



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

MARK CORDOVA & KAREN MANDUCHI (DAC ENTERPRISES, AGENT) request(s) a special exception to Section 14-16-2-6(B)(14): a CONDITIONAL USE to allow for a wall over 3' in height in the front yard setback area for an existing 5' high wall on all or a portion of Lot(s) 1, Block(s) 2, FOUR HILLS VILLAGE FIRST INSTALLMENT, zoned R-1, located at 800 FOUR HILLS RD SE (M-23)

Special Exception No:..... **10ZHE-80253**
Project No: **Project# 1008426**
Hearing Date: 01-21-11
Closing of Public Record: 01-21-11
Date of Decision: 02-07-11

STATEMENT OF FACTS: The applicants, Mark Cordova and Karen Manduchi, request a conditional use to allow for a wall over 3' in height in the front yard setback area for an existing 5' high wall. This matter comes before the hearing officer after many previously scheduled hearings. All prior hearings concluded that the application was not complete and further that inspections of the existing wall were required. Inspections were conducted at the request of the neighbors as well as at the request of this hearing officer to determine whether or not the walls that were constructed comply with the building code requirements. The results of those inspections indicate that the walls do comply and there are no safety issues. As to the requests for these conditional uses and variances this is a matter that has brought many interested parties to the hearing. The evidence indicates that the applicant contracted with a licensed contractor who advised the applicant that he had obtained all of the necessary permits to construct the walls according to the clients' wishes. It was later discovered that the applicant was duped by the contractor who had not obtained the necessary permits. The walls were constructed without the necessary permits without the applicant's knowledge.

The application, at this hearing, is now complete with regard to the conditional uses and the variances. It should be noted that a number of meetings were held by mediation services contracted by the City of Albuquerque in order to bring all of these issues to light. All of this was done prior to this final hearing. It is noted that there is considerable opposition to this request. Much of it is premised on the fact that the applicant failed to confer with the Architectural Control Committee which apparently is a requirement of all property owners in the Four Hills community. There is no dispute that the applicant failed to do so. These matters were considered in making a final determination as to the request that is before this body.

The Zoning Ordinance provides that this office may consider evidence of covenants as part of the record. It is understood that the applicant failed to comply with the covenant of making contact with the Architectural Control Committee. However, there is not specificity as to whether the requested variances or wall heights are considered violations pursuant to those covenants. Nevertheless, while covenants may be considered by this

office, it may not be considered a control factor and the interested parties have been advised that if they desire to pursue violations of covenants that this issue may be taken to another forum.

As to the conditional uses, it is noted that the applicant has made considerable modifications to these requests as a result of the advice of his representative and the result of taking into consideration some of the very valid issues raised by the neighbors. The applicant's agent was advised that his client should maintain the property in as habitable and visibly pleasing status as is possible. In this case, the applicant elected to build the walls in the perimeter of the property prior to investing in any modifications of the home. This certainly, to the native eye, gives an unpleasant look to the gateway of Four Hills, which this property represents as one of the first corner homes when entering onto Four Hills. However, it is the belief of this office that someone who has invested the amount of money in preparing the perimeter of the property suggests that the renovations to the home will be similarly well invested. The applicant's agent indicated that his client does intend to build a very beautiful home so that he and his future wife may enjoy their property and a return on their investment.

I find that these conditional uses do not cause injury to the neighborhood, adjacent property or the community. Initially, prior to the modifications, there were some extensive add-ons to the walls which seemed to aid a negative visual affect. However, as earlier stated the applicant has modified these walls and therefore the negative impact has been eliminated.

