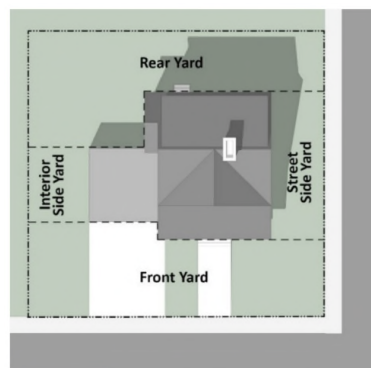
Land Use Hearing Officer
March 17, 2022
Page 2

REASON FOR APPEAL

Respectfully, the ZHE erred in finding that Mr. Reynolds did not satisfy IDO § 6-6(H)(3)(a)'s 20 percent requirement. IDO § 6-6(H)(3)(a) states in part¹ that:

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.

The ZHE determined that, because 12 properties were within the area of analysis,² 3 of those 12 properties must have walls over 3 feet to meet IDO § 6-6(H)(3)(a)'s 20 percent requirement. Decision ¶ 15. While the ZHE found that the front yard walls or fences on 4201 Brockmont and 4216 Brockmont were over 3 feet (and thus contributed to the 20% requirement), the ZHE found that 4220 Brockmont's wall was not a front yard wall and thus did not contribute to the 20 percent requirement. Decision ¶ 15. In doing so, the ZHE appeared to adopt the opposing argument that the wall at 4220 Brockmont was not "located in the front yard area, as 'front yard' is defined by Section 7-1 of the IDO (see diagram on page 592)." Decision ¶ 15. IDO § 7-1 defines "front yard" as "[t]he part of a lot from the front lot line to any front façade of the primary building, extended to both side lot lines." § 7-1 includes the following diagram:



The ZHE provided additional reasoning for its decision: "the wall at 4220 Brockmont runs contiguous with the primary structure on that lot and parallel with the front yard lot line."

¹ This section states that, if the wall meets any one of three listed criteria, the application shall be approved. Mr. Reynolds agrees that the two criteria listed in IDO § 14-16-6-6(H)(3)(a)(1) and (2) are not applicable to the Property.

² As used herein, "area of analysis" refers to the area containing properties within 330 feet of the Property under IDO § 6-6(H)(3)(a).

Land Use Hearing Officer
March 17, 2022
Page 3

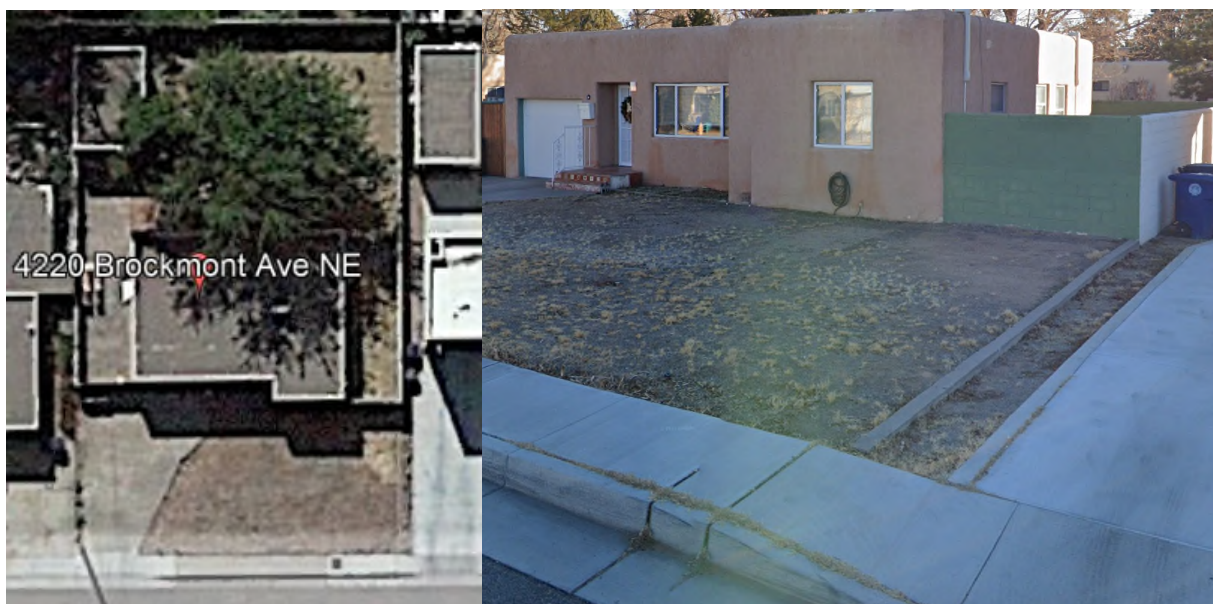
Decision ¶ 15. Ultimately, the ZHE found that, because the 20 percent requirement had not been met, the Application must fail. Decision ¶ 16.

Ordinances are interpreted “using the same rules of construction that apply to statutes.” *San Pedro Neighborhood Ass’n v. Bd. Of Cty. Comm’rs of Santa Fe Cty.*, 2009-NMCA-045, ¶ 12, 146 N.M. 106, 206 P.3d 1011.

The first rule is that the plain language of a statute is the primary indicator of legislative intent. Courts are to give the words used in the statute their ordinary meaning unless the [L]egislature indicates a different intent. The court will not read into a statute or ordinance language which is not there, particularly if it makes sense as written. The second rule is to give persuasive weight to long-standing administrative constructions of statutes by the agency charged with administering them. The third rule dictates that where several sections of a statute are involved, they must be read together so that all parts are given effect.

Id. The plain language of IDO § 6-6(H)(3)(a) indicates that the walls that can be considered for purposes of the 20 percent requirement are those placed on the front yard, as defined by IDO § 7-1. The diagram in IDO § 7-1 reflects this.

The ZHE’s decision is incorrect because 4220 Brockmont’s wall is a “front yard wall” under the plain language of the IDO. Below is a satellite view and street view on the left and right, respectively, of 4220 Brockmont:



Land Use Hearing Officer
March 17, 2022
Page 4

While 4220 Brockmont's right wall may appear to straddle the line between the front and street side yards, at least some portion of it may be within the front yard.³ The wall is also prominently displayed and faces the street. Based on IDO § 7-1's definition, 4220 Brockmont's wall can reasonably be considered a "front yard wall." The ZHE's additional criteria (whether the wall is contiguous with the primary structure and parallel with the front yard lot line) should not be considered because they are not mentioned in the IDO. *See San Pedro Neighborhood Ass'n, 2009-NMCA-045, ¶ 12* (courts "will not read into a statute or ordinance language which is not there[.]").

Furthermore, at least one other property in the area of analysis has a front yard wall⁴ that is over 3 feet. A wall over 3 feet separates 4219 Brockmont and 4223 Brockmont, as shown below in overhead satellite view and street view:



Mr. Reynolds has personally verified that this wall extends *past* the front facades of both 4219 and 4223 Brockmont *into* the front yards of both properties and is over 3 feet high. Even assuming that the ZHE's additional criteria should be considered, this wall satisfies those criteria: it is not contiguous with the facades of either house and is not parallel to the street. Without question, the portion of this wall within the front yard is a "front yard wall" under the

³ While not submitted to the ZHE, 4215 Brockmont (which is within the area of analysis) has a similarly situated wall. This wall has been measured at over four feet high.

⁴ This wall was inadvertently omitted from Mr. Reynolds' presentation to the ZHE and so was not considered below. The reason for this is that it can be easy to miss. It is not a typical front yard wall because it is not parallel to the street or prominently placed in the front yard area(s). Additionally, the wall is partially obscured by shrubbery on 4223 Brockmont.

Land Use Hearing Officer
March 17, 2022
Page 5

IDO and therefore is the third property⁵ that satisfies the 20 percent requirement under IDO § 6-6(H)(3)(a).

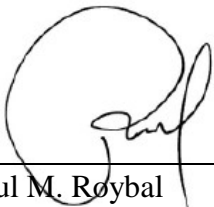
While not determinative of the issue on appeal, it is important to note the value of granting the Application. The Property is located at the corner of two heavily trafficked streets and is near several multi-family complexes. Thus, the Property is subject to high levels of noise and activity. The Albuquerque/Bernalillo Comprehensive Plan (Mar. 2017) (“Comp Plan”) acknowledges the dangers of traffic noise: “transportation can impact health through exposure to traffic noise, which can cause sleep disturbance, cardiovascular disease, elevated hormone levels, psychological problems, and even premature death . . . Exposure to noise is one of the most common environmental exposures in the United States, and exposure to traffic noise is often high enough to be harmful to health.” Comp Plan at Page 6-19. Recognizing these ill effects, the Comp Plan lists Goal 6.4 to “[p]romote individual and community health through . . . noise mitigation[.]” Comp Plan at 6-32. In addition to the well-documented impacts of noise, Mr. Reynolds suffers from trauma as a result of his service with the United States Marine Corp, which is exacerbated by the noise near the Property. The wall at issue in the Application would significantly mitigate such noise.

CONCLUSION

For the foregoing reasons, Appellant Samuel J. Reynolds respectfully requests that the Land Use Hearing Officer issue a recommendation to reverse the ZHE’s Decision and remand for further consideration of Mr. Reynold’s Application.

Sincerely,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By:  _____
Paul M. Roybal

⁵ Which lot this wall is on is not determinative; as seen on the overhead satellite view, the wall extends past the right side façade of 4219 Brockmont and the entire façade of 4223 Brockmont. Under the diagram in IDO § 7-1, a house may have two different facades and thus the rear line of a front yard may not be a straight line.



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

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Special Exception No:..... **VA-2021-00449**
Project No: **Project#2021-006330**
Hearing Date: 02-15-22
Closing of Public Record: 02-15-22
Date of Decision: 03-02-22

On the 15th day of February, 2022, Dave Bennett, agent for property owners Samuel Jacob Reynolds (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit for a taller court yard wall major (“Application”) upon the real property located at 4200 Brockmont Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a permit for a taller courtyard wall major.
2. This matter was continued from the ZHE’s January 18, 2022 hearing, because of evidence that the “Notice of Hearing” signage was not posted in accordance with IDO requirements.
3. Applicant testified at the February 15, 2022 ZHE hearing that the necessary signage was posted in accordance with IDO requirements. The ZHE finds that the proper “Notice of Hearing” signage was posted as required by Section 14-16-6-4(K)(3).
4. The ZHE finds that the Applicant has authority to pursue this Application.
5. 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.*
6. 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).
7. 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).
8. All property owners within 100 feet and affected neighborhood associations were notified of the application.
9. The subject property is currently zoned R-1B.
10. City Transportation issued a report stating that it does not object.
11. The Nob Hill Neighborhood Association submitted evidence and testimony in opposition to the Application.
12. Several neighbors in the vicinity of the Subject Property submitted evidence and testimony in favor of the application.
13. Regarding IDO Section 6-6(H)(3)(a), the Subject Property is not at least ½ acre, and the Subject Property does not front a street designated as a collector, arterial, or interstate highway.
14. Consequently, to be entitled to approval, the Application must satisfy the requirement that “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.”
15. Based on photographs, maps and oral evidence submitted, it does not appear that 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. There are 12 lots aside from the Subject Property along Brockmont, which the Subject Property fronts. Therefore, 3 of those 12 properties must have a front yard wall or fence over 3 feet to satisfy the 20 percent criteria. Applicant and opponents agree that 4201 Brockmont and 4216 Brockmont have a front yard wall or fence over 3 feet and are located within the pertinent area of review. However, while Applicant maintains that 4220 Brockmont has a front yard wall or fence over 3 feet, opponents argued that the wall at 4220 Brockmont is not located in the front yard area, as “front yard” is defined by Section 7-1 of the IDO (see diagram on page 592). Opponents appear to be correct, because the wall at 4220 Brockmont runs contiguous with the primary structure on that lot and parallel with the front yard lot line. 4220 Brockmont does not count toward the 20 percent requirement. Therefore, it appears that only two properties can be counted toward the 20 percent criteria, resulting in a percentage of only approximately 16.7 percent. The Application does not satisfy the criterion in IDO Section 6-6(H)(3)(a).

16. Because the criterion in IDO Section 6-6(H)(3)(a) is not satisfied as to the front yard wall and all criteria of IDO 6-6-(H)(3) must be satisfied, the Application must fail as to the front yard wall. For the sake of administrative and quasi-judicial economy, the ZHE will not examine the remainder of the criteria of IDO 6-6-(H)(3), because they are moot in light of the failure to satisfy IDO Section 6-6(H)(3)(a), which is dispositive of the Application.
17. As to the street side yard wall, the ZHE has granted approval of the companion application to the Application, which requested a variance for the street side yard wall. The ZHE therefore will not examine the IDO 6-6-(H)(3) criteria regarding the street side yard, because they, too, are moot.

DECISION:

DENIAL of a permit for a taller courtyard wall major.

APPEAL:

If you wish to appeal this decision, you must do so by March 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Dave Bennett, landconm@gmail.com
Samuel Jacob Reynolds, samueljr1309@gmail.com
Gary Eyster, meyster1@me.com
Diane and Charles McCash, sewellpics@aol.com
Erick Seelinger, 4201 Roma Ave NE, 87108
Carolyn Richter, 405 Montclair DR NE
Jennifer Prakash, 437 Montclair NE, 87108

REQUEST FOR SPECIAL EXCEPTION

☐ Variance ☐ Conditional Use ☐ Other

Interpreter: ☐ Yes ☐ No

VA# 2021-00449 PR# PR-2021-006330

Date: 11/1/2021		Received By: Concetta Trujillo	
Address of Request: 4200 Brockmont Ave NE			
City: Albuquerque		State: NM	Zip: 87108
Lot: 20	Block: 14	Zone: R-1B	Map pg. K17
Subdivision: Broadmoor Addn		UPC# 101705720148923020	
Property Owner(s): Samuel Jacob Reynolds			
Mailing Address: 4200 Brockmont Ave NE			
City: Albuquerque		State: NM	Zip: 87113
Phone: 505-720-5322		Email: samueljr1309@gmail.com	
Agent: Dave Bennett			
Mailing Address: 8100 Wyoming Blvd NE #M4			
City: Albuquerque		State: NM	Zip: 87113
Phone: 505-681-0191		Email: Landconm@gmail.com	
Fee Total: \$ 214.20			

Completed Application Requirements:

- ☐ Copy of relevant IDO section
- ☐ Letter of authorization (if agent representation)
- ☐ Proof of Pre-application Meeting (not required for a variance)
- ☐ Proof that neighborhood meeting requirements were met
- ☐ Proof that public notice requirements were met
- ☐ Photos (site and existing structures)
- ☐ Sketch plan
- ☐ Justification letter
- ☐ Sign posting

Approved for acceptance by:	Date:	Hearing Date:
------------------------------------	--------------	----------------------

ZONING OFFICIAL USE ONLY			
Request for exception to IDO Section: 14-16-5-7(D)(3)(g) Table 5-7-2			
Description of request: a permit for a TALLER COURT YARD WALL - MAJOR			
<input type="checkbox"/> Ownership verified on AGIS <input type="checkbox"/> Proof of ownership included <input type="checkbox"/> Letter of authorization included			
Case history number(s) from AGIS:			
APO:	CPO#	HPO#	VPO#
Wall variances not allowed in low-density residential development in these 2 areas per 5-7(D)(3)(e):			
1) CPO 3 and 2) Monte Vista / College View Historic Dist. - Mapped Area			
2) CPO-8 states walls no more than 3 feet high, but may request a variance			
			2 nd check Initials _____

REQUEST FOR SPECIAL EXCEPTION

☐ Variance ☐ Conditional Use ☐ Other

Interpreter: ☐ Yes ☐ No

VA# VA-2022-00016 PR# PR-2021-006330

Date: 11/1/2021		Received By: Concetta Trujillo	
Address of Request: 4200 Brockmont Ave NE			
City: Albuquerque		State: NM	Zip: 87108
Lot: 20	Block: 14	Zone: R-1B	Map pg. K17
Subdivision: Broadmoor Addn		UPC# 101705720148923020	
Property Owner(s): Samuel Jacob Reynolds			
Mailing Address: 4200 Brockmont Ave NE			
City: Albuquerque		State: NM	Zip: 87113
Phone: 505-720-5322		Email: samueljr1309@gmail.com	
Agent: Dave Bennett			
Mailing Address: 8100 Wyoming Blvd NE #M4			
City: Albuquerque		State: NM	Zip: 87113
Phone: 505-681-0191		Email: Landconm@gmail.com	
Fee Total: \$ 214.20			

Completed Application Requirements:

- ☐ Copy of relevant IDO section
- ☐ Letter of authorization (if agent representation)
- ☐ Proof of Pre-application Meeting (not required for a variance)
- ☐ Proof that neighborhood meeting requirements were met
- ☐ Proof that public notice requirements were met
- ☐ Photos (site and existing structures)
- ☐ Sketch plan
- ☐ Justification letter
- ☐ Sign posting

Approved for acceptance by:	Date:	Hearing Date:
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ZONING OFFICIAL USE ONLY			
Request for exception to IDO Section: 14-16-5-7(D)(1) Table 5-7-1			
Description of request: a VARIANCE of 2 feet 9 inch to allow for a Court yard wall in the side yard setback.			
<input type="checkbox"/> Ownership verified on AGIS <input type="checkbox"/> Proof of ownership included <input type="checkbox"/> Letter of authorization included			
Case history number(s) from AGIS:			
APO:	CPO#	HPO#	VPO#
Wall variances not allowed in low-density residential development in these 2 areas per 5-7(D)(3)(e):			
1) CPO 3 and 2) Monte Vista / College View Historic Dist. - Mapped Area			
2) CPO-8 states walls no more than 3 feet high, but may request a variance ^{2nd check} Initials _____			

5-7(C) WALL LOCATION

- 5-7(C)(1) Walls may be constructed anywhere on a lot, including but not limited to any front, side, or rear setback area, unless otherwise prohibited by this IDO, by with Articles 14-1, 14-2, and 14-3 of ROA 1994 (Uniform Administrative Code and Technical Codes, Fire Code, and Uniform Housing Code), or by clear sight triangle requirements.
- 5-7(C)(2) Walls may be constructed without any setback from a property line, unless otherwise prohibited by this IDO, by Articles 14-1, 14-2, and 14-3 of ROA 1994 (Uniform Administrative Code and Technical Codes, Fire Code, and Uniform Housing Code), or by the DPM, including but not limited to, clear sight triangle requirements or standards for alignments and easements. Walls may not encroach into any public right-of-way without the prior written approval from the City Engineer and may not encroach onto any adjacent property without prior written approval of that property owner.

5-7(D) MAXIMUM WALL HEIGHT

5-7(D)(1) Maximum Wall Height Table

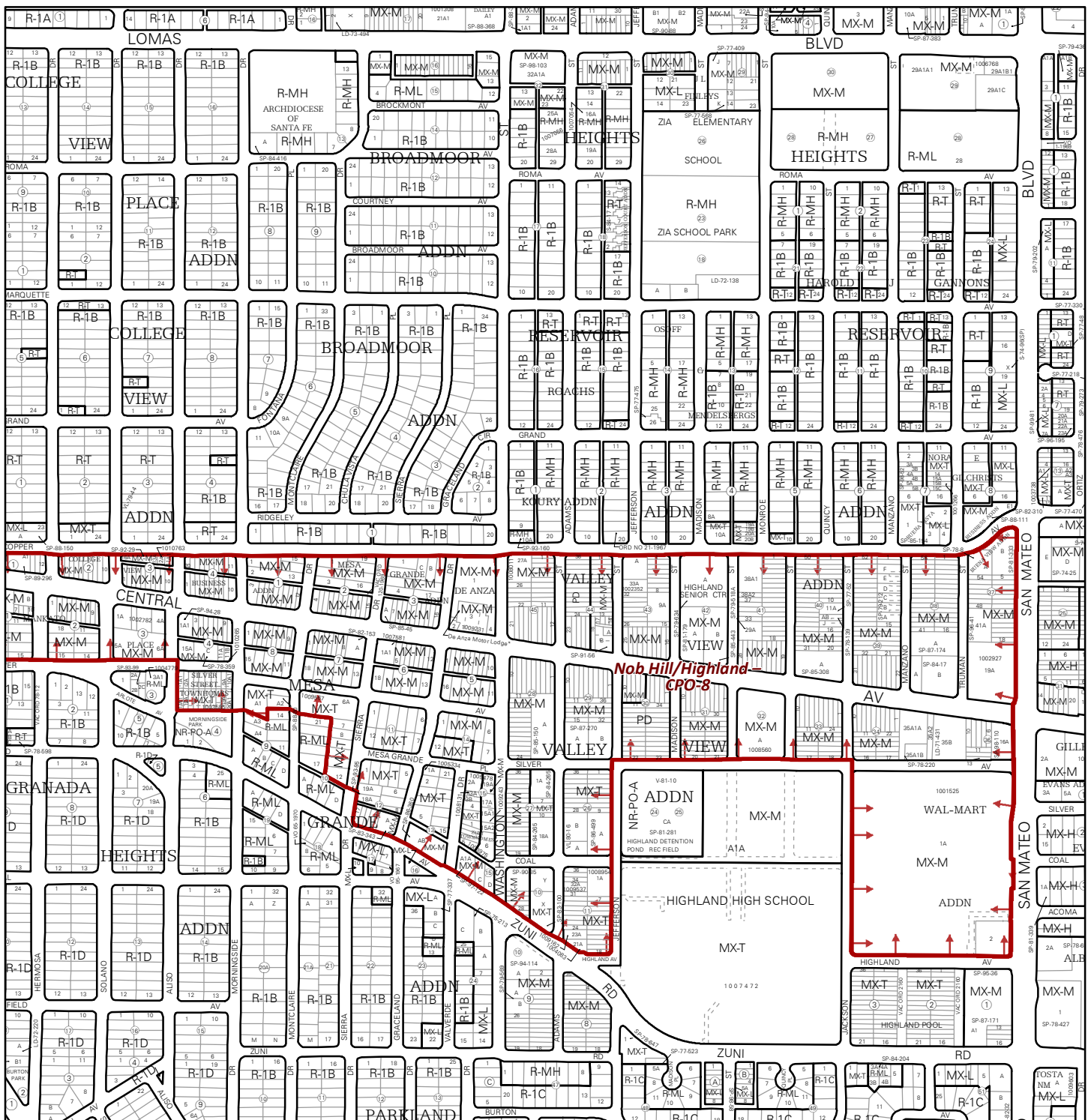
Unless specified otherwise in Subsection 14-16-5-7(D)(3) (Exceptions to Maximum Wall Height) or elsewhere in this IDO, walls shall comply with the height standards in Table 5-7-1.

Table 5-7-1: Maximum Wall Height					
Zone Category	Residential	Mixed-use	Non-residential (NR-C, NR-BP) ⁽¹⁾	Non-residential (NR-LM, NR-GM)	See also:
Standard Wall Height					
Wall in the front yard or street side yard ⁽²⁾⁽³⁾⁽⁴⁾	3 ft.	3 ft.	3 ft.	6 ft.	5-7(D)(2)
Wall in other locations on the lot ⁽⁵⁾⁽⁶⁾	8 ft.	8 ft.	8 ft.	10 ft.	5-7(D)(2)
Corner Lot Abutting Residential Zone District					
Any portion of a wall in the rear yard abutting the front yard of a Residential zone district.					
<10 ft. from the lot line abutting the street ⁽³⁾	3 ft.	3 ft.	3 ft.	6 ft.	5-7(D)(2) 5-7(D)(3)(g)
≥10 ft. from the lot line abutting the street	6 ft.	8 ft. Low-density residential: 6ft.	8 ft.	8 ft.	5-7(D)(2)
Walls Abutting Major Arroyos and Major Public Open Space					
Wall in a rear or interior side yard abutting a major arroyo	6 ft.	8 ft.	8 ft.	8 ft.	5-7(D)(2) 5-7(E)(4)
Wall in a rear or interior side yard abutting Major Public Open Space	6 ft.	6 ft.	6 ft.	10 ft.	5-7(D)(2) 5-7(E)(4)
⁽¹⁾ In the NR-BP zone district, wall heights shall be specified in the Master Development Plan. If no Master Development Plan exists or if no wall heights are specified in the Master Development Plan, then the wall height requirements in this table apply. ⁽²⁾ Taller walls may be approved for multi-family residential development pursuant to Subsection 14-16-5-7(D)(3)(c). ⁽³⁾ Taller walls may be approved for low-density residential development pursuant to Subsections 14-16-5-7(D)(3)(d) or 14-16-5-7(D)(3)(g). ⁽⁴⁾ Taller walls may be approved in any NR-C or NR-BP zone district pursuant to Subsection 14-16-5-7(D)(3)(e). ⁽⁵⁾ Portions of walls in the rear yard of a corner lot abutting the front yard of a Residential zone district are treated differently, with provisions later in this table. ⁽⁶⁾ Where the rear yard of a through lot abuts at least 1 lot with any residential development that faces the second public street, the rear and side walls shall be subject to the same height restrictions applicable within the required front setback of the abutting residential property.					

- 5-7(D)(3)(e) For development in any NR-C or NR-BP zone district, the maximum height of walls in any front or street side yard is 6 feet if the wall is set back at least 5 feet from the property line and if view fencing that is at most 50 percent opaque to perpendicular view is used for portions of a wall above 3 feet.
- 5-7(D)(3)(f) Except where a Permit – Wall or Fence – Major is required pursuant to Subsection (g) below or where prohibited pursuant to Subsection (h) below, the Zoning Enforcement Officer (ZEO) may make an exception to the height standards in Table 5-7-1 for security reasons due to specific site conditions or the nature of the land use or related materials and facilities on the site, pursuant to Subsection 14-16-6-5(F) (Permit – Wall or Fence – Minor).
- 5-7(D)(3)(g) For low-density development in or abutting a Residential zone district where wall height in any front or street side yard is restricted to 3 feet by Table 5-7-1, a request for a taller wall that meets the height and location standards in Table 5-7-2 shall require Permit – Wall or Fence – Major pursuant to Subsection 14-16-6-6(H), except where a taller wall is prohibited pursuant to Subsection (h) below.

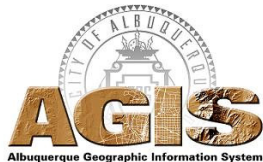
Table 5-7-2: Options for a Taller Front or Side Yard Wall^[1]

Wall Type and Location	Maximum Wall Height	Illustration
View Fencing		
View fencing at most 50 percent opaque may be added above 3 ft. to increase the total height of the wall as follows:		
<10 ft. from lot line abutting the street	5 ft.	0
≥10 ft. from lot line abutting the street	6 ft.	0
Courtyard Walls		
≥10 ft. from lot line abutting the street or edge of the sidewalk closest to the primary building, whichever is more restrictive	6 ft.	5-7(D)(3)(g)2
Corner Lots		
On a corner lot where the rear yard abuts the front yard of a residentially zoned lot, a taller wall enclosing the rear yard may be approved as follows:		
<10 ft. from the lot line abutting the street	5 ft.	5-7(D)(2)
[1] The maximum wall heights in this table require an approval pursuant to the standards in Subsections 14-16-5-7(D)(3)(g) and 14-16-6-6(H) (Permit – Wall or Fence – Major).		

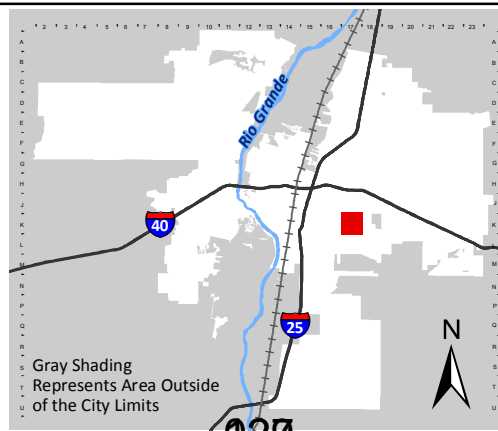


For more details about the Integrated Development Ordinance visit: <http://www.cabq.gov/planning/codes-policies-regulations/integrated-development-ordinance>

IDO Zone Atlas May 2018



IDO Zoning information as of May 17, 2018
The Zone Districts and Overlay Zones
are established by the
Integrated Development Ordinance (IDO).



Zone Atlas Page: K-17-Z

- Easement
- Escarpment
- Petroglyph National Monument
- Areas Outside of City Limits
- Airport Protection Overlay (APO) Zone
- Character Protection Overlay (CPO) Zone
- Historic Protection Overlay (HPO) Zone
- View Protection Overlay (VPO) Zone

0 250 500 1,000 Feet

Letter of Authorization

To: Zoning Hearing Examiner

Date: _____

Project # _____

ZHE# _____

I, Samuel Reynolds hereby authorize
David Bennett to act on my behalf in all matters relating to this
application for Special Exception filed for my property located at
4200 Brockmont Ave NE, Albuquerque NM 87108.

