RAFAEL DE LA ROSA requests a special exception to Section 14-16-2-6(B)(14)(a): a CONDITIONAL USE to allow for a 5 ft wall in the required front yard setback for all or a portion of Lot 2C, Block 0000, GLENDALE GARDENS zoned R-1, located on 4709 UTE RD NW (K-12) Special Exception No:............ 18ZHE-80019 Project No:...................... Project# 1011505 Hearing Date:....................... 03-16-18 Closing of Public Record:....... 03-16-18 Date of Decision: ................. 03-30-18

On the 16th day of March, 2018, RAFAEL DE LA ROSA (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a 5 ft wall in the required front yard setback (“Application”) upon the real property located at 4709 UTE RD NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a 5 ft 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. 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).
4. 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).
5. The wall will not block light or views, interfere with safety as described below, disturb the streetscape or historic integrity of the property or neighborhood, or present any other injury to the adjacent property, neighborhood or community.
6. The proposed wall will also limit the potential for injury by providing protection from stray dogs and security from theft.
7. The ZHE finds that proposed wall is of an attractive design and in harmony with its site as required by §14-16-2-6(B)(14)(a).
8. The style of the wall blends architecturally with the adjacent residences and with the general streetscape, including the use of exposed block and wrought iron.
9. The wall/fence is consistent and compliant with the requirements of Section 14-16-3-19, including the (A) height limits, the (B) barbed or similar materials and the (C) design regulations, as it includes variations in materials, texture, openings and color, projecting vertical pilasters and decorative features.
10. The portion of the wall which is more than three feet above the adjacent curb top is essentially an open fence which permits good visibility through it, in accordance with § 14-16-2-6(B)(14)(a).

11. No one other than the Applicant spoke at the hearing. One letter of concern was submitted, raising the following concerns/questions:
   a. “The size and location in driveway will not be able to see oncoming traffic.” Section 14-16-2-6-(B)(14)(b) states “The Zoning Hearing Examiner shall not approve a wall or fence unless the Traffic Engineer finds that the specific plan approved would not be a hazard to traffic visibility.” The City of Albuquerque Traffic Engineer reviewed the application for clear sight triangle compliance. The result of that review was a conditional approval, as identified below. I find that the conditions of approval adequately address the visibility of traffic concern.
   b. “This wall will create unnecessary hardship,” contrary to the “intent and purpose of the zoning code 14-16-13 and the zoning district.” It would appear that the reference is actually to §14-16-4-2(C)(2)(c), the criteria for decision on a variance. This criteria is not applicable to a special exception.
   c. “This wall will be permanent longer than a period of one year or more.” I cannot find a prohibition on approval of conditional uses for longer than a period of one year, and the approval is presumed valid until abandoned.
   d. “What is the special exception for this property to have a five foot wall?” The conditional use requested falls within the code heading of “special exceptions” (§14-16-4-2) but does not require a showing of “special circumstances” that a variance would require under §14-16-4-2(C)(2).

12. 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).

13. 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).

14. The ZHE finds that the Applicant has authority to pursue this Application.

**DECISION:**

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

**CONDITIONS OF APPROVAL:**

Wrought iron fencing between block pilasters, as shown in the application sketches, is approved. Otherwise, there shall not be a solid wall higher than 3 feet constructed in the mini clear sight triangle. The wrought iron fencing shall have bars spaced at least 6 inches apart and no larger than ¾” diameter. Any pilaster taller than 3 feet shall not be larger than 8” in width within the mini clear sight triangle.

If you wish to appeal this decision, you must do so by April 16, 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
    Rafael de la Rosa, 4709 Ute Dr NW, 87105