As to the variances requested, I believe that the lot does have sufficient exceptional physical characteristics to warrant these requests. It is indicated by the opposition that many of the lots in this community have similar elevation differences. An on-site inspection by this office shows that while this lot is a corner lot it does have exceptional physical elevation differences. It is true that there are other lots with similar elevation differences; however, the entire community seems to be unique because of its location in Four Hills. To suggest that this lot is not unique would seem to be inconsistent with the overall topography of the area. The characteristics of the elevation differences as well as the size of the lot justify the granting of these requests. It should be noted however, that no additional variances are to be approved. The applicant must maintain the property and the walls in suitable condition. Any damage that may occur to adjacent neighbors as a result of the applicant's construction of the walls will be a matter that the applicant would be held liable for and would have to make the necessary improvements. Any walls that may experience graffiti or anything of that nature will require the applicant to correct the situation within 24 hours. This is a condition that is placed on all walls around the city by this office. As the applicant failed to obtain the necessary and appropriate permits prior to these requests and built the walls albeit through a contractor without obtaining the proper permits, he is advised that this type of activity will not be tolerated. As a property owner he is responsible to assure that any work done by a contractor is done consistent with the Zoning Ordinance and the Building Code and he has the responsibility to assure not only himself but his neighbors and the City that the appropriate permits are obtained. I further suggest to the applicant that as future resident of the Four Hills

neighborhood, he should take all necessary measures to communicate with the Architectural Control Committee. The applicant has retained agents who are very qualified in these types of activities and I am sure they can be of assistance to him.

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.

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 February 22, 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.

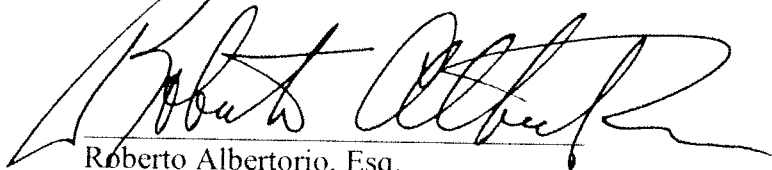
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of 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.

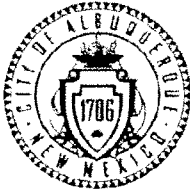
Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for 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.



Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
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NOTIFICATION OF DECISION

MARK CORDOVA & KAREN MANDUCHI (DAC ENTERPRISES, AGENT) request(s) a special exception to Section 14-16-2-6(B)(14): a VARIANCE of 11' 1" to the 8' wall height allowance for an existing 19' 1" high wall in the rear yard setback area on all or a portion of Lot(s) 1, Block(s) 2, FOUR HILLS VILLAGE FIRST INSTALLMENT, zoned R-1, located at 800 FOUR HILLS RD SE (M-23)

Special Exception No:..... **10ZHE-80254**
Project No: **Project# 1008426**
Hearing Date: 01-21-11
Closing of Public Record: 01-21-11
Date of Decision: 02-07-11

STATEMENT OF FACTS: The applicants, Mark Cordova and Karen Manduchi, request a variance of 11' 1" to the 8' wall height allowance for an existing 19' 1" high wall in the rear yard setback area. This matter comes before the hearing officer after many previously scheduled hearings. All prior hearings concluded that the application was not complete and further that inspections of the existing wall were required. Inspections were conducted at the request of the neighbors as well as at the request of this hearing officer to determine whether or not the walls that were constructed comply with the building code requirements. The results of those inspections indicate that the walls do comply and there are no safety issues. As to the requests for these conditional uses and variances this is a matter that has brought many interested parties to the hearing. The evidence indicates that the applicant contracted with a licensed contractor who advised the applicant that he had obtained all of the necessary permits to construct the walls according to the clients' wishes. It was later discovered that the applicant was duped by the contractor who had not obtained the necessary permits. The walls were constructed without the necessary permits without the applicant's knowledge.

The application, at this hearing, is now complete with regard to the conditional uses and the variances. It should be noted that a number of meetings were held by mediation services contracted by the City of Albuquerque in order to bring all of these issues to light. All of this was done prior to this final hearing. It is noted that there is considerable opposition to this request. Much of it is premised on the fact that the applicant failed to confer with the Architectural Control Committee which apparently is a requirement of all property owners in the Four Hills community. There is no dispute that the applicant failed to do so. These matters were considered in making a final determination as to the request that is before this body.

The Zoning Ordinance provides that this office may consider evidence of covenants as part of the record. It is understood that the applicant failed to comply with the covenant of making contact with the Architectural Control Committee. However, there is not specificity as to whether the requested variances or wall heights are considered violations pursuant to those covenants. Nevertheless, while covenants may be considered by this

office, it may not be considered a control factor and the interested parties have been advised that if they desire to pursue violations of covenants that this issue may be taken to another forum.

