



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

Modesta Esparza requests a permit-wall or fence-major for Lot A, Block 4, Winona Addn, located at 4112 Los Tomases Dr NW, zoned R-1B [Section 14-16-5-7-D]

Special Exception No:..... **VA-2021-00301**  
Project No: ..... **Project#2021-005802**  
Hearing Date: ..... 09-21-21  
Closing of Public Record: ..... 09-21-21  
Date of Decision: ..... 10-06-21

On the 21st day of September, 2021, property owner Modesta Esparza (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit-wall or fence-major (“Application”) upon the real property located at 4112 Los Tomases Dr 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.*
    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-1B.
  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, if brought into compliance with the IDO, 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, if brought into compliance with the IDO, 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, if brought into compliance with the IDO, 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.

DECISION:

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

CONDITIONS:

1. No portion of the wall within the front yard setback may exceed five feet in height.
2. All portions of the wall within the front yard setback must have no more than three feet of CMU block or other opaque construction, with two feet of wrought iron or other view fencing on top.

APPEAL:

If you wish to appeal this decision, you must do so by October 21, 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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Zoning Hearing Examiner

cc:

ZHE File  
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CITY OF ALBUQUERQUE  
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NOTIFICATION OF DECISION

Modesta Esparza requests a variance of 3 ft to the 3 ft maximum wall height for Lot A, Block 4, Winona Addn, located at 4112 Los Tomases Dr NW, zoned R-1B [Section 14-16-5-7-D]

Special Exception No:..... **VA-2021-00303**  
Project No: ..... **Project#2021-005802**  
Hearing Date: ..... 09-21-21  
Closing of Public Record: ..... 09-21-21  
Date of Decision: ..... 10-06-21

On the 21st day of September, 2021, property owner Modesta Esparza (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the 3 ft maximum wall height (“Application”) upon the real property located at 4112 Los Tomases Dr NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3ft to the 3ft maximum wall height.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(O)(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 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. Applicant appeared and gave evidence in support of the application.

6. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
7. The subject property is currently zoned R-1B.
8. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
9. The Applicant has authority to pursue this Application.
10. To establish the first prong of the variance test, Applicant submitted a letter of justification stating that "[t]he wall brings privacy between properties and it stays with the high of homes." [sic]. This statement does not establish any special circumstance. Further, despite direct questioning by the ZHE, Applicant did not submit any testimony at the hearing as to how the Subject Property has special circumstances that are not self-imposed and that do not apply generally to other property in the same zone and vicinity. Therefore, there appears no special circumstance under Section 14-16-6-6(O)(3)(a)(1), which would 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.
11. Because all prongs of the variance test must be satisfied and, as stated above, Applicant failed to satisfy Section 14-16-6-6(O)(3)(a)(1), the Application must be denied.
12. However, Applicant's accompanying application for a permit-wall or fence-major, VA-2021-00272, is approved with conditions, and Applicant is therefore approved to construct a wall not to exceed 5 feet in height, with no more than three feet of a non-transparent base, within the front yard setback.

DECISION:

DENIAL of a variance of 3ft to the 3ft maximum wall height.

APPEAL:

If you wish to appeal this decision, you must do so by October 21, 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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