Property Owner(s)* (Applicant) Printed Name

Samuel Reynolds

Property Owner(s)* (Applicant) Signature

[Signature]

Mailing Address

4200 Brockmont Ave NE, Albuquerque NM 87108

* Where a property has more than one owner, all owners must consent in writing to the filing of the application to the maximum extent practicable. In the case that not all of the property owners have consented in writing to the application, or when the ownership status of some parties is unclear (as shown on a title abstract or title insurance commitment), the owner shall attest in writing that all of the property owners shown on a title abstract or title insurance commitment have been notified of the application in writing at their last known address as shown on the property tax records of Bernalillo County.

Sanchez, Suzanna A.

From: Sanchez, Suzanna A.
Sent: Wednesday, October 20, 2021 11:40 AM
To: 'landconm@gmail.com'
Subject: ZHE Information for 4200 Brockmont Ave
Attachments: STEPS TO APPLY FOR A SPECIAL EXCEPTION APRIL 2021.pdf; 1. Letter to Neighborhood Association.pdf

Dear Applicant,

Attached are forms and instructions to complete your application. Please pay special attention to Step 3 in the "STEPS TO APPLY" document. These materials are required for a complete submittal. Requests will not be set for a hearing or reviewed for compliance until the application submittal is complete.

1. Please fill in and forward the attached Letter to Neighborhood Association to the list of neighborhood association contacts below. It is recommended that the neighborhood associations be notified 45 days prior to application submittal. Per Section 14-16-6-4(C)(3) of the Integrated Development Ordinance, a meeting request must be sent to the 2 representatives of all applicable Neighborhood Associations via Certified Mail, return receipt requested, or via email. (Please include project information such as renderings, a site plan and/or a photo in the notice).

Association Name	First Name	Last Name	Email	Address Line 1
Nob Hill NA	Gary	Eyster	meyster1@me.com	316 Amherst Drive
Nob Hill NA	David	Garcia	david@halflifedigital.com	316 Tulane SE
District 6 Coalition of Neighborhood Associations	Mandy	Warr	mandy@theremedydayspa.com	119 Vassar Drive
District 6 Coalition of Neighborhood Associations	Patricia	Willson	info@willsonstudio.com	505 Dartmouth Street SE

Thank you,

Suzie



SUZIE SANCHEZ-FLORES
zhe administrative assistant
o 505.924.3894
e suzannasanchez@cabq.gov
cabq.gov/planning

REQUEST FOR NEIGHBORHOOD MEETING

Date: 10-20-2021

To Whom This May Concern:

I am requesting approval from the Zoning Hearing Examiner within the City of Albuquerque for a conditional use or variance to allow an extension of existing courtyard wall to match the existing height, color, texture and style.

_____ (summary of request).

Property owner Samuel Reynolds

Agent if applicable Dave Bennett

Property Address 4200 Brockmont ave ne, Albuquerque, NM, 87108 (zip code).

This letter is an offer to meet with you to provide additional information. If you wish to meet, please respond within 15 days. If you do not want to meet, or you support the proposal, please let me know.

Thank you,

Applicant Name Dave Bennett

Email Landconm@gmail.com

Phone Number 505-681-0191

The City may require the applicant to attend a City-sponsored facilitated meeting with the Neighborhood Associations whose boundaries include or are adjacent to the proposed project, based on the complexity and potential impacts of a proposed project. For more information, please contact the ZHE Administrative Assistant Suzie Sanchez at 505-924-3894 or suzannasanchez@cabq.gov.

Please note: "You may submit written comments to the Zoning Hearing Examiner up to 6 days before the hearing (5pm on the Wednesday before the hearing). Written comments received after that deadline will not be taken into consideration for this application.

[Note: Items with an asterisk (*) are required.]

Neighborhood Meeting Request for a Proposed Project in the City of Albuquerque

Date of Request*: 10-20-2021

This request for a Neighborhood Meeting for a proposed project is provided as required by Integrated Development Ordinance (IDO) [Subsection 14-16-6-4\(K\) Public Notice](#) to:

Neighborhood Association (NA)*: Nob Hill NA

Name of NA Representative*: Gary Eyster

Email Address* or Mailing Address* of NA Representative¹: meyster1@me.com

The application is not yet submitted. If you would like to have a Neighborhood Meeting about this proposed project, please respond to this request within 15 days.²

Email address to respond yes or no: Landconm@gmail.com

The applicant may specify a Neighborhood Meeting date that must be at least 15 days from the Date of Request above, unless you agree to an earlier date.

Meeting Date / Time / Location:

Project Information Required by [IDO Subsection 14-16-6-4\(K\)\(1\)\(a\)](#)

1. Subject Property Address* 4200 Brockmont ave NE, Albuquerque NM 87108
Location Description Corner of Brockmont and Monthclaire
2. Property Owner* Samuel Reynolds
3. Agent/Applicant* [if applicable] Dave Bennett
4. Application(s) Type* per IDO [Table 6-1-1](#) [mark all that apply]
 - ☐ Conditional Use Approval
 - ☐ Permit _____ (Carport or Wall/Fence – Major)
 - ☐ Site Plan
 - ☐ Subdivision _____ (Minor or Major)

¹ Pursuant to [IDO Subsection 14-16-6-4\(K\)\(5\)\(a\)](#), email is sufficient if on file with the Office of Neighborhood Coordination. If no email address is on file for a particular NA representative, notice must be mailed to the mailing address on file for that representative.

² If no one replies to this request, the applicant may be submitted to the City to begin the review/decision process.

[Note: Items with an asterisk (*) are required.]

- ☐ Vacation _____ (Easement/Private Way or Public Right-of-way)
- ☒ Variance
- ☐ Waiver
- ☐ Zoning Map Amendment
- ☐ Other: _____

Summary of project/request^{3*}:

Extension of existing courtyard wall to enclose front door area and to match existing color, stucco, texture and style.

5. This type of application will be decided by^{*}: ☐ City Staff
- OR at a public meeting or hearing by:
- ☒ Zoning Hearing Examiner (ZHE) ☐ Development Review Board (DRB)
- ☐ Landmarks Commission (LC) ☐ Environmental Planning Commission (EPC)
- ☐ City Council
6. Where more information about the project can be found^{*4}:

Project Information Required for Mail/Email Notice by [IDO Subsection 6-4\(K\)\(1\)\(b\)](#):

1. Zone Atlas Page(s)^{*5} K-17-Z
2. Architectural drawings, elevations of the proposed building(s) or other illustrations of the proposed application, as relevant^{*}: Attached to notice or provided via website noted above
3. The following exceptions to IDO standards will be requested for this project^{*}:
- ☐ Deviation(s) ☒ Variance(s) ☐ Waiver(s)

Explanation:

Wall that is higher than 3 feet but not exceeding 6 feet

4. An offer of a Pre-submittal Neighborhood Meeting is required by [Table 6-1-1](#)^{*}: ☐ Yes ☒ No

³ Attach additional information, as needed to explain the project/request. Note that information provided in this meeting request is conceptual and constitutes a draft intended to provide sufficient information for discussion of concerns and opportunities.

⁴ Address (mailing or email), phone number, or website to be provided by the applicant

⁵ Available online here: <http://data.cabq.gov/business/zoneatlas/>

[Note: Items with an asterisk (*) are required.]

5. **For Site Plan Applications only***, attach site plan showing, at a minimum:

- ☐ a. Location of proposed buildings and landscape areas.*
- ☐ b. Access and circulation for vehicles and pedestrians.*
- ☐ c. Maximum height of any proposed structures, with building elevations.*
- ☐ d. **For residential development***: Maximum number of proposed dwelling units.
- ☐ e. **For non-residential development***:
 - ☐ Total gross floor area of proposed project.
 - ☐ Gross floor area for each proposed use.

Additional Information:

1. From the IDO Zoning Map⁶:

- a. Area of Property [typically in acres] _____
- b. IDO Zone District _____
- c. Overlay Zone(s) [if applicable] _____
- d. Center or Corridor Area [if applicable] _____

2. Current Land Use(s) [vacant, if none] _____

Useful Links

Integrated Development Ordinance (IDO):

<https://ido.abc-zone.com/>

IDO Interactive Map

<https://tinyurl.com/IDOzoningmap>

Cc: _____ [Other Neighborhood Associations, if any]

⁶ Available here: <https://tinurl.com/idozoningmap>

Sanchez, Suzanna A.

From: D <landconm@gmail.com>
Sent: Monday, December 06, 2021 11:26 PM
To: Sanchez, Suzanna A.
Subject: Fwd: Request for meeting
Attachments: 1. Letter to Neighborhood Association nhge.pdf; IDOZoneAtlasPage_K-17-Z.pdf; 12.png; 19.pdf; Before.png

----- Forwarded message -----

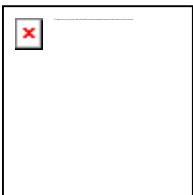
From: D <landconm@gmail.com>
Date: Wed, Oct 20, 2021 at 2:36 PM
Subject: Request for meeting
To: <meyster1@me.com>

Hello,

My name is Dave. Our company is installing some landscaping for our customer who lives at 4200 Brockmont ave NE, Albuquerque NM 87108. We made a plan for him to xeriscape his front yard and to extend his existing courtyard wall so that it encloses his front door instead of just his side door. Upon his approval, we proceeded with the project including the wall (plan and constructed wall attached) but I mistakenly overlooked the rule of front yard walls no taller than 3 ft without a variance. I went to the planning and zoning department and they've given me the instructions on obtaining a variance which includes the attached request for a meeting. If you have some time to respond to the attached request, that would be great. Also, if you have any questions that I can answer or if you would like to come by and see the wall and project, I would be more than happy to meet you there to show you everything if you'd like. The wall itself is just under 6ft, is reinforced with rebar, filled with cement, and matches the existing wall and house.

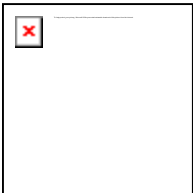
Thank you for your time,

--



Dave Bennett
Landco Landscape Development & Supply
5901 Carmel Ave NE
Albuquerque, NM 87113
Office: 505-681-0191
www.landconm.com

--



Dave Bennett
Landco Landscape Development & Supply
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Albuquerque, NM 87113
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Sanchez, Suzanna A.

From: Gary Eyster <meyster1@me.com>
Sent: Wednesday, October 20, 2021 4:14 PM
To: 'D'
Cc: Sanchez, Suzanna A.; Greg Weirs; 'Jeff Hoehn'; Gary and Melodie Eyster
Subject: RE: Request for meeting, 4200 Brockmont NE

Follow Up Flag: Follow up
Flag Status: Completed

Yes, Dave. We would like a meeting.

It's not clear from the materials you sent if you are applying for a wall permit-major or a variance. Would you please clear that up with Ms. Sanchez or Ms. Patten Quintana at the ZHE office?

Kind regards, Gary Eyster, President
Nob Hill NA

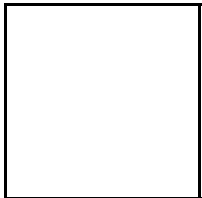
From: D [<mailto:landconm@gmail.com>]
Sent: Wednesday, October 20, 2021 2:37 PM
To: meyster1@me.com
Subject: Request for meeting

Hello,

My name is Dave. Our company is installing some landscaping for our customer who lives at 4200 Brockmont ave NE, Albuquerque NM 87108. We made a plan for him to xeriscape his front yard and to extend his existing courtyard wall so that it encloses his front door instead of just his side door. Upon his approval, we proceeded with the project including the wall (plan and constructed wall attached) but I mistakenly overlooked the rule of front yard walls no taller than 3 ft without a variance. I went to the planning and zoning department and they've given me the instructions on obtaining a variance which includes the attached request for a meeting. If you have some time to respond to the attached request, that would be great. Also, if you have any questions that I can answer or if you would like to come by and see the wall and project, I would be more than happy to meet you there to show you everything if you'd like. The wall itself is just under 6ft, is reinforced with rebar, filled with cement, and matches the existing wall and house.

Thank you for your time,

--



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CITY OF ALBUQUERQUE
LAND USE FACILITATION PROGRAM PROJECT MEETING REPORT
4200 Brockmont NE - Facilitated Meeting of November 29, 2021

Project: 4200 Brockmont NE, ABQ, NM 87108

Property Description/Address: Same

Date Submitted: November 30, 2021

Submitted By: Philip Crump and Jocelyn M. Torres

Meeting Date/Time: November 29, 2021, 5:30-7:30 pm

Meeting Location: Via Google

Facilitator: Philip Crump

Co-facilitator: Jocelyn M. Torres

Applicant: Samuel Reynolds

Agent: David Bennett, Landco Landscape Development Design and Supply

Neighborhood Associations/Interested Parties: Nob Hill NA; Neighbors

Background Summary:

Applicant filed for a front and side wall ZHE variance on November 1, 2021, after the walls had already been constructed. The Nob Hill NA and neighbors oppose the existing front wall height on the basis that it does not meet either the Nob Hill NA Policy on Walls and Fences¹ or the Integrated Design Ordinance (IDO) height requirements. The side wall height may meet an IDO exception.

Outcomes:

- **Areas of Agreement:**
- There was no agreement regarding the existing height and construction of the front wall.
- The Nob Hill NA President voiced that the height of the side wall may meet the 20% IDO variance standard.²
- **Areas of Concern:**
- Neighbors are opposed to the existing walls.
- **Areas for Further Discussion:**
- The Nob Hill NA will further discuss this matter at their meeting of December 9, 2021.
- The side wall height may meet an IDO exception.

¹ See: <http://www.nobhill-nm.com/resources/modifying-your-property/walls-and-fences/>.

² IDO §6-6(H) (3) (a) (4): "For a street side yard wall taller than allowed in Table 5-7-1, at least 20% 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."

CITY OF ALBUQUERQUE
LAND USE FACILITATION PROGRAM PROJECT MEETING REPORT
4200 Brockmont NE - Facilitated Meeting of November 29, 2021

Meeting Specifics: *Neighbor Questions and Comments are Italicized.* Agent's comments and answers are not.

1) History of Brockmont/Montclair Wall Design and Construction.

- a) C: The home owner wanted a front wall. The original design was shorter. Because of the owner's concerns about strangers and trash dumping, we decided to make the wall higher and extend it to the Montclair side yard. We have gotten compliments on this wall. I have since reviewed the guidelines on wall height and design that Gary sent me and would like to hear from neighbors regarding the wall.

Q: So the front yard faces Brockmont and the side yard faces Montclair?

A: Yes. Also, the driveway and garage door are on Montclair.

- b) *Q: What is the current condition of the wall on the front and side yards? Can you distinguish between the front and side walls?*

A: We've already extended the wall on the side yard to where it meets the neighbor's back yard. There is a security door. There is xeriscaping throughout. The trees provide privacy. Vegetation includes original crabapple, aspen, elm and pine trees, plus agave.

We raised the inside height (of the side wall) 1.5 feet in order to construct a back patio. The inside height is not as high as the outside. The corner of the two walls is rounded not jagged. The front gate is permeable, so you could see through it. Maybe we should change that gate so it meets the standard requiring that the front door and window be seen from five feet away.

2) Neighbor Comments and Concerns.

- a) *C: It would have been nice if we could have had this meeting before the construction. We are not here to bully, but to share what we know about the system, process and necessary qualifications for a wall permit.*
- b) *C: I'm really opposed to the height of that wall. It's totally obtrusive. I don't live on that street but walking down Brockmont, that is what is seen bolting out from the house. I think it is illegal, unpermitted and sets a really bad precedent. If it is allowed to stand, everyone else will think that they can do what they want.*
- c) *C: I've been a realtor for 40 years. Part of my job is to advise buyers and sellers of rules involving wall additions. The wall height rule applies to the entire City, not just Nob Hill. Since August, I have seen four walls of four to six feet constructed within a half mile of Carlisle and Lomas. Any contractor, plumber, electrician or wall builder should know the City rules and regulations. I feel bad because I told some clients living near Roma and Montclair that they couldn't build a wall over three feet in the front. They have big dogs and would have preferred a taller wall.*
- d) *Q: Were any of those walls located in Nob Hill?*

A: No. Two were on Wellesley near Constitution. There is another one on Morningside. There was one on Mackland that just got shortened.

- e) *C: The process requires that you get the permit before you build the wall.*

CITY OF ALBUQUERQUE
LAND USE FACILITATION PROGRAM PROJECT MEETING REPORT
4200 Brockmont NE - Facilitated Meeting of November 29, 2021

- f) *C: This is about asking for permission, not forgiveness. Things like this would approach a crisis status for our City if people did not stand up, as they have done tonight, to say things that are uncomfortable and unpleasant to enforce community form. I want this stated in the record.*

3) History of Nob Hill Wall Design Standards.

- a) *C: This is not a new issue. It is one the Neighborhood Association has considered for 15 years. This is not about aesthetics. It is a matter of process and permitting. It also pertains to our pedestrian friendly neighborhood, streetscape and crime prevention. Owners want a higher wall for safety. That is counterproductive because once criminals are behind the fence, no one on the street can see them.*

- b) *Q: So you are saying that it's not about aesthetics, it's about process, walkability and eyes on the street safety, right?*

A: Yes.

- c) *C: I'm going to read some excerpts from the Integrated Development Ordinance. This came about in 2017 after enormous public input and comment. Our association was one of about six others that asked the council to regulate front yard walls. There are three areas on a lot; the side, back and front yards. It's a city-wide ordinance.*

Subsection six says a public meeting is required when you apply for a major wall permit on the front or side street, which is what you have here. You don't have ½ acre or face a collector street. This section requires that at least, 20% of the residential properties abutting Brockmont within 330 feet, have a front yard wall over three feet.³

We've done a survey and there are 12 houses east of the house on Brockmont. Two of them have the wall over three feet. So that's 16%. Your wall does not meet that (IDO) requirement.

- d) *C: Our Neighborhood Association supports front walls meeting IDO Sections 6-6(H) (3) (a) (1) through (3) requirements. If they don't, we oppose them. This wall does not meet those requirements.*

- e) *C: Also, the front wall blocks the window view from the street.⁴*

- f) *A: We did not intend to violate any requirements when we built that wall. I accept the blame. I did recommend a Ring camera to see street activity, which the home owner got right away.*

- g) *C: Regarding the side yard application, we are not sure whether that meets the IDO's applicable 20% requirement. [See second footnote on page one].*

- h) *Q: Will the (Nob Hill) Board oppose both applications?*

³ IDO §6-6(H) (3) (a) (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 IDO §6-6(H) (3)(d): "The design of the wall complies with any applicable standards in section 5-7 (walls and fences) including but not limited to §(3) articulation and alignment and 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 ft. above the ground level at the centerline of the street in front of the house."

CITY OF ALBUQUERQUE
LAND USE FACILITATION PROGRAM PROJECT MEETING REPORT
4200 Brockmont NE - Facilitated Meeting of November 29, 2021

A: We have a policy requiring opposition of the front wall because it does not meet IDO requirements. We are not sure about the side wall. Only two of eleven board members are here tonight. The others must be included in that decision.

- i) C: We didn't intend anything malicious. A neighbor informed us that he just got permission from other neighbors when he built his wall.

C: That wall on Montclair and Roma has been there at least 15 years. The permitting and Neighborhood Association's view may have been different at that time. We adopted our current position at least five years ago.

C: The three foot front wall requirements were in place in the 80's and 90's. When requesting a variance, it may be good to go door to door asking neighbors. In this case, the wall is already built, so that reasoning doesn't apply.

C: Many people support the appearance of the wall.

C: This is not based on popularity; it is based on the IDO's permitting requirements.

4) Variance Applications.

- a) Q: Did you file both applications on November 1, 2021?

A: Yes.

- b) C: In that case, the ZHE meeting will be published in the Journal on December 6, 2021 and the Nob Hill NA will consider this matter in its December 9, 2021 meeting. The ZHE hearing will be held on December 21, 2021.

Projected Publication and Hearing timetable:

Both applications were filed November 1, 2021.

Journal Publication anticipated for December 6, 2021.

ZHE Hearing anticipated for December 21, 2021.

Names & Affiliations of Attendees and Interested Parties:

Samuel J Reynolds	Property Owner
David Bennett	Landco Landscape Dev. & Supply
Gary Eyster	Nob Hill NA
Greg Weirs	Nob Hill NA
Susan Beard	Neighbor
Marshall Mourar	Neighbor
Lorena Patten-Quintana	ZHE Planner
Suzie Sanchez-Flores	ZHE Administrative Assistant
Tyson Hummell	CABQ ADR Coordinator

















Only submit photos of properties that are within the linear area up to 330 feet. (Only properties in green, along the yellow lines).

Take a picture of any side yard fence/wall that is over 3 feet.

Write the address on the front.

Mark the address off on the map.

Print all and submit to the ZHE.

About 22 Properties = 5 Photos

4201 Roma



4216 Brockmont



4201 Brockmont

4201
Brockmont



4204 Roma



528 Montclair DR NE

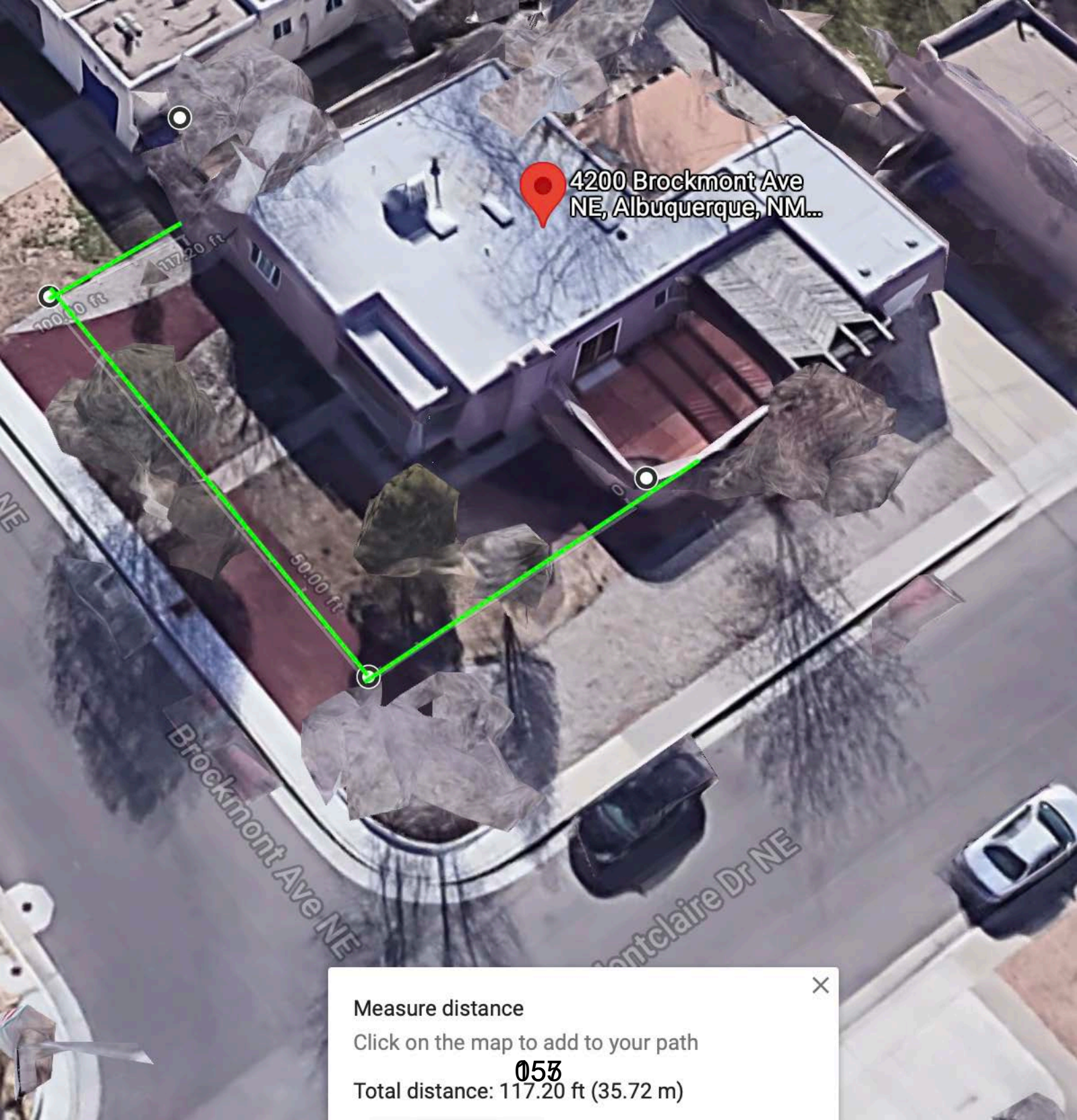


525 Montclair



522 Montclair





4200 Brockmont Ave
NE, Albuquerque, NM...

Measure distance

Click on the map to add to your path

053

Total distance: 117.20 ft (35.72 m)

4200 BrockMont
Albuquerque NM 87108



New Wall

Original Wall

New Wall

New Wall

Brockmont

Montclair

* Height of wall is 5'11" with (3) step up decorative accents in corners

058

**YOU MAY USE THE FORM BELOW TO ENSURE ALL ITEMS
ARE ADDRESSED**

PERMIT JUSTIFICATION LETTER – WALL OR FENCE

Zoning Hearing Examiner City of Albuquerque
600 2nd Street NW, 3rd Floor Albuquerque, NM 87102

RE: Request for Wall Permit of over 3'
at 4200 Brockmont Ave NE Albuquerque NM 87108 (address of the
subject property).

(a) The wall is proposed on a lot that meets any of the following criteria:

1. The lot is at least 1/2 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. (See figure below for an illustration of this measurement.)
 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. (See figure below for an illustration of this measurement.)
-

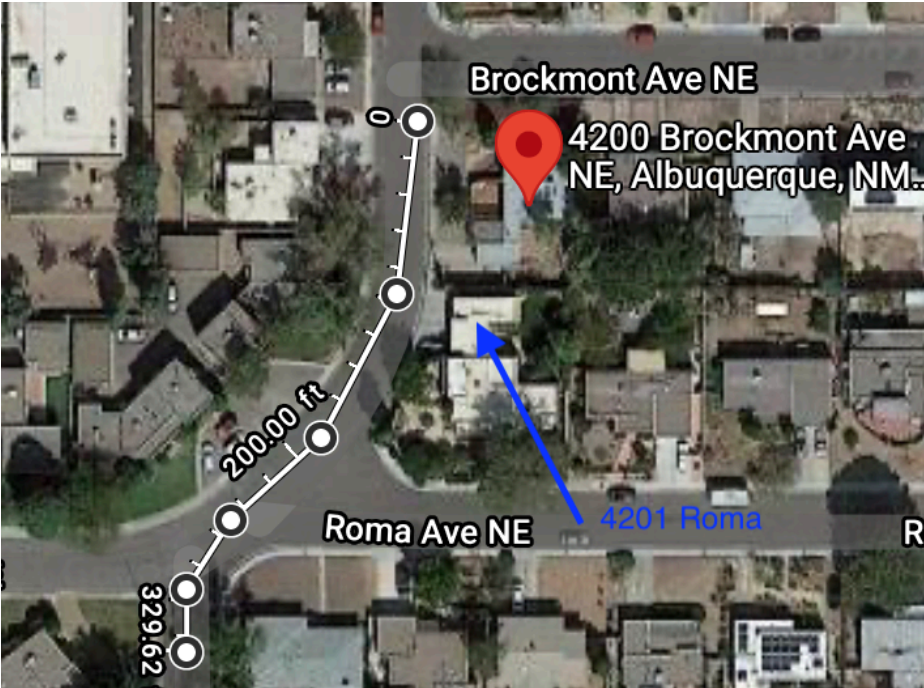


I MEET CRITERIA 2,3 and 4. IF 3 OR 4, YOU MUST INCLUDE PHOTOGRAPHS WITH

ADDRESSES AS PROOF THAT THE 20% REQUIREMENT IS MET.

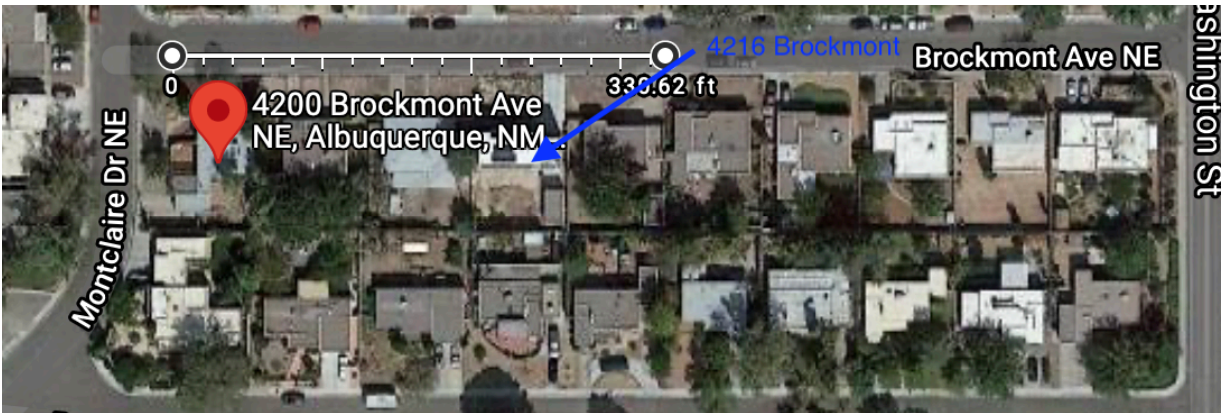
1. House directly next door who's wall is higher than 3': 4201 Roma ave NE Albuquerque NM 87108





2. 3 houses down: 4216 Brockmont Ave NE, Albuquerque NM 87108





(b) The proposed wall would strengthen or reinforce the architectural character of the surrounding area **BECAUSE**: The majority of the neighborhood has a southwestern style. Since the wall is new and remains the same style, it might encourage other neighbors to add something new and shows that the southwestern style is or can be a timeless enhancement, could and may eventually raise the value of the homes in the neighborhood. The location of the home and the proposed wall is somewhat of a first impression upon entering the neighborhood and coupled with the new landscaping would enhance the overall look of the area.