As to the conditional uses, it is noted that the applicant has made considerable modifications to these requests as a result of the advice of his representative and the result of taking into consideration some of the very valid issues raised by the neighbors. The applicant's agent was advised that his client should maintain the property in as habitable and visibly pleasing status as is possible. In this case, the applicant elected to build the walls in the perimeter of the property prior to investing in any modifications of the home. This certainly, to the native eye, gives an unpleasant look to the gateway of Four Hills, which this property represents as one of the first corner homes when entering onto Four Hills. However, it is the belief of this office that someone who has invested the amount of money in preparing the perimeter of the property suggests that the renovations to the home will be similarly well invested. The applicant's agent indicated that his client does intend to build a very beautiful home so that he and his future wife may enjoy their property and a return on their investment.

I find that these conditional uses do not cause injury to the neighborhood, adjacent property or the community. Initially, prior to the modifications, there were some extensive add-ons to the walls which seemed to aid a negative visual affect. However, as earlier stated the applicant has modified these walls and therefore the negative impact has been eliminated.

As to the variances requested, I believe that the lot does have sufficient exceptional physical characteristics to warrant these requests. It is indicated by the opposition that many of the lots in this community have similar elevation differences. An on-site inspection by this office shows that while this lot is a corner lot it does have exceptional physical elevation differences. It is true that there are other lots with similar elevation differences; however, the entire community seems to be unique because of its location in Four Hills. To suggest that this lot is not unique would seem to be inconsistent with the overall typography of the area. The characteristics of the elevation differences as well as the size of the lot justify the granting of these requests. It should be noted however, that no additional variances are to be approved. The applicant must maintain the property and the walls in suitable condition. Any damage that may occur to adjacent neighbors as a result of the applicant's construction of the walls will be a matter that the applicant would be held liable for and would have to make the necessary improvements. Any walls that may experience graffiti or anything of that nature will require the applicant to correct the situation within 24 hours. This is a condition that is placed on all walls around the city by this office. As the applicant failed to obtain the necessary and appropriate permits prior to these requests and built the walls albeit through a contractor without obtaining the proper permits, he is advised that this type of activity will not be tolerated. As a property owner he is responsible to assure that any work done by a contractor is done consistent with the Zoning Ordinance and the Building Code and he has the responsibility to assure not only himself but his neighbors and the City that the appropriate permits are obtained. I further suggest to the applicant that as future resident of the Four Hills

neighborhood, he should take all necessary measures to communicate with the Architectural Control Committee. The applicant has retained agents who are very qualified in these types of activities and I am sure they can be of assistance to him.

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 parcel is exceptional as compared to other parcels in the vicinity and, therefore, it meets the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that, as a result of the exceptional aspect of the property, the regulations produce an unnecessary hardship in that it will limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Furthermore, I find that the particular variance is appropriate to prevent the unnecessary hardship and further find that the variance will differ from development which will be permitted under the existing regular zoning regulations no more than what is necessary to overcome the unnecessary hardship. Finally, the variance will not significantly interfere with the enjoyment of other land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Approved.

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.

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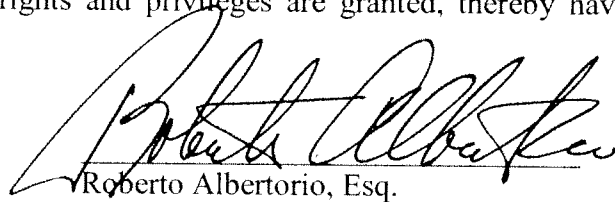
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Special Exception No:..... **10ZHE-80362**
Project No: **Project# 1008426**
Hearing Date: 01-21-11
Closing of Public Record: 01-21-11
Date of Decision: 02-07-11

STATEMENT OF FACTS: The applicants, Mark Cordova and Karen Manduchi, request a conditional use to allow for a wall over 3' in height in the side yard setback area for a proposed 5' 6" high wall. This matter comes before the hearing officer after many previously scheduled hearings. All prior hearings concluded that the application was not complete and further that inspections of the existing wall were required. Inspections were conducted at the request of the neighbors as well as at the request of this hearing officer to determine whether or not the walls that were constructed comply with the building code requirements. The results of those inspections indicate that the walls do comply and there are no safety issues. As to the requests for these conditional uses and variances this is a matter that has brought many interested parties to the hearing. The evidence indicates that the applicant contracted with a licensed contractor who advised the applicant that he had obtained all of the necessary permits to construct the walls according to the clients' wishes. It was later discovered that the applicant was duped by the contractor who had not obtained the necessary permits. The walls were constructed without the necessary permits without the applicant's knowledge.

