



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

SUSAN A CUELLAR (AUSTIN'S CARPORT'S, AGENT) requests a special exception to Section 14-16-2-6(B)(3): a CONDITIONAL USE to allow for a proposed carport in the front yard setback for all or a portion of Lot 15, Block 11, GUTIERREZ-OFIMIANO J LOWER zoned R-1, located on 8504 GUTIERREZ RD NE (F-20)

Special Exception No:..... **15ZHE-80031**  
Project No:..... **Project# 1010374**  
Hearing Date:..... 04-21-2015  
Closing of Public Record:..... 04-21-2015  
Date of Decision: ..... 05-04-2015

On the 21st day of April, 2015 (hereinafter "**Hearing**") AUSTIN'S CARPORT'S, (hereinafter "**Agent**") acting as agent on behalf of the property owner SUSAN A CUELLAR (hereinafter "**Applicant**") appeared before the Zoning Hearing Examiner (hereinafter "**ZHE**") requesting a Conditional Use to allow for a proposed carport in the front yard setback (hereinafter "**Application**") upon the real property located at 8504 GUTIERREZ RD NE ("**Subject Property**"). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Conditional Use to allow for a proposed carport in the front yard setback.
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 the design of the carport complies with the three pronged test articulated in Section 14-16-2-6 (B) of the Albuquerque Zoning Code, namely: (a.) no part of the carport is located within three feet of a property line, other than a right of way line; (b.) no building wall is ever built within the required setback area for the Subject Property; and (c.) the carport proposed on the Subject Property is in harmony with the building site because it will have wrought iron legs and be painted "colonial white" just like the home on the Subject Property. Additionally, the Applicant provided testimony that they did not receive any neighborhood opposition regarding the proposed carport. For these reasons, the ZHE believes that the Applicant met their burden of proving that the carport is not injurious to the adjacent property or community.
4. There are no neighborhood associations that spoke at this Hearing.
5. The Applicant testified that down spouts will maintain the storm water on site.

6. 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.”
7. The DMD Traffic Engineer indicated that the proposed carport will not violate the CST’s for residential driveways.
8. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding structures or activities.
9. 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.
10. 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:**

- A. The carport shall comply with the three pronged test articulated in Section 14-16-2-6 (B) of the Albuquerque Zoning Code, namely: (a.) no part of the carport is located within three feet of a property line, other than a right of way line; (b.) no building wall is ever built within the required setback area for the Subject Property; and (c.) the carport proposed on the Subject Property shall be in harmony with the building site (wrought iron legs and be painted “colonial white” just like the home on the Subject Property).
- B. The Applicant shall install down spouts to keep storm water on site.

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.



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Zoning Hearing Examiner

cc: Zoning Enforcement  
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