



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

Kevin Evans, Annex General Contracting,
Agent for Sarah Bernhard, request for a
variance to courtyard wall setback to install a
5 ft. courtyard wall 4 ft. from the front
property line for Lot 24 Block 38 University
Heights Addition, located at 301 Bryn Mawr
Dr. SE, zoned R-1C.

Special Exception No: **VA-2025-00142**
Project No: **PR-2025-020105**
Hearing Date: 12-16-25
Closing of Public Record: 12-16-25
Date of Decision: 01-02-26

On December 16, 2025, Kevin Evans (“**Applicant**”) was scheduled to appear before the Zoning Hearing Examiner (the “**ZHE**”) requesting a Variance to courtyard wall setback to install a 5 ft. courtyard wall 4 ft from the front property line (“**Application**”) upon the real property located at 301 Bryn Mawr Dr. SE. (the “**Subject Property**”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a Variance of wall height, pursuant to City of Albuquerque Code of Ordinances Integrated Development Ordinance (“IDO”) Section 14-16-6-6(O).
2. Applicant has authority to pursue this Application, pursuant to 14-16-6-4(D).
3. Applicant has duly authorized Agent to act on Applicant’s behalf regarding the Application.
4. Applicant is not required to offer a meeting to Indian Nations, Tribes, and Pueblos before filing the application, pursuant to IDO Section 14-16-6-4(B).
5. The Planning Director’s delegee has determined that the Application is complete, pursuant to IDO Section 14-16-6-4(G).
6. The analyses and studies listed in IDO Section 14-16-6-4(H) are not required.
7. The Application was forwarded to commenting agencies pursuant to IDO Section 14-16-6-4(I).
8. The content of the notice of the Application satisfies IDO Section 14-16-6-4(J)(1).
9. Applicant has sent an electronic mail notice to the email addresses on file with the Office of Neighborhood Coordination for each pertinent Neighborhood Association as required by IDO Section 14-16-6-4(J)(2).
10. Applicant has sent mailed notice to all property owners within 100 feet of the subject property as required by IDO Section 14-16-6-4(J)(3).
11. Applicant has posted sign notice(s) as required by IDO Section 14-16-6-4(J)(4).

12. The Subject Property is located in the R-1C zone
13. Therefore, tall wall on the Subject Property requires a Variance Approval pursuant to IDO Subsection 14-16-6-6(O).
14. IDO Section 14-16-6-6(O)(3)(a) (Review and Decision Criteria– Variance) 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 district and vicinity, including but not limited to size, shape, topography, location, surroundings, physical characteristics, natural forces, or by 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 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.*
15. Applicant must provide a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
16. Applicant must show compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
17. The City Traffic Engineer submitted a report stating no objection to the Application
18. Agent appeared at the December 16, 2025 ZHE hearing on the Application and gave evidence in support of the Application.
19. 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). The site has special circumstances that are not present on all sites. The Subject Property is located on the busy intersection of Lead and Bryn Mawr and has extra-wide right-of-way, which is 12 feet from the outside of the sidewalk to the property line. While typically a courtyard wall is setback 10 feet from the sidewalk, this site would require it to be 24 feet from the sidewalk. The site has been built-out by previous owners leaving the only location for outdoor space to be in the front yard. For this reason, the applicant asks for the variance to allow for a more comfortable front courtyard that would allow outdoor seating and landscaping.
20. 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). The placement of the front courtyard wall is not contrary to public health and safety and has received appositive response from the Nob Hill Neighborhood Association.

21. 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). All proposed construction would be within the property and would not interfere with any infrastructure, nor would it cause any adverse impacts on neighboring properties.
22. 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). The variance to the front courtyard wall is not contrary to the intent of the IDO. The 10 ft setback is to establish a courtyard wall with the typical property line to be located at the sidewalk. This site has an additional 14 feet of right-of-way, making the proposed placement 16 feet from the sidewalk. The IDO intent is to protect pedestrian walkability. This wall meets the intent of the IDO.
23. 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(O)(3)(a)(5). Any smaller variance would not be practicable to provide the usable outdoor space sought to be created.

DECISION:

APPROVAL of a variance to courtyard wall setback to install a 5 ft. courtyard wall 4 ft. from the front property line.

APPEAL:

If you wish to appeal this decision, you must do so by January 16, 2026 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 Notice of Decision does not constitute approval of plans for a building permit. If your Application is approved, bring this Notice of Decision with you when you apply for any related building permit or occupation tax number. Approval of a Conditional Use is void after two (2) years from date of approval if the rights and privileges granted thereby have not been executed or utilized. Approval of a Variance is void after one (1) year from date of approval if the rights and privileges granted thereby have not been executed or utilized.



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Zoning Hearing Examiner

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ZHE File
Zoning Enforcement