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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.

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.

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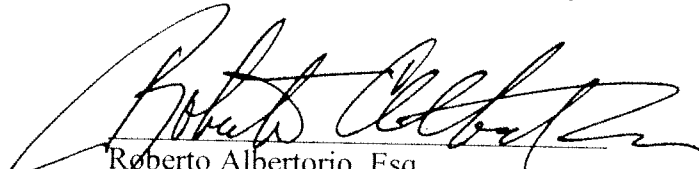
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Wallace & Kate Kulingowski, 905 Maverick Trail SE, 87123
Andrew & Ellen Lipmans, 709 Wagon Train Drive SE, 87123
Roger Hartman, 1308 Wagon Train Drive SE, 87123
Steve Brugge
Esther Helweg
Gail Nash
Jim Andre
Donald Nash
John Hale, 1020 Brazos Place SE, 87123



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

MARK CORDOVA & KAREN MANDUCHI (DAC ENTERPRISES, AGENT) request(s) a special exception to Section 14-16-2-6(B)(14): a CONDITIONAL USE to allow for a wall over 3' in height in the side yard setback area for an existing 6' high wall on all or a portion of Lot(s) 1, Block(s) 2, FOUR HILLS VILLAGE FIRST INSTALLMENT, zoned R-1, located at 800 FOUR HILLS RD SE (M-23)

Special Exception No:..... **10ZHE-80363**
Project No: **Project# 1008426**
Hearing Date: 01-21-11
Closing of Public Record: 01-21-11
Date of Decision: 02-07-11

STATEMENT OF FACTS: The applicants, Mark Cordova and Karen Manduchi, request a conditional use to allow for a wall over 3' in height in the side yard setback area for an existing 6' high wall. This matter comes before the hearing officer after many previously scheduled hearings. All prior hearings concluded that the application was not complete and further that inspections of the existing wall were required. Inspections were conducted at the request of the neighbors as well as at the request of this hearing officer to determine whether or not the walls that were constructed comply with the building code requirements. The results of those inspections indicate that the walls do comply and there are no safety issues. As to the requests for these conditional uses and variances this is a matter that has brought many interested parties to the hearing. The evidence indicates that the applicant contracted with a licensed contractor who advised the applicant that he had obtained all of the necessary permits to construct the walls according to the clients' wishes. It was later discovered that the applicant was duped by the contractor who had not obtained the necessary permits. The walls were constructed without the necessary permits without the applicant's knowledge.

The application, at this hearing, is now complete with regard to the conditional uses and the variances. It should be noted that a number of meetings were held by mediation services contracted by the City of Albuquerque in order to bring all of these issues to light. All of this was done prior to this final hearing. It is noted that there is considerable opposition to this request. Much of it is premised on the fact that the applicant failed to confer with the Architectural Control Committee which apparently is a requirement of all property owners in the Four Hills community. There is no dispute that the applicant failed to do so. These matters were considered in making a final determination as to the request that is before this body.

The Zoning Ordinance provides that this office may consider evidence of covenants as part of the record. It is understood that the applicant failed to comply with the covenant of making contact with the Architectural Control Committee. However, there is not specificity as to whether the requested variances or wall heights are considered violations pursuant to those covenants. Nevertheless, while covenants may be considered by this

office, it may not be considered a control factor and the interested parties have been advised that if they desire to pursue violations of covenants that this issue may be taken to another forum.

