



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

WILFRED SILVA request(s) a special exception to Section 14-16-3-19(A)(2)(b): a CONDITIONAL USE to allow a wall over 3' in height in the corner side yard setback area for an existing 4' high wall on all or a portion of Lot(s) 17, Block(s) 3, CHERRY HILLS UNIT 1 zoned R-1, located at 8228 CHERRY HILLS DR NE (E-19)

Special Exception No:..... **11ZHE-80256**
Project No: **Project# 1009004**
Hearing Date: 11-14-11
Closing of Public Record: 11-14-11
Date of Decision: 11-30-11

STATEMENT OF FACTS: The applicant, Wilfred Silva, requests a conditional use to allow a wall over 3' in height in the corner side yard setback area for an existing 4' high wall. Mr. Silva testified, at the hearing that the existing wall was built in July 2010 in order to secure the property. He stated that the existing wall does not cause injury to the neighborhood as there is not a lot of pedestrian traffic. The Traffic Engineer's report dated November 4, 2011 indicates that the existing wall does impact the City of Albuquerque's Transportation Design 11' mini clear sight triangle for residential driveways; and the portion of the wall adjacent to the south gate should be reduced to 3' in height for a distance of 11' on the north and south side of the entrance. The report also indicates that the gate for the entrance should also be modified (install stoppers on the outside of the hinges) so that it can not open into the flow of pedestrian traffic. Mr. Silva was informed of this information and told that modifications to the wall needed to be made within two weeks. A second report from the Traffic Engineer, dated November 29, 2011 indicates that there are no longer obstructions 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 wall. The yellow sign was posted. There was no opposition to this request at the hearing, nor is there any opposition noted in the file.

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

FINDINGS AND CONCLUSIONS: I find that this request complies with Section 14.16.4.2.(C).1., for the granting of a conditional use upon a finding that the proposed use will not cause injury to the neighborhood, adjacent property or the community, nor will it be damaged by surrounding structures. For reasons stated above, this request is approved.

DECISION: Approved with conditions.

CONDITIONS: The applicant must comply with any and all requirements made by the City Traffic Engineer in that clear sight must be maintained. Vehicles, dumpsters, or landscaping that may mature and cause an obstruction to clear sight may not be placed next to this wall.

The approval is subject to the submitted site plan, as required. Any substantial changes to the site plan, as determined by the Zoning Enforcement Division, shall require the scheduling of an additional Public Hearing.

A Building Permit must be applied for at the Building Permit Desk which is located at the Plaza del Sol Building, Ground Level on the east side of the lobby.

If you wish to appeal this decision, you may do so by 5:00 p.m., on December 15, 2011 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.

Anita Reina

Anita Reina, Esq.
Deputy Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Wilfred Silva, 8228 Cherry Hills Drive NE, 87111