



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

Annette Padilla requests a variance of 3 ft to the 3 ft maximum wall height for Lot 22, Block 18, Palisades, located at 5140 La Bajada NW, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2019-00253**  
Project No: ..... **Project#2019-002696**  
Hearing Date: ..... 09-17-19  
Closing of Public Record: ..... 09-17-19  
Date of Decision: ..... 10-02-19

On the 17th day of September, 2019, property owner Annette Padilla (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft maximum wall height (“Application”) upon the real property located at 5140 La Bajada NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

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

5. The address of the subject property is 5140 La Bajada NW.
6. The subject property is currently zoned R-1C.
7. The proposed wall would be constructed from concrete blocks.
8. All property owners within 100 feet and affected neighborhood association were notified of the application.
9. West Mesa Neighborhood Association; South West Alliance of Neighborhood Associations and Westside Coalition of Neighborhood Associations are the affected Neighborhood Association.
10. A letter from Steve Budenski, President WMNA, dated July 15, 2019, indicating no opposition to the Application, showing no opposition to her request for a CMU block fence 4 feet tall in the front yard and 6 feet tall in the side yards, was submitted in support of the Application.
11. Transportation initially issued a report indicating the wall is Not Allowed.
12. The wall is within the clear sight triangle.
13. After discussion with the Applicant, Transportation changed the report to Conditional Approval as long as the wall is converted or modified to see through fencing above 3 feet within the clear sight triangle.
14. Any wall shall not violate the clear sight triangle as required by transportation.
15. Any part of the wall currently in the clear sight triangle, and is above 3 feet and in the clear sight triangle shall be removed or modified to meet Transportation's conditional approval.
16. Katie Burch, 5149 Lomas De Atrisco, appeared and gave evidence in support of the request.
17. The proposed wall would strengthen or reinforce the architectural character of the surrounding area as required by Section 14-16-6-6(N)(3)(c)(1).
18. The proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community as required by Section 14-16-6-6(N)(3)(c)(2).
19. A proximity map (showing properties within 330 feet of the subject property), photographs of properties (with addresses) within 330 feet showing walls taller than 3 feet in front yard set-backs, in support of criteria required by Section 14-16-4-3(C)(3)c are submitted by Applicant.
20. 11 properties are shown on the map requiring 2 to show at least 20 percent, and Applicant submitted 3 photographs with addresses, showing 27 per cent.
21. At least 20 percent of the properties within 330 feet of the lot where the wall or fence is being requested have a wall or fence over 3 feet in the front yard as required by Section 14-16-6-6(N)(3)(c)(3)c.
22. 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).
23. The ZHE finds that the Applicant has authority to pursue this Application.

#### CONCLUSIONS OF LAW:

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

#### DECISION:

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

CONDITIONS:

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

Any part of the wall currently in the clear sight triangle, and is above 3 feet and in the clear sight triangle shall be removed or modified to meet Transportation's conditional approval.

APPEAL:

If you wish to appeal this decision, you must do so by October 17, 2019 pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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Stan Harada, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
Annette Padilla, 5140 La Bajada NW, 87105  
Katie Burch, 5149 Lomas De Atrisco NW, 87105