



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

Samuel Martinez and Maria Cholico request a Permit-Wall or Fence Major for Lot 163, Rio Grande Heights Addn, located at 518 57<sup>th</sup> ST SW, zoned R-1C [Section 14-16-5-7-D]

Special Exception No:..... **VA-2021-00046**  
Project No: ..... **Project#2021-005138**  
Hearing Date: ..... 04-20-21  
Closing of Public Record: ..... 04-20-21  
Date of Decision: ..... 05-05-21

On the 20th day of April, 2021, property owners Samuel Martinez and Maria Cholico (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a Permit-Wall or Fence Major (“Application”) upon the real property located at 518 57<sup>th</sup> ST SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a Permit-Wall or Fence-Major.
2. The 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. (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..*

- 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.*
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 associations were notified of the application.
  5. The subject property is currently zoned R-1C.
  6. City Transportation initially issued a report objecting to the proposed wall as violating the driveway sight distance (mini clear sight triangle). However, subsequent correspondence between City Transportation and Agent indicate that City Transportation would not object if any solid portion of the fence were limited to 3-feet in height.
  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.
  8. 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. However, it appears from the evidence that the proposed wall as it currently exists would be out of character with the surrounding area, in that the photos submitted show walls that are wrought iron, concrete or block with wrought iron upper, or chain link, and thus transparent at least over 3-feet in height. Applicant's fence is solid wood, except where it was cut back within 11 feet of the driveway based on conversation with City Transportation. Neighbors submitted evidence that the fence being solid over 3-feet in height was out of character with the neighborhood. However, if the fence were see-through over 3-feet in height, it would reinforce the architectural character of the neighborhood by being in harmony with the other similar fences in the area.
  9. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, applicant provided testimony that the wall would enhance the safety of both the subject property and neighboring properties by discouraging trespassers from coming into the community and property. However, neighbors testified that the fence being solid up to 6-feet in height would interfere with traffic and could lead to accidents. The City

Transportations initial comments would appear in line with this. If the fence were transparent over 3-feet in height, it would address any safety and traffic concerns.

10. Applicant states that the design of the wall complies with any applicable standard in Section 14-16-5-7 (Walls and Fences), including, but not limited to Subsection 14-16-5-7(E)(2) (Articulation and alignment) and Subsection 14-16-5-7(E)(3) (Wall Design), and all of the following: (a) The wall or fence shall not block the view of any portion of any window on the front façade of the primary building when viewed from 5 feet above ground level at the centerline of the street in front of the house; and (b) The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area. However, the fence, which is located along the property line, must comply with Table 5-7-2 of the IDO, which requires that view fencing at most 50% opaque may be added above 3 feet to increase the total height of the wall to 5 feet when located less than 10 feet from the lot line abutting the street. Table 5-7-2 further requires that on a corner lot where the rear yard abuts the front yard of a residentially zoned lot, such as the Subject Property, a wall up to 5 feet in height enclosing the rear yard may be approved when located less than 10 feet lot line abutting the street.
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.

#### DECISION:

APPROVAL WITH CONDITIONS of a Permit-Wall or Fence-Major.

#### CONDITIONS:

- A. In accordance with Table 5-7-2 of the IDO, the portion of the fence located along the front or side yard of the Subject Property may not exceed 5-feet in height, and any portion of such fence over 3-feet in height must be view fencing at most 50% opaque.
- B. In accordance with Table 5-7-2 of the IDO, the portion of the fence located along the rear yard of the Subject Property may not exceed 5-feet in height and may be solid.

#### APPEAL:

If you wish to appeal this decision, you must do so by May 20, 2021 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.

A handwritten signature in black ink, appearing to read "Robert Lucero". The signature is fluid and cursive, written in a professional style.

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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

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