



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

Ian Vanderwoude requests a variance of 3 feet to the 3 feet maximum wall height for Lot 9, Block 8, McDuffie Place Addn Unit 3, located at 3301 Mountain Rd NE, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2020-00090**  
Project No: ..... **Project#2020-003563**  
Hearing Date: ..... 05-19-20  
Closing of Public Record: ..... 05-19-20  
Date of Decision: ..... 06-03-20

On the 19th day of May, 2020, property owner Ian Vanderwoude (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 feet to the 3 feet maximum wall height (“Application”) upon the real property located at 3301 Mountain Rd NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

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

4. All property owners within 100 feet and affected neighborhood association were notified of the application.
5. The subject property is currently zoned R-1C.
6. Applicant appeared and gave evidence in support of the application.
7. City Transportation issued a report stating that it does not object.
8. Based on evidence presented by Applicant, it appears that the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Specifically, Applicant testified that the wall would be constructed in harmony with the home on site and neighboring properties. Although public testimony was provided by an opponent to the project objecting in general to walls within setback areas, written support from neighbors in favor of the proposed wall was also received.
9. Based on evidence presented by Applicant, it appears that the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, the wall would enhance the safety of both the subject property and neighboring properties by discouraging trespassers from coming into the property and keeping sports balls in the yard. Although public testimony was provided by an opponent to the project objecting in general to walls within setback areas, written support from neighbors in favor of the proposed wall was also received.
10. Based on evidence presented by Applicant, it appears that the design of the wall complies with any applicable standard in Section 14-16-5-7 (Walls and Fences), including, but not limited to Subsection 14-16-5-7(E)(2) (Articulation and alignment) and Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following: (a) The wall or fence shall not block the view of any portion of any window on the front façade of the primary building when viewed from 5 feet above ground level at the centerline of the street in front of the house; and (b) The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area. Although public testimony was provided by an opponent to the project objecting in general to walls within setback areas, written support from neighbors in favor of the proposed wall was also received.
11. 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).
12. The ZHE finds that the Applicant has authority to pursue this Application.
13. However, based on evidence presented by Applicant, questions remain regarding whether 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 is required.
14. This matter should be deferred to allow further factual and evidentiary support to be submitted.

DECISION:

DEFERRAL of the Application to be heard at the ZHE hearing at 9:00 a.m. on June 16, 2020.

APPEAL:

If you wish to appeal this decision, you must do so by June 18, 2020 pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

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



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Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
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