



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

ROB AND BETH O'LEARY (JAY PARKS, AGENT) requests a special exception to Section 14-16-2-6(B)(14)(a)(1) : a CONDITIONAL USE to allow a 6 ft wall at 11 ft from back of sidewalk for all or a portion of Lot 9, Block 20, Monterey Hills Addn zoned R-1, located on 3015 SANTA CLARA AV SE (L-16)

Special Exception No:..... **16ZHE-80274**
Project No:..... **Project# 1011020**
Hearing Date:..... 11-17-16
Closing of Public Record:..... 11-17-16
Date of Decision: 11-30-16

On the 17th day of November, 2016, JAY PARKS ("Agent") acting as agent on behalf of the property owner ROB AND BETH O'LEARY ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a conditional use to allow a 6 ft wall at 11 ft from back of sidewalk ("Application") upon the real property located at 3015 SANTA CLARA AV SE ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a 6 ft wall at 11 ft from back of sidewalk.
2. The City of Albuquerque Code of Ordinances Section 14-16-4-2(C)(1) (Special Exceptions – Conditional Use) reads: *"A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:*
 - (a) *Will not be injurious to the adjacent property, the neighborhood, or the community;*
 - (b) *Will not be significantly damaged by surrounding structures or activities.*
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. The ZHE finds that in the proposed use will not be injurious to the adjacent property, the neighborhood, or the community as required by Section 14-16-4-2(C)(1)(a).
5. Specifically, the ZHE finds that the proposed wall is designed to coordinate with the house and otherwise be harmonious with the subject property. It is designed to be attractive and in keeping with the architectural style of the house.
6. The wall encloses a small portion of the front property, and it will not block views or light or otherwise visually interfere with adjacent properties, including access. It will not change the character of the property, its use or its impact on the neighborhood or community.
7. The Southeast Heights Neighborhood Association objects to the application, stating that it has a standard policy to oppose wall requests.
8. The basis of the policy is the historic design of the neighborhood with houses with primary orientation to the street, defensibility (surveillance of the street by the

- residence, as well as surveillance of the residence from the street and nearby properties), providing places to hide and disturbing sight lines and views.
9. These objections are not specific to this Application, but rather general policy positions.
 10. Here, the design of the wall enhances the streetscape and presents an entrance that is oriented to the street. It is set wall back from the sidewalk (10-11 feet) and does not interfere with sight lines, particularly in the context of other homes with similar walls on the street and in the area.
 11. The issues of defensibility and security are not supported by evidence, but are also not contested by the Applicant. Rather, the Applicant focusses on privacy for the residents and avoiding disturbances for others.
 12. In this context, and weighing the evidence and testimony, the ZHE finds that the application is not injurious to the adjacent property, the neighborhood, or the community. There is not enough evidence to conclude that disregarding the Association's preferred policy constitutes an actual injury.
 13. The policy states that "Properties in our neighborhood do not generally have special circumstances that would justify violation of the zoning standards for construction of a wall of that height." However, this Application is for a conditional use, not a variance, and there is no requirement to find special circumstances.
 14. The ZHE finds that in the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b).
 15. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
 16. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a conditional use to allow a 6 ft wall at 11 ft from back of sidewalk.

If you wish to appeal this decision, you must do so by December 15, 2016, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

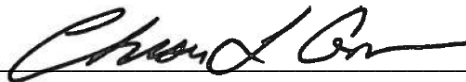
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, Planning Application Counter located on the west side of the lobby. **Please present this letter of notification when filing an appeal.** When an application is withdrawn, the fee shall not be refunded.

An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of the opponents, if any are known, and the appellant.

Please note that pursuant to Section 14. 16. 4. 4. (B), of the City of Albuquerque Comprehensive Zoning Code, you must demonstrate that you have legal standing to file an appeal as defined.

You will receive notice if any other person files an appeal. If there is no appeal, you can receive building permits any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. However, the Zoning Hearing Examiner may allow issuance of building permits if the public hearing produces no objection of any kind to the approval of an application. To receive this approval, the applicant agrees in writing to return the building permit or occupation tax number.

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 'Chris L. Graeser', is written over a horizontal line.

Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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