(c) The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the **BECAUSE**: The location of the wall still allows enough space for drivers on both Brockmont and Montclair to see and safely stop, proceed forward or turn in either direction. The wall doesn't prevent any walkways/paths and does not impose any other type of hazard directly or indirectly.

(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. **PLEASE EXPLAIN**: Because in the front yard, there is one window at the front porch and the front door. The proposed wall

includes a perforated gate directly in the centerline of the street in front of the house that would allow some privacy, but still gives visibility if it was needed for some reason.

2. The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area. **PLEASE EXPLAIN:** Yes. The wall was designed using the same style of stucco, shape of the top of the wall and a southwestern theme. The wall was designed to match the existing wall and to extend the existing wall which already matched the home and the style of the neighborhood.

Signature 

Date 11/08/2021

VARIANCE JUSTIFICATION LETTER GUIDELINES - GENERAL

Per Integrated Development Ordinance 16-14-6-4(E)(3): **The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence.**

Per Integrated Development Ordinance 14-16-6-4(E)(4) **The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary.**

Because the burden of evidence is borne by the applicant, you may choose to retain the services of a development professional that is knowledgeable in land use matters to guide your application and represent you at the public hearing.

To justify your request and aid our review, please provide a detailed response to items 1-5.

6-6(O) VARIANCE – ZHE

All applicable provisions of Section 14-16-6-4 (General Procedures) apply unless specifically modified by the provisions of this Subsection 14-16-6-6(O) or the DPM.

6-6(O)(3) Review and Decision Criteria

6-6(O)(3)(a) General

An application for a Variance – ZHE shall be approved if it meets all of the following criteria:

1. There are special circumstances applicable to a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical

difficulties result from strict compliance with the minimum standards.

2. The Variance will not be materially contrary to the public safety, health, or welfare. 3. The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.

4. The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district.

5. The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.

YOU MAY USE THE FORM BELOW TO ENSURE ALL ITEMS ARE ADDRESSED

VARIANCE JUSTIFICATION LETTER - GENERAL

Zoning Hearing Examiner City of Albuquerque

600 2nd Street NW, 3rd Floor Albuquerque, NM 87102

RE: Request for Variance of 4200 Brockmont Ave NE, Albuquerque NM 87108 (address of the subject property).

1) There are special circumstances applicable to a single lot that are not self-imposed and that do not apply generally to other property in the same zone district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic return on the property, or practical difficulties

result from strict compliance with the minimum standards. **PLEASE EXPLAIN:**

The front yard, located on a corner lot, has a significant amount of both vehicle traffic and foot traffic. More so than any of the nearby neighbors as it is exposed to both Brockmont and Montclair. This is fine, except for the below factors:

1. Frequent loitering/trespassing & transient activity

2. Limited privacy
3. Excess trash accumulation as a result of said loitering.

2) The Variance will not be materially contrary to the public safety, health, or welfare **BECAUSE**:

The proposed location of the wall still allows enough space for drivers on both Brockmont and Montclair to see and safely stop, proceed forward or turn in either direction. The wall doesn't prevent any walkways/paths and does not impose any other type of hazard directly or indirectly.

3) The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity **BECAUSE**:

The proposed wall not only matches the home, it also flows with the same look and feel for the entire neighborhood by way of the design, materials used and style.

4) The Variance will not materially undermine the intent and purpose of this IDO or the applicable zone district **BECAUSE**:

The proposed wall was not only designed to preserve enough space in front of it to include landscaping (xeriscaping) that is esthetically pleasing to the outside of the wall area, it was also designed so that it wouldn't protrude, to blend in, and with wooden window openings to allow people on the inside and the outside to still have some kind of minimal visibility through the wall.

5) The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties **BECAUSE**:

The alternative solution would be to place signs, put a dog on a leash outside, or to hire a security guard, all of which would impose some kind of nuisance more so than the proposed wall.

Signature_____

Date_____



CITY OF ALBUQUERQUE INVOICE

DAVE BENNETT

8100 WYOMING BLVD NE #M4

Reference NO: VA-2021-00449

Customer NO: CU-150008417

Date	Description	Amount
12/10/21	2% Technology Fee	\$4.20
12/10/21	Application Fee	\$100.00
12/10/21	Facilitated Meeting Fee	\$50.00
12/10/21	Posted Sign Fee	\$10.00
12/10/21	Published Notice Fee	\$50.00

Due Date: **12/10/21**

Total due for this invoice:

\$214.20

Options to pay your Invoice:

1. Online with a credit card: <http://posse.cabq.gov/posse/pub/lms/Default.aspx>
2. In person: Plaza Del Sol, 600 2nd St. NW, Albuquerque, NM 87102

PLEASE RETURN THE BOTTOM PORTION OF THIS INVOICE NOTICE WITH PAYMENT



City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

Date: 12/10/21
Amount Due: **\$214.20**
Reference NO: VA-2021-00449
Payment Code: 130
Customer NO: CU-150008417

DAVE BENNETT
8100 WYOMING BLVD NE #M4
ALBUQUERQUE, NM 87113



130 0000VA20210044900102566715000839400000000000002142CU150008417

SIGN POSTING AGREEMENT

REQUIREMENTS

POSTING SIGNS ANNOUNCING PUBLIC HEARINGS

All persons making application to the City under the requirements and procedures established by the Integrated Development Ordinance are responsible for the posting and maintaining of one or more signs on the property which is subject to the application, as shown in Table 6-1-1. Vacations of public rights-of-way (if the way has been in use) also require signs. Waterproof signs are provided at the time of application for a \$10 fee per sign. If the application is mailed, you must still stop at the Development Services Front Counter to pick up the sign(s).

The applicant is responsible for ensuring that the signs remain posted throughout the 15-day period prior to any public meeting or hearing. Failure to maintain the signs during this entire period may be cause for deferral or denial of the application. Replacement signs for those lost or damaged are available from the Development Services Front Counter.

1. LOCATION

- A. The sign shall be conspicuously located. It shall be located within twenty feet of the public sidewalk (or edge of public street). Staff may indicate a specific location.
- B. The face of the sign shall be parallel to the street, and the bottom of the sign shall be at least two feet from the ground.
- C. No barrier shall prevent a person from coming within five feet of the sign to read it.

2. NUMBER

- A. One sign shall be posted on each paved street frontage. Signs may be required on unpaved street frontages.
- B. If the land does not abut a public street, then, in addition to a sign placed on the property, a sign shall be placed on and at the edge of the public right-of-way of the nearest paved City street. Such a sign must direct readers toward the subject property by an arrow and an indication of distance.

3. PHYSICAL POSTING

- A. A heavy stake with two crossbars or a full plywood backing works best to keep the sign in place, especially during high winds.
- B. Large headed nails or staples are best for attaching signs to a post or backing; the sign tears out less easily.

4. TIME

Signs must be posted from Jan 31 To Mar 17

5. REMOVAL

- A. The sign is not to be removed before the initial hearing on the request.
- B. The sign should be removed within five (5) days after the initial hearing.

I have read this sheet and discussed it with the Development Services Front Counter Staff. I understand (A) my obligation to keep the sign(s) posted for (15) days and (B) where the sign(s) are to be located. I am being given a copy of this sheet.

[Signature]
(Applicant or Agent)

1-19-22
(Date)

I issued 2 signs for this application, 1/19/22 [Signature]
(Date) (Staff Member)

PROJECT NUMBER: VA-2021-00449

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT
INTER-OFFICE MEMORANDUM

January 7, 2022

To: Lorena Patten-Quintana, ZHE Planner

From: Matt Grush, P.E. Senior Engineer

Subject: COMMENTS FOR THE ZHE HEARING OF December 18, 2022

The Transportation Development Review Services Section has reviewed the zone hearing requests, and submits the attached comments.

VA-2021-00449

PR-2021-006330

Address: 4200 Brockmont Ave NE

Transportation Review: No objections

After review of the provided application, Transportation has no objection to the request for a permit for a TALLER COURT YARD WALL – MAJOR. The wall will not negatively affect the driveway or intersection sight distance.

City of Albuquerque ZHE – January 18, 2022

Agenda Item #8

VA-2021-00449

PR-2021-006330

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Ownership: **Owner:** REYNOLDS SAMUEL JACOB

Zone District/Purpose: R-1/The purpose of the R-1 zone district is to provide for neighborhoods of single-family homes on individual lots with a variety of lot sizes and dimensions. Primary land uses include single-family detached homes on individual lots, with limited civic and institutional uses to serve the surrounding residential area.

Allowable Use: n/a

Applicable Comp Plan Designation(s): Area of Consistency; Lomas MT

Applicable Overlay Zones: None listed

Applicable Use-Specific Standard(s): n/a

Applicable Dimensional/Development Standards:

5-7(D)(3)(g) For low-density residential development in or abutting a Residential zone district where wall height in any front or street side yard is restricted to 3 feet by Table 5-7-1, a request for a taller wall that meets the height and location standards in Table 5-7-2 shall require Permit – Wall or Fence – Major pursuant to Subsection 14-16-6-6(H), except where a taller wall is prohibited pursuant to Subsection (h) below.

Table 5-7-2: Options for a Taller Front or Side Yard Wall ⁽¹⁾		
Wall Type and Location	Maximum Wall Height	Illustration
View Fencing		
View fencing at most 50 percent opaque may be added above 3 ft. to increase the total height of the wall as follows:		
<10 ft. from lot line abutting the street	5 ft.	0
≥10 ft. from lot line abutting the street	6 ft.	0
Courtyard Walls		
≥10 ft. from lot line abutting the street or edge of the sidewalk closest to the primary building, whichever is more restrictive	6 ft.	5-7(D)(3)(g)2
Corner Lots		
On a corner lot where the rear yard abuts the front yard of a residentially zoned lot, a taller wall enclosing the rear yard may be approved as follows:		
<10 ft. from the lot line abutting the street	5 ft.	5-7(D)(2)
<small>[1] The maximum wall heights in this table require an approval pursuant to the standards in Subsections 14-16-5-7(D)(3)(g) and 14-16-6-6(H) (Permit – Wall or Fence – Major).</small>		

Traffic Recommendations: No objections

Planning Recommendation: This matter should proceed to a public hearing where the Zoning Hearing Examiner will hear additional evidence and make a written decision pursuant to applicable provisions of Section 14-16-6-4.



Sanchez, Suzanna A.

From: David Bennett <landconm@gmail.com>
Sent: Monday, January 10, 2022 1:22 PM
To: Sanchez, Suzanna A.
Subject: Fwd: USPS eReceipt

Hi Suzi,

The forwarded message is the receipt that I received for the postage.

Thank you,

Dave Bennett

Landco Landscape Development & Supply

5901 Carmel Ave NE

Albuquerque NM 87113

505-681-0191

<https://ddec1-0-en-ctp.trendmicro.com:443/wis/clicktime/v1/query?url=www.landconm.org&umid=4974ee96-96f6-4cbc-bdc1-f96dc167f0d3&auth=307405480ca3e49a8b1deb4e49ca5cd244e7e096-c25259e2814702e6d9acad996ef64ebb93fdf517>

Begin forwarded message:

From: DoNotReply@ereceipt.usps.gov
Date: January 10, 2022 at 1:16:45 PM MST
To: landconm@gmail.com
Subject: USPS eReceipt



LAS CRUCES
201 E LAS CRUCES AVE
LAS CRUCES, NM 88001-9998
(800)275-8777

01/10/2022

01:16 PM

Product	Qty	Unit Price	Price
\$1.16 Postage Stamp	15	\$1.16	\$17.40
Grand Total:			\$17.40
Debit Card Remitted			\$17.40
Card Name: VISA			

PIN: Not Required

to fulfill the service (service providers); to process servers; to domestic government agencies if needed as part of their duties; and to a foreign government agency for violations and alleged violations of law. For more information on our privacy policies visit www.usps.com/privacypolicy.

This is an automated email. Please do not reply to this message. This message is for the designated recipient only and may contain privileged, proprietary, or otherwise private information. If you have received it in error, please delete. Any other use of this email by you is prohibited.

Sanchez, Suzanna A.

From: Gary Eyster <meyster1@me.com>
Sent: Monday, January 10, 2022 11:35 AM
To: Sanchez, Suzanna A.
Cc: 'TheBoard NobHill-NM'; 'David Bennett'
Subject: 4200 Brockmont NE, Statement of Position, Nob Hill Neighborhood Association
Attachments: 4200 Brockmont NE Letter to ZHE Final.pdf; Inventory of Walls Within 330 ft. of 4200 Brockmont NE.xlsx

Good morning, Suzie.

Please enter this statement into the record for the subject request.

Kind regards, Gary Eyster

Nob Hill Neighborhood Association, Inc.

PO Box 4875, Albuquerque, NM 87196

TheBoard@NobHill-NM.com

10 January 2022

Robert Lucero, Esq, Zoning Hearing Examiner

By email to suzannasanchez@cabq.gov

Re: VA-2021-00449 Project# PR-2021- 006330 Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Dear Mr. Lucero,

Thank you for arranging a facilitated meeting on the request attended by Mr. Bennett, two Directors of the NHNA, and two members of the public on November 29th, 2021. Most of the discussion took place at the facilitated meeting. Mr. Bennett presented the request at the NHNA regular Board meeting on January 6th. Except for the facilitators, all the participants at the facilitated meeting attended the Board meeting. Both meetings were announced to the public on our NHNA email list and website.

The request is for a stuccoed CMU wall in the front and side yards of the subject. The wall has already been built, and is 6' high except at corners and decorative elements, where it is up to 8' high. The wall is approximately 16' from the sidewalk on Montclair NE (side yard) and 8' from the sidewalk on Brockmont NE (front yard, residence faces north). While under construction in the summer of 2021 we understand members of the public reported its construction to CABQ code compliance via 311. Apparently, the process for notification of non-compliance requires several months. During this time the wall was completed.

Two primary goals identified in our bylaws are to *uphold efficient and beneficial community planning* and to *preserve Nob Hill's historic character*. Because they negatively impact the streetscape and eyes-on-the-street our association has long discouraged fences or walls higher than 3 ft. in front and street side setbacks. The NHNA consistently hears from its residents that they highly value the pedestrian friendly quality of their neighborhood, and preserving the streetscape is the foundation of that quality. "Eyes on the street" refers to open front yards with clear visibility from windows to sidewalks and vehicles and vice versa. This concept is well-documented in the public safety literature as a deterrent to crime and high walls in front and street side yards remove this deterrent.

Notwithstanding that, it is our NHNA policy, adopted April 8, 2021, that we may support a request that meets the criteria IDO 6-6(H) (3) (a) 1, 2, 3, or 4. That is, the lot is at least ½ acre or the lot fronts a street designated as a collector or above or at least 20% of the properties within 330 ft. of the lot have a wall or fence over 3 ft. in the front yard for a front yard request or street side yard for a street side yard request.

Our Board considered the requests for front and street side yards separately. The lot is less than ½ acre and Brockmont and Montclair are not collectors, so the subject property fails the first two criteria. Our analysis (attached) indicates that the request for the front yard wall permit does not meet the 20% criterion. On the side yard, our analysis indicates the street side yard does meet that criterion, but some of the assumptions in the analysis were controversial. In particular, there is only one other lot with a street side yard facing Montclair within the specified distance; there are many other residential lots within the 330 foot distance, but their front yards face Montclair (and notably, with no walls over 3' high) , so these were not considered. Finally the other property with the street side yard does have a 6' high wall, but it borders a non-standard intersection which in the past (pre-IDO) zoning may have been used as the basis for a special exception.

At the January 6 meeting the Board voted 8-0 to **(1) oppose the request for Permit-Wall-Major for the front yard**, noting that the front yard includes portions of the wall that face Montclair and 4204 Brockmont but are in the front yard area defined by IDO 5-7(D)(2), Residential Corner; and **(2) not to oppose the request for the Permit-Wall-Major for the street side yard**.

We note that during the facilitated meeting there was a request for a variance. The current agenda makes no mention of a variance, only a permit. We argue against a variance as none of the five criteria in IDO 6-6(O)(3)(a) are met. In particular, a variance would undermine the intent and purpose of the IDO. A variance should not be available for any issue that the IDO clearly addresses, and the applicability of the Permit-Wall-Major and associated decision criteria for walls over 3' are clearly described in the IDO as we have cited above. Additionally, there is no basis for exceptionality of the subject property; it is a standard corner lot on a standard residential intersection that does not impose hardships different than others in Nob Hill.

Board members noted opposition from two community members at both meetings who expressed the notion that construction without a permit undermines the legitimacy of the zoning process and that the Planning Department should proactively publicize the IDO process and sections on walls to the landscaping and construction communities and the public.

Respectfully yours,
Gary Eyster, President
Nob Hill Neighborhood Association

**Inventory of Walls in Front Yards on Properties on Brockmont NE
Within 330 ft. of 4200 Brockmont NE**

East and West 330 ft. on the North side of Brockmont

	Count	Wall >3ft? 1 is yes
4201 Brockmont NE	1	1
4207 and 4209	1	
4215	1	
4219 and 4221	1	
4223 and 4225	1	
4227 and 4231	1	

East and West 330 ft. on the South side of Brockmont

4200 Brockmont NE (Applicant)			
4204	1		
4212	1		
4216	1	1	
4220	1		
4224	1		
4228	1		
	<hr/> 12	<hr/> 2	16.7%

**Inventory of Walls in Street Side Yards on Properties on Montclair NE
Within 330 ft. of 4200 Brockmont NE**

4201 Roma NE	1	1	
4201 Brockmont NE	1		
	<hr/> 2	<hr/> 1	50%

Sanchez, Suzanna A.

From: David Bennett <landconm@gmail.com>
Sent: Saturday, January 08, 2022 1:49 PM
To: Sanchez, Suzanna A.
Subject: Re: 4200 Brockmont
Attachments: image0.png; image1.png; ATT00001.txt

Good afternoon Suzi!

I hope your enjoying your weekend so far.

There is one house that I might have missed, it's a green wall at 4220 Brockmont (picture attached).

I will have those mailings done and ready on Monday.



Google



4219 Brockmont Ave NE

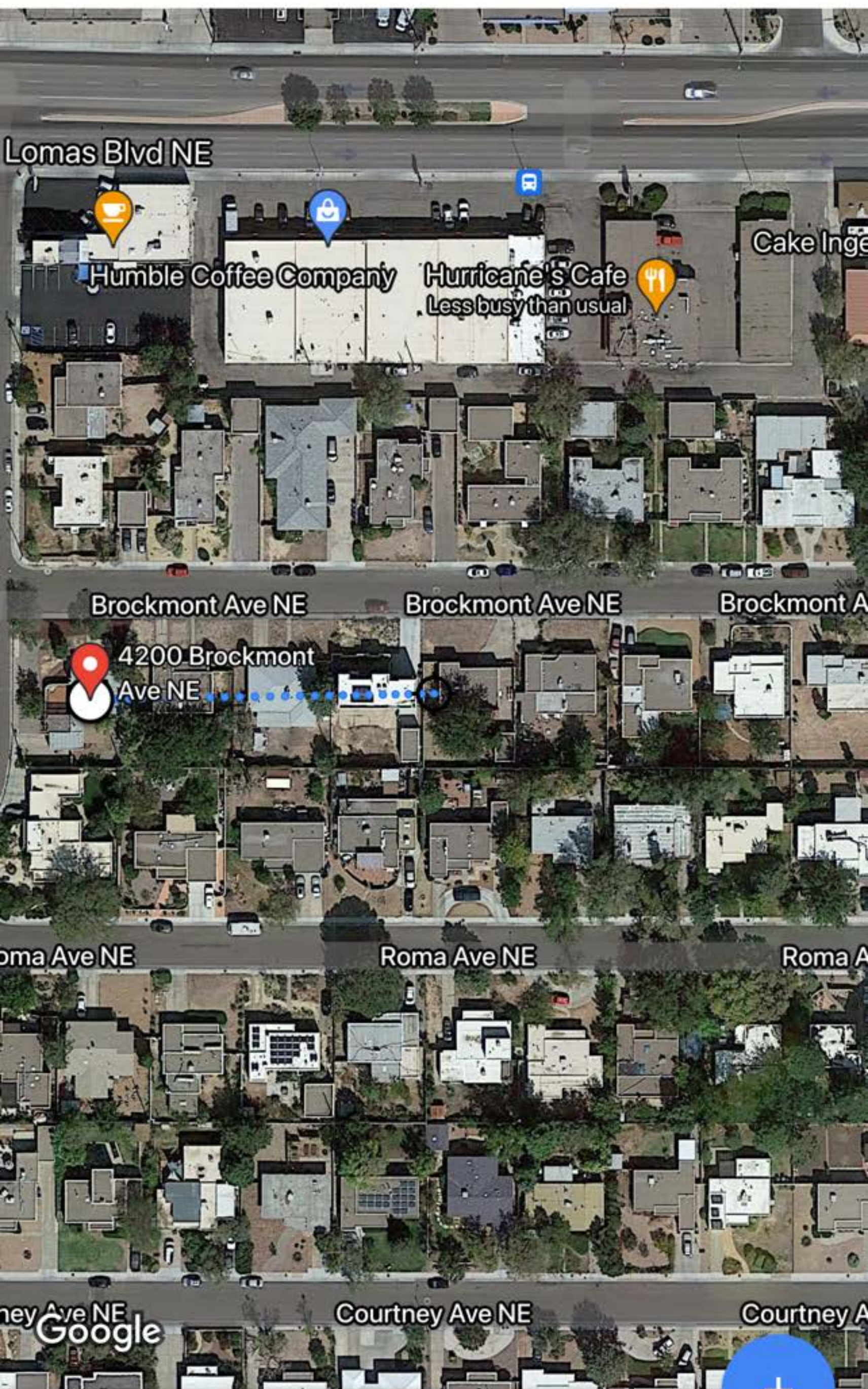




Measure distance



Drag the map and tap "Add point."



239.501 ft

Add point

Sanchez, Suzanna A.

From: Samuel Reynolds <samueljr1309@gmail.com>
Sent: Wednesday, February 16, 2022 1:55 PM
To: Sanchez, Suzanna A.
Cc: D
Subject: Additional information for Variance applications at 4200 Brockmont Ave NE

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.

Hi again Suzanna,

I just saw on the Zoning Hearing agenda that correspondence to Mr. Lucero should be addressed to you. Can you please ensure that Mr. Lucero receives the following note (as well as attached photograph)? Thanks so much! -Sam Reynolds



IMG_0455.HEIC

Dear Mr. Lucero,

I wanted to send you a note summarizing the case for my Variance at 4200 Brockmont, following the Hearing yesterday, as follows:

First and foremost let me quickly address the fact that we are applying for this Variance after the work has been mostly completed. Please be assured that this was simply an error on our part, based on a misinterpretation of the city codes (I believe Mr. Bennet thought that expanding a pre-existing wall, in combination with the fact that it would be set back from the street, did not require a Variance), and not in any way done with the intention of circumventing the lawful process for such work. Obviously my property is in a very visible location where the work was never going to escape notice, and I would not have knowingly invested so much time and money into this project if I thought that it was going to be wasted.

1) This is a corner lot in a heavily trafficked area. As I showed in my photographs yesterday, both street-facing sides of my property (which is only one short block off Lomas) are surrounded by multi-unit rental properties, and in immediate proximity (60 second walk) to Lomas shopping centers. Furthermore, the longest street-facing side of my property line is on Montclair, which is the main ingress/egress point from Lomas into this part of Nob Hill. My understanding was that this was a designated "collector" street, and though this was contradicted by Gary yesterday, I'm not sure why. It is a high-traffic tributary of Lomas with frequent speeding cars and no police traffic enforcement that I have ever witnessed in 8 years. I also showed yesterday the photograph of the permanent dumpster that is in the street immediately outside of my front door, which serves one of the multi-unit rental properties. I don't think that dumpsters are a common feature of the Nob Hill "streetscape", and as an aside, I strongly feel that if the city is going to allow a permanent dumpster on a residential street, they should also allow the surrounding houses to make reasonable accommodations to their yards to remove it from their sightlines. So to summarize, the combination of my proximity to Lomas and its commercial properties, the abundant surrounding multi-unit rentals, the fact that I am adjacent to this highly-trafficked tributary off Lomas, and the fact that I occupy the corner lot, all add up to my lot being subject to abundant car and pedestrian traffic (including people cutting across my property, littering, etc.), frequent transient individuals and panhandlers, frequent loud noises, and a general absence of privacy and tranquility for my home. These facts served as the motivation for this project.

2) My project has had overwhelmingly positive neighborhood support. Given how many compliments the work receives from passers-by on a daily basis, I was gratified but not surprised by how many residents showed up at the Variance hearing yesterday to voice their support for the project. I think it is very meaningful that folks would take time out of their days for this, to no benefit for themselves. This, in combination with the additional letters of neighborhood support that were submitted, and in addition to the fact that NO neighboring residents showed up at the meeting to oppose the project, clearly demonstrates how well-received this work has been in the neighborhood.

3) The Nob Hill Association objection to the front wall Variance seems based on two factors: 1) the "eyes on the street" concept, and 2) the "preservation of the Nob Hill streetscape" concept. First, I believe that this "eyes on the street" is clearly a theoretical, untestable concept. But even if we consider it legitimate, as I stated yesterday such a concept really only makes sense in single-family neighborhoods where you know your neighbors, and life follows predictable, known patterns. Due to the high-traffic and high density of multi-unit rental properties which surround my home, this concept simply does not apply - I am not going to notice anything out of the ordinary, because there is no "ordinary" here. Nevertheless, I have made multiple concessions to this objection, including installing a video doorbell which will keep a recording of all motion in the street outside my house, as well as retrofitting the North and East walls with multiple windows for additional sightlines, at significant cost to myself. Gary's assertion that these modifications do "nothing to ameliorate" their Eyes on the Street concern is frankly nonsensical. Secondly is the "Nob Hill streetscape" concept. This one makes a lot more sense to me, as there ARE areas of Nob Hill that have great aesthetic and historical appeal. However, 4200 Brockmont is NOT one of them. I have already referenced all of the multi-unit rental properties surrounding me, which are clearly not prioritizing aesthetics, as well as the permanent dumpster in the street. And as I showed in a Brockmont streetscape photograph yesterday (also included in the PP presentation that Mr. Bennett forwarded to your office), even most of the single-family homes on this segment of Brockmont are lacking in this historic appeal, with plain, unlandscaped dirt yards. This is probably part of the reason WHY my project has received such wide local support - because it has significantly improved the overall aesthetic of the area. So to summarize #3, I do not believe that either of the Nob Hill Association objections have any validity, and I think they simply have a blanket objection to ANY front wall, which they are inappropriately applying to my project. I will say that I had never heard of the "Nob Hill Association" prior to this process, and they have certainly never provided me with any services or benefits that I am aware of, so the idea that a tiny group of men with a lot of extra time on their hands can show up and oppose very reasonable modifications that I want to make to my own property is somewhat infuriating.

The subsequent points are ones that I did NOT make at the Hearing yesterday, as I was not comfortable presenting them in a public forum.

4) The past few years of the pandemic have been difficult for everyone, but I believe in particular for healthcare workers and first responders. I am a physician working at UNM Hospital and the pandemic has been an exhausting and frightening time for those in my line of work. What little time I have to myself has been compromised these last few years by the relative absence of peace and tranquility at my home (for the aforementioned reasons), which was the catalyst for this project. Since the work has been completed, I have felt happier at home, more well-rested, and more at peace. I do not want to lose this, and I feel that given my service to the community I am deserving of a home that feels like a true refuge from my work at the hospital.

5) I am also a veteran of the United States Marine Corps (photo of discharge certificate attached) and although I do not like to discuss it, I have some residual psychological trauma which has made the challenges of 4200 Brockmont's location harder than they might otherwise be. Loud noises from cars, unexpected activity, etc., can be challenging for me. When I saw this property 8 years ago and was also considering more remote properties, I was balancing these concerns against the desire to be within bicycle-commuting distance of work, and prioritized the latter. The work to my front yard has made a drastic improvement in facing the challenges of this particular location.

In summary, I hope that I have made the motivation for this project, and the reasons I think it is reasonable and justifiable, clear for your consideration. Because I am proud of my neighborhood despite its challenges, and because I respect my neighbors, while accomplishing my own goals I have also made every effort and spared no expense to concurrently improve the aesthetic of the neighborhood (firstly by constructing a visually appealing, southwestern-style wall with numerous decorative touches, and secondly by extensively landscaping the property on the wall's exterior with intricate stonework and numerous indigenous plants and trees). I think I have succeeded on both counts, I know that the project is widely supported by my neighbors, and I hope with all of my heart that the City will support me.

