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

Meredith Baker (Agent, John Osborn) requests a Tall Wall Permit-Major for Lot 138A4, Valle Alto Addn, located at 1209 Aztec Rd NW, zoned MX-L [Section 14-16-5-7(D)(3) Table 5-7-2]

Special Exception No:	**VA-2024-00329**
Project No:	**PR-2024-011309**
Hearing Date:	01-21-25
Closing of Public Record:	01-21-25
Date of Decision:	02-05-25

On the 21st day of January, 2025, John Osborn, agent for property owner Meredith Baker ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a permit-wall or fence-major ("Application") upon the real property located at 1209 Aztec Rd NW ("Subject Property"). Below are the ZHE's finding of fact and decision:

FINDINGS:

1. Applicant is requesting a Permit-Wall or Fence-Major.
1. The ZHE finds that the Applicant has authority to pursue this Application.
2. All property owners within 100 feet and affected neighborhood association(s) were notified.
3. 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(J)(4).
4. The City of Albuquerque Integrated Development Ordinance ("IDO") 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 both of the following criteria:

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.

5. 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).
6. 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).
7. Applicant appeared and gave evidence in support of the application.
8. Based on photographs, maps and oral evidence presented by Applicant, 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 applicable yard area.
9. Based on evidence presented by Applicant, the proposed wall would strengthen or reinforce the architectural character of the surrounding area. Based on evidence provided by Applicant, it would be consistent with walls in the surrounding area.
10. Based on evidence presented by Applicant, the proposed wall would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Applicant testified that it would provide more safety and privacy to the Subject Property.
11. 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.
12. The City Traffic Engineer submitted a report stating no objection to the Application, provided that the wall is see-through (view fencing) and does not affect the mini sight triangle.

DECISION:

APPROVAL WITH CONDITION of a Permit-Wall or Fence-Major.

CONDITION:

Any portion of the wall within the mini clear sight triangle must be view fencing as defined in the IDO.

APPEAL:

If you wish to appeal this decision, you must do so by February 20th, 2025 pursuant to Section 14-16-6-4(U), 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
Johnny Osborn <josborn@jslolaw.com>

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

Meredith Baker (Agent, John Osborn) requests a Variance of 3 ft to the allowed 3 ft wall height in the front yard for Lot 138A4, Valle Alto Addn, located at 1209 Aztec Rd NW, zoned MX-L [Section 14-16-5-7(D)(1) Table 5-7-1]	Special Exception No: ..... **VA-2024-00330** Project No: ..... **PR-2024-011309** Hearing Date: ..... 01-21-25 Closing of Public Record: ..... 01-21-25 Date of Decision: 02-05-25

On the 21st day of January, 2025, John Osborn, agent for property owner Meredith Baker ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a variance of 3 ft to the allowed 3 ft wall height in the front yard ("Application") upon the real property located at 1209 Aztec Rd NW ("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 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(J)(4).
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 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."
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. 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).
8. Applicant appeared and gave evidence in support of the application.
9. The subject property is currently zoned MX-L.
10. 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). The location and layout of the property in relation to existing improvements and infrastructure creates special circumstances that result in practical difficulties in complying strictly with IDO requirements without the requested variance.
11. 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). Applicant stated that no negative impacts would result.
12. 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 stated that it would help keep the neighborhood safe because the protection of a taller wall is more secure.
13. 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). Applicant testified that the proposed wall would comply with all applicable requirements of the IDO, thereby not undermining any intent or purpose.
14. Based on evidence submitted by or on behalf of Applicant, the variance is the minimum necessary to avoid extraordinary hardship or practical difficulties as required by Section 14-16-6-6(N)(3)(a)(5). Applicant testified that any shorter wall would not be sufficient to provide safety and privacy.
15. The City Traffic Engineer submitted a report stating no objection to the Application, provided that the wall is see-through (view fencing) and does not affect the mini sight triangle.

DECISION:

APPROVAL WITH CONDITION of a variance of 3 ft to the allowed 3 ft wall height in the front yard.

CONDITION:

Any portion of the wall within the mini clear sight triangle must be view fencing as defined in the IDO.

APPEAL:

If you wish to appeal this decision, you must do so by February 20th, 2025 pursuant to Section 14-16-6-4(U), 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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