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

Vinodh Perumal (Agent, Kent Beierle /Equiterra Regenerative Design, Inc.) request a taller wall permit major for Lot 13, Block 2, North Albuquerque Acres TR 3 Unit 3, located at 8920 Eagle Rock AVE NE, zoned PD [Section 14-16-5-7(D)(3)]

Special Exception No:	**VA-2023-00333**
Project No:	**Project#2023-008238**
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, Kent Beierle /Equiterra Regenerative Design, Inc., agent for property owner Vinodh Perumal ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a taller wall permit major ("Application") upon the real property located at 8920 Eagle Rock AVE NE ("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 PD.
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 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.

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.

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Kent Beierle kent@equiterra.design
Delcie Dobrovolny delcie@equiterra.design

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NOTIFICATION OF DECISION

Vinodh Perumal (Agent, Kent Beierle /Equiterra Regenerative Design, Inc.) request a variance of 5 ft to the allowed 3ft wall height in front yard for Lot 13, Block 2, North Albuquerque Acres TR 3 Unit 3, located at 8920 Eagle Rock AVE NE, zoned PD [Section 14-16-5-7(D)(1)]

Special Exception No:	**VA-2023-00334**
Project No:	**Project#2023-008238**
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, Kent Beierle /Equiterra Regenerative Design, Inc., agent for property owner Vinodh Perumal ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 5 ft to the allowed 3ft wall height in front yard ("Application") upon the real property located at 8920 Eagle Rock AVE NE ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 5 ft to the allowed 3ft wall height in 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. Agent 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 all property owners and neighborhood association entitled to notice were notified of the Application.
8. Applicant established that proper notice was provided pursuant to IDO requirements.
9. Applicant has authority to pursue this Application.
10. The subject property is currently zoned PD.
11. 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). Specifically, Applicant confirmed in oral testimony and submitted evidence that, the Subject Property's layout based on historic platting and development under prior approval regimes, as well as the location of existing public and private improvements on site and on and around neighboring properties, create special circumstances. 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 request, which otherwise would comply the IDO.
12. 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).
13. The City Traffic Engineer submitted a report stating no objection to the Application.
14. 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 prior approvals, what currently exists in the neighborhood, rights of way and infrastructure.
15. 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 useability of the site in line with prior development in the area.
16. The proposed variance is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(O)(3)(a)(5). Evidence supports that, any smaller variance would not be practicable.
17. The requirements of IDO Section 14-16-6-6(O)(3)(a) are satisfied.

DECISION:

APPROVAL of a variance of 5 ft to the allowed 3ft wall height in 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.

Robert Lucero, Esq.
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Delcie Dobrovolny delcie@equiterra.design