As to the conditional uses, it is noted that the applicant has made considerable modifications to these requests as a result of the advice of his representative and the result of taking into consideration some of the very valid issues raised by the neighbors. The applicant's agent was advised that his client should maintain the property in as habitable and visibly pleasing status as is possible. In this case, the applicant elected to build the walls in the perimeter of the property prior to investing in any modifications of the home. This certainly, to the native eye, gives an unpleasant look to the gateway of Four Hills, which this property represents as one of the first corner homes when entering onto Four Hills. However, it is the belief of this office that someone who has invested the amount of money in preparing the perimeter of the property suggests that the renovations to the home will be similarly well invested. The applicant's agent indicated that his client does intend to build a very beautiful home so that he and his future wife may enjoy their property and a return on their investment.

I find that these conditional uses do not cause injury to the neighborhood, adjacent property or the community. Initially, prior to the modifications, there were some extensive add-ons to the walls which seemed to aid a negative visual affect. However, as earlier stated the applicant has modified these walls and therefore the negative impact has been eliminated.

As to the variances requested, I believe that the lot does have sufficient exceptional physical characteristics to warrant these requests. It is indicated by the opposition that many of the lots in this community have similar elevation differences. An on-site inspection by this office shows that while this lot is a corner lot it does have exceptional physical elevation differences. It is true that there are other lots with similar elevation differences; however, the entire community seems to be unique because of its location in Four Hills. To suggest that this lot is not unique would seem to be inconsistent with the overall topography of the area. The characteristics of the elevation differences as well as the size of the lot justify the granting of these requests. It should be noted however, that no additional variances are to be approved. The applicant must maintain the property and the walls in suitable condition. Any damage that may occur to adjacent neighbors as a result of the applicant's construction of the walls will be a matter that the applicant would be held liable for and would have to make the necessary improvements. Any walls that may experience graffiti or anything of that nature will require the applicant to correct the situation within 24 hours. This is a condition that is placed on all walls around the city by this office. As the applicant failed to obtain the necessary and appropriate permits prior to these requests and built the walls albeit through a contractor without obtaining the proper permits, he is advised that this type of activity will not be tolerated. As a property owner he is responsible to assure that any work done by a contractor is done consistent with the Zoning Ordinance and the Building Code and he has the responsibility to assure not only himself but his neighbors and the City that the appropriate permits are obtained. I further suggest to the applicant that as future resident of the Four Hills

neighborhood, he should take all necessary measures to communicate with the Architectural Control Committee. The applicant has retained agents who are very qualified in these types of activities and I am sure they can be of assistance to him.

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.

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 February 22, 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.

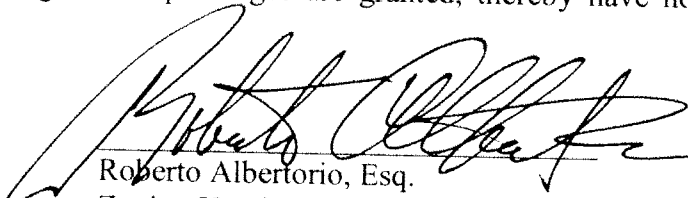
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of 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.

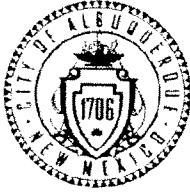
Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for 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.



Roberto Albertorio, Esq.
Zoning Hearing Examiner

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

MARK CORDOVA & KAREN MANDUCHI (DAC ENTERPRISES, AGENT) request(s) a special exception to Section 14-16-2-6(B)(14): a VARIANCE of 11' 1" to the 8' wall height allowance for an existing 19' 1" high wall in the rear yard setback area on all or a portion of Lot(s) 1, Block(s) 2, FOUR HILLS VILLAGE FIRST INSTALLMENT, zoned R-1, located at 800 FOUR HILLS RD SE (M-23)

Special Exception No: **10ZHE-80364**
Project No: **Project# 1008426**
Hearing Date: 01-21-11
Closing of Public Record: 01-21-11
Date of Decision: 02-07-11

