



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 courtyard 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: 06-21-22
Closing of Public Record: 06-21-22
Date of Decision: 07-06-22

On the 21st day of June, 2022, Dave Bennett, agent for property owner Samuel Jacob Reynolds (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit for a taller courtyard 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 court yard wall major.
2. The Application came before the ZHE at the June 21, 2022 ZHE hearing, upon remand from the Land Use Hearing Officer (“LUHO”), pursuant to the “LUHO Remand to ZHE” in AC-22-7, dated May 23, 2022 (the “LUHO Remand”).
3. The LUHO Remand determined that, with respect to IDO Section 14-16-6-6-(H)(3)(a)(3), there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces. It appears from written submittals and testimony that the parties to the appeal do not dispute this determination.
4. 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).
5. The ZHE finds that the Applicant has authority to pursue this Application
6. 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.*

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. All property owners within 100 feet and affected neighborhood associations were notified of the application.
10. The subject property is currently zoned R-1B.
11. 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.
 - a. As stated, above, there are 11 lots located within 330 feet of the subject property along the length of the street the lot faces.
 - b. Of these 11 lots, 2 of them have a front yard wall or fence over 3 feet in height.
 - c. Applicant argues that, to determine how many lots constitute 20% of 11, the number 11 should be multiplied by 20% (which results in a product of 2.2), then rounded down to result in 2 lots required to satisfy the 20%, which would be satisfied by the facts here.

- d. Opponent argues that 2 lots constitute only approximately 18.18% of 11, because 2 divided by 11 yields approximately 18.18%, and that therefore IDO Section 14-16-6-6-(H)(3)(a)(3) is not satisfied.
 - e. The ZHE finds that Applicant's interpretation of rounding down to 2 lots required to satisfy 20% of 11 is consistent with the IDO. The IDO discusses rounding down to the nearest integer to determine a standard in several sections (Sections 3-4(J)(3)(a)(3), 4-3(B)(2)(c), 4-3(B)(3)(c)(1)(a), 5-5(C)(1)(c), 5-5(C)(5)(b), and 5-10(C)(1)). The only reference to rounding up in the IDO the ZHE found was in 5-10(C)(1), where numbers were rounded up only if the decimal was 0.9 or more.
 - f. Here, because 20% of 11 equals 2.2, the requirement should be that to satisfy IDO Section 14-16-6-6-(H)(3)(a)(3), Applicant must establish that 2 lots have a front yard wall or fence over 3 feet in height, which Applicant has done.
12. 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.
 13. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, that the wall would enhance the safety of both the subject property and neighboring properties by discouraging trespassers and vehicle headlamp light from coming into the subject property.
 14. 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.

DECISION:

APPROVAL of a permit for a taller court yard wall major.

APPEAL:

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

A handwritten signature in black ink, appearing to read "Robert Lucero". The signature is fluid and cursive, with the first name "Robert" and last name "Lucero" clearly distinguishable.

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Samuel Jacob Reynolds, samueljr1309@gmail.com