On the 15th day of May, 2018, CHARLES SPINELLO (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a fence over 3 ft high within the front and corner side yard setback (“Application”) upon the real property located at 4701 TRUMBULL AVE SE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

**FINDINGS:**

1. Applicant is requesting a conditional use to allow a fence over 3 ft high within the front and corner side 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 proposed fence meets the following requirements of Section 14-16-2-6(B)(14)(a):
   a. It is attractive and in harmony with its site, and is more attractive than the existing chain link fence.
   b. The style of the fence blends architecturally with the adjacent residences and with the general streetscape.
   c. The fence is consistent with the requirements of Section 14-16-3-19, identified below.
   d. The portion of the fence, which is more than three feet above the adjacent curb top is essentially an open fence which permits good visibility through it.
6. The Traffic Engineer finds that the specific plan approved would not be a hazard to traffic visibility, subject to certain conditions.

7. The fence meets the requirements of § 14-16-3-19-(C)(2)(b) Façade openings, at least 5% of the wall façade surface will be constructed into the façade or created by using see-through pattern blocks, tubular steel or wrought iron bars, wood or other grillwork and there will be a variety of materials, texture or color on at least 20% of the wall façade surface.

8. The fence does not interfere with the views, light or access of other residents or detrimentally impact neighborhood character or security.

9. The ZHE finds that the new, residential design, “Design Master” fence is aesthetically different and preferable to existing “wire” fence designs, such that the fence does not infringe the intent behind Section 14-16-2-6(B)(14)(c).

10. 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).

11. 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).

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

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow a fence over 3 ft high within the front and corner side yard setback.

CONDITIONS OF APPROVAL:

The Applicant shall not alter the design to any fence material that blocks the clear sight triangle.

If you wish to appeal this decision, you must do so by June 14, 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
    Charles Spinello, 4701 Trumbull Ave SE, 87108