



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

John Vasquez requests a taller wall permit major in the front yard for Lot 3, Block 7, Buena Ventura, located at 120 Espejo ST NE, zoned R-MH [Section 14-16-5-7(D)]

Special Exception No: ..... **VA-2023-00265**  
Project No: ..... **Project#2023-009326**  
Hearing Date: ..... 12-19-23  
Closing of Public Record: ..... 12-19-23  
Date of Decision: ..... 01-03-24

On the 19th day of December, 2023, property owner John Vasquez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a taller wall permit major in the front yard (“Application”) upon the real property located at 120 Espejo ST NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a taller 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-1MH.
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. The Application does not satisfy the requirements of IDO Section 14-16-6-6(H)(3)(a), because there are less than 20 percent of the properties with low-density residential development with the applicable 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 bounds have an applicable yard wall or fence over 3 feet. Applicant's justification letter does not cite that this prong is satisfied (it is blank in that regard), and testimony revealed that this prong is not satisfied. Although Applicant argued that a property having a shrubbery or hedge would qualify, such plantings would appear to be a "vegetative screen" under the IDO, not a wall or fence, as such terms are defined differently and are mutually exclusive.
10. The City Traffic Engineering Division submitted a report objecting to the Application, because the existing wall violates the mini clear sight triangle. Neighbors submitted evidence that the wall causes visual impairment to drivers entering the Subject Property driveway and otherwise harms the neighborhood. It therefore appears that the proposed wall would be injurious to adjacent properties, the surrounding neighborhood, or the larger community.
11. Because all prongs of the wall permit major test must be satisfied and, as stated above, the Application failed to satisfy the above-stated prong of the test, the Application must be denied.
12. Out of considerations of administrative and quasi-judicial economy, the ZHE will not summarize any analysis of the remaining prongs of the test in this Notification of Decision.

#### DECISION:

DENIAL of a taller wall permit major in the front yard.

APPEAL:

If you wish to appeal this decision, you must do so by January 18, 2024 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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CITY OF ALBUQUERQUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

John Vasquez requests a variance of 2 feet to the allowed 3 foot wall height in the front yard for Lot 3, Block 7, Buena Ventura, located at 120 Espejo ST NE, zoned R-MH [Section 14-16-5-7(D)]

Special Exception No: ..... **VA-2023-00266**  
Project No: ..... **Project#2023-009326**  
Hearing Date: ..... 12-19-23  
Closing of Public Record: ..... 12-19-23  
Date of Decision: ..... 01-03-24

On the 19th day of December, 2023, property owner John Vasquez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 2 feet to the allowed 3 foot wall height in the front yard (“Application”) upon the real property located at 120 Espejo ST NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 2 feet to the allowed 3 foot wall height in the front yard.
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. 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. 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 at the ZHE hearing on this matter and gave evidence in support of the Application.

6. Applicant established that the proper "Notice of Hearing" signage was posted for the required time period.
7. Applicant established that proper notice was provided pursuant to IDO requirements.
8. Applicant has authority to pursue this Application.
9. The subject property is currently zoned R-ML.
10. Based on evidence submitted into the record, the Application fails to establish 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's justification letter does not identify any special circumstance applicable to the Subject Property that would distinguish it from other property in the same zone and vicinity. In testimony, Applicant cited problems with crime and homelessness. While the ZHE can empathize with problems with crime and homelessness, it is unclear in the record how the Subject Property would be impacted by those in any way different than other properties in the vicinity.
11. Because all prongs of the variance test must be satisfied and, as stated above, the Application failed to satisfy the above-stated prongs of the test, the Application must be denied.
12. Out of considerations of administrative and quasi-judicial economy, the ZHE will not summarize any analysis of the remaining prongs of the test in this Notification of Decision.

DECISION:

DENIAL of a variance of 2 feet to the allowed 3 foot wall height in the front yard.

APPEAL:

If you wish to appeal this decision, you must do so by January 18, 2024 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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