Thank you sincerely for your consideration and time.

Best,
Sam Reynolds
4200 Brockmont Ave

P.S. You should have received from Mr. Bennett the Power Point presentation that I showed at the Hearing yesterday, which contains the photos of the project as well as the photo of the Brockmont streetscape that you requested.

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES		THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.		ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID																																					
CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY																																									
1. NAME (Last, first, middle) REYNOLDS, Samuel Jacob		2. DEPARTMENT, COMPONENT AND BRANCH USMC-R1		3. SOCIAL SECURITY NO. 379 02 9998																																					
4.a. GRADE, RATE OR RANK PEC	4.b. PAY GRADE E-2	5. DATE OF BIRTH (YYMMDD) 720817		6. RESERVE OBLIG. TERM. DATE Year 00 Month 03 Day 05																																					
7.a. PLACE OF ENTRY INTO ACTIVE DUTY MEPS, DETROIT, MI 48084		7.b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) TRENTON, MI 48170																																							
8.a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND MCES, MCB, CAMLEJ, NC 28542-5040		8.b. STATION WHERE SEPARATED (RUC 31400) MCES, MCB, CAMLEJ, NC 28542-5040																																							
9. COMMAND TO WHICH TRANSFERRED HQSODN-47, DET-A, 4TH MAW, SELFRIDGE ANG, MT. CLEMENS, MI 48045		10. SGLI COVERAGE None <input type="checkbox"/> Amount: \$ 100,000																																							
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 1345 - ENGINEER EQUIPMENT OPERATOR 00 YRS 00 MOS		12. RECORD OF SERVICE <table border="1"> <thead> <tr> <th></th> <th>Year(s)</th> <th>Month(s)</th> <th>Day(s)</th> </tr> </thead> <tbody> <tr> <td>a. Date Entered AD This Period</td> <td>92</td> <td>03</td> <td>23</td> </tr> <tr> <td>b. Separation Date This Period</td> <td>92</td> <td>10</td> <td>28</td> </tr> <tr> <td>c. Net Active Service This Period</td> <td>00</td> <td>07</td> <td>06</td> </tr> <tr> <td>d. Total Prior Active Service</td> <td>00</td> <td>00</td> <td>00</td> </tr> <tr> <td>e. Total Prior Inactive Service</td> <td>00</td> <td>00</td> <td>17</td> </tr> <tr> <td>f. Foreign Service</td> <td>00</td> <td>00</td> <td>00</td> </tr> <tr> <td>g. Sea Service</td> <td>00</td> <td>00</td> <td>00</td> </tr> <tr> <td>h. Effective Date of Pay Grade</td> <td>92</td> <td>09</td> <td>01</td> </tr> </tbody> </table>					Year(s)	Month(s)	Day(s)	a. Date Entered AD This Period	92	03	23	b. Separation Date This Period	92	10	28	c. Net Active Service This Period	00	07	06	d. Total Prior Active Service	00	00	00	e. Total Prior Inactive Service	00	00	17	f. Foreign Service	00	00	00	g. Sea Service	00	00	00	h. Effective Date of Pay Grade	92	09	01
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13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) RIFLE EXPERT BADGE NATIONAL DEFENSE SERVICE MEDAL																																									
14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) BASIC ENGINEER EQUIPMENT OPERATOR																																									
15.a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERAN EDUCATIONAL ASSISTANCE PROGRAM		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	15.b. HIGH SCHOOL GRADUATE OR EQUIVALENT		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>																																				
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17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																																									
18. REMARKS NOT A FINAL DISCHARGE RESERVE SPECIAL ENLISTMENT																																									
19.a. MAILING ADDRESS AFTER SEPARATION (Include Zip Code) 11905 BECK RD PLYMOUTH, MI 48170		19.b. NEAREST RELATIVE (Name and address - include Zip Code) EDWARD REYNOLDS (FATHER) SAME AS BLOOD #19A																																							
20. MEMBER REQUESTS COPY 4 BE SENT TO <input type="checkbox"/> MT <input type="checkbox"/> DIR. OF VET AFFAIRS <input type="checkbox"/> Yes <input type="checkbox"/> No		22. OFFICIAL AUTHORITY SIGN (Typed name, grade, title and signature) G. T. WHITTEN, CWO2, USMC, PERSO																																							
21. SIGNATURE OF MEMBER BEING SEPARATED Samuel J. Reynolds																																									
SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)																																									
23. TYPE OF SEPARATION RELEASED FROM IADT		24. CHARACTER OF SERVICE (Include upgrades) HONORABLE																																							
25. SEPARATION AUTHORITY MARCORSEPMAN PAR 1005		26. SEPARATION CODE MBK1		27. REENTRY CODE N/A																																					
28. NARRATIVE REASON FOR SEPARATION COMPLETION OF REQUIRED ACTIVE SERVICE (USMCR) IADT																																									
29. DATES OF TIME LOST DURING THIS PERIOD NONE				30. MEMBER REQUESTS COPY 4 <input type="checkbox"/> (Initials)																																					

Sanchez, Suzanna A.

From: David Bennett <landconm@gmail.com>
Sent: Tuesday, February 15, 2022 10:21 AM
To: Sanchez, Suzanna A.
Subject: Fwd: The wall on Brockmont and Montclair

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.

Hi Suzanna!

Below is the letter from a neighbor in support of the wall at 4200 Brockmont ave.

Dave Bennett
Landco Landscape Development & Supply
5901 Carmel Ave NE
Albuquerque NM 87113
505-681-0191
www.landconm.org

Begin forwarded message:

From: DIANE AND CHARLES MCCASH <sewellpics@aol.com>
Date: February 14, 2022 at 2:19:02 PM MST
To: landconm@gmail.com
Subject: The wall on Brockmont and Montclair

To Whom it May Concern,

My husband and I have been following the progress of the project at Montclair and Brockmont. It is a wonderful project in its aesthetics and workmanship and we have enjoyed seeing it's progress. It was surprising to us that anyone in the neighborhood might object. First of all because it looks great and secondly because there are a number of properties within a block in two directions with walls of similar height. We hope that the variance that is necessary for this project is granted.

Thank you,
Diane and Charles McCash
505-269-4932
sewellpics@aol.com

Sent from my iPhone

Sanchez, Suzanna A.

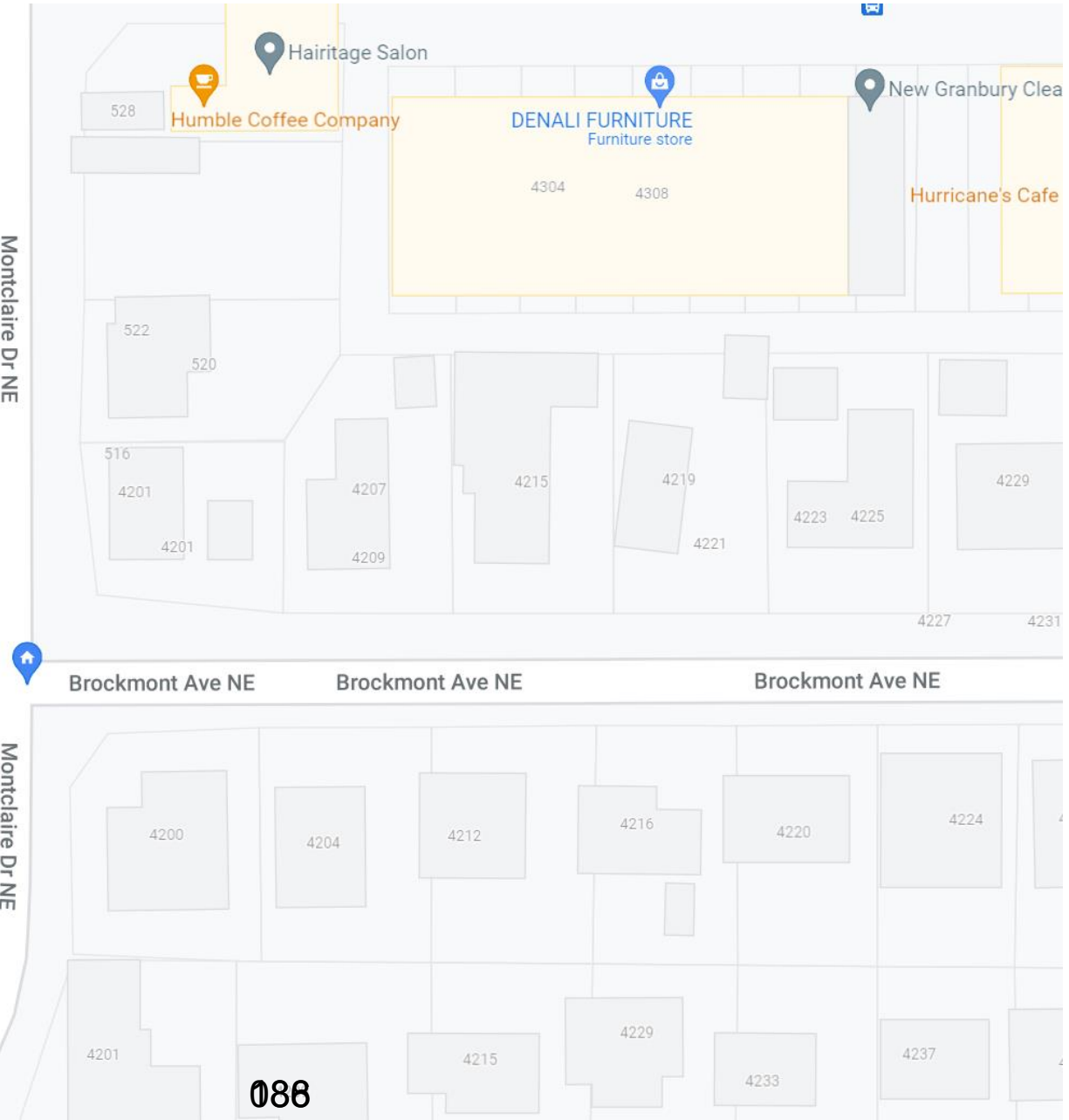
From: David Bennett <landconm@gmail.com>
Sent: Tuesday, February 15, 2022 1:33 PM
To: Sanchez, Suzanna A.
Subject: Images from homeowner presentation 4200 Brockmont
Attachments: IMG_7015.jpg; ATT00001.txt; IMG_7016.jpg; ATT00002.txt; IMG_7017.jpg; ATT00003.txt

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.

Hi Suzi,

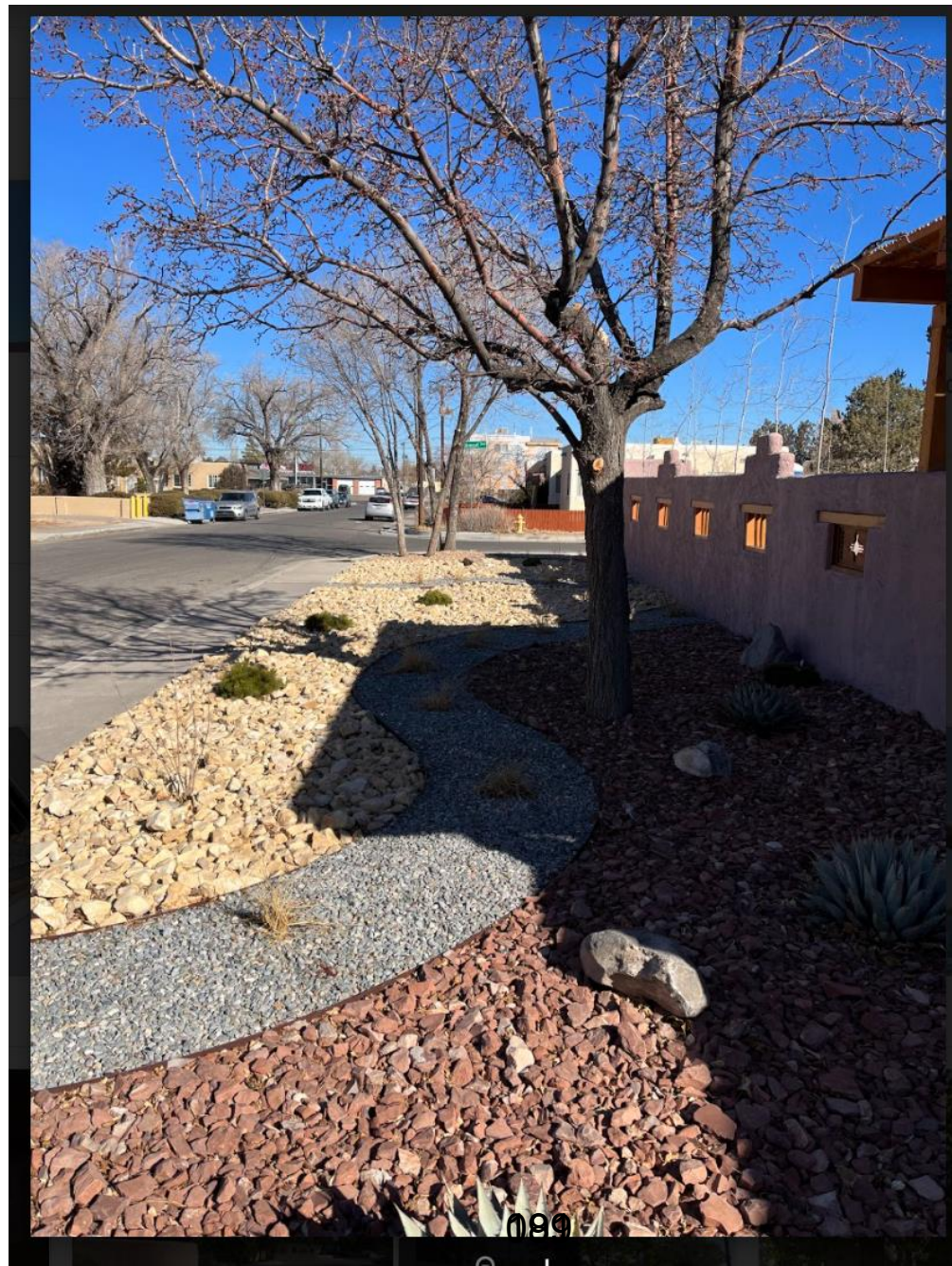
I tried sending the file as it was from Sam but it was too large and would bounce back so hopefully these images come through:







098









092



Sanchez, Suzanna A.

From: David Bennett <landconm@gmail.com>
Sent: Tuesday, January 18, 2022 10:57 AM
To: Sanchez, Suzanna A.
Subject: See through front gate 4200 Brockmont
Attachments: IMG_6500.jpg; ATT00001.txt; IMG_6502.jpg; ATT00002.txt

Follow Up Flag: Follow up
Flag Status: Completed

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.

Hi Suzie,

It occurred to me that I should send this to you as well. Im not sure if I ever sent you this side of the wall.







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

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Special Exception No:..... **VA-2021-00449**
Project No: **Project#2021-006330**
Hearing Date: 02-15-22
Closing of Public Record: 02-15-22
Date of Decision: 03-02-22

On the 15th day of February, 2022, Dave Bennett, agent for property owners Samuel Jacob Reynolds (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit for a taller court yard wall major (“Application”) upon the real property located at 4200 Brockmont Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a permit for a taller courtyard wall major.
2. This matter was continued from the ZHE’s January 18, 2022 hearing, because of evidence that the “Notice of Hearing” signage was not posted in accordance with IDO requirements.
3. Applicant testified at the February 15, 2022 ZHE hearing that the necessary signage was posted in accordance with IDO requirements. The ZHE finds that the proper “Notice of Hearing” signage was posted as required by Section 14-16-6-4(K)(3).
4. The ZHE finds that the Applicant has authority to pursue this Application.
5. 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.*
6. 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).
7. 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).
8. All property owners within 100 feet and affected neighborhood associations were notified of the application.
9. The subject property is currently zoned R-1B.
10. City Transportation issued a report stating that it does not object.
11. The Nob Hill Neighborhood Association submitted evidence and testimony in opposition to the Application.
12. Several neighbors in the vicinity of the Subject Property submitted evidence and testimony in favor of the application.
13. Regarding IDO Section 6-6(H)(3)(a), the Subject Property is not at least ½ acre, and the Subject Property does not front a street designated as a collector, arterial, or interstate highway.
14. Consequently, to be entitled to approval, the Application must satisfy the requirement that “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.”
15. Based on photographs, maps and oral evidence submitted, it does not appear that 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. There are 12 lots aside from the Subject Property along Brockmont, which the Subject Property fronts. Therefore, 3 of those 12 properties must have a front yard wall or fence over 3 feet to satisfy the 20 percent criteria. Applicant and opponents agree that 4201 Brockmont and 4216 Brockmont have a front yard wall or fence over 3 feet and are located within the pertinent area of review. However, while Applicant maintains that 4220 Brockmont has a front yard wall or fence over 3 feet, opponents argued that the wall at 4220 Brockmont is not located in the front yard area, as “front yard” is defined by Section 7-1 of the IDO (see diagram on page 592). Opponents appear to be correct, because the wall at 4220 Brockmont runs contiguous with the primary structure on that lot and parallel with the front yard lot line. 4220 Brockmont does not count toward the 20 percent requirement. Therefore, it appears that only two properties can be counted toward the 20 percent criteria, resulting in a percentage of only approximately 16.7 percent. The Application does not satisfy the criterion in IDO Section 6-6(H)(3)(a).

16. Because the criterion in IDO Section 6-6(H)(3)(a) is not satisfied as to the front yard wall and all criteria of IDO 6-6-(H)(3) must be satisfied, the Application must fail as to the front yard wall. For the sake of administrative and quasi-judicial economy, the ZHE will not examine the remainder of the criteria of IDO 6-6-(H)(3), because they are moot in light of the failure to satisfy IDO Section 6-6(H)(3)(a), which is dispositive of the Application.
17. As to the street side yard wall, the ZHE has granted approval of the companion application to the Application, which requested a variance for the street side yard wall. The ZHE therefore will not examine the IDO 6-6-(H)(3) criteria regarding the street side yard, because they, too, are moot.

DECISION:

DENIAL of a permit for a taller courtyard wall major.

APPEAL:

If you wish to appeal this decision, you must do so by March 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Dave Bennett, landconm@gmail.com
Samuel Jacob Reynolds, samueljr1309@gmail.com
Gary Eyster, meyster1@me.com
Diane and Charles McCash, sewellpics@aol.com
Erick Seelinger, 4201 Roma Ave NE, 87108
Carolyn Richter, 405 Montclair DR NE
Jennifer Prakash, 437 Montclair NE, 87108



**Hearing on Special Exceptions
to the Integrated Development Ordinance**

MINUTES

February 15, 2022

600 2nd St NW, Albuquerque, NM 87102

CITY STAFF PRESENT:

Robert Lucero – Zoning Hearing Examiner

Lorena Patten-Quintana – ZHE Planner, Planning Department

Suzie Sanchez – Hearing Monitor

VA-2021-00449
PR: 2021-006330
Applicant: S. Reynolds

ZHE: We'll go on to the next two agenda items and those are agenda items eight and nine that will be heard together. It's VA 2021-00449, project number, PR-2021-006630, also listed under VA-2022-00016. Samuel Jacob Reynolds through agent Dave Bennett request a permit for a taller courtyard wall major for Lot 20, Block 14, Broadmoor Addition located at 4200 Brockmont Avenue NE, which is zoned R-1B. And, the same applicant and agent requesting a variance of 2 feet, 9 inches to allow a courtyard wall in the side yard setback at the same property. Do we have Mr. Bennett or Mr. Reynolds?

D. BENNETT: Yes, this is Dave Bennett and I'm here and I believe Sam Reynolds is also here.

S. REYNOLDS: That's correct. Hello, Mr. Lucero.

ZHE: Thank you. Good morning, gentlemen. Would you both please raise your right hands and do you affirm under penalty of perjury that your testimony today will be true?

D. BENNETT: Yes.

S. REYNOLDS: Yes.

ZHE: Thank you. Okay, so we're here on deferral, last month the notice sign was apparently not properly placed. Has the, have the notice requirements been met for this hearing?

D. BENNETT: Yes.

ZHE: Thank you. Okay, very good. Well, Mr. Bennett would you like to briefly summarize the application?

D. BENNETT: Yes, so we are - - We actually have the two items here. The first one, we're trying to request a permit for a taller courtyard wall and this is gonna be for the, I don't know if they're separated for the front and the side total but pretty much what we're trying to do is, we extended a wall that goes from the side which is on Montclair and then it curves around to the front which is facing Brockmont. And, the so, the wall itself is - - Well, the original wall was almost 6 feet and we, we just continued the wall from that to go around to the front and so we, we're requesting a permit and variance for that.

ZHE: Okay and what is - - What are the - - I'm trying to find - - I think you submitted a site plan, is that right? I'm looking at the application here. I recall having seeing various pictures.

D. BENNETT: Yeah.

ZHE: Here we go.

S. REYNOLDS: Mr. Lucero, this is Sam Reynolds, I can also show photos.

ZHE: Oh, yeah, yeah. Why don't you do that so you can sort of talk us through what's there.

S. REYNOLDS: Sure, if you'll allow me to share my screen?

ZHE: Let's see. Suzie, would you mind authorizing him, please?

HEARING MONITOR: He should be good to go.

S. REYNOLDS: All right. Can you see?

ZHE: Yes, yes we see it.

S. REYNOLDS: All right. Yeah, so here's a map of my property here which, is on the corner of Montclair and Brockmont. Are you folks able to see my cursor?

ZHE: Yes.

S. REYNOLDS: So, here I am at 4200 Brockmont.

ZHE: Okay, and you know, given that the recording is audio only and not the video it would be helpful if you sort of talk through what you're doing as you do it, with the cursor.

S. REYNOLDS: Sure, so I'm - - The cursor is now over my lot here at 4200 Brockmont. Again, on the corner of Brockmont and Montclair facing north, not shown on this screen but within a stone's throw of my house is Lomas and then you can see these strip mall businesses located here along Lomas. So I - - So, this is a corner lot and it is on this collector street which is Montclair Drive. And I - -I'm sorry, I heard some noise, I'm not sure if somebody was asking something but, so, I'm sort of - - This is a, this is a Nob Hill location but it's a very unique location because my property, in addition to being on a corner lot on this collector street is right at sort of a juncture of the single-family home area and the rental property area. So, all of these, I'm moving my cursor along the west and north sides of the house. These are all multi-unit rental properties, triplexes, and quad-plexes and so forth. And then, sort of south of that is where the single-family home units start. So, in addition to being on this corner lot, there's, there's abundant traffic with all of these rental units in addition to the traffic coming in, it's both a major ingress and egress point from Lomas into this area of Nob Hill, along Montclair. So, I'm going to advance to the next slide which is going to start to show photographs. So, this is the view, northwest, out my front door facing these rental units. So this, this building here that I'm moving my cursor along is, I think it has 7 or 8 units in it and it has this permanent dumpster on the street which is, I don't think, very characteristic of the Nob Hill neighborhood and I think they're allowed to have this dumpster just because it's this collector street. This has been the view out my front door for the past 7 or 8 years. So, it's a pretty unique location for Nob Hill. There's a lot of foot traffic going up to Humble Coffee and the stores up here on these strip malls. Humble Coffee is starting to have, routinely throw these festivals, sort of like a street party, block party which is great, it's - - I love the community but it results in a lot of traffic, a lot of foot traffic, detritus deposited in my yard and so forth. Because of these private businesses, there's a lot of alleyways and so there's, there are number of transient individuals in this area so, there's a lot of

panhandling, a lot of sort of visits to this dumpster and just cars flying down Montclair, here. And so, for this reason, I have wanted to enclose my front yard for privacy and safety. I've had two sets of patio furniture taken off my front patio so, the front yard has been pretty unusable. So, that's what Mr. Bennett and I have done is, is enclose the front yard and we've done it in, in a way that's to the greatest extent possible really sparing no cost has, has - - We've done it with attempt to sort of increase the aesthetic appeal of the neighborhood to correspond to the southwestern aesthetic of the neighborhood. So, this is the view of my house and my neighbor's house. This is obviously the Sandia's in the background. This is looking sort of northeast. This lighter building is my neighbor's house and this is my building here so, we're looking off Roma and I think the, the two houses sort of perfectly complement each other. So, this is the west facing the Montclair wall project. You can see our sign posted here. Here is a closer view of the side yard on Montclair; you can see that we've put pretty extensive stonework. There's about 30 drought resistant plants here which are gonna go out to bloom here as soon as the weather gets warmer. We put windows in the wall here. Here is facing east along the front side of the wall, again continuing the stonework. We preserved all of the mature trees on the outside of the yard. We planted 21 new trees, both on the interior and exterior yard. We have windows facing the front for street visibility. Here's a view of the front. Here's Benny in the doorway, here. So, that's the front view with the windows so it all matches the aesthetic of the house and the neighborhood and stucco. Here's the side yard. So, we have Southwestern art on the walls the neighbors are going to get a new eight aspen tree grove on their side of the property here, neighbor's house not really showing. And then, finally we have a ring camera installed on the front door for eyes on the street and that's constantly recording. And so, so, yeah, you know, I love my house. I love my neighborhood but it has some significant challenges that are you unique to the location and so I wanted to, to make this front yard private and safe and more usable and in doing so, we made every effort to increase the aesthetic appeal of the neighborhood and done a lot of work to, to that end. So, that's sort of our story.

ZHE: Okay. Okay, thank you for that summary. I had some questions, I'm looking at a document that's in the submittal packet in the application that shows a sort of like a 3-D rendering kind of from an angle looking down at the corner of Brockmont and Montclair at the subject property and it has several measurements in various colors and I'm just not sure what, what applies where. Is, is it correct then, that the front, that the wall facing Brockmont is 11 feet back from the sidewalk? Is that right?

S. REYNOLDS: Yeah, that should be correct.

ZHE: Okay. And then, from Montclair, it looks like 18.5 feet from, from the sidewalk running along Montclair?

S. REYNOLDS: That should be correct. It, it might vary a little bit because some of those measurements were taken via satellite but it's about, about correct. Yeah.

ZHE: Certainly more than 10 feet though?

S. REYNOLDS: Correct, yes, absolutely.

ZHE: Okay. Okay, very good. All right, bear with me one second here. Now, I understand there was a facilitated meeting and then also we received some comments from the neighborhood association. Have you had a chance to review those? Would you like to address any, any comments that arose from the neighborhood association or the meeting, facilitated meeting?

D. BENNETT: I would. This is Dave Bennett by the way. You now, one of the things that you know, came through with the neighborhood association meeting was the first part, was about eyes on the street. And you know, on the sidewalk, they didn't oppose the sidewalk and I think mainly it was, it was because it has the windows which you know, the HOA, the neighbor association seems to be really keen on eyes on the street. And for that reason, that's why since, you know, in the last month we added the windows to the front wall which the neighborhood association, they didn't seem like they were as you know, they didn't, they didn't like the front wall because there wasn't that much visibility but to try to help with this, we added the front windows, I think a total of seven. And, initially we didn't do that, mainly just to you know, to increase privacy but after you know, hearing their perspective and you know, understanding what they were saying with eyes on the street. And, what's funny is that we actually had heard some other cases last month, since our original hearing was last month, we heard some cases where a neighbor was concerned that you know, a bad guy could be hiding around the corner and you know, so we thought that it would, it would help with that aspect of it. So, hopefully that will help and - - And there was another thing that I didn't want to address from their, from the neighborhood association's note which is - - Let me see if I can find it here. It's an inventory of other walls in the area. According to the neighborhood association - - According to them, we have, we can, we reach the 20% minimal criteria on the Montclair side but on the Brockmont side, according to their calculations we had 16.7%, somewhere around there which wasn't quite the 20% except that there was one house that wasn't accounted for. Let me see if I can just grab that address really quick here. That is... I apologize, just give me one minute here.

ZHE: No worries.

D. BENNETT: Thank you.

S. REYNOLDS: Mr. Lucero, this is Sam Reynolds, the property owner again. If I could - - While Dave's looking for that address, I also want to address this eyes on the street issue. So, this is that claim that supposedly if there's a wall in the front and eyes aren't on the street, that this increases crime or you know. First of all, that's really - - There's no scientific way to prove that. This is all sort of anecdotal evidence but even if you're going to allow for that sort of thing is, as Dave said, we retrofitted these windows in the front wall. And, in addition to that, a reasonable person would think, if that does, if that is going to decrease crime, that's going to be in a single-family neighborhood where you know your neighbors, there's not a lot of traffic, you know who is going to be, you know, who's supposed to be at each individual house because it's a single-family neighborhood. But again, I am surrounded on all my outward facing sides by multi-unit rental properties. People are constantly coming and going. Traffic all, all hours of the day and night. This is not the same type of situation like it is in the rest of Nob Hill.

ZHE: Thank you, Mr. Reynolds.

