



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

Wyndi Johnson requests a Wall  
Permit-Major for Lot 12, Block 5,  
Broad Acres Addn, located at 2632  
Espanola Street NE, zoned R-1C  
[Section 14- 16-5-7(D)(3)]

Special Exception No: ..... **VA-2024-00024**  
Project No: ..... **Project#2024-009923**  
Hearing Date: ..... 3-19-24  
Closing of Public Record: ..... 3-19-24  
Date of Decision: ..... 04-03-24

On the 19<sup>th</sup> day of March, 2024, property owner Wyndi Johnson (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit-wall or fence-major (“Application”) upon the real property located at 2632 Espanola St NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a Permit-Wall or Fence-Major.
2. The subject property is currently zoned R-1C.
3. The ZHE finds that the Applicant has authority to pursue this Application.
4. All property owners within 100 feet and affected neighborhood association(s) were notified.
5. 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).
6. The City of Albuquerque Integrated Development Ordinance Section 14-16-6-6(H)(3)(a) states in pertinent part:

*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)(a)2 (Exceptions to Maximum Wall Height) and Table 5-7-2 shall be approved if all of 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 1/2 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.*

7. 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. 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. Classic Uptown is the affected Neighborhood Association.
10. City Transportation issued a report indicating no objection.
11. Applicant appeared and provided evidence in support of the application.
12. Applicant stated that the proposed wall would not be injurious to adjacent properties or surrounding neighborhood because the wall proposed is close to the Subject Property.
13. The Application does not satisfy the pertinent criteria required by IDO Section 6-6(H)(3)(a):
  - a. The Subject Property is less than 1/2 acre.
  - b. The Subject Property does not front a street designated as a collector, arterial, or interstate highway.
  - c. Evidence was not presented that would establish that at least 20 percent of the properties within 330 feet of the lot where the wall or fence is being requested have a wall or fence over 3 feet in the front yard.
  - d. Applicant's justification letter states the foregoing, and Applicant testified to the same.
14. It appears to the ZHE that the courtyard wall Applicant requests in the Application is not unreasonable. Indeed, the Application may satisfy the majority if not all the other criteria required by the IDO outside of Section 6-6(H)(3)(a) (the ZHE makes no express findings as to the other criteria).
15. Unfortunately, because Section 6-6(H)(3)(a) is not satisfied, the ZHE must deny the Application.
16. As stated in the NOD for the companion case to this Application, VA-2024-00030, which requests a variance for the proposed wall, it appears that special circumstances exist and the general variance criteria would be met. However, because a Permit-Wall or Fence-Major is required to construct the proposed wall, the variance application must also be denied.
17. The ZHE encourages the Planning Department and the City Council to consider these companion cases as an opportunity to examine whether and, if so, how the IDO should be amended to address circumstances such as this, where a variance would otherwise appear justified, but the Application does not meet the technical requirements of a Permit-Wall or Fence-Major.

DECISION:

DENIAL of a Permit-Wall or Fence-Major.

APPEAL:

If you wish to appeal this decision, you must do so by April 19<sup>th</sup>, 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.

A handwritten signature in black ink, appearing to read "Robert Lucero".

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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement



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

Wyndi Johnson request a variance of 4 FT to the 3 FT wall height in the front yard for Lot 12, Block 5, Broad Acres Addn, located at 2632 Espanola Street NE, zoned R-1C [Section 14-16-5-7(D)(3)]

Special Exception No: ..... **VA-2024-00030**  
Project No: ..... **Project#2024-009923**  
Hearing Date: ..... 3-19-24  
Closing of Public Record: ..... 3-19-24  
Date of Decision: ..... 04-03-24

On the 19<sup>th</sup> day of March, 2024, property owner Wyndi Johnson (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 4 FT to the 3 FT wall height in the front yard (“Application”) upon the real property located at 2632 Espanola St NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of variance of 4 ft. to the 3 ft. wall height in the front yard.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. All property owners within 100 feet and affected neighborhood association(s) were notified.
4. 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).
5. The City of Albuquerque Integrated Development Ordinance (“IDO”), 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 the IDO or the applicable zone district.*
  - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.”*

6. 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).
7. 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).
8. Classic Uptown is the affected neighborhood association.
9. The subject property is currently zoned R-1C.
10. This Application is one of a pair of companion applications, the other being VA-2024-00024, which requests a Permit-Wall or Fence Major.
11. As stated in the NOD for the companion case to this Application, it appears to the ZHE that the courtyard wall Applicant requests in the Application is not unreasonable. Indeed, the Application may satisfy the majority if not all the other criteria for a Permit-Wall or Fence Major required by the IDO outside of Section 6-6(H)(3)(a) (the ZHE makes no express findings as to the other criteria).
12. Unfortunately, because Section 6-6(H)(3)(a) is not satisfied, the ZHE must deny the companion application for a Permit-Wall or Fence Major.
13. It appears that special circumstances exist in this case (including, without limitation, the location of a banking facility at the southern end of the block south of Espanola Street causes increased traffic to pass in front of the Subject Property and stop at the stop sign directly in front of Applicant's bedroom window) and the general variance criteria would otherwise be met.
14. However, because, under the ZHE's conservative reading of the IDO, a Permit-Wall or Fence-Major is required to construct the proposed wall, this variance application must also be denied.
15. The ZHE encourages the Planning Department and the City Council to consider these companion cases as an opportunity to examine whether and, if so, how the IDO should be amended to address circumstances such as this, where a variance would otherwise appear justified, but the Application does not meet the technical requirements of a Permit-Wall or Fence-Major.

#### DECISION:

DENIAL of a variance of 3 feet to the 4 feet wall height.

#### APPEAL:

If you wish to appeal this decision, you must do so by April 19<sup>th</sup>, 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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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement