



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

Samuel Jacob Reynolds (Agent, Dave Bennett) requests a permit for a taller court yard wall major for Lot 20, Block 14, Broadmoor Addn, located at 4200 Brockmont Ave NE, zoned R-1B [Section 14-16-5-7(D)(3)(g)]

Special Exception No:..... **VA-2021-00449**
Project No: **Project#2021-006330**
Hearing Date: 02-15-22
Closing of Public Record: 02-15-22
Date of Decision: 03-02-22

On the 15th day of February, 2022, Dave Bennett, agent for property owners Samuel Jacob Reynolds (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit for a taller court yard wall major (“Application”) upon the real property located at 4200 Brockmont Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a permit for a taller courtyard wall major.
2. This matter was continued from the ZHE’s January 18, 2022 hearing, because of evidence that the “Notice of Hearing” signage was not posted in accordance with IDO requirements.
3. Applicant testified at the February 15, 2022 ZHE hearing that the necessary signage was posted in accordance with IDO requirements. The ZHE finds that the proper “Notice of Hearing” signage was posted as required by Section 14-16-6-4(K)(3).
4. The ZHE finds that the Applicant has authority to pursue this Application.
5. 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.*
6. 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).
7. 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).
8. All property owners within 100 feet and affected neighborhood associations were notified of the application.
9. The subject property is currently zoned R-1B.
10. City Transportation issued a report stating that it does not object.
11. The Nob Hill Neighborhood Association submitted evidence and testimony in opposition to the Application.
12. Several neighbors in the vicinity of the Subject Property submitted evidence and testimony in favor of the application.
13. Regarding IDO Section 6-6(H)(3)(a), the Subject Property is not at least ½ acre, and the Subject Property does not front a street designated as a collector, arterial, or interstate highway.
14. Consequently, to be entitled to approval, the Application must satisfy the requirement that “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.”
15. Based on photographs, maps and oral evidence submitted, it does not appear that 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. There are 12 lots aside from the Subject Property along Brockmont, which the Subject Property fronts. Therefore, 3 of those 12 properties must have a front yard wall or fence over 3 feet to satisfy the 20 percent criteria. Applicant and opponents agree that 4201 Brockmont and 4216 Brockmont have a front yard wall or fence over 3 feet and are located within the pertinent area of review. However, while Applicant maintains that 4220 Brockmont has a front yard wall or fence over 3 feet, opponents argued that the wall at 4220 Brockmont is not located in the front yard area, as “front yard” is defined by Section 7-1 of the IDO (see diagram on page 592). Opponents appear to be correct, because the wall at 4220 Brockmont runs contiguous with the primary structure on that lot and parallel with the front yard lot line. 4220 Brockmont does not count toward the 20 percent requirement. Therefore, it appears that only two properties can be counted toward the 20 percent criteria, resulting in a percentage of only approximately 16.7 percent. The Application does not satisfy the criterion in IDO Section 6-6(H)(3)(a).

16. Because the criterion in IDO Section 6-6(H)(3)(a) is not satisfied as to the front yard wall and all criteria of IDO 6-6-(H)(3) must be satisfied, the Application must fail as to the front yard wall. For the sake of administrative and quasi-judicial economy, the ZHE will not examine the remainder of the criteria of IDO 6-6-(H)(3), because they are moot in light of the failure to satisfy IDO Section 6-6(H)(3)(a), which is dispositive of the Application.
17. As to the street side yard wall, the ZHE has granted approval of the companion application to the Application, which requested a variance for the street side yard wall. The ZHE therefore will not examine the IDO 6-6-(H)(3) criteria regarding the street side yard, because they, too, are moot.

DECISION:

DENIAL of a permit for a taller courtyard wall major.

APPEAL:

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

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