STATEMENT OF FACTS: The applicants, Mark Cordova and Karen Manduchi, request a variance of 11' 1" to the 8' wall height allowance for an existing 19' 1' high wall in the rear yard setback area. This matter comes before the hearing officer after many previously scheduled hearings. All prior hearings concluded that the application was not complete and further that inspections of the existing wall were required. Inspections were conducted at the request of the neighbors as well as at the request of this hearing officer to determine whether or not the walls that were constructed comply with the building code requirements. The results of those inspections indicate that the walls do comply and there are no safety issues. As to the requests for these conditional uses and variances this is a matter that has brought many interested parties to the hearing. The evidence indicates that the applicant contracted with a licensed contractor who advised the applicant that he had obtained all of the necessary permits to construct the walls according to the clients' wishes. It was later discovered that the applicant was duped by the contractor who had not obtained the necessary permits. The walls were constructed without the necessary permits without the applicant's knowledge.

The application, at this hearing, is now complete with regard to the conditional uses and the variances. It should be noted that a number of meetings were held by mediation services contracted by the City of Albuquerque in order to bring all of these issues to light. All of this was done prior to this final hearing. It is noted that there is considerable opposition to this request. Much of it is premised on the fact that the applicant failed to confer with the Architectural Control Committee which apparently is a requirement of all property owners in the Four Hills community. There is no dispute that the applicant failed to do so. These matters were considered in making a final determination as to the request that is before this body.

The Zoning Ordinance provides that this office may consider evidence of covenants as part of the record. It is understood that the applicant failed to comply with the covenant of making contact with the Architectural Control Committee. However, there is not specificity as to whether the requested variances or wall heights are considered violations pursuant to those covenants. Nevertheless, while covenants may be considered by this

office, it may not be considered a control factor and the interested parties have been advised that if they desire to pursue violations of covenants that this issue may be taken to another forum.

As to the conditional uses, it is noted that the applicant has made considerable modifications to these requests as a result of the advice of his representative and the result of taking into consideration some of the very valid issues raised by the neighbors. The applicant's agent was advised that his client should maintain the property in as habitable and visibly pleasing status as is possible. In this case, the applicant elected to build the walls in the perimeter of the property prior to investing in any modifications of the home. This certainly, to the native eye, gives an unpleasant look to the gateway of Four Hills, which this property represents as one of the first corner homes when entering onto Four Hills. However, it is the belief of this office that someone who has invested the amount of money in preparing the perimeter of the property suggests that the renovations to the home will be similarly well invested. The applicant's agent indicated that his client does intend to build a very beautiful home so that he and his future wife may enjoy their property and a return on their investment.

I find that these conditional uses do not cause injury to the neighborhood, adjacent property or the community. Initially, prior to the modifications, there were some extensive add-ons to the walls which seemed to aid a negative visual affect. However, as earlier stated the applicant has modified these walls and therefore the negative impact has been eliminated.

As to the variances requested, I believe that the lot does have sufficient exceptional physical characteristics to warrant these requests. It is indicated by the opposition that many of the lots in this community have similar elevation differences. An on-site inspection by this office shows that while this lot is a corner lot it does have exceptional physical elevation differences. It is true that there are other lots with similar elevation differences; however, the entire community seems to be unique because of its location in Four Hills. To suggest that this lot is not unique would seem to be inconsistent with the overall topography of the area. The characteristics of the elevation differences as well as the size of the lot justify the granting of these requests. It should be noted however, that no additional variances are to be approved. The applicant must maintain the property and the walls in suitable condition. Any damage that may occur to adjacent neighbors as a result of the applicant's construction of the walls will be a matter that the applicant would be held liable for and would have to make the necessary improvements. Any walls that may experience graffiti or anything of that nature will require the applicant to correct the situation within 24 hours. This is a condition that is placed on all walls around the city by this office. As the applicant failed to obtain the necessary and appropriate permits prior to these requests and built the walls albeit through a contractor without obtaining the proper permits, he is advised that this type of activity will not be tolerated. As a property owner he is responsible to assure that any work done by a contractor is done consistent with the Zoning Ordinance and the Building Code and he has the responsibility to assure not only himself but his neighbors and the City that the appropriate permits are obtained. I further suggest to the applicant that as future resident of the Four Hills

neighborhood, he should take all necessary measures to communicate with the Architectural Control Committee. The applicant has retained agents who are very qualified in these types of activities and I am sure they can be of assistance to him.

