



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

Rosa E. Hernandez requests a variance of 3 ft to the allowed 3 ft tall wall height in the front yard for Lot 13, Block 5A, Dennis – WB, located at 2321 Broadway BLVD NE, zoned R-1B [Section 14-16-5-7(D)]

Special Exception No: ..... **VA-2023-00146**  
Project No: ..... **Project#2023-008758**  
Hearing Date: ..... 07-18-23  
Closing of Public Record: ..... 07-18-23  
Date of Decision: ..... 08-02-23

On the 18th day of July, 2023, property owner Rosa E. Hernandez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the allowed 3 ft tall wall height in the front yard (“Application”) upon the real property located at 2321 Broadway BLVD NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 3 ft to the allowed 3 ft tall wall height in the front yard.
2. However, Applicant also submitted a justification for a Permit – Wall or Fence – Major.
3. Because there does not appear to be substantial evidence of any special circumstance as would be required to grant a variance, the ZHE cannot grant a variance in this case.
4. Nonetheless, Applicant has satisfied the requirements for a Permit – Wall or Fence – Major, and the Application will be decided on the criteria for such a permit.
5. The ZHE finds that the notice provided as to the requested taller wall was sufficient to put the world on notice of the Application and Applicant’s proposed wall, regardless of the fact that it was noticed as a variance and not as a Permit – Wall or Fence – Major.
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. Applicant appeared at the ZHE and gave evidence in support of the Application.
  10. Applicant provided evidence that all property owners and neighborhood association entitled to notice were notified of the Application.
  11. Based on photographs, maps and evidence provided by Applicant, at least 20 percent of the properties within 330 feet of the lot where the fence is being requested have a wall or fence over 3 feet in the applicable front yard area.
  12. Based on evidence presented by Applicant, the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Applicant submitted photographs showing several fences in the neighborhood. It appears from the evidence that the proposed wall would not be out of character with the surrounding area, rather it would reinforce the architectural character of the neighborhood by being in harmony with the other improvements in the vicinity.
  13. Based on evidence presented by Applicant the proposed wall would not cause injury to adjacent properties, the surrounding neighborhood, or the larger community. Applicant stated that the wall would enhance the safety of both the subject property and neighboring properties by discouraging trespassers.

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.
15. 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).
16. The City Traffic Engineer initially submitted a report stating an objection to the Application, because the block portion of the proposed wall would be over 3-feet high within the mini clear sight triangle. However, Applicant agreed to construct the fence 5-feet in height, with a base 3-feet high of cinder block and with 2-feet of view fencing on top. Based on this redesign, the City Traffic Engineer submitted a revised report stating no objection to the proposed wall.

DECISION:

APPROVAL WITH CONDITION of a Permit – Wall or Fence – Major to allow a 5-foot tall wall height in the front yard.

CONDITION:

The permitted wall must not exceed 5-feet in height, with a base 3-feet high of cinder block and with 2-feet of view fencing on top.

APPEAL:

If you wish to appeal this decision, you must do so by August 17, 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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Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement  
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