



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

MAUDE NIELSEN (POSITIVE ENERGY, INC., AGENT) requests a special exception to Section 14-16-2-6(B)(3): a CONDITIONAL USE to allow a proposed carport in the required front yard setback area for all or a portion of Lot 10, Block 18, HEIGHTS RESERVOIR ADDN zoned R-3, located on 4603 MARQUETTE AVE NE (K-17)

Special Exception No: **15ZHE-80010**
Project No: **Project# 1010342**
Hearing Date: February 20, 2015
Closing of Public Record: February 20, 2015
Date of Decision: 03-06-15

On the 20th day of February, 2015 (hereinafter “**Hearing** POSITIVE ENERGY, INC., (hereinafter “**Agent**”) acting as agent on behalf of the property owner MAUDE NIELSEN (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use to allow a proposed carport in the required front yard setback area (hereinafter “**Application**”) upon the real property located at 4603 MARQUETTE AVE NE (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

30. Applicant is requesting a Conditional Use to allow a proposed carport in the required front yard setback area.
31. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) “SPECIAL EXCEPTIONS” reads in part: “*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*”
32. Applicant testified at the Hearing that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because the carport complies with Albuquerque Zoning Code Section 14-16-2-6 (B) (3): (a.) no part of the carport will be constructed within three feet of a property line (other than a right of way line; (b.) no building wall of the carport will be built within a required setback area; and (c.) the specific carport design will be in harmony with the home and the building site (similar colors, materials, etc.). Additionally, the Applicant stressed that the carport will be utilized for solar panels that will meet with all applicable fire and electrical codes. Additionally, the Applicant testified that she will maintain some of the landscaping and setback the carport at least 5’ from the property lines of neighbors. The carport will be able to accommodate two cars (next to one another). For these reasons, the ZHE believes that the Applicant met their burden of proving that the Application will not be injurious.

33. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) “SPECIAL EXCEPTIONS” reads in part: “*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities.*”
34. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities.
35. The ZHE received correspondence from the DMD that the carport will not violate the Clear Sight Triangle regulations.
36. The yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
37. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.

DECISION:

APPROVAL WITH CONDITIONS of a CONDITIONAL USE to allow for a proposed carport in the front yard setback.

CONDITIONS OF APPROVAL:

- D. The carport shall comply with Albuquerque Zoning Code Section 14-16-2-6 (B) (3): (a.) no part of the carport shall be constructed within three feet of a property line (other than a right of way line; (b.) no building wall of the carport shall be built within a required setback area; and (c.) the specific carport design shall be in harmony with the home and the building site (similar colors, materials, etc.).
- E. The carport posts shall not interfere with the Clear Sight Triangle regulations promulgated by the Dept. of Municipal Development (Transportation).
- F. The rainwater shall be captured on the carport and placed into down spouts that keep the water on the Subject Property (and not dumped on to neighboring properties).

If you wish to appeal this decision, you may do so 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.



Joshua J. Skarsgard, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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