



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

MARCELINO A LEGARDA-ARMENDARIZ (JOEL LEGARDA, AGENT) requests a special exception to Section 14-16-2-6(B)(14): a CONDITIONAL USE to allow an existing 5' wall in the front yard setback area for all or a portion of Lot 19, Block E, CARLOS REY zoned R-1, located on 5932 EUCARIZ AVENUE SW (L-11)

Special Exception No:..... **15ZHE-80027**
Project No:..... **Project# 1010367**
Hearing Date:..... 03-17-15
Closing of Public Record:..... 03-17-15
Date of Decision: 03-31-15

On the 17th day of March, 2015 (hereinafter “**Hearing**”) JOEL LEGARDA, (hereinafter “**Agent**”) acting as agent on behalf of the property owner MARCELINO A LEGARDA-ARMENDARIZ (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use to allow an existing 5’ wall in the front yard setback area (hereinafter “**Application**”) upon the real property located at 5932 EUCARIZ AVENUE SW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

10. Applicant is requesting a Conditional Use to allow an existing 5’ wall in the front yard setback area.
11. 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.*”
12. 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 wall will be only 5’ high with sections of the wall that have good visibility through the wall. Additionally, the Applicant provided testimony and photos of adjacent homes in this neighborhood that have walls with a similar design establishing a precedence for these types of walls in the front yard setback. The ZHE requested that the DMD Traffic Engineer review the wall for Clear Sight Triangle (CST) and Mr. Sanchez replied via email and requested that the portion of the wall (see email) needs to be removed and brought the CMU block wall down to 3’ in height with a material that has “good visibility” for the remaining two feet. Pursuant to the changes required by the DMD, the ZHE believes that the wall is not injurious to the community.
13. 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.”

14. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities.
15. The Applicant testified that his two neighbors both support the wall design.
16. The Applicant testified that the wall was constructed six months ago.
17. 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.
18. 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 to allow an existing 5’ wall in the front yard setback area.

CONDITIONS OF APPROVAL:

- B. The Applicant shall adhere to the *design guidelines* for walls and fences as set forth in the City of Albuquerque Zoning Code.
- C. The Applicant shall abide by the City of Albuquerque Traffic Engineer Mr. Paul Sanchez email and remove 2 feet of CMU Block Wall (per his exhibit) that will keep the wall’s clear sight triangle free of obstructions.

If you wish to appeal this decision, you may do so 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.



Joshua L. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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