



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

MARTIN MEDINA requests a special exception to Section 14-16-2-9(B) and 14-16-2-6(B)(14)(a): a CONDITIONAL USE to allow an existing 5 foot wall in the required front yard setback for all or a portion of Lot 1-P1, Block 21, El Rancho Grande 1 Unit 5A zoned R-T, located on 8500 BAY MARE AVE SW (M-9)

Special Exception No:**18ZHE-80006**
Project No:**Project# 1011494**
Hearing Date:02-20-18
Closing of Public Record:02-20-18
Date of Decision:03-07-18

On the 20th day of February, 2018, MARTIN MEDINA appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow an existing 5 foot wall in the required front yard setback (“Application”) upon the real property located at 8500 BAY MARE AVE SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow an existing 5 foot wall in the required front yard setback.
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. Section 14-16-2-6 allows walls up to five feet high as a conditional use provided:
 - A. It is attractive and in harmony with its site, the style of the wall or fence blending architecturally with the adjacent residences and with the general streetscape, it is consistent with the requirements of Section 14-16-3-19, and it is at least one of the following:
 1. At least 11 feet from the public sidewalk or planned public sidewalk location, or 14 feet from the edge of the street pavement, whichever is more restrictive;
 2. The portion of the wall or fence which is more than three feet above the adjacent curb top is essentially an open fence which permits good visibility through it; or
 3. On a corner lot, the rear yard of which is contiguous to the front yard of a residentially-zoned lot, and the wall or fence is not in the required front yard setback.
4. 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).

5. The ZHE finds that 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).
6. Here, the proposed wall meets the requirement that it be attractive, be in harmony with the site and blend architecturally. It meets the façade requirements of Section 14-14-3-19 and it will be an essentially open fence above three feet.
7. There is no evidence that the proposed wall will cause injury to other property, the neighborhood or the community.
8. The ZHE finds that the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b).
9. 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).
10. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow an existing 5 foot wall in the required front yard setback.

CONDITIONS OF APPROVAL

The Applicant shall meet all requirements imposed by the Traffic Engineering Division. See §14-16-3-3(4)(c): “No wall, fence or retaining wall shall be erected in the clear sight triangle unless its type and location is approved by the Traffic Engineer based on a finding that it would not be a traffic hazard.”

1. Any pilaster taller than 3 feet shall not be larger than 8” in width with the mini clear sight triangle.
2. There shall not be a solid wall higher than 3 feet constructed in the mini clear sight triangle.
3. The wrought iron has bars spaced at least 6 inches apart and no larger than ¾”.

Additional Traffic Engineering advisory:

Based on the site plan provided, the applicant is advised that the proposed 14 foot gate at the corner would not be allowed by City Traffic. The accessible ramp on the corner is not a drive-pad and the applicant would be in violation if it is used as such. The applicant should also coordinate with local utilities so as not to cut off access to their equipment similar to the wall across the street.

If you wish to appeal this decision, you must do so by March 22, 2018, 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Martin Medina, 8500 Bay Mare, 87121