



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

JOSEFITA MARQUEZ requests a special exception to Section 14-16-2-6(B)(12): CONDITIONAL USE to allow for a shade structure in the rear yard for all or a portion of Lot 50, Block 41, KNOLLS OF PARADISE HILLS UNIT 2 zoned R-1, located on 4521 BAXTER CT NW (B-12)

Special Exception No:.....14ZHE-80245  
Project No: .....Project# 1010248  
Hearing Date: .....January 23, 2015  
Closing of Public Record: .....January 23, 2015  
Date of Decision:.....02-06-15

On the 23rd day of January, 2015 (hereinafter "**Hearing**") JOSEFITA MARQUEZ (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Conditional Use to allow for a shade structure in the rear yard (hereinafter "**Application**") upon the real property located at 4521 BAXTER CT NW ("**Subject Property**"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Conditional Use to allow for a shade structure in the rear yard.
2. 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.*"
3. Applicant testified at the Hearing that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because of two reasons: (i) Compliance with the 14-16-2-6, specifically, no part of the shade structure is within three feet of a property line, no building wall is built within the required setback area, no more than 50% of the require rear yard setback area is covered by a roof, the shade structure does not exceed 12 feet in height nor does the height exceed the principal building (home) on the site; and (ii) the neighbors adjacent to the Subject Property apparently believe that the existing shade structure is not injurious to the neighborhood or community (See: "Petition regarding Zoning Exceptions for 4521 Baxter Court" in the file). There are six neighbors that signed a petition stating in part the following: "The structure was professionally installed and is aesthetically not disruptive or any less attractive than the other structures on neighboring properties in the area. The structure does not pose any concerns of safety or obstruct view that might otherwise be available..."
4. 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.”*

5. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities. The “petition” signed by the neighbors indicated that this shade structure was not going to damage any surrounding structures.
6. 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.
7. 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 an (existing) shade structure in the rear yard.

**CONDITIONS OF APPROVAL:**

- A. The Applicant shall ensure the following is complied with:
  - a. No part of the shade structure is within three feet of a property line,
  - b. No building wall is built within the required setback area,
  - c. No more than 50% of the require rear yard setback area is covered by a roof,
  - d. The shade structure does not exceed 12 feet in height nor does the height exceed the principal building (home) on the site,
  - e. There shall not be a “second” floor deck on top of the structure
  - f. The shade structure shall be designed and constructed in harmony with the building site.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 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.



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Joshua J. Skarsgard, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Josefita Marquez, 4521 Baxter Ct NW 87114  
Charlie Marquez, charliemarquez@msn.com  
Dave and Michele Martinez, esquibel@csiaviation.com



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

JOSEFITA MARQUEZ requests a special exception to Section 14-16-3-3(B)(2)(e): a VARIANCE of 9' to the required 10' separation for an existing carport on the east side of the property for all or a portion of Lot 50, Block 41, KNOLLS OF PARADISE HILLS UNIT 2 zoned R-1, located on 4521 BAXTER CT NW (B-12)

Special Exception No: .....14ZHE-80247  
Project No: .....Project# 1010248  
Hearing Date: .....January 23, 2015  
Closing of Public Record: .....January 23, 2015  
Date of Decision: .....02-06-15

On the 23rd day of January, 2015 (hereinafter "Hearing") JOSEFITA MARQUEZ (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 9' to the required 10' separation for an existing carport on the east side of the property (hereinafter "Application") upon the real property located at 4521 BAXTER CT NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 9' to the required 10' separation for an existing carport on the east side of the property.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:
  - a. The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;
  - b. There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;
  - c. Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and
  - d. Substantial justice is done.
3. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property.

Specifically, the Applicant provided into evidence the fact that the neighbors adjacent to the Subject Property apparently believe that the carport is not injurious to the neighborhood or community (See: "Petition regarding Zoning Exceptions for 4521 Baxter Court" in the file). There are six neighbors that signed a petition stating in part the following: "The structure was professionally installed and is aesthetically not disruptive or any less attractive than the other structures on neighboring properties in the area. The structure does not pose any concerns of safety or obstruct view that might otherwise be available..." Additionally, the Applicant provided testimony that the metal carport was not injurious to the community because they have not received any complaints from neighbors [as required pursuant to Section § 14-16-4-2 (C) (2) (a)].

4. Further, the Application and testimony of the Applicant (including the Petition) at the Hearing suggest that there is no neighborhood written opposition to the Application.
5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Applicant purchased the property with the carport existing on the site and believed that it was in conformance with the Zoning Code. The Applicant indicated that the site is WELL BELOW the finished grade of the adjacent neighbor and as a result this topography is a special circumstance that makes this property a candidate for ZHE consideration of the variance application [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not "self-imposed", and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that the topography on the site was not self-imposed and that if we denied this Application the Applicant would have to demolish the existing carport that was there during the acquisition of the home, and this loss of value and the carport would constitute an "*unjustified limitation on the reasonable use of the Subject Property*" [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
8. Applicant testified at the Hearing that 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 (B) (4).