B. BENNETT: Okay, I think I found it, 4220 Brockmont. It's got a wall, I believe it's at least 6 feet tall which that one in itself I believe would put us at least at the 20% mark. And then, there's another I was - - I wanted to make sure that we were on the same page as far as the neighbors association's inventory and it shows you know, some of them have walls and they marked them as under 3 feet high and you know, I feel like if we're going off of that criteria, that it would only be fair that you know, we, we measure those walls as well to make sure that you know, that it's accurate. Some of them, they have, I measured the only walls that were on the property and almost all of them were over 3 feet. Some were 4 foot 3, some were 6-foot 7, some were, you know, like a little in between 5, 5 and 1/2 feet, something like that. So, you know, technically speaking, that would, that would push us over. The only reason why I'm, I'm not making it a huge deal is because I feel like even just the 4220 Brockmont would give us that 20% which is really the minimal but you know, the 4220 has a similar wall as, as what's at Sam's house. But, if it, if that was, if that was the hinge, then if need be, I can get more information on those. But, I did also want to mention that we've had a lot of the neighbors that walk their dogs and walk by and you know, they told us that they don't just like the way it looks but they also like that it's - - Well mostly it's about the looks. But, you know, they're happy with it. They're happy that it's enhancing the look of the neighborhood as well as Sam said earlier. And, yesterday I got an email from a couple that lives in the neighborhood, they're an elderly couple and really nice people and you know, they asked about the sign and they said, "Hey, so what's going on? Is someone opposing it because we absolutely love it?" And, they were really nice and they wrote us an email letter of support and I know that usually those things need to be submitted at least, I think it said 6 days in advance. So, we didn't have time to submit that within that timeframe but we do have that available as well as another woman who lives on Brockmont. I told her what's at stake here and what we're trying to make sure that we can keep the wall and she was like, my gosh, I hope so because it's really making this neighborhood look a lot better. Not that the neighborhood looks bad or anything but it does help and you know, again as Sam said earlier, with the - - He wanted to make sure that we dressed up the front landscaping wise as much as possible to make everything as nice as possible.

S. REYNOLDS: The bottom line, Mr. Lucero, it meets the variance requirements. It looks great. We have special circumstances that make it a reasonable decision to want it.

ZHE: Would - - Do you have those support letters? I know that they may not have made the deadline for written submittals but if you would like to read them into the record or show them on the screen, that would get them into the record.

D. BENNETT: That'd be wonderful. Sam, do you have that email? I thought I sent it to you but if you'd like, I can just read it.

S. REYNOLDS: Yeah, I have it. I can, I believe I can show it if you just give me one moment. Okay, I can share my screen again? So, this is the email that Dave forwarded to me from Diana and Charles McCash on February 14th. I will just read it, it's short. To whom it may concern, my husband and I have been following the progress at Montclair and Brockmont. It's a wonderful

project in aesthetics and workmanship and we have enjoyed seeing its progress. It was surprising to us that anyone in the neighborhood might object first of all because it looks great and secondly there a number of properties within a block in two directions with walls of similar heights. We hope that the variance that is necessary for this project is granted. Thank you, Diana and Charles McCash.

ZHE: Thank you, Mr. Reynolds. Would you mind emailing that to Suzie by this Friday and we'll include it in the record?

S. REYNOLDS: Certainly.

ZHE: Anything further gentlemen before we call for a public comment?

S. REYNOLDS: No. Thank you.

S. BENNETT: No, I don't think so. I don't.

ZHE: Okay, and then you'll get the chance to respond to any public comment. So, again these are agenda items 8 and 9. It's Samuel Jacob Reynolds, through agent Dave Bennett requesting a taller wall at 4200 Brockmont Avenue. Please raise your hand if you'd like to speak on that matter. I see Gary Eyster, are you there sir?

G. EYSTER: I am.

ZHE: Good morning.

G. EYSTER: Good morning, Mr. Examiner.

ZHE: Would you please state your full name and mailing address for the record?

G. EYSTER: I'm Gary Eyster, President of Nob Hill Neighborhood Association. I'm at 316 Amherst Northeast, 87106.

ZHE: Thank you, sir. And, please raise your right hand and do you affirm under penalty of perjury that your testimony today will be true?

G. EYSTER: Absolutely.

ZHE: Thank you, sir and since you're representing a neighborhood association, you have five minutes. Thank you, sir. Go ahead.

G. EYSTER: Thank you, Mr. Examiner. After construction of the wall started several months ago, two neighbors called our association and said they had reported it to 311 and the process for code compliance drags a great deal and in the interim period, the construction was completed. The stuccoed wall is 6 feet high except at corners in decorative elements were it approaches

seven or perhaps 8 feet in height. We appreciate you arranging the facilitated meeting where we had a good dialogue with Mr. Bennet appreciate meeting him. Samuel, I'm pleased to meet you today. Examiner, our association's not against all walls. To begin with, we have no objection to wall permit minor in front and street side yards. They do not disrupt eyes on the street. They are consistent with 3-foot walls built in the area during this period of development. Applicants talked about the uncertainty of the eyes on the street principal or bad guys could be hiding behind the corner. The fact is that eyes on the street is one of the five principles of crime prevention through environmental design, it's very well established. It allows people in the house to see what's going on with, out in front at their neighbors and it allows the other neighbors to see what's going on at the subject house in terms of crime. So, we consider requests for front and street side yard walls separately. I think Mr. Bennett talked about that in our letter and eyes on the street streetscape aside, we are apply simply the rules of IDO 6-6-h-3-a when we develop positions on walls. As Mr. Bennett said... Excuse me, I think I'm gonna go back, I think Mr. Reynolds said that Montclair is a collector, that is not true. I don't mean to say that he said something that, that he lied or something, it's just that I've looked at the long-range planning documents for Middle Rio Grande Council of Government. Montclair nor Brockmont is a collector street. So, 6-6-h-3-a has three criteria, you meet any one of those, you can qualify for the wall permit major. The first one is a lot of a half-acre, that does not apply. The second one, a collector street, that does not apply on either the front or the sidewall. The third and final remaining option is the 20% test. We did an exhaustive survey on the ground. On Google, we measured 330 feet up and down Montclair we counted, we countered only two properties and one of them has a wall over 6 feet so, so we're not objecting to the permit request for the side yard but on the front yard, I would take strong issue with Mr. Bennett's statement that the 4220 has a wall over 6 feet in the front yard. That, that's categorically untrue, I have it on my screen now. I'm not in a position to share it with you, I don't think because it's on another computer but it has a 6 foot wall in side yard. The front yard area, as you know Examiner and, and I'm not sure if the applicant's know but, the front yard is everything forward of the house. And, at 4220 there is a 6-foot wall and it is even with the front corner of the house and it goes directly to the side property line and I, I can see it with my own two eyes right now on the screen and it's not in the front yard. So, we stand behind our inventory on Brockmont where there are 12 properties within 330 feet of the subject and two of them have the walls over 3 feet. On the basis of this, our Board voted 8 to 0 not to oppose the side yard wall on Montpelier, on Montclair but 2 oppose the front yard wall on Brockmont. We would note to the applicant and to the Examiner, that the front yard is the entire area forward to the house so in this case the front yard begins at all, all points that are forward of the house on Brockmont. And so, Examiner...

HEARING MONITOR: Excuse me, Robert. The time limit is up.

ZHE: Mr. Eyster, go ahead and given that there are two applications we'll allow additional time. Go ahead, sir.

G. EYSTER: Oh, thank you, Examiner. I appreciate that. Thank you, Suzie I understand. So, Examiner, we hope that you will not issue the permit for the front yard wall and we note that, that includes areas on the side yard both on Montclair and over next to the next-door neighbor that those should be 3 feet maximum height. And so, our sympathy with Mr. Bennet, Mr.

Reynolds is outweighed by the widely held concern of our community to protect our street, our street scape, our eyes on the street we do support to the IDO in the way that it evaluates wall permits major. Now you've - - Thanks for reminding me, there's also a request for a variance of 2 feet 9, for the location of the wall in the side yard. We do not oppose that variance request on the location of the side yard wall because the side yard wall already existed in part of the side yard. One last thing, at our facilitated meeting and at our board meeting, these community property people who had called it in and told us about it, they expressed a notion that construction without a permit undermines legitimacy of our zoning process. This type of situation could be alleviated if the Planning Department would actively publicize the IDO requirements to the landscaping construction community and to the public. Thank you, Examiner.

ZHE: Thank you, Mr. Eyster. I think that's a good suggestion regarding the public, publicity rather of the requirements. I did have a question on the - - The applicant had apparently, has altered the construction of the front yard to provide for windows. Has the neighborhood association had an opportunity to view that? Does that make a difference?

G. Eyster: Thank you, Examiner for bringing that up because I think Mr. Bennett mis-characterized our assessment on the side yard and the, the windows. No, the windows do not ameliorate eyes on the street. They do not ameliorate the impact on our streetscape. So, no, it's not about the windows. Dave put those words in our mouth, I guess but we never said that.

ZHE: Okay. Thank you, Mr. Eyster.

G. EYSTER: Thank you, Examiner.

ZHE: I see Eric Seelinger. Are you there?

E. SEELINGER: Yes, I'm here. Thank you.

ZHE: Very good. Would you please state your full name and mailing address for the record?

E. SEELINGER: My name is Eric Seelinger, I live at 4201 Roma Avenue NE.

ZHE: Thank you, sir. Please raise your right hand, do you affirm under penalty of perjury that your testimony today will be true?

E. SEELINGER: Yes.

ZHE: Thank you, sir. Sorry for the mis-pronouncing, mis-pronunciation of your name.

E. SEELINGER: That's okay.

ZHE: Go ahead, sir. Two minutes, please.

E. SEELINGER: Yes, I'd like to say that I do not oppose the wall. I can attest to the amount of traffic that is on Montclair. I'm in the property just to the south of Mr. Reynolds and there is significant amount of traffic. There are, I know at night, you know, anybody coming around a corner, those headlights are right in in your windows and he is on a corner lot. And, the aesthetics of that property have been greatly improved. I've never really heard of the eyes on the street but, or thought that that was a major concern. I think it does add privacy to your own property. I think that 3 feet is really too small. I mean, is that eyes on the curb or eyes on the street? If there's a car outside your house, there's definitely, probably some middle ground that could be agreed-upon but it is a small house. I am in favor of anything that keeps an owner occupant in a house instead of moving out to the suburbs. What happens to a lot of these houses around here is, somebody will buy them and they'll turn them into a rental and you get like 3 different, you know, 4 or 5 kids in there that go to UNM and it turns into a party house. So, the gentrification of this part of the neighborhood I think it's very important to keep people here and I think the wall looks great. I do not think that it is overly imposing in the front and basically, I think the, that covers my comments basically. I do not oppose and I'm directly next-door.

ZHE: Thank you, Mr. Seelinger. I see Caroline with the hand raised.

C. RICHTER: Yes, hi. Can you hear me?

ZHE: Yes, yes. Please state your full name and mailing address for the record.

C. RICHTER: My name is Caroline Richter and I live at 405 Montclair Northeast.

ZHE: Thank you. Please raise your right hand and do you affirm under penalty of perjury that your testimony today will be true?

C. RICHTER: I do.

ZHE: Thank you, go ahead. Two minutes, please.

C. RICHTER: Okay, I'm calling in support of the wall permit variance under this item. The presentation very clearly expressed the reason as to why a wall surrounding the property including on the front is warranted there. I agree with other comments that say that there is significant traffic at that location especially due to the coffee shop on the corner and if I lived at that corner, I would certainly want more privacy. I really appreciate the level of effort that's been put into the project. It's one of the best looking walls in the neighborhood and I admire it on a daily basis, if not more frequently, every time I pass by. I've also discussed that with neighbors. I appreciate the owners have put in extra effort to design the wall not just to be practical for their needs but also to have character that fits in with the historical value. And, it's visually appealing. It's not just a big block wall. They've put significant effort into really well executed landscaping as well to maintain visual appeal. So, I don't think it detracts at all in fact, I think it adds to the visual appeal of the neighborhood. I also understand the Nob Hill Neighborhood Association to have a strong stance on the eyes on the street concept but this doesn't necessarily reflect the values of all residents in the neighborhood and as a neighborhood resident, I don't agree with the

strong stance. And, regardless I do think that the property owners have put in significant effort to address the concern. The windows and see through gate do sacrifice some of their privacy to allow sight on the street and they also have that Ring doorbell which, I think goes above and beyond addressing that concern. So again, I do live down the street. I walk and drive past this house on a daily basis and I very much appreciate the work that they put into it and support the variance request.

ZHE: Thank you Ms. Richter. All right. Again, these are agenda items 8 and 9. I see Jen Prakash. Are you there?

J. PRAKASH: Yes, I'm here.

ZHE: Thank you. Would you please state your full name and mailing address for the record?

J. PRAKASH: Sure, it's Jennifer Prakash, I'm at 437 Montclair Drive NE.

ZHE: Thank you. Please raise your right hand and do you affirm under penalty of perjury that your testimony today will be true?

J. PRAKASH: Yeah.

ZHE: Thank you. Sorry for mis-pronouncing your name Ms. Prakash. Would you please go ahead and submit your comments, two minutes please.

J. PRAKASH: Sure, I just wanted to echo mostly what Caroline was talking about as well. I live on the corner of Montclair and Roma and we can see this wall from our house and we think it's really beautiful and we are in support of allowing him to keep the wall as is. Thank you.

ZHE: Thank you, Ms. Prakash. Okay, again agenda items 8 and 9. Please raise your hand if you'd like to address agenda items 8 or 9. I'm scrolling through the participant list and I don't see anyone with the hand raised. Again, agenda items 8 or 9. It's a taller wall request for 4200 Brockmont. Please raise your hand if you'd like to speak on that matter. Last call for agenda items 8 and 9.

S. REYNOLDS: Mr. Lucero, I'd like to...

D. BENNETT: This is Dave Bennett.

ZHE: All right.

D. BENNETT: I'm sorry.

ZHE: It doesn't appear that there's any public comment so, Mr. Reynolds, Mr. Bennet would you like to respond to the public comment?

S. REYNOLDS: I would like to respond.

ZHE: Go ahead, sir.

S. REYNOLDS: May I share my screen again?

ZHE: Yes, we can authorize that.

S. REYNOLDS: Okay, so first of all, I'd just like to thank the people that spoke in support of our project. It's been a really nice surprising part of this process, is to meet a lot of my neighbors as they stop by to talk about the project. So, it's been great and I really appreciate folks who are in support of it which in my anecdotal experience, it's basically everyone I've talked to. So, I would just like to say that we dispute the HOA's position on our variance criteria of the 20% of walls in the neighborhood and secondly I think it's a bit strange that they say that our windows and see through door do not ameliorate the eyes on the street principal. I can't understand why that would not ameliorate that. I've already spoken to why the eyes on the street principle is much less applicable to our property. And, finally this is the current streetscape that they say they're trying to protect. So, my house and I'm moving the cursor around, my corner house down here, this is prior to the project starting. So, this is the current streetscape that they are trying to protect. So again, my project has drastically increased the aesthetic value of this street and that's all I have to say.

ZHE: Mr. Reynolds, is that what - - Well, a couple of things, would you please save that, take a screenshot and email it in so we can include it in the record?

S. REYNOLDS: Sure.

ZHE: And then secondly, it looks like there's a wall sort of at the property that's furthest to the left of the Google Street view that you're showing is that 4220 Brockmont?

S. REYNOLDS: I may have to get back to you on that.

ZHE: Okay. All right anything, anything further Mr. Reynolds or Mr. Bennett?

D. BENNETT: Yeah, this is Dave Bennett. You know, I just - - I did want to, you know, mention to Gary you know, I apologize I didn't mean to put words in your, in your mouth and that wasn't my intention as far as the window go but what I was trying to say was that, you know, the windows really is for the eyes on the street and I feel like it's really important that it's considered that Sam was, you know, proactive in pushing to have the windows in the front as a measure of good faith to make everybody else feel better. It wasn't necessarily something that he did just because he thought it would look great. It was more trying to accommodate the eyes on the street, so he put a decent deal of time and money and effort into that. So, I didn't mean to make it seem like that so, I just wanted to put that out there.

G. EYSTER: Yeah.

ZHE: Okay. Thank you. Mr. Eyster, would you be able to address in about 30 seconds?

G. EYSTER: Absolutely, Examiner, thank you. I appreciate what Dave said there and no harm done. I would like for your staff or Mr. Reynolds to put up the plan view of 4220 on Brockmont. It's very clearly, that this green wall that was shown a minute ago, this is in the side yard.

ZHE: Okay.

G. EYSTER: It's a completely different matter. Thanks, Mr. Examiner.

ZHE: Thank you, sir. Mr. Reynolds Mr. Bennett would you like to address that comment before we close the record?

D. BENNETT: This is Dave Bennett again. I think the walls in the front yard, as far as I understood it, is, is there a wall at all, parallel to the street? And, from what I can see on those requirements, it seems that it - - It seems like it's a pretty ambiguous definition. It's not so much you know, it doesn't say that it has to be the exact same orientation. I feel like 4220 would be the most similar because it is in the front and it does run parallel to Brockmont and that's the reason why I felt like it should be included mostly because the verbiage of that doesn't disclude it. It doesn't say that it can't be but anyways that's just, that's all I have to say about that.

ZHE: Thank you.

S. REYNOLDS: Maybe the 20% is debatable, whether or not we're there. I think just a general - - I think the HOA opposition to this project is disappointing. I think it's pretty rigid and myopic and doesn't take into account the special circumstances at this property and the effort that we put into improving the area while correspondingly achieving my goals for the property.

ZHE: Well, Mr. Reynolds, Mr. Bennet thank you for your presentation and thank you to all of the neighborhood association and public members who commented you've definitely giving me a lot to consider. I appreciate the civic dialogue. These are important cases because they have to do with the enforcement of the IDO, the implementation of the Comp Plan and you've given me a lot to consider. I'm gonna do my best to weigh it all and I will take everything under consideration. Mr. Reynolds, please email the items that we requested at this hearing to Suzie by Friday, if you'd like them included in the record. I will close these matters now and issue the written decision in 15 days. Thank you, everybody.

D. BENNETT: Thank you.

S. REYNOLDS: Thank you.



**Hearing on Special Exceptions
to the Integrated Development Ordinance**

MINUTES

January 18, 2022

600 2nd St NW, Albuquerque, NM 87102

CITY STAFF PRESENT:

Robert Lucero – Zoning Hearing Examiner

Lorena Patten-Quintana – ZHE Planner, Planning Department

Suzie Sanchez – Hearing Monitor

VA-2021-00449

PR-2021-006330

Applicant: S. Reynolds

ZHE: Next is agenda item 31. That's VA-2021-00449, project number, PR-2021-006330 Samuel Jacob Reynolds through agent, Dave Bennett request a permit for a taller courtyard wall major for Lot 20, Block 4, I'm sorry, Lot 20, Block 14, Broadmoor Addition, located at 4200 Brockmont Avenue NE, zoned R- 1B. I see a Mr. Reynolds.

S. REYNOLDS: Yes, hello.

ZHE: Hello sir. Would you please state your full name and mailing address for the record?

S. REYNOLDS: Yes, my name is Samuel Reynolds and my mailing address is 4200 Brockmont Avenue Northeast, Albuquerque 87108.

ZHE: Thank you, sir. And, please raise your right hand and do you affirm under penalty of perjury that your testimony today will be true?

S. REYNOLDS: I do.

ZHE: Thank you and then is your agent going to be appearing?

S. REYNOLDS: Yes, he's here.

ZHE: Okay, are you there, Mr. Bennett?

D. BENNETT: Hi, yes I'm here. I apologize, I'm here through dial in so I had to unmute. So, I'm here.

ZHE: Thank you, sir. Would you please state your full name and mailing address for the record?

D. BENNETT: Yes, my name is Dave Bennett, my mailing address is 8100 Wyoming Blvd. NE., Albuquerque, NM 87113, Suite M-4.

ZHE: Thank you, sir. Please raise your right hand and do you affirm under penalty of perjury that your testimony today will be true?

D. BENNETT: Yes.

ZHE: Thank you, sir. All right, so let me just say as a preliminary note that we received some correspondence about the yellow notice sign not having been posted in accordance with the sign agreement. Is that is that right? Do we have a notice issue because if so we can we can, you know, we'll need to defer or continue the case. What's the status of the sign?

D. BENNETT: So, I apologize about that and I think we may have had some kind of miscommunication but I received instructions to send out letters to a certain number of, of individuals in the neighborhood which I did and submitted the proof of that to Suzie but I - - For some reason, it, it seemed like the part that requires a sign was missing from that information and it's probably something that I over looked. So, if that's gonna cause an issue, I apologize but I,

Applicant: S. Reynolds

you know, if we need to defer it, that's fine but I mean, I'd love to move forward obviously but if it needs to be deferred... We can, we can do that.

ZHE: Yeah. Yeah, I think it's, you know, it is a, it's a big deal you know, notice is a jurisdictional defect it, it just subjects you to appeal, an easy appeal, you know, if there wasn't any notice that's, that's a defect and so, we do have to have proper notice. You know, that being said, if you'd like to present what you can of the case and the only thing that worries me there is that people may not have the benefit of having heard it. So, I'm inclined to just defer it or continue the matter, allow you to post the signs in a timely manner. You can confer with Lorena, the ZHE Staff Planner, as to what the requirements are and, and then we can hear it at the next meeting.

D. BENNETT: Sure. Yeah, yeah, I think that'd be great.

ZHE: Okay.

D. BENNETT: That'll be fine.

ZHE: And then, the next meeting is, is February 15th. We always have them on the third Tuesday of every month so, it'd be Tuesday, February 15 beginning at 9 AM.

D. BENNETT: Okay.

ZHE: So, we'll go ahead and defer until that time.

D. BENNETT: Okay.

ZHE: And, if you could just please submit photos, you know, evidence that the sign was properly posted and then that'll take care of that concern.

D. BENNETT: Yep, absolutely.

ZHE: Okay, very good. Well I'm - - I think we'll go ahead and close the record. I don't want to entertain any evidence just because without proper notice what, you know, there could be folks who otherwise want to hear what's being said now so we won't get into the merits. We'll just go ahead and defer it. Thank you very much everyone.

D. BENNETT: Sure. Thank you very much, as well.

ZHE: Sure thing. So, that's concludes agenda item 31.

Planning Department
Alan Varela, Interim, Planning Director
Development Review Division
600 2nd Street NW – 3rd Floor
Albuquerque, NM 87102

NOTICE OF APPEAL

March 23, 2022

TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on March 21, 2022. You will receive a Notice of Hearing as to when the appeal will be heard by the **Land Use Hearing Officer**. If you have any questions regarding the appeal please contact Alfredo Ernesto Salas, Planning Administrative Assistant at (505) 924-3370.

Please refer to the enclosed excerpt from the City Council Rules of Procedure for Land Use Hearing Officer Rules of Procedure and Qualifications for any questions you may have regarding the Land Use Hearing Officer rules of procedure.

Any questions you might have regarding Land Use Hearing Officer policy or procedures that are not answered in the enclosed rules can be answered by Crystal Ortega, Clerk to the Council, (505) 768-3100.

CITY COUNCIL APPEAL NUMBER: AC-22-7
PLANNING DEPARTMENT CASE FILE NUMBER:
PR-2021-006330-VA-2021-00449-VA-2022-00068

APPLICANT: Samuel J. Reynolds
4200 Brockmont Ave. NE
Albuquerque NM, 87113

Agent: Rodey, Dickason, Sloan, Akin, & Robb, P.A. c/o Paul M. Roybal,
201 3rd St. Suite 2200
Albuquerque, NM, 87102

cc: Crystal Ortega, City Council, City county bldg. 9th floor
Kevin Morrow/Legal Department, City Hall, 4th Floor-
Samuel Jacob Reynolds, samueljr1309@gmail.com
Rodey, Dickason, Sloan, Akin, & Robb, P.A. c/o Paul M. Roybal, proybal@rodey.com
Dave Bennett, landconm@gmail.com
Gary Eyster, meyster1@me.com
Diane and Charles McCash, sewellpics@aol.com
Erick Seelinger, 4201 Roma Ave NE, 87108
Carolyn Richter, 405 Montclair DR NE, 87108
Jennifer Prakash, 437 Montclair NE, 87108



ZONING HEARING EXAMINER'S AGENDA

TUESDAY, March 15, 2022 9:00 A.M.

Join Zoom Meeting

<https://cabq.zoom.us/j/7044490999>

Meeting ID: 704 449 0999

One tap mobile

+1-669-900-6833,,7044490999# US (San Jose)

+1-253-215-8782,,7044490999# US (Tacoma)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

Meeting ID: 704 449 0999

Find your local number: <https://cabq.zoom.us/j/7044490999>

Robert Lucero, Esq., Zoning Hearing Examiner

Lorena Patten-Quintana, ZHE Planner

Suzie Sanchez, ZHE Administrative Assistant

For Inquiries Regarding This Agenda, Please Call The Planning Dept. at (505) 924-3894.

PLEASE ADDRESS ALL CORRESPONDENCE TO:

Robert Lucero, Esq., Zoning Hearing Examiner at suzannasanchez@cabq.gov

NOTICE TO PEOPLE WITH DISABILITIES: If you have a disability and you require special assistance to participate in this hearing, please contact Planning Information at (505) 924-3860.

NEW BUSINESS:

- | | | | |
|----|---------------|--------------------------------|---|
| 1. | VA-2022-00023 | Project#
PR-2020-
003360 | US Eagle Federal Credit Union (Agent, Consensus Planning) requests a variance of 32% to the required 30% transparent windows in an activity center for Lot B1, Rhodes Acres Addn, located at 5420 Academy RD NE, zoned MX-H [Section 14-16-5-11(E)(2)(b)] |
|----|---------------|--------------------------------|---|

- | | | | |
|-----|---------------|--------------------------------|--|
| 2. | VA-2022-00024 | Project#
PR-2022-
006549 | Joshua Alan Quezada requests a permit major for a taller wall for Lot 23, Block P, Lavaland Addn, located at 430 60th ST NW, zoned R-1B [Section 14-16-5-7(D)(3)(g)] |
| 3. | VA-2022-00025 | Project#
PR-2022-
006549 | Joshua Alan Quezada requests a variance of 2 ft 6 inches to the 3 ft wall height in the front yard for Lot 23, Block P, Lavaland Addn, located at 430 60th ST NW, zoned R-1B [Section 14-16-5-7(D)(1)] |
| 4. | VA-2022-00026 | Project#
PR-2021-
006173 | Ernest Herrera requests a variance of 9 feet 10 inches to the required 15 foot rear yard setback for Lot 1, Block 5, Holiday Park Unit 4, located at 3100 Tahiti ST NE, zoned R-1C [Section 14-16-5-1(C)] |
| 5. | VA-2022-00028 | Project#
PR-2022-
006552 | DR Investments LLC (Agent, Brian Ortiz) requests a permit wall major in the front yard for Lot 11, Albright Addn No. 2, located at 610 Bellamah Ave NW, zoned R-1A [Section 14-16-5-7(D)(3)(g)] |
| 6. | VA-2022-00029 | Project#
PR-2022-
006552 | DR Investments LLC (Agent, Brian Ortiz) requests a variance of 3 ft to allow for a 6 ft solid wall in the front yard for Lot 11, Albright Addn No. 2, located at 610 Bellamah Ave NW, zoned R-1A [Section 14-16-5-7(D)(1)] |
| 7. | VA-2022-00030 | Project#
PR-2022-
006553 | Archdiocese of Santa Fe Real Estate Corp/ Our Lady of Lavang (Agent, Hoi Tran) requests a variance of 1 ft 4 inches to the required 3 foot fence in the front yard for Lot 9, Block E, Monterey Manor, located at 1015 Chelwood Park Blvd NE, zoned MX-L [Section 14-16-5-7(D)(1)] |
| 8. | VA-2022-00031 | Project#
PR-2022-
006554 | Richard Asenap and Teresa Brito-Asenap request a permit wall major for a taller court yard wall for Lot 15, Block B, Westpark Addn, located at 2025 Alhambra Ave SW, zoned R-1C [Section 14-16-5-7(D)(3)(g)] |
| 9. | VA-2022-00032 | Project#
PR-2022-
006555 | Rancho Vista Mobile Home Park LLC (Agent, Land Development Consultants, LLC) request a conditional use to allow for the retail of liquor for Lot A1, Adobe Wells, located at 9610 Eagle Ranch RD NW, zoned MX-M [Section 14-16-4-3(D)(39)(f)] |
| 10. | VA-2022-00033 | Project#
PR-2022-
006556 | Joseph Chavez (Agent, Gilbert Austin) requests a carport permit in the front yard for Lot 38-P1, Block K, Avalon Unit 3-BCONT, located at 9139 San Nicholas Ave NW, zoned R-1A [Section 14-16-5-5(F)(2)(a)(3)(b)] |
| 11. | VA-2022-00034 | Project#
PR-2019-
002309 | Wymont, LLC (Agent, Consensus Planning) requests a variance of 14 ft to the required 20 ft edge buffer landscaping next to an R-MH zone for Lot 1-A-1, La Miranda Subd, located at 4315 Wyoming Blvd NE, zoned MX-M [Section 14-16-5-6(E)(3)(a)] |

- | | | | |
|-----|---------------|--------------------------------|--|
| 12. | VA-2022-00035 | Project#
PR-2019-
002309 | Wymont, LLC (Agent, Consensus Planning) requests a variance of 32 ft to the required 50 distance from an order board to a lot containing residential uses for Lot 1-A-1, La Miranda Subd, located at 4315 Wyoming Blvd NE, zoned MX-M [Section 14-16-5-5(l)(2)(f)] |
| 13. | VA-2022-00036 | Project#
PR-2022-
006561 | Jesus Villareal and Maria Villareal request a permit wall or fence major for a taller wall for Lot 68, Field Addn, located at 5901 Gonzales RD SW, zoned R-1C [Section 14-16-5-7(D)(3)(g)] |
| 14. | VA-2022-00037 | Project#
PR-2022-
006561 | Jesus Villareal and Maria Villareal request a variance of 3 ft to the 3 ft wall height allowed in the front yard for Lot 68, Field Addn, located at 5901 Gonzales RD SW, zoned R-1C [Section 14-16-5-7(D)(1)] |
| 15. | VA-2021-00316 | Project#
PR-2021-
005834 | City of Albuquerque Family and Community Services (Agent, Consensus Planning) requests a conditional use to allow an overnight shelter for Lot A1A1A/Lovelace Hospital, Lovelace Hospital, located at 5400 Gibson BLVD SE, zoned MX-H [Section 14-16-4-2] |
| 16. | VA-2021-00317 | Project#
PR-2021-
005834 | City of Albuquerque Family and Community Services (Agent, Consensus Planning) requests a conditional use to allow an overnight shelter for Lot 1, Swift Addn, located at 5006 Gibson BLVD SE, zoned MX-H [Section 14-16-4-2] |

**BEFORE THE CITY OF ALBUQUERQUE
LAND USE HEARING OFFICER**

APPEAL NO. AC-22-7

PR-2021-006330; VA-2021-00449; VA-2022-00068

SAMUEL J. REYNOLDS, Appellant,

1 Samuel J. Reynolds (Appellant) through his attorney, filed this timely appeal of a
2 decision from the Zoning Hearing Examiner (ZHE). The ZHE denied Appellant's front yard
3 wall permit application for a wall taller than 3-feet in height. In this appeal Appellant
4 contends that the ZHE misinterpreted the definition of a "front yard" as that term applies to
5 front yard walls. Furthermore, Appellant contends that new evidence demonstrates that he
6 meets the IDO criteria for a front yard wall taller than 3-feet; Appellant asks for a remand back
7 to the ZHE to consider the new evidence accepted into the record at the appeal hearing.

