



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

JOHN M NATIVIDAD requests a special exception to Section 14-16-2-6(B)(14)(a): a CONDITIONAL USE to allow a proposed 5' fence in the front yard setback area for all or a portion of Lot 24, Block 23, MESA VERDE ADDN zoned R-2, located on 346 VIRGINIA ST NE (K-19)

Special Exception No:.....14ZHE-80280  
Project No: .....Project# 1010271  
Hearing Date: .....January 23, 2015  
Closing of Public Record: .....January 23, 2015  
Date of Decision:.....02-06-15

On the 23rd day of January, 2015 (hereinafter "**Hearing**") JOHN M NATIVIDAD (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Conditional Use to allow a proposed 5' fence in the front yard setback area (hereinafter "**Application**") upon the real property located at 346 VIRGINIA ST NE ("**Subject Property**"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Conditional Use to allow a proposed 5' fence in the front yard setback area.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*"
3. Applicant testified at the Hearing that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because the proposed fence will be 5' in height and contain wrought iron posts that allow for good visibility through the fence into the parking lot. The reason for the fence is to secure the parking lot which is on the corner of Virginia Ave. and Copper Ave. The Applicant testified that the fence would not be injurious to any of the neighbors and would be beneficial to the residents of the apartment complex.
4. The DMD Traffic Engineer indicated that the wrought iron fence design will not create line of sight problems for motorists.
5. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) "SPECIAL EXCEPTIONS" reads in part: "*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities.*"
6. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures.

7. The DMD Engineer indicated that the wall was required to be built on private property and not the adjacent public right of way.
8. There was no known neighborhood opposition presented at the Hearing.
9. The yellow "Notice of Hearing" signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
10. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.

**DECISION:**

**APPROVAL WITH CONDITIONS** of a **CONDITIONAL USE** to allow a proposed 5' fence in the front yard setback area.

**CONDITIONS OF APPROVAL:**

- A. The Applicant shall adhere to the *design guidelines* for walls and fences as set forth in the City of Albuquerque Zoning Code.
- B. The Applicant shall abide by the City of Albuquerque Traffic Engineer approval to keep the wall's clear sight triangle free of obstructions.
- C. The Applicant shall ensure that the fence is constructed with wrought iron that allows for good visibility through the fence and does not exceed 5' in height in any location.
- D. The fence **SHALL** not be constructed within the public right of way, and the Applicant has the burden of finding a plat or survey of the property prior to construction of the wall to ensure that the wall is not constructed within the public right of way.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 in the manner described below:

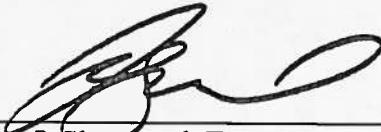
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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.



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Joshua J. Skarsgard, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
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