



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

NELY DOMINGUEZ (JOHN CHAVEZ, AGENT) requests a special exception to Section 14-16-2-6(B)(14)(a)(2): a CONDITIONAL USE to allow a 5' wall in the front yard setback area for all or a portion of Lot 26, Block 74, WESTGATE HEIGHTS ADDN UNIT NO 3 zoned R-D, located on 1400 MICHELLE ST SW (M-9)

Special Exception No:..... **15ZHE-80064**  
Project No:..... **Project# 1010420**  
Hearing Date:..... 05-19-2015  
Closing of Public Record:..... 05-19-2015  
Date of Decision: ..... 05-29-2015

On the 19th day of May, 2015 (hereinafter “**Hearing**”) JOHN CHAVEZ, (hereinafter “**Agent**”) acting as agent on behalf of the property owner NELY DOMINGUEZ hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use to allow a 5' wall in the front yard setback area (hereinafter “**Application**”) upon the real property located at 1400 MICHELLE ST SW (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Conditional Use to allow a 5' wall 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 five foot wall tall will have three feet of solid base (CMU Block) followed by two feet of wrought iron (which permits good visibility through the wall). The Applicant further justified the Application by pointing out to the ZHE that there are “at least 10 homes” with similar fences/wall in their front yard and that this design would be harmonious with the neighborhood and therefore not injurious to the neighbors. The Applicant further pointed out that there was no written opposition to the Application at the Hearing.
4. The ZHE notes that the City of ABQ Traffic Engineer emailed the ZHE Staff and indicated that this wall does not violate the clear sight triangle regulations of the City of Albuquerque.
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 or activities.
7. The ZHE notes that the base of the wall is “existing” yet it appears that the two feet of wrought iron has not be installed yet.
8. 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.
9. 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 5' wall 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 top two feet of the wall/fence is constructed with wrought iron and permits good visibility through the wall/fence.

If you wish to appeal this decision, you may do so in the manner described below:

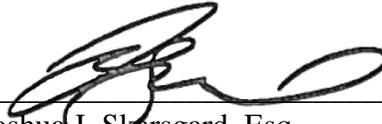
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level,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



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Joshua I. Skarsgard, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
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