8 After reviewing the record and the new supplemental evidence, listening to arguments
9 and testimony at the appeal hearing, and after reviewing the all the applicable IDO provisions,
10 as explained in more detail below, I find that the precise appeal issues argued by Appellant
11 and his legal counsel should be denied. The ZHE's interpretation of what a front yard wall
12 means is rational and consistent with the IDO. Appellant has not shown that the ZHE erred in
13 interpreting the IDO in this regard. However, I find that the ZHE did in fact error in applying
14 the analysis of IDO, § 6-6(H)(3)3. To be more precise, although not argued by the parties, the

evidence in the record demonstrates that the ZHE mistakenly included one too many lots into the equation to determine if 20% of the lots within 330-feet of Appellant's lot have front yard walls or fences taller than 3-feet. A remand is necessary so that the ZHE can reassess Appellant's application as described below.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Appellant resides in a single-family residential dwelling at 4200 Brockmont Avenue, NE, which is a corner lot at the Southeast corner of Brockmont Ave. and Montclair Street.¹ In the IDO, the area, including Appellant's lot, is zoned R-1B.

It is undisputed that during the Summer of 2021, the wall which is the subject of this appeal was fully constructed without any permitting from the City of Albuquerque [R. 075]. The wall is 6-feet in height and has taller decorative features along its length and corners [R. 075]. There are several drawings and photographs in the record showing the actual wall [R. 041-047].

Because the front yard wall exceeds the 3-foot height permissively allowed in a low-density residential zone, Appellant was apparently advised that he must apply for retroactive approval of the already constructed wall and notify the affected neighborhood associations and neighbors that he intends to apply for a variance for the wall's height. There are two neighborhood associations who satisfy the IDO's requirements for notice of the application—the Nob Hill Neighborhood Association (NHNA) and the District 6 Coalition of Neighborhood Associations (D6CNA) [R. 029]. The record reflects that on October 20, 2021, Appellant

1. It is undisputed that both streets are local streets and not collectors.

36 notified the NHNA and the D6CNA of his impending application and offered to have a pre-
37 submittal neighborhood meeting [R. 030, see also IDO, § 6-4(C)]. On the same day (October
38 20, 2021), NHNA President, Gary Eyster, accepted the request for a neighborhood meeting
39 [R. 036]. Pursuant to the IDO, § 6-4(C), a city facilitated meeting with Appellant’s residential
40 neighbors, NHNA representatives, Appellant, and his builder, was held on November 29, 2021
41 [R. 037-040].

42 On November 11, 2021, Appellant, through the builder, submitted a variance
43 application for the retroactive approval of the wall’s height [R. 023-024]. The ZHE held a
44 public hearing on January 18, 2022 [R. 009, 116]. After learning that Appellant did not comply
45 with IDO, § 6-4(K)(4) by properly posting a city sign at the application site, the ZHE continued
46 the case [R. 115-116]. On February 15, 2022, the ZHE reconvened the public evidentiary
47 hearing [R. 101-113]. In a written decision dated March 2, 2022, the ZHE denied Appellant’s
48 application [R. 005-008].

49 This timely appeal followed [R. 011]. As the applicant and owner of the property on
50 which the wall was located, under IDO, § 6-4(V)(2)(a)1, the Appellant has standing to appeal
51 the ZHE’s decision. A quasi-judicial appeal hearing on the record was held on May 18, 2022.
52 The November 2020, IDO update was applied to the application and is applicable in reviewing
53 this appeal.

54 Appellant argues that the ZHE misinterpreted the definition of a “front yard” in IDO, §
55 7-1 as the term applies to front yard walls. Appellant contends the ZHE’s narrow interpretation
56 of what a front yard wall may include under the IDO caused the ZHE to exclude certain walls
57 in the analysis of what is colloquially called the 20% rule for approving taller than 3-foot walls.

58

59 **II. STANDARD OF REVIEW**

60 A review of an appeal is a whole record review to determine whether the ZHE acted
61 fraudulently, arbitrarily, or capriciously; or whether the ZHE's decision is not supported by
62 substantial evidence; or if the ZHE erred in applying the requirements of the IDO, a plan,
63 policy, or regulation [IDO, § 14-16-6-4(V)(4)]. At the appeal level of review, the decision and
64 record must be supported by substantial evidence to be upheld. Under the IDO, the Land Use
65 Hearing Officer (LUHO) has been delegated the authority to make recommendations to the
66 City Council to affirm, reverse, or otherwise modify the appealed decision to bring it into
67 compliance with the standards and criteria of the IDO. The City Council has also delegated
68 authority to the LUHO to independently remand appeals if necessary.

69

70 **III. DISCUSSION**

71 **A. The ZHE's interpretation of a "front yard wall" is rational, reasonable, and** 72 **consistent with longstanding past administrative interpretations.**

73

74 Because Appellant essentially claims that the ZHE erred with the facts and the IDO and
75 specifically that the ZHE acted arbitrarily and capriciously, I take this opportunity before going
76 into the substantive merits of the appeal, to further explain Appellant's burdens of proof under
77 the applicable appeal standards under New Mexico law. I start with the definition of arbitrary
78 and/or capricious conduct. Under New Mexico law, arbitrary and capricious action is action
79 taken that "is unreasonable or without a rational basis, when viewed in light of the whole
80 record." *Rio Grande Chapter of the Sierra Club v. New Mexico Mining Commission*, 2003-
81 NMSC-005, ¶ 17. Moreover, it is action taken "without proper consideration in disregard of

the facts and circumstances.” *Perkins v. Department of Human Services*, 1987-NMCA-148, ¶ 20.

Furthermore, as stated above, the ZHE’s decision must be supported with substantial evidence to be upheld. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Embudo Canyon Neighborhood Ass’n v. City of Albuquerque* - 1998-NMCA-17, ¶8. Conversely, unless it can be shown that the ZHE’s interpretation of the relevant IDO provisions and the facts were irrational such that a reasonable mind cannot accept them as adequate to support the result reached, the ZHE’s interpretation should be accorded deference under New Mexico law. *Regents of the Univ. of N.M. v. N.M. Fed’n of Teachers*, 1998-NMSC-020, ¶ 17. Accordingly, even if Appellant has shown that there are competing interpretations of the specific IDO sections at issue, a contrasting interpretation is insufficient to disturb the ZHE’s decision. Put another way, the question for appellate review is not whether substantial evidence exists to support the Appellant’s interpretation of the IDO or the facts, but rather the question boils down to whether the ZHE’s interpretation of the IDO is rational and reasonable under the facts and whether there is substantial evidence in the record that can support the ZHE’s findings and the result he reached. Because Appellant through counsel is essentially arguing that the meaning of a front yard wall in IDO, § 6-6(H)(3)3 is somewhat ambiguous and can be interpreted in at least two ways, this important maxim of New Mexico law is applicable in this appeal.

Turning now to the applicable IDO provisions, in the IDO, § 5-7 of the IDO contains the development standards for regulating all types of fences and walls and in all zone districts. Because the Appellant’s lot is in a low-density residential zone (R-1B), under Table 5-7-1

(without a variance), the maximum height of a *front yard* wall or fence on the Applicant's lot is 3-feet [IDO, Table 5-7-1]. Notably, Table 5-7-2 in the IDO also establishes different height restrictions from those in Table 5-7-1 for fences and walls in low density residential zones that meet additional setback location standards in § 5-7(D)(3). Under IDO § 5-7(D)(3)(g) a request for a taller wall that is set back more than "*10-feet from the lot line abutting the street*" can be constructed to a height of 6 feet and may include certain design elements that "*project vertically 2 feet above the maximum wall height*" [IDO, § 5-7(D)(3)(a)]. Because the wall in this matter is setback by at least 10-feet from the front lot boundary line, Appellant's wall appears to satisfy the setback standards of § 5-7(D)(3). However, even so, under § 5-7(D)(3) the variance criteria of IDO, § 6-6(H)(3) still must also be satisfied. See IDO, § 5-7(D)(3)(g) and IDO, § 6-6(H)(1).²

The first four prongs of the Review and Decision Criteria in § 6-6(H)(3)(a) are alternative criteria for granting an application for a taller front yard wall, only one of which needs to be satisfied. The second part of § 6-6(H)(3) includes sections (b) through (d) and all four must be satisfied. Because IDO, § 6-6(H)(3) is somewhat complex, it is restated in full below:

Review and Decision Criteria

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:

2. Appellant's lot is near, but outside, of a restricted area (Monte Vista and College View Historic District) in which taller walls are not allowed, even under Table 5-7-2. See IDO § 5-7(D)(3)(g) and (h) respectively.

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. (See figure below for an illustration of this measurement.)
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. (See figure below for an illustration of this measurement.)

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- 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."

[Emphasis added.]

In this appeal Appellant is challenging how the ZHE interpreted and applied § 6-6(H)(3)(a) to Appellant's wall in this matter. For simplicity, this is the 20% rule. Appellant stipulates that the 20% rule applies to the application [R. 015].

The ZHE found that Appellant did not satisfy the first part of the test (the 20% rule), and that further analysis into the tests in § 6-6(H)(3)(b), (c), and (d) were unnecessary [R. 007, Fndg. 16]. ZHE Finding 15 is what is challenged by Appellant which states in full:

15. Based on photographs, maps and oral evidence submitted, it does not appear that 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. There are 12 lots aside from the Subject Property along Brockmont, which the Subject Property fronts. Therefore, 3 of those 12 properties must have a front yard wall or fence over 3 feet to satisfy the 20 percent criteria. Applicant and opponents agree that 4201 Brockmont and 4216 Brockmont have a front yard wall or fence over 3 feet and are located within the pertinent area of review. However, while Applicant maintains that 4220 Brockmont has a front yard wall or fence over 3 feet, opponents argued that the wall at 4220 Brockmont is not located in the front yard area, as *"front yard" is defined by Section 7-1 of the IDO (see diagram on page 592). Opponents appear to be correct, because the wall at 4220 Brockmont runs contiguous with the primary structure on that lot and parallel with the front yard lot line. 4220 Brockmont does not count toward the 20 percent requirement.* Therefore, it appears that only two properties can be counted toward the 20 percent criteria, resulting in a percentage of only approximately 16.7 percent. The Application does not satisfy the criterion in IDO Section 6-6(H)(3)(a). (Emphasis added).

[R. 006-007, ZHE, Fndg 15].

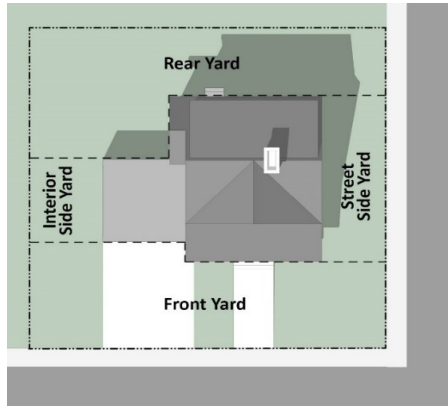
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Front Yard

The part of a lot from the front lot line to any front façade of the primary building, extended to both side lot lines. If there is no primary building on the lot, the part of a lot within the minimum setback in the zone district on

the side of the lot where the property will be addressed. See also Lot Definitions [IDO, § 7-1 Definitions].

Below is the illustration referenced by the ZHE:



The ZHE found that there are 12 lots on Brockmont Ave. that are within a 330-foot measurement. Of the 12, the ZHE concluded that there are only two residential lots that have walls or fences taller than 3 feet in the front yards as defined by the definition of a “front yard” and as shown in the above illustration. The ZHE concluded that the lot at 4220 Brockmont Ave, although parallel and facing the street front, that wall runs perpendicular to the side facing of the house and therefor that lot and wall cannot be considered a front yard wall. I agree.

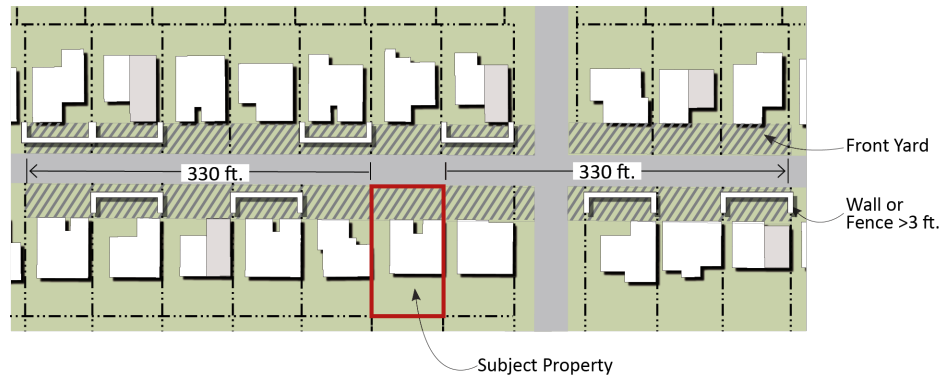
I first find that there is not a precise definition of a “front yard wall” in the IDO. Defining what a front yard wall is depends exclusively on its location. Because there is not a precise definition of a “front yard wall” in the IDO, the definition of “front yard” in the IDO aids in defining that term. However, as this appeal shows, defining exactly what a “front yard wall” means can be nuanced when a wall borders the imaginary line (in the above illustration) separating a side yard from a front yard. The term is therefore ambiguous.

Although the precise definition of a front yard wall is ambiguous, I find that the ZHE’s interpretation is consistent with the “front yard” illustration above which depicts what can be

224 considered a front yard and it is consistent with a longstanding interpretation of that term. The
225 illustration establishes the parameters of a front yard. It depicts an imaginary line that runs
226 perpendicular with the side facing of a house as the separation point between a side yard and
227 what can be considered the front yard. The space behind the imaginary line, perpendicular to
228 the side facing of a dwelling cannot be considered part of the front yard. The space in front of
229 the imaginary line, up to the front facing street is the front yard space. The ZHE's decision
230 regarding the lot at 4220 Brockmont is consistent with the illustration above because that wall,
231 although facing the street, is on the imaginary line the intersects with the dwelling's side facing
232 at a perpendicular (90 degree) angle [See R. 016 for a photo of this wall].

233 Appellant suggests that there is at least one additional wall on Brockmont Ave. that
234 should have been considered by the ZHE. This is the new evidence Appellant submitted in this
235 appeal [R. 017]. Appellant points to the wall separating the lots of 4223 and 4219 Brockmont
236 Ave. as one that extends past the imaginary line into the front yard portion of those lots. For
237 purposes of simplicity, I agree with Appellant that that wall in fact extends past the side facing
238 of the two houses by at least 3-feet and extends into the front yards of the lots on the lots' side
239 lot boundary line separating the two lots. However, despite that the wall extends into the front
240 yard portion of the front yard, it is missing one key attribute of a front yard wall, and therefore
241 it is still a side yard wall, not a front yard wall.

242 Although the IDO doesn't have a precise definition of a front yard wall, it does include
243 another illustration as part of, IDO, § 6-6(H)(3)3 that conspicuously depicts the two main
244 attributes that all front yard walls have. The illustration is reproduced below:



[IDO, page 463].

To qualify as a front yard wall, the first attribute of a front yard wall is that it must extend into the front yard in front of the house and in the front yard wall space. Certainly, the wall separating the homes of 4219 and 4223 Brockmont Ave. satisfies this attribute because it does, even if by about 3-feet, extend into the front yard space [see photographs at R. 017]. However, that is not the only attribute necessary for a wall to be considered a front yard wall under the IDO. If this were the only attribute necessary, a significant number of side yard walls could in fact also be concurrently considered front yard walls and the clear distinction in the IDO separating side yard walls from front yard walls would be considerably blurred and perhaps conflated in some instances.

The second attribute of a front yard wall depicted in the illustration in IDO, § 6-6(H)(3)3 is that the main part of the wall must also run parallel with the front façade of the house and street that the house faces. Both attributes are conspicuously depicted in the above illustration, and both are consistent with how the ZHE defined a front yard wall. I also take administrative notice that the ZHE has consistently defined front yard walls in this way for a long period of time. Furthermore, the ZHE's interpretation maintains the distinction between side and front yard walls in the IDO.

Conversely, I find that Appellant's interpretation is so expansive that its applicability erodes the distinctive attributes intended in the IDO. Because the City Council created separate tests in the IDO for front yard walls and for side yard walls, the Council, as a matter of public policy, intended that side yard walls and front yard walls be clearly distinguishable. Compare subsections 3 and 4 in IDO, § 6-6(H)(3). There is a separate process for evaluating each type of wall.³ It can't be overemphasized that Appellant's suggested broad interpretation of front yard walls has the effect of obscuring the deliberate differences between side and front yard walls or fences in the IDO. Under all the above circumstances, the ZHE's interpretation of front yard walls is neither absurd nor unreasonable.

B. Because the 330-foot measurement was incorrectly administered, a remand is necessary.

Although the ZHE correctly interpreted the IDO regarding the meaning of front yard walls, I find that the ZHE misapplied the 330-foot measurement to determine if 20% of the front yard walls are in fact taller than 3-feet in height. In so doing, the ZHE counted one too many lots for the analysis of the 20% rule. This seems like harmless error; however, it is not. For purposes of the 20% rule, the one superfluous (extra) lot counted significantly changes the number of qualifying front yard walls or fences (taller than 3-feet) necessary for the ZHE to approve Appellant's application (at least under that prong of the test). Said another way, measured from the outer boundary line of Appellant's lot (on the East side), there are a total of 11 lots on both sides of Brockmont Ave. that are within the correct 330-foot measurement.

3. Although the processes are similar, they are deliberately still separate tests.

289 I find that, on the South side of Brockmont Ave., there are a total of five lots and on the North
290 side, there are six lots. Breaking this down further, the following lot addresses are within 330-
291 feet of Appellant’s lot on Brockmont Ave: 4204, 4208, 4212, 4216, 4220 on the South side;
292 and 4201, 4205, 4209, 4213, 4217, and 4221 on the Northside of the street.⁴

293 The ZHE mistakenly included the lot at 4224 Brockmont Ave. on the Southside of the
294 street; this lot is more than 330 feet from the East side boundary line of Appellant’s lot (which
295 is the appropriate location to start the 330-foot measurement).⁵ A closer look at the evidence
296 in the record reveals that City Planning Staff included a much longer measurement area than
297 330-feet [R. 048].⁶ It appears to be an honest but consequential mistake. I presume that
298 everyone involved assumed that the 330-foot measurement was precise. It was not.

299 Presumably, under the correct measurement, because only 11 lots qualify in the 20%
300 analysis (not 12), Appellant demonstrated that of the 11 lots, two of them have front yard walls
301 or fences taller than 3-feet. In the record, it is undisputed that the lots at 4201 and 4216
302 Brockmont Ave. have walls/ fences taller than 3-feet in their front yards, and they are within
303 330-feet of Appellant’s East boundary line [R. 007]. Thus, with an accurate measurement of

4. The proper starting point for the eastward measurement on Brockmont Ave. is to start at the east side boundary line of Appellant’s lot. See the illustration in the IDO at page 463. In the remand, the ZHE should confirm the distance on the substantial evidence standard.

5. See the illustration on page 463 of the IDO indicating that the measurement begins at the outside boundary line of the lot on which a wall or fence is sought. Because Appellant’s lot is a corner lot and the address is a Brockmont Ave address, the lot therefore “faces” Brockmont Ave only, the measurement can only include these 11 lots. See IDO, § 6-6(H)(3)3.

6. There are other defects in the instructions given to Appellant by City Staff, but for purposes of the proper measurement, it appears to be incorrect.

304 330-feet from the outer East side boundary line of Appellant's lot, Appellant seemingly
305 satisfies the 20% rule.

306 A remand is necessary to confirm the presumptions regarding the measurements above
307 and for determining if the presumptions satisfy the substantial evidence standard and if so, an
308 analysis of the requirements in IDO § 6-6(H)(3)(b), (c), and (d) is necessary. To expedite the
309 ZHE's reevaluation, the parties should be allowed to supplement the record with accurate
310 measurements (if they choose) and with evidence to support the rest of the analysis under IDO
311 § 6-6(H)(3)(b), (c), and (d). Accordingly, this matter is remanded. All issues and arguments
312 are preserved in the event there is a subsequent appeal.

313 Respectfully Submitted:

314



Steven M. Chavez, Esq.
Land Use Hearing Officer
May 23, 2022

Copies emailed to:

Appellant and his Counsel
Party Opponent
ZHE
City Council and Staff

**BEFORE THE CITY OF ALBUQUERQUE
LAND USE HEARING OFFICER**

APPEAL NO. AC-22-7

PR-2021-006330; VA-2021-00449; VA-2022-00068

SAMUEL J. REYNOLDS, Appellant,

1 Samuel J. Reynolds (Appellant) through his attorney, filed this timely appeal of a
2 decision from the Zoning Hearing Examiner (ZHE). The ZHE denied Appellant's front yard
3 wall permit application for a wall taller than 3-feet in height. In this appeal Appellant
4 contends that the ZHE misinterpreted the definition of a "front yard" as that term applies to
5 front yard walls. Furthermore, Appellant contends that new evidence demonstrates that he
6 meets the IDO criteria for a front yard wall taller than 3-feet; Appellant asks for a remand back
7 to the ZHE to consider the new evidence accepted into the record at the appeal hearing.

8 After reviewing the record and the new supplemental evidence, listening to arguments
9 and testimony at the appeal hearing, and after reviewing the all the applicable IDO provisions,
10 as explained in more detail below, I find that the precise appeal issues argued by Appellant
11 and his legal counsel should be denied. The ZHE's interpretation of what a front yard wall
12 means is rational and consistent with the IDO. Appellant has not shown that the ZHE erred in
13 interpreting the IDO in this regard. However, I find that the ZHE did in fact error in applying
14 the analysis of IDO, § 6-6(H)(3)3. To be more precise, although not argued by the parties, the

evidence in the record demonstrates that the ZHE mistakenly included one too many lots into the equation to determine if 20% of the lots within 330-feet of Appellant's lot have front yard walls or fences taller than 3-feet. A remand is necessary so that the ZHE can reassess Appellant's application as described below.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Appellant resides in a single-family residential dwelling at 4200 Brockmont Avenue, NE, which is a corner lot at the Southeast corner of Brockmont Ave. and Montclair Street.¹ In the IDO, the area, including Appellant's lot, is zoned R-1B.

It is undisputed that during the Summer of 2021, the wall which is the subject of this appeal was fully constructed without any permitting from the City of Albuquerque [R. 075]. The wall is 6-feet in height and has taller decorative features along its length and corners [R. 075]. There are several drawings and photographs in the record showing the actual wall [R. 041-047].

Because the front yard wall exceeds the 3-foot height permissively allowed in a low-density residential zone, Appellant was apparently advised that he must apply for retroactive approval of the already constructed wall and notify the affected neighborhood associations and neighbors that he intends to apply for a variance for the wall's height. There are two neighborhood associations who satisfy the IDO's requirements for notice of the application—the Nob Hill Neighborhood Association (NHNA) and the District 6 Coalition of Neighborhood Associations (D6CNA) [R. 029]. The record reflects that on October 20, 2021, Appellant

1. It is undisputed that both streets are local streets and not collectors.

36 notified the NHNA and the D6CNA of his impending application and offered to have a pre-
37 submittal neighborhood meeting [R. 030, see also IDO, § 6-4(C)]. On the same day (October
38 20, 2021), NHNA President, Gary Eyster, accepted the request for a neighborhood meeting
39 [R. 036]. Pursuant to the IDO, § 6-4(C), a city facilitated meeting with Appellant's residential
40 neighbors, NHNA representatives, Appellant, and his builder, was held on November 29, 2021
41 [R. 037-040].

42 On November 11, 2021, Appellant, through the builder, submitted a variance
43 application for the retroactive approval of the wall's height [R. 023-024]. The ZHE held a
44 public hearing on January 18, 2022 [R. 009, 116]. After learning that Appellant did not comply
45 with IDO, § 6-4(K)(4) by properly posting a city sign at the application site, the ZHE continued
46 the case [R. 115-116]. On February 15, 2022, the ZHE reconvened the public evidentiary
47 hearing [R. 101-113]. In a written decision dated March 2, 2022, the ZHE denied Appellant's
48 application [R. 005-008].

49 This timely appeal followed [R. 011]. As the applicant and owner of the property on
50 which the wall was located, under IDO, § 6-4(V)(2)(a)1, the Appellant has standing to appeal
51 the ZHE's decision. A quasi-judicial appeal hearing on the record was held on May 18, 2022.
52 The November 2020, IDO update was applied to the application and is applicable in reviewing
53 this appeal.

54 Appellant argues that the ZHE misinterpreted the definition of a "front yard" in IDO, §
55 7-1 as the term applies to front yard walls. Appellant contends the ZHE's narrow interpretation
56 of what a front yard wall may include under the IDO caused the ZHE to exclude certain walls
57 in the analysis of what is colloquially called the 20% rule for approving taller than 3-foot walls.

58

59 **II. STANDARD OF REVIEW**

60 A review of an appeal is a whole record review to determine whether the ZHE acted
61 fraudulently, arbitrarily, or capriciously; or whether the ZHE's decision is not supported by
62 substantial evidence; or if the ZHE erred in applying the requirements of the IDO, a plan,
63 policy, or regulation [IDO, § 14-16-6-4(V)(4)]. At the appeal level of review, the decision and
64 record must be supported by substantial evidence to be upheld. Under the IDO, the Land Use
65 Hearing Officer (LUHO) has been delegated the authority to make recommendations to the
66 City Council to affirm, reverse, or otherwise modify the appealed decision to bring it into
67 compliance with the standards and criteria of the IDO. The City Council has also delegated
68 authority to the LUHO to independently remand appeals if necessary.

69

70 **III. DISCUSSION**

71 **A. The ZHE's interpretation of a "front yard wall" is rational, reasonable, and**
72 **consistent with longstanding past administrative interpretations.**

73

74 Because Appellant essentially claims that the ZHE erred with the facts and the IDO and
75 specifically that the ZHE acted arbitrarily and capriciously, I take this opportunity before going
76 into the substantive merits of the appeal, to further explain Appellant's burdens of proof under
77 the applicable appeal standards under New Mexico law. I start with the definition of arbitrary
78 and/or capricious conduct. Under New Mexico law, arbitrary and capricious action is action
79 taken that "is unreasonable or without a rational basis, when viewed in light of the whole
80 record." *Rio Grande Chapter of the Sierra Club v. New Mexico Mining Commission*, 2003-
81 NMSC-005, ¶ 17. Moreover, it is action taken "without proper consideration in disregard of

the facts and circumstances.” *Perkins v. Department of Human Services*, 1987-NMCA-148, ¶ 20.

