



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

Louella Lopez requests a wall permit major in the front yard for Lot 67, Block 1, Palisades Addn, located at 801 Hidalgo Cir NW, zoned R-1C [Section 14-16-5-7(D)(3)(a)(2)]

Special Exception No: ..... **VA-2023-00200**  
Project No: ..... **Project#2023-009033**  
Hearing Date: ..... 10-17-23  
Closing of Public Record: ..... 10-17-23  
Date of Decision: ..... 11-01-23

On the 17th day of October, 2023, Frederick Jones, agent for property owner Louella Lopez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a wall permit major in the front yard (“Application”) upon the real property located at 801 Hidalgo Cir NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a wall permit major in the front yard.
2. 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).
3. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits necessary, pursuant to IDO Section 14-16-6-4(E)(4).
4. Applicant established that the proper “Notice of Hearing” signage was posted for the required time period.
5. Applicant established that all property owners and neighborhood association entitled to notice were notified of the Application.
6. The subject property is currently zoned R-1C.
7. The Applicant has authority to pursue this Application.
8. 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.*

9. Applicant appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
10. Based on evidence presented by Applicant, in satisfaction of IDO Section 6-6(H)(3)(a), the wall is proposed on a lot that fronts a street designated as an arterial.
11. 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 and in the vicinity. Applicant testified that the wall would have a look similar to other walls in the neighborhood.
12. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Specifically, Applicant submits statement that proposed wall would be built in compliance with code requirements.
13. Based on evidence presented by Applicant, such as site drawings and testimony, 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 leveled materials proposed for the wall or fence shall reflect the architectural character of the surrounding area.

14. The City Traffic Engineer initially submitted a report stating an objection to the Application, because opaque portions of the proposed wall would be over 3-feet high within the mini clear sight triangle. However, after further communication with City Traffic, Applicant agrees that no portion of the wall taller than 3-feet in height that is not view fencing will be located within any clear sight triangle, which would satisfy the City Traffic Engineer.

DECISION:

APPROVAL WITH CONDITION of a wall permit major in the front yard.

CONDITION:

No portion of the wall taller than 3-feet in height that is not view fencing will be located within any clear sight triangle.

APPEAL:

If you wish to appeal this decision, you must do so by November 16, 2023 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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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
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CITY OF ALBUQUERQUE  
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ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

Louella Lopez requests a variance of 3 feet to allow a 6 ft view fence at the property line for Lot 67, Block 1, Palisades Addn, located at 801 Hidalgo Cir NW, zoned R-1C [Section 14-16-5-7(D)(3)(a)(2)]

Special Exception No: ..... **VA-2023-00201**  
Project No: ..... **Project#2023-009033**  
Hearing Date: ..... 10-17-23  
Closing of Public Record: ..... 10-17-23  
Date of Decision: ..... 11-01-23

On the 17th day of October, 2023, Frederick Jones, agent for property owner Louella Lopez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 feet to allow a 6 ft view fence at the property line (“Application”) upon the real property located at 801 Hidalgo Cir NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 feet to allow a 6 ft view fence at the property line.
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 this IDO, the applicable zone district, or any applicable Overlay Zone.*
  - (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. The subject property is currently zoned MX-M.
7. Based on evidence submitted by or on behalf of Applicant, it appears that 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, as required by Section 14-16-6-6(O)(3)(a)(1). Applicant confirmed in oral testimony and submitted evidence that the Subject Property's unique location adjoining R-ML zoning to the south and NR-C zoning to the east creates special circumstances applicable to the Subject Property. These special circumstances create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the Subject Property, because compliance with the minimum standards would not allow for the reasonably proposed wall, which otherwise would be in compliance with the IDO.
8. Based on evidence submitted by or on behalf of Applicant, the variance will not be contrary to the public safety, health and welfare of the community as required by Section 14-16-6-6(O)(3)(a)(2). Specifically, evidence was submitted supporting that, if granted approval, the Applicant intends to construct the proposed project in a manner that is consistent with the IDO and the Development Process Manual (DPM).
9. Based on evidence submitted by or on behalf of Applicant, the variance will not cause significant adverse material impacts on surrounding properties or infrastructure improvements in the vicinity as required by Section 14-16-6-6(O)(3)(a)(3). Specifically, the proposal is designed to be in harmony and consistency with what currently exists in the neighborhood.
10. Based on evidence submitted by or on behalf of Applicant, the variance will not materially undermine the intent and purpose of the IDO or applicable zone district as required by Section 14-16-6-6(O)(3)(a)(4). Specifically, Applicant confirmed in written submittals that the intent of IDO will still be met in that the subject site will be in harmony with existing uses and the proposed variance would merely add to the safety and useability of the site.
11. Based on evidence submitted by or on behalf of Applicant, the variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). Specifically, Applicant submitted evidence that any smaller variance would be ineffective to provide for the useability and security of the site. Thus, the applicant is not requesting more than what is minimally necessary for a variance.
12. All property owners within 100 feet and affected neighborhood association(s) were notified.
13. 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)(4).
14. The ZHE finds that the Applicant has authority to pursue this Application.
15. The City Traffic Engineer initially submitted a report stating an objection to the Application, because opaque portions of the proposed wall would be over 3-feet high within the mini clear sight triangle. However, after further communication with City Traffic, Applicant agrees that no portion of the wall taller than 3-feet in height that is not view fencing will be located within any clear sight triangle, which would satisfy the City Traffic Engineer.

DECISION:

APPROVAL WITH CONDITION of a variance of 3 feet to allow a 6 ft view fence at the property line.

CONDITIONS:

No portion of the wall taller than 3-feet in height that is not view fencing will be located within any clear sight triangle

APPEAL:

If you wish to appeal this decision, you must do so by November 16, 2023 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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