



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

Joshua Shapero request a Permit-Wall or Fence-Major for Lot 7, Block 23, Parkland Hills Addn, located at 716 Carlisle Blvd SE, zoned R-1D [Section 14-16-5-7-D]

Special Exception No:..... **VA-2021-00003**  
Project No: ..... **Project#2021-004911**  
Hearing Date: ..... 02-16-21  
Closing of Public Record: ..... 02-16-21  
Date of Decision: ..... 03-02-21

On the 16th day of February, 2021, property owner Joshua Shapero (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a Permit-Wall or Fence-Major (“Application”) upon the real property located at 716 Carlisle Blvd SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a Permit-Wall or Fence-Major.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(3)(a) (Variance-Review and Decision Criteria) reads: “... an application for a Variance-ZHE shall be approved if it meets all of the following criteria:
  - (1) *There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or 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 the IDO or the applicable zone district.*
  - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.”*
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. Applicant appeared and gave evidence in support of the application.
5. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
6. The subject property is currently zoned R1-D.

7. Based on evidence submitted by or on behalf of Applicant, it appears that there are special circumstances applicable to the Subject Property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid, as required by Section 14-16-6-6(N)(3)(a)(1). Specifically, Applicant testified and provided written evidence that, the Subject Property fronts Carlisle Boulevard, SE, which, on this block as opposed to as other blocks along Carlisle, has significant and high-speed traffic within close vicinity of the residence, which creates safety and security concerns on the site.
8. Based on evidence submitted by or on behalf of Applicant, the variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6(N)(3)(a)(2). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the wall in a manner that is consistent with the IDO and the Development Process Manual (DPM).
9. Based on evidence submitted by or on behalf of Applicant, the variance will not cause significant adverse material impacts on surrounding properties or infrastructure improvements in the vicinity as required by Section 14-16-6-6(N)(3)(a)(3). Specifically, the proposed wall is designed to be in harmony and consistency with what currently exists in the neighborhood, which was supported by photographic evidence and oral testimony. Photographs were submitted showing several walls in the neighborhood. Although not all walls were of similar construction, it appears from the evidence that neighborhood architectural styles differ markedly. 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 existing and proposed for the Subject Property.
10. Based on evidence submitted by or on behalf of Applicant, the variance will not materially undermine the intent and purpose of the IDO or applicable zone district as required by Section 14-16-6-6(N)(3)(a)(4). Specifically, Applicant presented evidence that the intent of IDO will still be met in that the subject site will continue the existing use and the proposed variance would merely add to the safety and usability of the site.
11. Based on evidence submitted by or on behalf of Applicant, the variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5). Specifically, Applicant testified that any smaller setback variance would be ineffective to provide for the safety and usability of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
12. City Transportation submitted a report stating no objection.
13. The affected neighborhood association objected to the Application, apparently out of principle, citing its longstanding policy against walls taller than 3 feet within the front yard setback area, a copy of which was submitted into the record. However, the neighborhood association presented no specific objection to the Application as presented.
14. Applicant's next-door neighbor, who in recent months obtained ZHE approval of a variance for a wall similar to that proposed by the Application, testified and submitted written evidence generally in support of the Application. However, Applicant's next-door neighbor requested that the Application be deferred pending the outcome of ongoing civil litigation between the neighbor and Applicant pertaining to a side wall dispute. The City is not a party to this civil litigation between neighbors and is not bound by the apparent restraining

order purportedly in effect. This litigation does not appear to be germane to this ZHE Notification of Decision. The parties to this litigation may effectively litigate the effect of this Notification of Decision, if any, in court without the City's involvement. Also, nothing in this Notification of Decision precludes the court from enjoining Applicant from constructing the wall proposed in the Application, should such an order be appropriate.

15. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
16. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a Permit-Wall or Fence-Major.

APPEAL:

If you wish to appeal this decision, you must do so by March 17, 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.



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cc:

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