Furthermore, as stated above, the ZHE’s decision must be supported with substantial evidence to be upheld. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Embudo Canyon Neighborhood Ass’n v. City of Albuquerque* - 1998-NMCA-17, ¶8. Conversely, unless it can be shown that the ZHE’s interpretation of the relevant IDO provisions and the facts were irrational such that a reasonable mind cannot accept them as adequate to support the result reached, the ZHE’s interpretation should be accorded deference under New Mexico law. *Regents of the Univ. of N.M. v. N.M. Fed’n of Teachers*, 1998-NMSC-020, ¶ 17. Accordingly, even if Appellant has shown that there are competing interpretations of the specific IDO sections at issue, a contrasting interpretation is insufficient to disturb the ZHE’s decision. Put another way, the question for appellate review is not whether substantial evidence exists to support the Appellant’s interpretation of the IDO or the facts, but rather the question boils down to whether the ZHE’s interpretation of the IDO is rational and reasonable under the facts and whether there is substantial evidence in the record that can support the ZHE’s findings and the result he reached. Because Appellant through counsel is essentially arguing that the meaning of a front yard wall in IDO, § 6-6(H)(3)3 is somewhat ambiguous and can be interpreted in at least two ways, this important maxim of New Mexico law is applicable in this appeal.

Turning now to the applicable IDO provisions, in the IDO, § 5-7 of the IDO contains the development standards for regulating all types of fences and walls and in all zone districts. Because the Appellant’s lot is in a low-density residential zone (R-1B), under Table 5-7-1

(without a variance), the maximum height of a *front yard* wall or fence on the Applicant's lot is 3-feet [IDO, Table 5-7-1]. Notably, Table 5-7-2 in the IDO also establishes different height restrictions from those in Table 5-7-1 for fences and walls in low density residential zones that meet additional setback location standards in § 5-7(D)(3). Under IDO § 5-7(D)(3)(g) a request for a taller wall that is set back more than "*10-feet from the lot line abutting the street*" can be constructed to a height of 6 feet and may include certain design elements that "*project vertically 2 feet above the maximum wall height*" [IDO, § 5-7(D)(3)(a)]. Because the wall in this matter is setback by at least 10-feet from the front lot boundary line, Appellant's wall appears to satisfy the setback standards of § 5-7(D)(3). However, even so, under § 5-7(D)(3) the variance criteria of IDO, § 6-6(H)(3) still must also be satisfied. See IDO, § 5-7(D)(3)(g) and IDO, § 6-6(H)(1).²

The first four prongs of the Review and Decision Criteria in § 6-6(H)(3)(a) are alternative criteria for granting an application for a taller front yard wall, only one of which needs to be satisfied. The second part of § 6-6(H)(3) includes sections (b) through (d) and all four must be satisfied. Because IDO, § 6-6(H)(3) is somewhat complex, it is restated in full below:

Review and Decision Criteria

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:

2. Appellant's lot is near, but outside, of a restricted area (Monte Vista and College View Historic District) in which taller walls are not allowed, even under Table 5-7-2. See IDO § 5-7(D)(3)(g) and (h) respectively.

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. (See figure below for an illustration of this measurement.)
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. (See figure below for an illustration of this measurement.)

- 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."

[Emphasis added.]

In this appeal Appellant is challenging how the ZHE interpreted and applied § 6-6(H)(3)(a) to Appellant's wall in this matter. For simplicity, this is the 20% rule. Appellant stipulates that the 20% rule applies to the application [R. 015].

The ZHE found that Appellant did not satisfy the first part of the test (the 20% rule), and that further analysis into the tests in § 6-6(H)(3)(b), (c), and (d) were unnecessary [R. 007, Fndg. 16]. ZHE Finding 15 is what is challenged by Appellant which states in full:

15. Based on photographs, maps and oral evidence submitted, it does not appear that 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. There are 12 lots aside from the Subject Property along Brockmont, which the Subject Property fronts. Therefore, 3 of those 12 properties must have a front yard wall or fence over 3 feet to satisfy the 20 percent criteria. Applicant and opponents agree that 4201 Brockmont and 4216 Brockmont have a front yard wall or fence over 3 feet and are located within the pertinent area of review. However, while Applicant maintains that 4220 Brockmont has a front yard wall or fence over 3 feet, opponents argued that the wall at 4220 Brockmont is not located in the front yard area, as *"front yard" is defined by Section 7-1 of the IDO (see diagram on page 592). Opponents appear to be correct, because the wall at 4220 Brockmont runs contiguous with the primary structure on that lot and parallel with the front yard lot line. 4220 Brockmont does not count toward the 20 percent requirement.* Therefore, it appears that only two properties can be counted toward the 20 percent criteria, resulting in a percentage of only approximately 16.7 percent. The Application does not satisfy the criterion in IDO Section 6-6(H)(3)(a). (Emphasis added).

[R. 006-007, ZHE, Fndg 15].

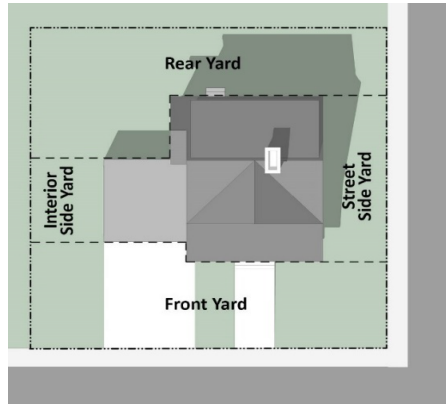
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The part of a lot from the front lot line to any front façade of the primary building, extended to both side lot lines. If there is no primary building on the lot, the part of a lot within the minimum setback in the zone district on

the side of the lot where the property will be addressed. See also Lot Definitions [IDO, § 7-1 Definitions].

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The ZHE found that there are 12 lots on Brockmont Ave. that are within a 330-foot measurement. Of the 12, the ZHE concluded that there are only two residential lots that have walls or fences taller than 3 feet in the front yards as defined by the definition of a “front yard” and as shown in the above illustration. The ZHE concluded that the lot at 4220 Brockmont Ave, although parallel and facing the street front, that wall runs perpendicular to the side facing of the house and therefor that lot and wall cannot be considered a front yard wall. I agree.

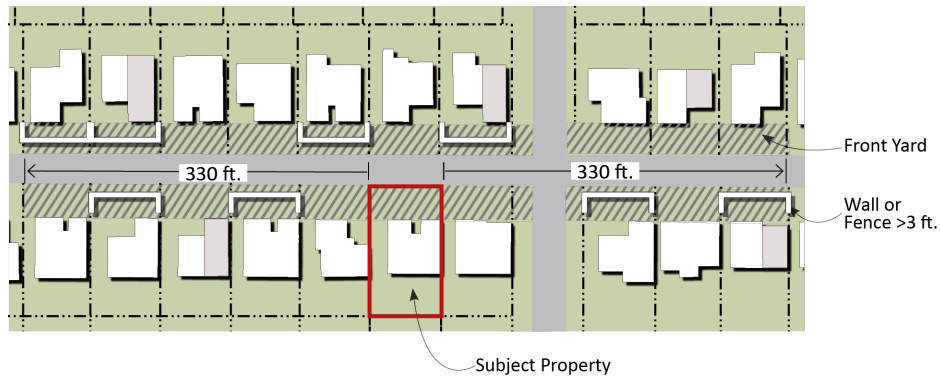
I first find that there is not a precise definition of a “front yard wall” in the IDO. Defining what a front yard wall is depends exclusively on its location. Because there is not a precise definition of a “front yard wall” in the IDO, the definition of “front yard” in the IDO aids in defining that term. However, as this appeal shows, defining exactly what a “front yard wall” means can be nuanced when a wall borders the imaginary line (in the above illustration) separating a side yard from a front yard. The term is therefore ambiguous.

Although the precise definition of a front yard wall is ambiguous, I find that the ZHE’s interpretation is consistent with the “front yard” illustration above which depicts what can be

considered a front yard and it is consistent with a longstanding interpretation of that term. The illustration establishes the parameters of a front yard. It depicts an imaginary line that runs perpendicular with the side facing of a house as the separation point between a side yard and what can be considered the front yard. The space behind the imaginary line, perpendicular to the side facing of a dwelling cannot be considered part of the front yard. The space in front of the imaginary line, up to the front facing street is the front yard space. The ZHE's decision regarding the lot at 4220 Brockmont is consistent with the illustration above because that wall, although facing the street, is on the imaginary line the intersects with the dwelling's side facing at a perpendicular (90 degree) angle [See R. 016 for a photo of this wall].

Appellant suggests that there is at least one additional wall on Brockmont Ave. that should have been considered by the ZHE. This is the new evidence Appellant submitted in this appeal [R. 017]. Appellant points to the wall separating the lots of 4223 and 4219 Brockmont Ave. as one that extends past the imaginary line into the front yard portion of those lots. For purposes of simplicity, I agree with Appellant that that wall in fact extends past the side facing of the two houses by at least 3-feet and extends into the front yards of the lots on the lots' side lot boundary line separating the two lots. However, despite that the wall extends into the front yard portion of the front yard, it is missing one key attribute of a front yard wall, and therefore it is still a side yard wall, not a front yard wall.

Although the IDO doesn't have a precise definition of a front yard wall, it does include another illustration as part of, IDO, § 6-6(H)(3)3 that conspicuously depicts the two main attributes that all front yard walls have. The illustration is reproduced below:



[IDO, page 463].

To qualify as a front yard wall, the first attribute of a front yard wall is that it must extend into the front yard in front of the house and in the front yard wall space. Certainly, the wall separating the homes of 4219 and 4223 Brockmont Ave. satisfies this attribute because it does, even if by about 3-feet, extend into the front yard space [see photographs at R. 017]. However, that is not the only attribute necessary for a wall to be considered a front yard wall under the IDO. If this were the only attribute necessary, a significant number of side yard walls could in fact also be concurrently considered front yard walls and the clear distinction in the IDO separating side yard walls from front yard walls would be considerably blurred and perhaps conflated in some instances.

The second attribute of a front yard wall depicted in the illustration in IDO, § 6-6(H)(3)3 is that the main part of the wall must also run parallel with the front façade of the house and street that the house faces. Both attributes are conspicuously depicted in the above illustration, and both are consistent with how the ZHE defined a front yard wall. I also take administrative notice that the ZHE has consistently defined front yard walls in this way for a long period of time. Furthermore, the ZHE's interpretation maintains the distinction between side and front yard walls in the IDO.

Conversely, I find that Appellant's interpretation is so expansive that its applicability erodes the distinctive attributes intended in the IDO. Because the City Council created separate tests in the IDO for front yard walls and for side yard walls, the Council, as a matter of public policy, intended that side yard walls and front yard walls be clearly distinguishable. Compare subsections 3 and 4 in IDO, § 6-6(H)(3). There is a separate process for evaluating each type of wall.³ It can't be overemphasized that Appellant's suggested broad interpretation of front yard walls has the effect of obscuring the deliberate differences between side and front yard walls or fences in the IDO. Under all the above circumstances, the ZHE's interpretation of front yard walls is neither absurd nor unreasonable.

B. Because the 330-foot measurement was incorrectly administered, a remand is necessary.

Although the ZHE correctly interpreted the IDO regarding the meaning of front yard walls, I find that the ZHE misapplied the 330-foot measurement to determine if 20% of the front yard walls are in fact taller than 3-feet in height. In so doing, the ZHE counted one too many lots for the analysis of the 20% rule. This seems like harmless error; however, it is not. For purposes of the 20% rule, the one superfluous (extra) lot counted significantly changes the number of qualifying front yard walls or fences (taller than 3-feet) necessary for the ZHE to approve Appellant's application (at least under that prong of the test). Said another way, measured from the outer boundary line of Appellant's lot (on the East side), there are a total of 11 lots on both sides of Brockmont Ave. that are within the correct 330-foot measurement.

3. Although the processes are similar, they are deliberately still separate tests.

289 I find that, on the South side of Brockmont Ave., there are a total of five lots and on the North
290 side, there are six lots. Breaking this down further, the following lot addresses are within 330-
291 feet of Appellant’s lot on Brockmont Ave: 4204, 4208, 4212, 4216, 4220 on the South side;
292 and 4201, 4205, 4209, 4213, 4217, and 4221 on the Northside of the street.⁴

293 The ZHE mistakenly included the lot at 4224 Brockmont Ave. on the Southside of the
294 street; this lot is more than 330 feet from the East side boundary line of Appellant’s lot (which
295 is the appropriate location to start the 330-foot measurement).⁵ A closer look at the evidence
296 in the record reveals that City Planning Staff included a much longer measurement area than
297 330-feet [R. 048].⁶ It appears to be an honest but consequential mistake. I presume that
298 everyone involved assumed that the 330-foot measurement was precise. It was not.

299 Presumably, under the correct measurement, because only 11 lots qualify in the 20%
300 analysis (not 12), Appellant demonstrated that of the 11 lots, two of them have front yard walls
301 or fences taller than 3-feet. In the record, it is undisputed that the lots at 4201 and 4216
302 Brockmont Ave. have walls/ fences taller than 3-feet in their front yards, and they are within
303 330-feet of Appellant’s East boundary line [R. 007]. Thus, with an accurate measurement of

4. The proper starting point for the eastward measurement on Brockmont Ave. is to start at the east side boundary line of Appellant’s lot. See the illustration in the IDO at page 463. In the remand, the ZHE should confirm the distance on the substantial evidence standard.

5. See the illustration on page 463 of the IDO indicating that the measurement begins at the outside boundary line of the lot on which a wall or fence is sought. Because Appellant’s lot is a corner lot and the address is a Brockmont Ave address, the lot therefore “faces” Brockmont Ave only, the measurement can only include these 11 lots. See IDO, § 6-6(H)(3)3.

6. There are other defects in the instructions given to Appellant by City Staff, but for purposes of the proper measurement, it appears to be incorrect.

304 330-feet from the outer East side boundary line of Appellant's lot, Appellant seemingly
305 satisfies the 20% rule.

306 A remand is necessary to confirm the presumptions regarding the measurements above
307 and for determining if the presumptions satisfy the substantial evidence standard and if so, an
308 analysis of the requirements in IDO § 6-6(H)(3)(b), (c), and (d) is necessary. To expedite the
309 ZHE's reevaluation, the parties should be allowed to supplement the record with accurate
310 measurements (if they choose) and with evidence to support the rest of the analysis under IDO
311 § 6-6(H)(3)(b), (c), and (d). Accordingly, this matter is remanded. All issues and arguments
312 are preserved in the event there is a subsequent appeal.

313 Respectfully Submitted:

314



Steven M. Chavez, Esq.
Land Use Hearing Officer
May 23, 2022

Copies emailed to:

Appellant and his Counsel
Party Opponent
ZHE
City Council and Staff

Sanchez, Suzanna A.

From: Gary Eyster <meyster1@me.com>
Sent: Tuesday, June 14, 2022 9:47 AM
To: Susan Beard; Marshall Mourar
Cc: Greg Weirs; Sanchez, Suzanna A.; Gary and Melodie Eyster
Subject: Emailing: 4200 Brockmont NE Letter to ZHE on Remand (1).pdf
Attachments: 4200 Brockmont NE Letter to ZHE on Remand (1).pdf

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.
Susan, Marshall.

I think I advised you the Land Use Hearing Officer remanded this to the ZHE because of a lack of clarity on the 20% rule.

NHNA has developed the attached letter to the ZHE. Hearing is morning of June 21. I will testify for NHNA.

If you would like to speak to him I can tell you how to zoom.

If you would like to send him a statement deadline is tomorrow, June 15, close of business. Email to Suzie Sanchez (suzannasanchez@cabq.gov)

Thank you for your partnership! We will keep you posted.

GLE

Your message is ready to be sent with the following file or link attachments:

4200 Brockmont NE Letter to ZHE on Remand (1).pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Nob Hill Neighborhood Association, Inc.

PO Box 4875, Albuquerque, NM 87196

TheBoard@NobHill-NM.com

June 12, 2022

Robert Lucero, Esq, Zoning Hearing Examiner, by email to
suzannasanchez@cabq.gov

Re: VA-2021-00449 Project# PR-2021- 006330 Samuel Jacob Reynolds
(Agent, Dave Bennett) requests a permit for a taller court yard wall major
for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE,
zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Dear Mr. Lucero,

We appreciate the LUHO's careful and detailed reading of the relevant IDO
sections for this request, as well as the supporting analysis and arguments
on the intent of front and side yard wall regulations.

At lines 289-292 of the remand LUHO finds there are five lots on the south
side of Brockmont that qualify for the 20% test. We consulted the 1945 plat
(attached) which confirms that the fifth lot east of the subject is the last
within 330 ft.

Addresses he lists are not consistent with those displayed on the houses.
The addresses displayed on the 5 houses are 4204, 4212, 4216, 4220, 4224.
The addresses displayed on the houses skip 4208. Nonetheless we agree
there are 5 lots on the south side. We agree there are 6 lots on the north
side. Therefore, 11 lots are within 330 ft to be considered for the 20% rule.

We agree with the LUHO at lines 301 and 302 that "it is undisputed that the
lots at 4201 and 4216 Brockmont Ave. have walls/fences higher than 3-feet
in their front yards and they are within 330-feet of the Appellant". That is,
there are 2 lots of the 11 considered with walls/fences higher than 3 ft.

However, we strongly disagree with the statement on lines 304-305, "Appellant seemingly satisfies the 20% rule." We assert that 2 lots out of 11 is 18.2%, which is less than 20% and therefore does not satisfy the 20% rule. While we would find it exasperating for this to remain a point of contention, we are prepared to call expert witnesses with recognized credentials in mathematics should a second appeal be necessary.

IDO 6-6(H)(3)(d)1 requires that a wall not block the view of any door or window on the front façade of the primary building when viewed from 5 ft. above ground level at the centerline of the street in front of the house. It is not possible for the wall to meet that in its current state.

Community members at two meetings expressed the notion that construction without a permit undermines the IDO because it precludes the opportunity for property owners and communities to develop mutually acceptable plans for walls.

We regret that the Planning Department has done so little to educate property owners and the construction industry about wall permits. They need to do much more so property owners are not subjected to costly mistakes and neighborhood associations don't have to devote tremendous time and effort to safeguard their streetscapes and eyes on the street. We further regret that the Planning Department cannot respond quickly when unpermitted walls are reported to save property owners from unwarranted expense.

Respectfully yours,
Greg Weirs
Chair, Urban Planning Committee
Nob Hill Neighborhood Association

Attachment: 1945 Plat, Broadmoor Addition

BROADMOOR

AN ADDITION TO THE CITY OF ALBUQUERQUE-NEW MEXICO

SCALE: 1 IN. = 100 FT.

ROSS-BEYER ENGINEERING OFFICE

C.B.B.

JULY 18, 1945

State of New Mexico
County of Bernalillo
This instrument was filed for record on

SEP 1 - 1945

At 9:05 a.m. Recorded in Vol. _____
of records of said County Folio _____
By *May C. [Signature]* Clerk & Recorder
Robert [Signature] Deputy Clerk

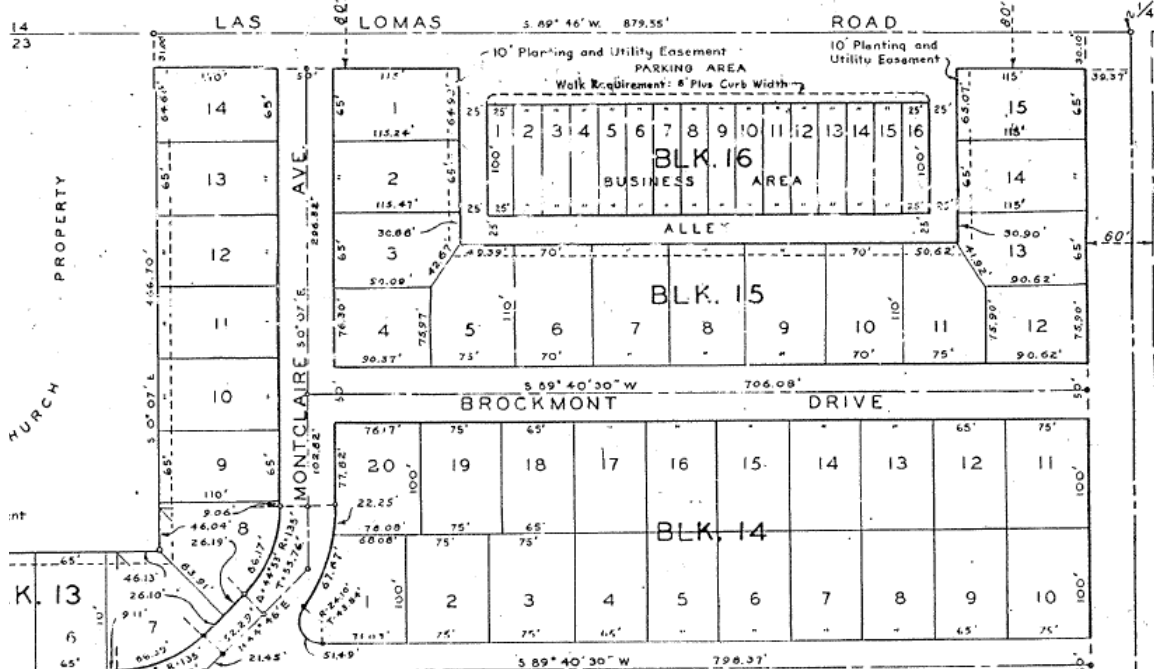
10' SETBACK REQUIREMENTS ON
ALL LOTS

LINE = NOT LESS THAN 20' NOR

INNER LOTS = NOT LESS THAN 10'

NOTE: UNLESS OTHERWISE INDICATED A UTILITY EASEMENT MEASURING 5' IN WIDTH
IS RETAINED ACROSS THE REAR OF EACH RESIDENTIAL LOT, THUS--

LOT B'DY.	LOT	LOT	LOT	LOT	5' EASEMENT
	LOT	LOT	LOT	LOT	5' EASEMENT



Maps



To Whom It May Concern,

By signing the following, I hereby lend my full support and affirmation to the new Stucco Wall and Landscaping project located at 4200 Brockmont Ave, on the corner of Brockmont and Montclair. I am aware that the property owner, Samuel Reynolds, is seeking a permit/variance approval to have a front yard wall that is greater than 3 feet high. I agree that the wall is properly constructed, safe, and poses no danger to the surrounding street or sidewalk. I agree that this is a high-traffic corner lot, and that the desire to modify the property to attain a greater degree of privacy is reasonable and appropriate. I agree that the wall is aesthetically pleasing, and improves the quality of the surrounding neighborhood, and is congruent with the existing "Southwestern" style architecture of this area of Nob Hill. I urge the Albuquerque City Council to vote in support of the wall as it stands, with no modifications necessary.

Vernica Mata

Vernica Mata

4207 Brockmont Ave NE
ABQ, NM 87108

Comments:

JORDAN SAWYER

Jordan Sawyer

4201 Brockmont NE
Abq. NM 87108

Comments:

Rick Davis

~~209~~

509 Montclerc Apt B

Comments:

Alex Hamilton

~~Alex~~

4204 Backmont Ave NE

Comments:

Cory M. Brown

GREGORY A CANAVAS

4209 12th St NW

AR 2 07105

Comments:

Tristen Toledo
~~Tristen Toledo~~
SOS Montclair
Dr NE

Comments:

Eric Seelinger
4201 Roma
Abq 87108

Comments:

→ Mr. Seelinger is on vacation, but is on record from the February 15th ZME Hearing as being in support of the Wall

Comments:

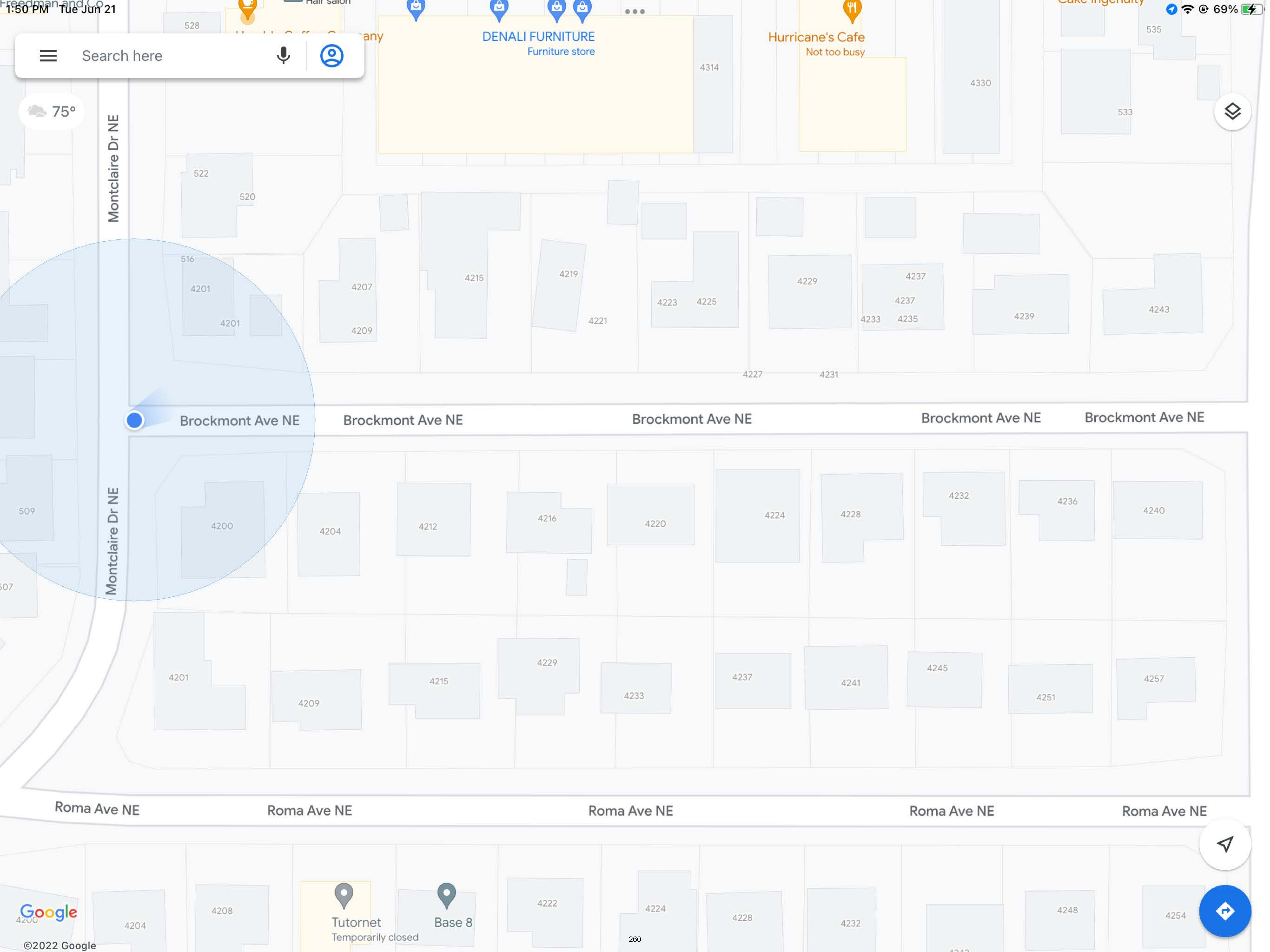
Sanchez, Suzanna A.

From: Sam <samueljr1309@gmail.com>
Sent: Tuesday, June 21, 2022 1:53 PM
To: Sanchez, Suzanna A.
Subject: VA-2021-00449, project # PR-2021-006330
Attachments: image0.png; ATT00001.txt

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.
Hi Suzie,

Attached is one more photo that Mr. Lucero requested for VA-2021-00449, project # PR-2021-006330.

Thanks,
Sam Reynolds





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

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller courtyard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Special Exception No:..... **VA-2021-00449**
Project No: **Project#2021-006330**
Hearing Date: 06-21-22
Closing of Public Record: 06-21-22
Date of Decision: 07-06-22

On the 21st day of June, 2022, Dave Bennett, agent for property owner Samuel Jacob Reynolds (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit for a taller courtyard wall major (“Application”) upon the real property located at 4200 Brockmont Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a permit for a taller court yard wall major.
2. The Application came before the ZHE at the June 21, 2022 ZHE hearing, upon remand from the Land Use Hearing Officer (“LUHO”), pursuant to the “LUHO Remand to ZHE” in AC-22-7, dated May 23, 2022 (the “LUHO Remand”).
3. The LUHO Remand determined that, with respect to IDO Section 14-16-6-6-(H)(3)(a)(3), there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces. It appears from written submittals and testimony that the parties to the appeal do not dispute this determination.
4. 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).
5. The ZHE finds that the Applicant has authority to pursue this Application
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-1B.
11. Based on photographs, maps and oral 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 area.
 - a. As stated, above, there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces.
 - b. Of these 11 lots, 2 of them have a front yard wall or fence over 3 feet in height.
 - c. Applicant argues that, to determine how many lots constitute 20% of 11, the number 11 should be multiplied by 20% (which results in a product of 2.2), then rounded down to result in 2 lots required to satisfy the 20%, which would be satisfied by the facts here.

