



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

Helen Bachicha requests a variance of 3 feet to the 3 feet maximum wall height for Lot 2-P1, Block 8, Las Marcadas 2, located at 4908 Sherry Ann RD NW, zoned R-1C [Section 14-16-5-7(D)]

Special Exception No:..... **VA-2020-00239**
Project No: **Project#2020-004158**
Hearing Date: 03-16-21
Closing of Public Record: 03-16-21
Date of Decision: 03-31-21

On the 16th day of March, 2021, property owner Helen Bachicha (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 feet to the 3-foot maximum wall height (“Application”) upon the real property located at 4908 Sherry Ann RD NW (“Subject Property”). Below are the ZHE’s finding 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. The Applicant has authority to pursue this Application.

5. The proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
6. All property owners within 100 feet and affected neighborhood association were notified of the application.
7. The subject property is currently zoned R-1C.
8. City Transportation issued a report stating no objection to the Application.
9. 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):
 - a. Applicant submitted evidence that the wall would be stuccoed to match the residence on the Subject Property, which is similar to other residences in the area and would therefore reinforce the architectural character of the surrounding area.
 - b. Opponents submitted evidence that a majority of houses in the surrounding area have no wall in the front yard area. Nonetheless, there are several houses in the surrounding area that do have a wall in the front yard area, which walls do not detract from, and rather help to establish the architectural character of the neighborhood. Applicants submitted evidence that the house across the street from the Subject Property has a similar 4-foot wall in the front yard, which appears to have never caused a problem. As such, the proposed wall would strengthen and reinforce the architectural character of the neighborhood.
 - c. Opponents stated that the architectural character of the area is one of having an open front yard visible from the streetscape. Applicant’s proposed wall is set back far from the street, such that it begins parallel with the structure and arcs back further from the street. As such, the wall does not impede on any visual element of the streetscape and would therefore reinforce the architectural character of the surrounding area.
10. 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):
 - a. Applicants submitted evidence that the wall has no negative impact on the adjacent properties, the surrounding neighborhood, or the larger community.
 - b. Opponents argue that the wall would harm their adjacent property by allowing criminals to hide behind it. However, the wall is wholly upon the Subject Property and meets the area near the boundary with the adjacent property only where there is already a boundary wall. It appears unrealistic to imagine a criminal seeking to harm the adjacent property would be hiding two walls over on a neighboring property. Further, consistent with required design elements, the ZHE finds that the wall must contain a window element, Subsection 14-16-5-7(E)(3), which will add visibility. Finally, although opponents allege a general
 - c. Opponents also complained of potential negative impacts of drainage from the wall. The ZHE finds that the Applicant must construct the wall such that no increased drainage over historic levels results onto any adjacent property.
11. 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):
 - a. Appellant submitted evidence to show that of the 43 lots within 330-feet of her lot (330-feet measured in all directions), 9 of them (or 20%) have front yard walls taller than 3-feet in height.

- b. Opponents argued that one of these 9 properties, 8715 Tia Christina Drive NW, does not have a front yard wall greater than 3 feet in height. Also, the homeowners at 8715 Tia Christina Drive NW submitted an email asserting that their wall is 36” in height “with an additional 1-inch decorative cap stone.” The front yard wall at 8715 Tia Christina Drive NW is capped with decorative bricks along the entire course of the top of the wall. Opponents argue, citing IDOL Section 14-16-7-1, that the capped decorative bricks should be excluded when measuring wall height. However, Section 14-16-7-1 states that “[w]all height does not include decorative or incidental features, such as pilasters or fence posts, that are allowed or required by this IDO. See also IDO Section 14-16-5-7(D)(3)(a) (“Design elements may project vertically 2 feet above the maximum wall height. Such elements shall have a maximum width of 5 feet and are allowed at intervals of no less than 200 feet.”). The capstones in question are not “decorative or incidental features, such as pilasters or fence posts, that are allowed or required by this IDO”, but rather are elemental to the construction of the wall in question, as they run along the top of the entire length of the wall. Opponent’s photos show these capstones exceeding the 36” yardstick shown to measure the wall. Further, Applicant submitted photos showing the wall in question in proportion to other structural elements, which reveal that the wall at 8715 Tia Christina Drive NW exceeds 3 feet in height.
12. 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), as required by Section 14-16-6-6(N)(3)(c)(4):
 - a. Subsection 14-16-5-7(E)(2) (Articulation and alignment) is satisfied under IDO Subsection 14-16-5-7(E)(2)(d) Option 4, by incorporating curvilinear alignments with a minimum distance of 4 feet between the outer surfaces of the wall. The outermost point of each curve shall have intervals no greater than 80 feet.
 - b. Subsection 14-16-5-7(E)(3) (Wall Design) – Applicant testified her willingness to incorporate openings distributed throughout the length of the wall equal to at least 5 percent of the wall surface, constructed into the surface or created by using see-through pattern blocks, tubular steel or wrought iron bars, wood, or other grillwork which would satisfy IDO Subsection 14-16-5-7(E)(3)(a) Option 1.
13. 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, as required by Section 14-16-6-6(N)(3)(c)(4)(a): Applicant submitted photographic evidence demonstrating that the proposed wall 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.
14. The design and materials proposed for the wall or fence shall reflect the architectural character of the surrounding area, as required by Section 14-16-6-6(N)(3)(c)(4)(b): See finding 9 and subparts, above, incorporated in this finding by reference.

DECISION:

APPROVAL WITH CONDITION of a variance of 3 feet to the 3 feet maximum wall height.

CONDITION:

1. Applicant must incorporate openings distributed throughout the length of the wall equal to at least 5 percent of the wall surface, constructed into the surface or created by using see-through pattern blocks, tubular steel or wrought iron bars, wood, or other grillwork, in accordance with IDO Subsection 14-16-5-7(E)(3)(a) Option 1.

APPEAL:

If you wish to appeal this decision, you must do so by April 15, 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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