



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

Carlos Hernandez requests a variance to allow a 6 ft solid wall in the front yard for Lot 8, Highland Place, located at 621 Santa Fe Ave SE, zoned R-1A [Section 14-16-5-7-D]

Special Exception No:..... **VA-2021-00359**
Project No: **Project#2021-006085**
Hearing Date: 01-18-22
Closing of Public Record: 01-18-22
Date of Decision: 02-02-22

On the 18th day of January, 2022, property owner Carlos Hernandez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance to allow a 6 ft solid wall in the front yard (“Application”) upon the real property located at 621 Santa Fe Ave SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance to allow a 6 ft solid wall in the front yard.
2. The Application first came before the ZHE at the November 2021 ZHE hearing, after Applicant was cited by the City for having erected an unpermitted fence in violation of the IDO. At the November 2021 Applicant requested additional time to supplement the record with evidence. The ZHE granted a continuance to the December 2021 hearing to allow applicant additional time.
3. As of the December 2021 ZHE hearing, Applicant had failed to submit any additional evidence. However, Applicant again requested additional time to submit further justification and evidence supporting the Application. Given the COVID pandemic and other considerations, the ZHE again granted a continuance, this time to the January 18, 2022 ZHE hearing.
4. As of the January 18, 2022 ZHE hearing, Applicant had still failed to submit any additional evidence. Further, Applicant failed to appear at the January 18, 2022 hearing.
5. Applicant has now had three months of ZHE hearings at which to submit evidence. The ZHE finds that the Application is ready for decision and has closed the record in this matter.
6. 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.”

7. 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).
8. 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).
9. Applicant appeared and gave evidence in support of the Application.
10. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
11. The subject property is currently zoned R-1A.
12. Applicant has failed to establish that there are special circumstances applicable to the Subject Property, as would be required to satisfy Section 14-16-6-6(O)(3)(a)(1). Applicant’s written justification states in response to this criterion that his “dog was jumping over 4 ft fence and going into neighbor yards.” The actions of Applicant’s dog have nothing to do with whether the Subject Property itself has any special circumstance. Applicant appeared to argue that the Subject Property has an unusual shape. However, in viewing the aerials in the record, it is evident that several neighboring lots have the same or similar shape to the Subject Property. Even if the shape of the subject property were to constitute a special circumstance, Applicant has failed to establish how such purported special circumstance would create an extraordinary hardship or practical difficulties. The ZHE finds that the criteria in IDO Section 6-6(O)(3)(a)(1) are not met.
13. In response to the criteria in Section 14-16-6-6(O)(3)(a)(2), Applicant states that the “metal panels are of regular building material that can be found at your local hardware store.” This statement does not address how the requested variance would not be materially contrary to public safety, health, or welfare. The ZHE finds that the criteria in IDO Section 6-6(O)(3)(a)(2) are not met.
14. In response to the criteria in Section 14-16-6-6(O)(3)(a)(3), Applicant states in his written justification that he will “frame metal material with trim and paint to match house.” It is unclear how this would not cause material adverse impacts on surrounding properties or infrastructure in the vicinity. Also, the South Broadway Neighborhood Association submitted written evidence stating that the wall on the subject property is out of character with the neighborhood and surrounding area, stating that “this is not a fence that any one of us would want near our residences.” Such negative aesthetic impacts could result in material adverse impacts on surrounding properties. The ZHE finds that the criteria in IDO Section 6-6(O)(3)(a)(3) are not met.
15. In response to the criteria in Section 14-16-6-6(O)(3)(a)(4) (that the variance will not materially undermine the intent and purpose of the IDO or applicable zone district), Applicant’s written justification states “Safety-Security.” It is unclear how this addresses the

intent and purpose of the IDO or zone district. The ZHE finds that the criteria in IDO Section 6-6(O)(3)(a)(4) are not met.

16. In response to the criteria in Section 14-16-6-6(O)(3)(a)(5), Applicant's written justification states "safety of my dogs and others." It is unclear how this relates to the variance requested qualifying as the minimum necessary to avoid extraordinary hardship or practical difficulties. The ZHE finds that the criteria in IDO Section 6-6(O)(3)(a)(5) are not met.
17. City Transportation submitted a report stating no objection.
18. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
19. The Applicant has authority to pursue this Application.

DECISION:

DENIAL of a variance to allow a 6 ft solid wall in the front yard.

APPEAL:

If you wish to appeal this decision, you must do so by February 17, 2022 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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cc:

ZHE File
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