- d. Opponent argues that 2 lots constitute only approximately 18.18% of 11, because 2 divided by 11 yields approximately 18.18%, and that therefore IDO Section 14-16-6-6-(H)(3)(a)(3) is not satisfied.
 - e. The ZHE finds that Applicant's interpretation of rounding down to 2 lots required to satisfy 20% of 11 is consistent with the IDO. The IDO discusses rounding down to the nearest integer to determine a standard in several sections (Sections 3-4(J)(3)(a)(3), 4-3(B)(2)(c), 4-3(B)(3)(c)(1)(a), 5-5(C)(1)(c), 5-5(C)(5)(b), and 5-10(C)(1)). The only reference to rounding up in the IDO the ZHE found was in 5-10(C)(1), where numbers were rounded up only if the decimal was 0.9 or more.
 - f. Here, because 20% of 11 equals 2.2, the requirement should be that to satisfy IDO Section 14-16-6-6-(H)(3)(a)(3), Applicant must establish that 2 lots have a front yard wall or fence over 3 feet in height, which Applicant has done.
12. Based on evidence presented by Applicant, the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Specifically, photographs were submitted showing several walls/fences in the neighborhood. It appears from the evidence that the proposed wall would not be out of character with the surrounding area, but rather would reinforce the architectural character of the neighborhood by being in harmony with the other improvements on the Subject Property.
13. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, that the wall would enhance the safety of both the subject property and neighboring properties by discouraging trespassers and vehicle headlamp light from coming into the subject property.
14. Based on evidence presented by Applicant, 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.

DECISION:

APPROVAL of a permit for a taller court yard wall major.

APPEAL:

If you wish to appeal this decision, you must do so by July 21, 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.

A handwritten signature in blue ink, appearing to read "Robert Lucero".

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Samuel Jacob Reynolds, samueljr1309@gmail.com



**Hearing on Special Exceptions
to the Integrated Development Ordinance**

MINUTES

June 21, 2022

600 2nd St NW, Albuquerque, NM 87102

CITY STAFF PRESENT:

Robert Lucero – Zoning Hearing Examiner

Lorena Patten-Quintana – ZHE Planner, Planning Department

Suzie Sanchez – Hearing Monitor

VA-2021-00449
PR-2021-006330
4200 Brockmont
Samuel J Reynolds Appeal

ZHE: We'll proceed with agenda item 5 right now. And, that is VA-2021-00449, project number, PR-2021-006330, Samuel Jacob Reynolds through agent Dave Bennett requests a permit for a taller courtyard wall major for Lot 10, Block 14, Broadmoor Addition, located at 4200 Brockmont Avenue Northeast which is zoned R-1B. Do we have the agent or applicant with us this morning?

S. REYNOLDS: Good morning, Mr. Lucero, this is Sam Reynolds, the applicant. I don't believe Mr. Bennett is here today.

ZHE: Good morning, sir would you please state your full name and mailing address for the record?

S. REYNOLDS: My name is Samuel Reynolds and my mailing address is 4200 Brockmont Avenue NE, 87108.

ZHE: Thank you, sir and please raise your right hand. And, do you affirm under penalty of perjury that your testimony today will be true?

S. REYNOLDS: I do.

ZHE: Thank you, sir. All right so, we're here after a LUHO appeal and remand and with direction to focus in part on the, what I'll call the 20% rule for the wall major permits but certainly, anything else that's germane to the appeal, we want to hear testimony on. So, with that, sir, go ahead. Would you please summarize where we are after the remand?

S. REYNOLDS: Sure. Am I able to share my screen?

ZHE: Yes. Suzie, would you please enable that?

HEARING MONITOR: You can go ahead, now.

ZHE: Thank you.

S. REYNOLDS: Okay, so yes. The LUHO determined that the 20% rule at the original ZHE meeting was improperly applied, that there was an error and in summary, at the initial ZHE hearing, for calculation of the 20%, the so-called 20% rule, 12 properties were included. And, just to summarize the LUHO's decision, the most pertinent part of their decision regarding this 20% rule, the LUHO states the ZHE mistakenly included the lot at 2224 Brockmont on the south side of the street. This lot is more than 330 feet from the east side boundary of the appellant's lot. A closer look at the evidence in the record reveals that City Planning Staff included a much longer measurement area than 330 feet. It appears to be an honest but consequential mistake under the correct measurements because only 11 lots qualify in the 20% analysis. The appellant has demonstrated that out of the 11 lots, 2 of them had front yard walls or fences taller than 3

feet. In the record, it is undisputed that the lots at 4201 and 4216 Brockmont have fences or walls taller than 3 feet in the front yards and within 330 feet of the appellant's east boundary. Thus, with an accurate measurement of 330 feet from the outer east side boundary line of the appellant's lot, the appellant satisfies the 20% rule. And, I think the easiest way to show this error is on Google Maps here, so, I'm on the corner of Montclair and Brockmont marked by the red pin. And, on the north side of Brockmont, the last house included in the original ZHE's measurement is 4221. That's the eastern most property included and you can see that on the screen there. And, on the south side of Brockmont, the ZHE originally included 4224 which, as you can see is significantly further east than 4221 on the north side and so that's what the LUHO determined was improperly included in that 20% decision which is why the initial ZHE application was denied.

ZHE: I see. And, what about 4220, is that to be included?

S. REYNOLDS: 4220, according to the LUHO's decision, is the easternmost house on the south side which is included, yes.

ZHE: Very good. Well, thank you for that clear description.

S. REYNOLDS: And so, with that, if you'll allow me, I'd just like to move on to briefly address the other requirements in the statute which I - - The main one is that, from the centerline of the property, the, all of the windows in the front facade of the house must be visible from the exterior of the wall. So, I have two videos to show.

ZHE: Okay, go ahead.

S. REYNOLDS: This is from the interior of the wall just showing all of the open spaces in the front yard wall through which the windows can be viewed. So again, that's the interior of the wall.

ZHE: Okay.

S. REYNOLDS: Here is from the exterior of the wall. The centerline of the property is almost exactly at that translucent front gate but probably more exactly a few feet west so, that's essentially where I'm standing. There are two windows in the front façade, two picture windows so, you can clearly see the easternmost window at the start of the video, and I will pan the camera to the left and right to show that this is the centerline of the property. As I pan to the left, the end of my property line will be where the brown rock ends.

ZHE: Okay.

S. REYNOLDS: Showing the second window here and then I'll walk to the gate to show that there are in fact, those are the two windows in the front façade of the house. And, I believe that that video also shows evidence regarding the other bullets in the statute which is that the architecture of the wall must match the surrounding area and the house itself and the architecture is sound, safe and so forth. So, I'm going to stop sharing my screen.

ZHE: Thank you, Mr. Reynolds. Would you please email the Google maps as well as the two videos to Suzie Sanchez for inclusion in the record?

S. REYNOLDS: Yes.

ZHE: If so, that'd be great.

S. REYNOLDS: And, if I could make one other addition?

ZHE: Sure.

S. REYNOLDS: Actually, I'm sorry, can I just share my, I'm gonna share my screen one more time.

ZHE: Go ahead.

S. REYNOLDS: And so, I just want to remind you Mr. Hearing Examiner, that from the initial ZHE application, there was no neighborhood opposition to this project and in fact, I had three neighbors spontaneously show up at that ZHE hearing to support the project. And, for my LUHO appeal, I actually went and did a more formal petition. Is my screen showing?

ZHE: Yes.

S. REYNOLDS: And so, I...

ZHE: I see a map, it looks like.

S. REYNOLDS: Yes. So, this is the petition that I submitted at my appeal. I have highlighted my property on the corner of Brockmont and Montclair. The red squares around the surrounding houses are all the surrounding properties. A brief paragraph saying that the before mentioned, support the project. They think it's reasonable in a high traffic area. That it is, appears safe and poses no danger. That it matches the architecture of neighborhood and that essentially, the signees are in support of the project and these are those particular address signatures. Mr. Seelinger was on vacation when I got this petition signed but he is on record at the initial ZHE hearing as being in support of the wall.

ZHE: Okay.

VA-2021-00449
PR-2021-006330
4200 Brockmont
Samuel J Reynolds Appeal

S. REYNOLDS: And so, the only opposition to this project has been the neighborhood association.

ZHE: Okay. Thank you and please submit that petition if you haven't already.

S. REYNOLDS: Very well.

ZHE: All right, anything else you'd like to add before we call for public comment?

S. REYNOLDS: No, thank you.

ZHE: Very good, well I appreciate your submittals. Let's see if there's any public comment and then if so, you'll get the chance to respond. So, again this is agenda item 5, Samuel Jacob Reynolds requesting a permit for a taller courtyard wall at 4200 Brookmont. Please raise your hand if you'd like to speak on that matter. I see a Gary Eyster with a hand raised.

G. EYSTER: Yes, Mr. Lucero.

ZHE: There you are, sir. Would you please state your full name and mailing address for the record?

G. EYSTER: Yes, sir. Gary Eyster 316 Amhurst Northeast, 87106.

ZHE: Thank you, sir. Please raise your right hand and do you affirm under penalty of perjury that your testimony today will be true?

G. EYSTER: Absolutely.

ZHE: Thank you, sir. Are you speaking on your own behalf or on behalf of our neighborhood association?

G. EYSTER: For the neighborhood association.

ZHE: Thank you, sir. Go ahead, five minutes.

G. EYSTER: Thank you, Mr. Lucero and good morning, Mrs. Patten-Quintana and Mrs. Sanchez-Flores and Mr. Reynolds. It appears Mr. Examiner, that this remand boils down to the question of IDO 6-6-h-3-a, the, do at least 20% of the properties with low density residential development with a front yard abutting the same street as the subject within 330 feet along the length of the street, the lot faces have a front wall or fence over 3 feet. Referring to the LUHO's Notice of Decision, outlines 289 through 292 of the remand, LUHO finds that there are five lots on the south side of Brockmont that qualify for the 20% test. As far as I can tell, that is not contested. We did however, consult the 1945 plat which, we provided to you and it confirms that the fifth lot east of the subject is the last within 330 feet. We noted in the Notice of Decision that

the address the LUHO listed are not consistent with those displayed on the houses. The addresses displayed on the five houses to the east of the subject are 4204-12, 16, 20 and 24. They skip 08. Nonetheless, we agree with the LUHO there are five lots on the south side. We also agree with him, there are six lots on the north side. Therefore, 11 lots qualify for the test. We appreciate the LUHO adjudicating what is a wall in the front yard and what is not. We agree with him at line 301 and 302 when he says; it is undisputed that the lots at 4201 and 4216 have walls or fences higher than 3 feet in their front yards and they are within 330 feet of the applicable. However, Mr. Lucero we strongly disagree with the LUHO's statement on line 304 and 305, appellant seemingly satisfies the 20% rule. Here's why, two lots out of 11 is 18.2%, that is not at least 20% as required by the so-called 20% rule. Two lots out of 10 would be 20%, two lots out of 11 is less than 20%. We continue to argue that the wall would not meet h-3-D-1 requiring that the wall not view any door, not block the view of any door or window when viewed from the middle of the street at 5 feet high. There are many locations where it would block that view. We would note that community members have expressed to us, the notion that construction without a permit undermines the IDO because it precludes the opportunity for property owners and communities to develop mutually acceptable plans for walls. We regret, Mr. Lucero, that Planning has done so little to educate property owners and the construction industry about wall permits. Planning needs to do much better so property owners are not subjected to mistakes. The neighborhood associations don't have to devote the tremendous time and effort to safeguard streetscapes and eyes on the street. We're also sorry that code compliance cannot respond quickly when unpermitted walls are reported to save property owners from unwarranted expense. Thank you.

ZHE: Thank you, Mr. Eyster and I confirm, we do have that plat map that you referenced in the record. Thank you.

G. EYSTER: You're welcome.

ZHE: Okay. Again, calling for any further public comment on agenda item 5 please raise your hand if you'd like to speak on agenda item 5. I'm scrolling through the participant list and I don't see any one with a hand raised. Last call for agenda item 5. Okay, Mr. Reynolds are you there?

S. REYNOLDS: I am.

ZHE: It doesn't appear that there's any additional public comments but you heard Mr. Eyster, would you like to respond to the public comment?

S. REYNOLDS: I would.

ZHE: Go ahead, sir.

S. REYNOLDS: Yes, so the LUHO's reasoning, obviously the LUHO can do basic math and understands that 2 is not 20% of 11. The reasoning for that, is that the IDO precedent in these cases where determining the number of structures required to achieve a certain regulation is to round down. And so, mathematically well yes, I would need 2.1 or 2.2 houses out of 11 to achieve a mathematical 20%. Clearly, that's unreasonable and the reasonable decision is to round down to 2, not round way up to 3 not in favor of the property owner. I think that's pretty obvious. Secondly, Mr. Eyster states that the front windows in the front façade need to be visible from the middle of the street. That's not correct. There's nothing in the IDO that states anything about the middle of the street. It's 5 feet from the wall, 5 feet out from the wall. And, I think the video quite clearly shows that you can see the windows from many points in the front yard including from the center property line, 5 feet out. And so, I think this really just shows that the neighborhood association has a blanket opposition to any wall above 3 feet and this is a last ditch effort to try to prevent what is a very reasonable modification to my property. That's it.

ZHE: Thank you, Mr. Reynolds. Thank you, sir. Okay. Again, anything that hasn't yet been submitted into the record that was shown on the screen today please email to Suzie by this Friday and I will take everything under consideration and issue the written decision in 15 days. Thank you, very much.

S. REYNOLDS: Thank you.

ZHE: That concludes agenda item 5.

Planning Department
Alan Varela, Planning Director
Development Review Division
600 2nd Street NW – 3rd Floor
Albuquerque, NM 87102

NOTICE OF APPEAL

July 22, 2022

TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on July 21, 2022. You will receive a Notice of Hearing as to when the appeal will be heard by the **Land Use Hearing Officer**. If you have any questions regarding the appeal please contact Alfredo Ernesto Salas, Planning Administrative Assistant at (505) 924-3370.

Please refer to the enclosed excerpt from the City Council Rules of Procedure for Land Use Hearing Officer Rules of Procedure and Qualifications for any questions you may have regarding the Land Use Hearing Officer rules of procedure.

Any questions you might have regarding Land Use Hearing Officer policy or procedures that are not answered in the enclosed rules can be answered by Crystal Ortega, Clerk to the Council, (505) 768-3100.

CITY COUNCIL APPEAL NUMBER: AC-22-10
PLANNING DEPARTMENT CASE FILE NUMBER:
PR-2021-006330-VA-2021-00449-VA-2022-00204

APPLICANT: Nob Hill Neighborhood Association
P.O.Box 4875
Albuquerque NM, 87196

cc: Crystal Ortega, City Council, City county bldg. 9th floor
Kevin Morrow/Legal Department, City Hall, 4th Floor-
Samuel Jacob Reynolds, samueljr1309@gmail.com
Dave Bennett, landconm@gmail.com
Gary Eyster, meyster1@me.com
Greg Weirs vgweirs@gmail.com



ZONING HEARING EXAMINER'S AGENDA

TUESDAY, June 21, 2022 9:00 A.M.

Join Zoom Meeting

<https://cabq.zoom.us/j/7044490999>

Meeting ID: 704 449 0999

One tap mobile

+1-669-900-6833,,7044490999# US (San Jose)

+1-253-215-8782,,7044490999# US (Tacoma)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

Meeting ID: 704 449 0999

Find your local number: <https://cabq.zoom.us/j/7044490999>

Robert Lucero, Esq., Zoning Hearing Examiner

Lorena Patten-Quintana, ZHE Planner

Suzie Sanchez, ZHE Administrative Assistant

For Inquiries Regarding This Agenda, Please Call The Planning Dept. at (505) 924-3894.

PLEASE ADDRESS ALL CORRESPONDENCE TO:

Robert Lucero, Esq., Zoning Hearing Examiner at suzannasanchez@cabq.gov

NOTICE TO PEOPLE WITH DISABILITIES: If you have a disability and you require special assistance to participate in this hearing, please contact Planning Information at (505) 924-3860.

INTERPRETER NEEDED:

- | | | | |
|----|---------------|--------------------------------|---|
| 1. | VA-2022-00095 | Project#
PR-2020-
003521 | Carlos Fadrago and Dania Rodriguez request a variance of 10 feet to the required 10 foot corner side setback for Lot 10, Block 12, Vista Encantada, located at 2736 Florida ST NE, zoned R-1C [Section 14-16-5-1(C)(1)] |
|----|---------------|--------------------------------|---|

- | | | | |
|----|---------------|--------------------------------|---|
| 2. | VA-2022-00096 | Project#
PR-2022-
006946 | Rosa Anchondo requests a conditional use to allow for a family home daycare for Lot 14, Block 2, Katherine Village, located at 3421 Abbey CT NW, zoned R-T [Section -14-16-4-3(F)(7)] |
|----|---------------|--------------------------------|---|

OLD BUSINESS:

- | | | | |
|-----|---------------|--------------------------------|--|
| 3. | VA-2021-00316 | Project#
PR-2021-
005834 | City of Albuquerque Family and Community Services (Agent, Consensus Planning) requests a conditional use to allow an overnight shelter for Lot A1A1A/Lovelace Hospital, Lovelace Hospital, located at 5400 Gibson BLVD SE, zoned MX-H [Section 14-16-4-2] |
| 4. | VA-2021-00317 | Project#
PR-2021-
005834 | City of Albuquerque Family and Community Services (Agent, Consensus Planning) requests a conditional use to allow an overnight shelter for Lot 1, Swift Addn, located at 5006 Gibson BLVD SE, zoned MX-H [Section 14-16-4-2] |
| 5. | VA-2021-00449 | Project#
PR-2021-
006330 | Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)] |
| 6. | VA-2021-00390 | Project#
PR-2021-
006174 | Jared Congdon (Agent, Roger Congdon) requests a variance of 4 ft for a retaining wall in the rear yard for Lot 19A, Stonegate Village located at 4909 Oso Grande PL NE, zoned R-T [Section 14-16-5-7(D)] |
| 7. | VA-2021-00399 | Project#
PR-2021-
006176 | Kylie and Zephyr Renner request a conditional use to allow an accessory dwelling unit without a kitchen for Lot 1, Block N, Netherwood Park 1 st Replat, located at 2702 Morrow RD NE, zoned R-1D [Section 14-16-4-3(F)(5)(g)] |
| 8. | VA-2022-00074 | Project#
PR-2022-
006810 | Theresa Herron requests a taller wall permit major for Lot 1, Block 9, Albright & Moore Addn, located at 1519 Los Tomases DR NW, zoned R-1A [Section 14-16-5-7(D)(3)(g)] |
| 9. | VA-2022-00080 | Project#
PR-2022-
006815 | Una Esquina LLC (Agent, Consensus Planning) requests a conditional use to allow for the retail of cannabis located within 600 ft of another cannabis retail establishment for Lot 3, Block 2, Bel Air, located at 2837 San Mateo BLVD NE, zoned MX-L [Section 14-16-4-3(D)(35)(c)] |
| 10. | VA-2022-00082 | Project#
PR-2022-
006817 | Kinsella Investment Company, LLC. (Agent, Matt Chadwick) requests a conditional use to allow cannabis retail within 600 feet of another cannabis retail for Lot A, Block 14, Miramontes Park Unit 1, located at 5715 Menaul BLVD NE, zoned MX-M [Section 14-16-4-3(D)(35)(c)] |

NEW BUSINESS:

- | | | | |
|-----|---------------|----------------------------|---|
| 11. | VA-2022-00097 | Project#
PR-2022-006947 | Steven Wood requests a wall permit major in the front yard for Lot 18, Block 11, Waggonman & Denison Addn, located at 201 General Somervell ST NE, zoned R-1C [Section 14-16-5-7(D)(3)(g)] |
| 12. | VA-2022-00098 | Project#
PR-2022-006947 | Steven Wood requests a variance of 3 feet view fencing to allow for a 6 foot high wall along the front and street side yards for Lot 18, Block 11, Waggonman & Denison Addn, located at 201 General Somervell ST NE, zoned R-1C [Section 14-16-5-7(D)(1)] |
| 13. | VA-2022-00099 | Project#
PR-2022-006948 | Scott Peters and Delcina Phelps requests a permit for a courtyard wall in the front yard for Lot 21, Block 7, Sunset Terrace Addn, located at 1034 Princeton DR NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)] |
| 14. | VA-2022-00100 | Project#
PR-2022-006949 | Richard Levering (Agent, Gilbert Austin) requests a permit carport for Lot 19, Block 22, Juan Tabo Height Unit 2, located at 505 Shirley ST NE, zoned R-1C [Section 14-16-5-5(F)(2)(a)(3)(b)] |
| 15. | VA-2022-00101 | Project#
PR-2022-006950 | Larry Peters and Kathleen Peters requests a variance of 1 foot to the required 3 ft for a carport to a property line for Lot 7, Block 111, Bel-Air, located at 2417 Palomas DR NE, zoned [Section 14-16-5-5(F)(2)(a)(3)(c)] |
| 16. | VA-2022-00130 | Project#
PR-2022-006950 | Larry Peters and Kathleen Peters requests a permit-carport for Lot 7, Block 111, Bel-Air, located at 2417 Palomas DR NE, zoned R-1C [Section 14-16-5-5(F)(2)(a)(3)(b)] |
| 17. | VA-2022-00102 | Project#
PR-2020-003309 | Leonard and Deborah Garcia request a variance of 5 ft to the required 10 ft side setback for Lot 11C, Block 1, Sloans Acres, located at 4224 Estancia DR NW, zoned R-1D [Section 14-16-5-1(C)(1)] |
| 18. | VA-2022-00103 | Project#
PR-2022-006952 | Karsten Creightney (Agent, Greg Baczek) requests a variance of 1,074 square feet to the allowed size of an accessory building for Lot 4, Regina Addn, located at 3409 Herrera RD NW, zoned R-1D [Section 14-16-4-3(F)(5)(c)] |
| 19. | VA-2022-00104 | Project#
PR-2022-006952 | Karsten Creightney (Agent, Greg Baczek) requests a conditional use to allow for an accessory dwelling unit without a kitchen for Lot 4, Regina Addn, located at 3409 Herrera RD NW, zoned R-1D [Section 14-16-4-3(F)(5)(g)] |
| 20. | VA-2022-00105 | Project#
PR-2022-006953 | Terrel and Mary Rhodes request a permit wall major in the street side yard for Lot 24, Block 12, Broadmoor Addn, located at 4200 Roma Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)] |

- | | | | |
|-----|---------------|--------------------------------|--|
| 21. | VA-2022-00106 | Project#
PR-2022-
006954 | Volcano RV LP (Agent, Kimley-Horn and Associated) requests a variance of 3 ft to the allowed 3 ft wall height on the street side yard for Lot C48, The Town of Atrisco Grant Unit 4, located at 8301 Volcano RD NW, zoned NR-BP [Section 14-16-5-7(D)] |
| 22. | VA-2022-00109 | Project#
PR-2022-
006956 | Carmen Alcantar requests a conditional use to allow for an accessory dwelling unit without a kitchen for Lot 14B1, Block 1, La Mariposa South, located at 5171 Vista de Luz DR NW, zoned R-1C [Section 14-16-4-3(F)(5)(g)] |
| 23. | VA-2022-00110 | Project#
PR-2022-
006957 | Lawrence and Donna Trujillo requests a variance of 9 feet into the required 10 ft street side setback for Lot 7, Block 5, Foothills North, located at 13413 Pierce Arrow RD NE, zoned R-1B [Section 14-16-5-1(C)(1)] |
| 24. | VA-2022-00111 | Project#
PR-2022-
006958 | Homestead Development Group (Agent, Carl Garcia-ABQ Land Use Consulting, LLC) requests a variance of 6 ft to the allowed 3 ft wall or fence on the street side yard for Lot AB, Block 20, Woodward – Hugh B, located at 500 Oak ST NE, zoned MX-T [Section 14-16-5-7(D)] |
| 25. | VA-2022-00113 | Project#
PR-2022-
006958 | Homestead Development Group (Agent, Carl Garcia-ABQ Land Use Consulting, LLC) requests a variance of 6 ft to the allowed 3 ft wall or fence on the street side yard for Lot C, Block 20, Woodward – Hugh B, located at 500 Oak ST NE, zoned MX-T [Section 14-16-5-7(D)] |
| 26. | VA-2022-00114 | Project#
PR-2022-
006958 | Homestead Development Group (Agent, Carl Garcia-ABQ Land Use Consulting, LLC) requests a variance of 6 ft to the allowed 3 ft wall or fence on the street side yard for Lot D, Block 20, Woodward – Hugh B, located at 500 Oak ST NE, zoned MX-T [Section 14-16-5-7(D)] |
| 27. | VA-2022-00115 | Project#
PR-2022-
006958 | Homestead Development Group (Agent, Carl Garcia-ABQ Land Use Consulting, LLC) requests a variance of 6 ft to the allowed 3 ft wall or fence on the street side yard for Lot VAC ORD 2-1967, Block 20, Woodward – Hugh B, located at 500 Oak ST NE, zoned MX-T [Section 14-16-5-7(D)] |
| 28. | VA-2022-00116 | Project#
PR-2019-
002179 | Christine Ragsdale and Michelle Chavez (Agent, Carl Garcia-ABQ Land Use Consulting, LLC) requests a variance of 5 ft to the required 10 ft side yard setback for Lot 31, Saddle Ridge Unit 2, located at 5809 Morgan LN NW, zoned R-1D [Section 14-16-5-1(C)(1)] |
| 29. | VA-2022-00117 | Project#
PR-2022-
006959 | Anthony Leon (Agent, Carl Garcia-ABQ Land Use Consulting, LLC) requests a variance of 3 ft to the required 3 ft setback for a carport for Lot 100, Paradise Skies Unit 1, located at 5809 Virgo CT NW, zoned R-T [Section 14-16-5-5(F)(2)(a)(3)(c)] |

30.	VA-2022-00118	Project# PR-2022- 006959	Anthony Leon (Agent, Carl Garcia-ABQ Land Use Consulting, LLC) requests a permit carport for Lot 100, Paradise Skies Unit 1, located at 5809 Virgo CT NW, zoned R-T [Section 14-16-5-5(F)(2)(a)(3)(b)]
31.	VA-2022-00119	Project# PR-2022- 006960	NM Educators Federal Credit Union (Nusenda) (Agent, Carl Garcia-ABQ Land Use Consulting, LLC) requests a variance of 5 ft to allow for an 8 ft view fence on the street side yard for Lot E2A2, Jeannedale Addn Unit 1A, located at 6501 Indian School RD NE, zoned MX-H [Section 14-16-5-7(D)(1)]
32.	VA-2022-00120	Project# PR-2022- 006961	All Faiths (Agent, Matthew Ramsey) requests a variance of 3 ft to the required 3 ft wall height for Lot 9 SWLY Portion Of, Block 18, Snow Heights Addn, located at 8401 Constitution Ave NE, zoned MX-L [Section 14-16-5-7(D)(1)]
33.	VA-2022-00122	Project# PR-2022- 006965	Las Tiendas, LLC (Agent, Consensus Planning) requests a conditional use to allow for cannabis retail within 600 ft of another cannabis retail establishment for Lot F1B, Seven Bar Ranch, located at 10200 Corrales RD NW, zoned MX-M [Section 14-16-4-3(D)(35)(c)]
34.	VA-2022-00123	Project# PR-2022- 006967	Michael Wood and Sarah Wallace (Agent, Thomas Tomlinson) requests a permit wall major in the front yard for Lot 12, Block 21, Parkland Hills Addn, located at 715 Solano DR SE, zoned R-1D [Section 14-16-5-7(D)(3)(g)]
35.	VA-2022-00125	Project# PR-2022- 006967	Michael Wood and Sarah Wallace (Agent, Thomas Tomlinson) requests a variance of solid 3 ft to the required 3 ft wall height at front yard for Lot 12, Block 21, Parkland Hills Addn, located at 715 Solano DR SE, zoned R-1D [Section 14-16-5-7(D)(1)]
36.	VA-2022-00127	Project# PR-2020- 004024	Diamond Tail, LLC (Agent, Consensus Planning) requests a conditional use to allow for self-storage in an MX-M zone for Lot H9, Ventana Square at Ventana Ranch, located at 9610 Universe Blvd NW, zoned MX-M [Section 14-16-4-3(D)(29)]
37.	VA-2022-00128	Project# PR-2020- 004024	Diamond Tail, LLC (Agent, Consensus Planning) requests a conditional use to allow for self-storage in an MX-M zone for Lot H6, Ventana Square at Ventana Ranch, located at 9630 Universe Blvd NW, zoned MX-M [Section 14-16-4-3(D)(29)]
38.	VA-2022-00129	Project# PR-2022- 006970	Steve Memarian requests a variance pf 5 ft to the required 3 ft street side wall/fence height for Lot 6A, Block 44, Hunings Highland Addn, located at 725 Central Ave NE, zoned MX-L [Section 14-16-5-7(D)(1)]
39.	VA-2022-00135	Project# PR-2022- 006981	Las Tiendas LLC (Agent, Steven Lopez) requests a conditional use to allow nicotine retail for Lot F1B, Seven Bar Ranch, located at 10200 Corrales RD NW, Ste B-1, zoned MX-M [Section 14-16-4-3(D)(40)(e)]

40. VA-2022-00136 Project# Maria Hernandez requests a permit for a taller wall major on the abutting
PR-2022- street for Lot 1, Block 31, Mesa Park Addn Mankins, located at 700 Indiana
006986 ST SE, zoned R-1C [Section 14-16-5-7(D)(3)(g)]