#### **CONCLUSIONS OF LAW:**

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

#### **DECISION:**

**APPROVAL WITH CONDITIONS** of a **VARIANCE** of 9' to the required 10' separation for an existing carport on the east side of the property.

**CONDITIONS OF APPROVAL:**

- A. The Applicant shall not make any additions to the carport that decreases the separation between the existing carport and the east side of the property.
- B. The Applicant shall ensure that the carport is aesthetically similar to the home, and blends in with the home.
- C. The Applicant shall ensure that the carport drains all storm water on to the Subject Property and not the neighboring parcel.

If you wish to appeal this decision, you may do so by 5:00 p.m., on February 23, 2015 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.

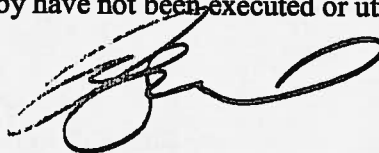
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written notice of an appeal, together with a notice of the date, time and place of the hearing to the applicant, a representative of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

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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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Zoning Hearing Examiner

cc: **Zoning Enforcement**  
**ZHE File**  
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CITY OF ALBUQUERQUE  
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NOTIFICATION OF DECISION

JOSEFITA MARQUEZ requests a special exception to Section 14-16-2-6(E)(4)(a): a VARIANCE of 3' 5" to the required 5' side yard setback for an existing carport on the east side of the property for all or a portion of Lot 50, Block 41, KNOLLS OF PARADISE HILLS UNIT 2 zoned R-1, located on 4521 BAXTER CT NW (B-12)

Special Exception No:.....14ZHE-80248  
Project No: .....Project# 1010248  
Hearing Date: .....January 23, 2015  
Closing of Public Record: .....January 23, 2015  
Date of Decision:.....02-06-15

On the 23rd day of January, 2015 (hereinafter "Hearing") JOSEFITA MARQUEZ (hereinafter "Applicant") appeared before the Zoning Hearing Examiner (hereinafter "ZHE") requesting a Variance of 3' 5" to the required 5' side yard setback for an existing carport on the east side of the property (hereinafter "Application") upon the real property located at 4521 BAXTER CT NW ("Subject Property"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 3' 5" to the required 5' side yard setback for an existing carport on the east side of the property.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) "SPECIAL EXCEPTIONS – VARIANCE" reads in part: "A variance application shall be approved by the Zoning Hearing Examiner, if and only if, the Zoning Hearing Examiner finds all of the following:
  - a. The application is not contrary to the public interest or injurious to the community, or to property or improvements in the vicinity;
  - b. There are special circumstances applicable to the subject property which do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid;
  - c. Such special circumstances were not self-imposed and create an unnecessary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property that need not be endured to achieve the intent and purpose of the Zoning Code (§14-16-1-3) and the applicable zoning district; and
  - d. Substantial justice is done.



3. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property. Specifically, the Applicant provided into evidence the fact that the neighbors adjacent to the Subject Property apparently believe that the carport is not injurious to the neighborhood or community (See: "Petition regarding Zoning Exceptions for 4521 Baxter Court" in the file). There are six neighbors that signed a petition stating in part the following: "The structure was professionally installed and is aesthetically not disruptive or any less attractive than the other structures on neighboring properties in the area. The structure does not pose any concerns of safety or obstruct view that might otherwise be available..." Additionally, the Applicant provided testimony that the metal carport was not injurious to the community because they have not received any complaints from neighbors [as required pursuant to Section § 14-16-4-2 (C) (2) (a)]. The Applicant indicated that the side yard setback is still sufficient to provide safe passage between the carport and the wall on the site of the property.
4. Further, the Application and testimony of the Applicant (including the Petition) at the Hearing suggest that there is no neighborhood written opposition to the Application.
5. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that the Applicant purchased the property with the carport existing on the site and believed that it was in conformance with the Zoning Code. The Applicant indicated that the site is WELL BELOW the finished grade of the adjacent neighbor and as a result this topography is a special circumstance that makes this property a candidate for ZHE consideration of the variance application [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]
6. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not "self-imposed", and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that the topography on the site was not self-imposed and that if we denied this Application the Applicant would have to demolish the existing carport that was there during the acquisition of the home, and this loss of value and the carport would constitute an "*unjustified limitation on the reasonable use of the Subject Property*" [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
7. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]

8. Applicant testified at the Hearing that 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 (B) (4).

**CONCLUSIONS OF LAW:**

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

**DECISION:**

**APPROVAL WITH CONDITIONS** of a **VARIANCE** of 3' 5" to the required 5' side yard setback for an existing carport on the east side of the property.

**CONDITIONS OF APPROVAL:**

- D. The Applicant shall not make any additions to the carport that decreases the separation between the existing carport and the east side of the property (side yard setback).
- E. The Applicant shall ensure that the carport is aesthetically similar to the home, and blends in with the home.
- F. The Applicant shall ensure that the carport drains all storm water on to the Subject Property and not the neighboring parcel.

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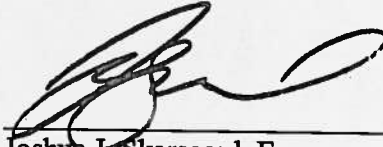
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