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 parcel is exceptional as compared to other parcels in the vicinity because of its elevation differences and, therefore, it meets the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that, as a result of the exceptional aspect of the property, the regulations produce an unnecessary hardship in that it will limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Furthermore, I find that the particular variance is appropriate to prevent the unnecessary hardship and further find that the variance will differ from development which will be permitted under the existing regular zoning regulations no more than what is necessary to overcome the unnecessary hardship. Finally, the variance will not significantly interfere with the enjoyment of other land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Approved.

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.

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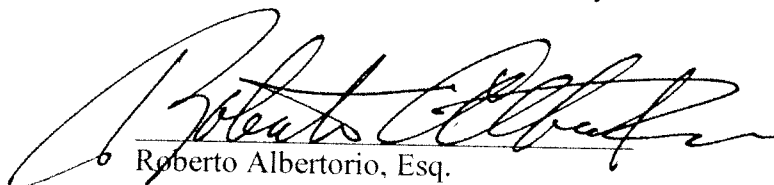
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Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, 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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CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

MARK CORDOVA & KAREN MANDUCHI (DAC ENTERPRISES, AGENT) request(s) a special exception to Section 14-16-2-6(B)(14): a VARIANCE of 2' 2" to the 6' wall height allowance for an existing 8' 2" high wall in the side yard setback area on all or a portion of Lot(s) 1, Block(s) 2, FOUR HILLS VILLAGE FIRST INSTALLMENT, zoned R-1, located at 800 FOUR HILLS RD SE (M-23)

Special Exception No:..... **10ZHE-80365**
Project No:..... **Project# 1008426**
Hearing Date:..... 01-21-11
Closing of Public Record:..... 01-21-11
Date of Decision:..... 02-07-11

STATEMENT OF FACTS: The applicants, Mark Cordova and Karen Manduchi, request a variance of 2' 2" to the 6' wall height allowance for an existing 8' 2" high wall in the side yard setback area. This matter comes before the hearing officer after many previously scheduled hearings. All prior hearings concluded that the application was not complete and further that inspections of the existing wall were required. Inspections were conducted at the request of the neighbors as well as at the request of this hearing officer to determine whether or not the walls that were constructed comply with the building code requirements. The results of those inspections indicate that the walls do comply and there are no safety issues. As to the requests for these conditional uses and variances this is a matter that has brought many interested parties to the hearing. The evidence indicates that the applicant contracted with a licensed contractor who advised the applicant that he had obtained all of the necessary permits to construct the walls according to the clients' wishes. It was later discovered that the applicant was duped by the contractor who had not obtained the necessary permits. The walls were constructed without the necessary permits without the applicant's knowledge.

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I find that these conditional uses do not cause injury to the neighborhood, adjacent property or the community. Initially, prior to the modifications, there were some extensive add-ons to the walls which seemed to aid a negative visual affect. However, as earlier stated the applicant has modified these walls and therefore the negative impact has been eliminated.

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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 parcel is exceptional as compared to other parcels in the vicinity because of its elevation differences and, therefore, it meets the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that, as a result of the exceptional aspect of the property, the regulations produce an unnecessary hardship in that it will limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Furthermore, I find that the particular variance is appropriate to prevent the unnecessary hardship and further find that the variance will differ from development which will be permitted under the existing regular zoning regulations no more than what is necessary to overcome the unnecessary hardship. Finally, the variance will not significantly interfere with the enjoyment of other land in the vicinity and is consistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Approved.

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.

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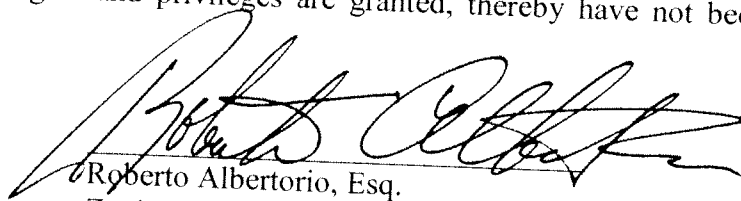
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Teresa Loschke
Le Roy Pickens
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