



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

Constance S Cox requests a wall permit major for Lot 6, Block 11, Mesa Court Addn, located at 3937 Smith AVE SE, zoned R-1B [Section 14-16-5-7(D)]

Special Exception No: **VA-2023-00328**
Project No: **Project#2023-009521**
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 Constance S Cox (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a wall permit major (“Application”) upon the real property located at 3937 Smith AVE SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a taller wall permit major.
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-1B.
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 Subject Property meets the requirements of IDO Section 14-16-6-6(H)(3)(a), because Applicant submitted evidence that there are at least 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 faces have an applicable yard wall or fence over 3 feet.
10. 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.
11. 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.
12. 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.
13. The City Traffic Engineering Division submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a taller wall permit major.

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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cc:

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