



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

MICHAEL NEESE request(s) a special exception to Section 14-16-2-6(B)(a)(1): a CONDITIONAL USE to allow a wall over 3' in height in the front yard setback area for an existing 6' high wall on all or a portion of Lot(s) 20, Block(s) 5, PARKLAND HILLS ADDN zoned R-1, located at 609 PARKLAND CIRCLE SE (L-16)

Special Exception No:..... **12ZHE-80018**  
Project No: ..... **Project# 1009109**  
Hearing Date: ..... 02-21-12  
Closing of Public Record: ..... 02-21-12  
Date of Decision: ..... 03-07-12

**STATEMENT OF FACTS:** The applicant, Michael Neese, requests a conditional use to allow a wall over 3' in height in the front yard setback area for an existing 6' high wall. Mr. Neese testified, at the hearing, that he has owned the property for approximately 27 years. The applicant testified that he did not obtain a building permit or contact the Neighborhood Association prior to starting of construction of the fence.

The applicant testified that if approved, the fence will be mainly a wooden board fence with 1.5" spaces between each board to allow visibility. The center section will be set back 3' from the wooden board portions of the fence and this 8' section will be a decorative metal grid allowing full visibility. The gate would be a similar metal open grid. The wooden board fence is 15' from the sidewalk and 19' from the street. Mr. Neese acknowledged that the initial construction of the fence is over 6' and the pilasters for the gate are 7'. If approved, Mr. Neese testified that he is willing to reduce the wall and pilasters to 6'. There is a letter in the file from the Traffic Engineer's office that indicates no obstruction to the clear sight requirements. The applicant was advised that, if approved, clear sight must be maintained and that vehicles, dumpsters, or landscaping that may mature and cause an obstruction to clear sight may not be placed next to this fence. The yellow sign was posted.

There are six letters of opposition in the file, to wit: Fred and Pauline Hardy, Robert Staehlin, John Pate (SE Neighborhood Association President), Katy Fuchs, Sandra Alden and Patricia Freeman. The letters included a number of points to support their opposition; the main point stated was that a 6' high wall would cause the neighborhood to lose its historic landscape of open yards and parks. A wall in the front yard would be out of character with the Ridgcrest neighborhood. Robert Staehlin and Katy Fuchs also testified in opposition at the hearing.

The question before the Deputy Zoning Hearing Examiner rests on whether the board fence is essentially an open fence and if the style of the fence blends architecturally with the adjacent residence and with the general streetscape. It appears that the applicant

made an attempt to comply with required design standards to have the wall contain variation in layout, façade surface, pattern of openings, materials, texture and color. Ultimately the portion of the wall or fence which is higher than 3' needs to be an open fence which this wooden board fence does not appear to be. The 6' tall wooden board fence does not appear to blend with the general streetscape.

Based on all of the testimony and a review of the entire file, it is determined that there is substantial evidence to make the following findings and conclusions:

**FINDINGS AND CONCLUSIONS:** I find that this request does not comply with Section 14. 16. 4. 2. (C). 1., for the granting of a conditional use upon a finding that the proposed use will cause injury to the neighborhood, adjacent property or the community, and will be damaged by surrounding structures. For reasons stated above, this request is denied.

**DECISION:** Denied.

**If you wish to appeal this decision, you may do so by 5:00 p.m., on March 22, 2012 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 Deputy 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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Anita Reina, Esq.  
Deputy Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Michael Neese, 609 Parkland SE, 87108  
Patricia Freeman, 612 Ridgecrest Drive SE, 87108  
Sandra Alden, 606 Ridgecrest Drive SE, 87108  
Katy Fuchs, 614 Ridgecrest Drive SE, 87108  
Robert Staehlin, [rstaehlin@comcast.net](mailto:rstaehlin@comcast.net)  
Fred & Pauline Hardy, 607 Parkland Circle SE, 87108