



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

Ryan Gunter requests a Wall Permit - Major for Lot 2, Block 38, Snow Heights Addn, located at 9604 Euclid Ave NE, zoned R-1B [14-16-5-7(D)(3) Table 5-7-2]

Special Exception No:..... **VA-2024-00040**  
Project No: ..... **Project#2024-010011**  
Hearing Date: ..... 5-21-24  
Closing of Public Record: .. 5-21-24  
Date of Decision: ..... 6-5-24

On the 21st day of May, 2024, property owner Ryan Gunter (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit-wall or fence-major (“Application”) upon the real property located at 9604 Euclid Ave 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 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. Applicant, in public testimony and in correspondence submitted into the record on the Application, requests a “modification under the Fair Housing Act Amendments of 1998 (or as amended) for the additional three (3) feet wall/fence height permit/variance, which is the minimum necessary to comply with the Federal Housing Act Amendments to prevent and keep safe disabled resident from eloping from property.”
6. The ZHE interprets this request as a request for a deviation to City of Albuquerque Integrated Development Ordinance (“IDO”) standards under IDO Section 14-16-6 4(O) states that “[w]hen an application is submitted, the applicant may request a deviation to IDO Standards, up to the limits listed in Table 6-4-1.”
7. IDO Table 6-4-1 states that as to “[a]ny standard cited in an application for ‘reasonable accommodation’ or ‘reasonable modification’ under the federal Fair Housing Act Amendments of 1998 (or as amended),” the maximum allowable deviation would be the “minimum deviation necessary to comply with the federal Fair Housing Act.”
8. Under the Fair Housing Act, a reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service. See Fair Housing Act Amendments Sec. 804 (42 U.S.C. 3604)(f)(3)(B) and related sections. The Fair Housing Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. *Id.*

9. Applicant has established that the Subject Property is entitled to a reasonable accommodation under the Fair Housing Act, because Applicant provided evidence that a minor resident of the household has a disability covered by the Fair Housing Act and that IDO minimum standards would not permit improvement of the property in a manner necessary to provide the resident with an equal opportunity to use and enjoy the Subject Property.
10. IDO Section 6-4(O)(1) enumerates certain IDO subsections as to which deviations beyond the stated thresholds are to be reviewed and decided as Waivers (as defined in the IDO). None of the items enumerated in IDO Section 6-4(O)(1) apply to the Application.
9. IDO Section 6-4(O)(2) states that “[f]or all other IDO standards, requests for exceptions beyond these thresholds will be reviewed and decided as Variances.” Consequently, the ZHE will treat Applicant’s request for a deviation to IDO standards as a variance.
10. 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 a single lot 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, physical characteristics, natural forces or government actions for which no compensation was paid. Such special circumstances of the lot either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or economic 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.*” 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).
11. 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).
12. 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).
13. Applicant appeared and gave evidence in support of the Application.
14. The subject property is currently zoned R-1B.
15. 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(N)(3)(a)(1). Specifically, Applicant testified and confirmed in written submittals that because of the preexisting configuration of the Subject Property and improvements

thereon, the front yard area is the only practicable outdoor play area necessary for the minor resident to accommodate the stated disability.

16. 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(N)(3)(a)(2). Specifically, Applicant testified and confirmed in written submittals that the 6-foot tall fence was constructed with aid from the Make A Wish Foundation and has been in place for months without any negative impact. The fence is transparent and does not impede any views of drivers or pedestrians.
17. 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(N)(3)(a)(3). Specifically, Applicant testified and confirmed in written submittals that the wall will not be obtrusive to surrounding properties and infrastructure.
18. 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(N)(3)(a)(4). Specifically, Applicant testified and confirmed in written submittals that it is consistent with the IDO because the variance addresses community welfare and residential safety.
19. Based on evidence submitted by or on behalf of Applicant, the variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5). Specifically, Applicant testified and confirmed in written submittals that the 3 foot variance would provide them with the privacy and safety concerns given the unique “location and circumstances”. Any lesser variance would be impractical to provide the reasonable accommodation requested under the Fair Housing Act.
20. The City Traffic Engineer submitted a report stating no objection to the Application.

