



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

JOE REMIJIO & MICHELLE BARELA requests a special exception to Section 14-16-2-6(B)(14) : a CONDITIONAL USE to allow for a 5 ft wall in the front yard setback for all or a portion of Lot 22A, Block 29, The Knolls of Paradise Hills Unit 2 zoned R-1, located on 9988 BUCKEYE ST NW (B-13)

Special Exception No:..... **15ZHE-80264**
Project No:..... **Project# 1010628**
Hearing Date:..... 11-17-15
Closing of Public Record:..... 11-17-15
Date of Decision: 12-02-15

On the 17th day of November, 2015 (hereinafter “**Hearing**”) JOE REMIJIO & MICHELLE BARELA (hereinafter “**Applicants**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use to allow for a 5 ft wall in the front yard setback (hereinafter “**Application**”) upon the real property located at 9988 BUCKEYE ST NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicants is requesting a Conditional Use to allow for a 5 ft wall in the front yard setback.
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. Applicants provided evidence that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because it is lower than 5 feet in height, it is constructed to allow pedestrians and motorists to see through it on the upper portion, it does not impact views and will increase safety for children playing on the Subject Property. The wall is designed in an attractive manner and applicants have committed to proper upkeep. Applicants also testified that they have significant support from other neighbors.
4. Adjoining property owner Tess Ivey testified and submitted evidence in opposition to the application. Fundamentally, Ms. Ivey’s concern with the Applicants’ property overall is her assertion that they are conducting illegal business activity on the premises. As to the specific application, Ms. Ivey feels that that erecting a wall will serve to conceal illegal business activity, making detection and enforcement more difficult.
5. Enforcement of land use regulations is not the province of the ZHE, although the ZHE should not approve a conditional use that has a primary purpose or effect of facilitating violations.

6. Applicants testified that they have met the conditions of both the City of Albuquerque and their agreement with Ms. Ivey as to the home occupation use of the Subject Property. Moreover, they have sold the business. There is no evidence in the record indicating that there is a substantial likelihood of increased commercial activity.
7. Regardless, upon review of the whole record, the ZHE finds that the wall as proposed will not serve to conceal activity on the Subject Property. Thus, the primary objection that it will be injurious due to facilitation of commercial uses is not supported by substantial evidence in the record.
8. 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.*”
9. Applicants testified that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities and the ZHE finds no evidence in the record indicating that it would be subject to any damage.
10. 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.
11. The Applicants have 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 for a 5 ft wall in the front yard setback.

CONDITIONS OF APPROVAL:

The wall shall be constructed in accordance with the plans described at the hearing and submitted with the application, including Applicants’ explanation that the CMU portion of the wall is complete and only non-opaque metal elements will be added.

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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