



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

Benjamin Sherman (Agent, Strata Design, Michelle Negrette) requests a wall permit major for Lot 13, Block 2, Ridge Park Addn, located at 1433 Jefferson ST NE, zoned R-1C [Section 14-16-5-7(D)(3)]

Special Exception No: **VA-2023-00223**
Project No: **Project#2023-009060**
Hearing Date: 09-19-23
Closing of Public Record: 09-19-23
Date of Decision: 10-04-23

On the 19th day of September, 2023, Strata Design, Michelle Negrette, agent for property owner Benjamin Sherman (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a wall permit major (“Application”) upon the real property located at 1433 Jefferson ST 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 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. Agent appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
10. The Subject Property meets the requirements of IDO Section 14-16-6-6(H)(3)(a), criteria “2” The lot fronts a street designated as a collector, arterial, or interstate highway, and “4” – “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. The buffer map (figure 6) indicates that there are 8 properties within 330 feet of the subject property along Indian School and demonstrating that 3 of these properties have a side yard wall or fence over 3 feet is necessary to meet the criteria 4. Additionally, Indian School is designated as a minor arterial fulfilling criteria 2.
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.
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 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 October 19, 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

Benjamin Sherman (Agent, Strata Design, Michelle Negrette) requests a variance of 4 ft 6 inches to allow a 7 ft 6 inch solid wall on the street side for Lot 13, Block 2, Ridge Park Addn, located at 1433 Jefferson ST NE, zoned R-1C [Section 14-16-5-7(D)(1)]

Special Exception No: **VA-2023-00224**
Project No: **Project#2023-009060**
Hearing Date: 09-19-23
Closing of Public Record: 09-19-23
Date of Decision: 10-04-23

On the 19th day of September, 2023, Strata Design, Michelle Negrette, agent for property owner Benjamin Sherman (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 4 ft 6 inches to allow a 7 ft 6-inch solid wall on the street side (“Application”) upon the real property located at 1433 Jefferson ST NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 4 ft 6 inches to allow a 7 ft 6-inch solid wall on the street side.
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 R-1C.
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: (a) the Subject Property is located adjacent to Indian School Blvd., which is classified as a minor arterial; (b) the subject property is located in an area with as steep topographical condition; and (c) there is excessive public ROW behind the back of sidewalk of approximately 6 feet which must be maintained by the property owner and has excessive topography which cannot be retained with a permanent structure as it is not owned by the property owner.. 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 use, which otherwise would be in compliance with 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 Engineering Division submitted a report stating no objection.
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 approvals.
16. Based on evidence submitted by or on behalf of Applicant, 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). The proposed wall would replace an existing collapsed wall and will measure 6' in height from the interior side and approximately 6 feet 8 inches on the

downhill side, because of the site's topography This is necessary for both resident safety, privacy, noise protection and security as well as reinforcing the structural integrity of the wall..

17. The requirements of IDO Section 14-16-6-6(O)(3)(a) are satisfied.

DECISION:

APPROVAL of a variance of 4 ft 6 inches to allow a 7 ft 6-inch solid wall on the street side.

APPEAL:

If you wish to appeal this decision, you must do so by October 19, 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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