#### DECISION:

APPROVAL of a Permit-Wall or Fence-Major.

#### APPEAL:

If you wish to appeal this decision, you must do so by June 20, 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, reading "Robert Lucero", enclosed in a thin black rectangular border.

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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

Ryan Gunter requests a Variance of 3 ft to the allowed 3ft fence in front and side yard for Lot 2, Block 38, Snow Heights Addn, located at 9604 Euclid Ave NE, zoned R-1B [4-16-5-7(D)(1) Table 5-7-1]

Special Exception No:..... **VA-2024-00041**  
Project No: ..... **Project#2024-010011**  
Hearing Date: ..... 5-21-24  
Closing of Public Record: .. 5-21-24  
Date of Decision: ..... 6-5-24

On the 16<sup>th</sup> day of April, 2024, property owner Ryan Gunter (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 3 ft to the allowed 3ft fence in front and side yard (“Application”) upon the real property located at 9604 Euclid Ave 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 3ft fence in front and side 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. Applicant, in public testimony and in correspondence submitted into the record on the Application, requests a “modification under the Fair Housing Act Amendments of 1998 (or as amended) for the additional three (3) feet wall/fence height permit/variance, which is the minimum necessary to comply with the Federal Housing Act Amendments to prevent and keep safe disabled resident from eloping from property.”
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*Amendments of 1998 (or as amended),” the maximum allowable deviation would be the “minimum deviation necessary to comply with the federal Fair Housing Act.”*

8. Under the Fair Housing Act, a reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service. *See* Fair Housing Act Amendments Sec. 804 (42 U.S.C. 3604)(f)(3)(B) and related sections. The Fair Housing Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. *Id.*
9. Applicant has established that the Subject Property is entitled to a reasonable accommodation under the Fair Housing Act, because Applicant provided evidence that a minor resident of the household has a disability covered by the Fair Housing Act and that IDO minimum standards would not permit improvement of the property in a manner necessary to provide the resident with an equal opportunity to use and enjoy the Subject Property.
10. IDO Section 6-4(O)(1) enumerates certain IDO subsections as to which deviations beyond the stated thresholds are to be reviewed and decided as Waivers (as defined in the IDO). None of the items enumerated in IDO Section 6-4(O)(1) apply to the Application.
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  - (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.*” 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).
13. 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).
14. 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).
15. Applicant appeared and gave evidence in support of the Application.

16. The subject property is currently zoned R-1B.
17. 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(N)(3)(a)(1). Specifically, Applicant testified and confirmed in written submittals that because of the preexisting configuration of the Subject Property and improvements thereon, the front yard area is the only practicable outdoor play area necessary for the minor resident to accommodate the stated disability.
18. 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(N)(3)(a)(2). Specifically, Applicant testified and confirmed in written submittals that the 6-foot tall fence was constructed with aid from the Make A Wish Foundation and has been in place for months without any negative impact. The fence is transparent and does not impede any views of drivers or pedestrians.
19. 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(N)(3)(a)(3). Specifically, Applicant testified and confirmed in written submittals that the wall will not be obtrusive to surrounding properties and infrastructure.
20. 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(N)(3)(a)(4). Specifically, Applicant testified and confirmed in written submittals that it is consistent with the IDO because the variance addresses community welfare and residential safety.
21. Based on evidence submitted by or on behalf of Applicant, the variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5). Specifically, Applicant testified and confirmed in written submittals that the 3 foot variance would provide them with the privacy and safety concerns given the unique “location and circumstances”. Any lesser variance would be impractical to provide the reasonable accommodation requested under the Fair Housing Act.
22. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL of a variance of 3 ft to the allowed 3ft fence in front and side yard.

APPEAL:

If you wish to appeal this decision, you must do so by June 20, 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". The signature is written in a cursive style and is positioned above a horizontal line.

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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File  
Zoning Enforcement