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

Chelsea Pyne, Robert Hinton and Karen Hrobuchak request a Permit-Wall or Fence-Major for Lot 2B, Block 3, Major Acres, located at 1128 Major Ave NW, zoned R-1D [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2021-00103**
Project No: ..... **Project#2021-005380**
Hearing Date: 07-20-21
Closing of Public Record: 07-20-21
Date of Decision: 08-04-21

On the 20th day of July, 2021, property owners Chelsea Pyne, Robert Hinton and Karen Hrobuchak ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a Permit-Wall or Fence-Major ("Application") upon the real property located at 1128 Major Ave NW ("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 providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
4. 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).
5. All property owners within 100 feet and affected neighborhood associations were notified of the application.
6. The subject property is currently zoned R-1D.
7. City Transportation issued a report stating that it does not object.
8. 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.
9. 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.
10. 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.
11. 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.

12. 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).
13. The ZHE finds that the Applicant has authority to pursue this Application.
14. Applicants propose a wall not to exceed 5 feet in height, as follows: a 3 ft solid wall (existing) topped with 2 feet view fencing on north and west sides of the front yard, a 5 foot wrapped wire on east side of the front yard, a wrought iron gate for vehicles and a wrought iron gate for pedestrians on the north side of the yard.
15. Near North Valley Neighborhood Association representatives submitted evidence that their Neighborhood Association and impacted neighbors support the wall proposal as summarized in the immediately preceding paragraph.

DECISION:

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

CONDITION:

1. The proposed wall will be constructed as follows: a 3 ft solid wall (existing) topped with 2 feet view fencing on north and west sides of the front yard, a 5 foot wrapped wire fence on east side of the front yard, a wrought iron gate for vehicles and a wrought iron gate for pedestrians on the north side of the yard.

APPEAL:

If you wish to appeal this decision, you must do so by August 19, 2021 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:

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CITY OF ALBUQUERQUE
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NOTIFICATION OF DECISION

Chelsea Pyne, Robert Hinton and Karen Hrobuchak request a variance to allow for a solid wall in the front yard setback for Lot 2B, Block 3, Major Acres, located at 1128 Major Ave NW, zoned R-1D [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2021-00104**
Project No: ..... **Project#2021-005380**
Hearing Date:..... 07-20-21
Closing of Public Record:..... 07-20-21
Date of Decision: 08-04-21

On the 20th day of July, 2021, property owners Chelsea Pyne, Robert Hinton and Karen Hrobuchak ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance to allow for a solid wall in the front yard setback ("Application") upon the real property located at 1128 Major Ave NW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant has revised the wall proposal to fit within the requirements for a Permit-Wall or Fence-Major under IDO Section 14-16-6-6(H)(3).
2. Therefore, the application for a variance is unnecessary and is withdrawn.

DECISION:

WITHDRAWAL of the Application for a variance to allow for a solid wall in the front yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by August 19, 2021 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.

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