



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

MIKE MARES requests a special exception to Section 14-16-2-6(B)(3) : a CONDITIONAL USE to allow an existing carport in the required front setback area for all or a portion of Lot A, Barnes-EA zoned R-1, located on 854 LOS ARBOLES AV NW (G-14)

Special Exception No:..... **15ZHE-80276**
Project No:..... **Project# 1010642**
Hearing Date:..... 12-15-15
Closing of Public Record:..... 12-15-15
Date of Decision: 12-30-15

On the 15th day of December, 2015 (hereinafter “**Hearing**”) MIKE MARES (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use to allow an existing carport in the required front setback (hereinafter “**Application**”) upon the real property located on 854 LOS ARBOLES AV NW (“**Subject Property**”). Below are the findings of facts:

FINDINGS:

1. Applicant is requesting a Conditional Use to allow an existing carport in the required front 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. The requested conditional use permit is for a carport. Carports are allowed by conditional use provided that “the specific carport proposed is in harmony with the building site.” § 14-16-2-6(B)(3).
4. The carport in question is a 20’ by 20’ kit-built carport with a peaked roof and two sides. In appearance it looks to be an enclosed building from the sides.
5. The height is not given, but it appears to be only slightly less high than it is long or wide.
6. The carport is constructed of brown metal.
7. Applicant testified at the Hearing, explaining his need for the carport: he is disabled and his garage is far into the back yard, and in addition he seeks privacy and home protection.
8. Applicant did not address in any substantive way the lack of injury to the community and harmony with the building site.
9. The ZHE finds that the carport as constructed presents a large, opaque visual intrusion that is out of character with the surrounding properties and unattractive.
10. Based on the evidence and testimony, including numerous photographs, the ZHE finds that the carport as constructed is not in harmony with the building site and that it s injurious to the community.

11. The ZHE's decision is based on the aesthetic aspects of the structure itself, as well as its potential to block light and views, and not on asserted safety concerns, of which there is inadequate evidence in the record.
12. 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.*"
13. The ZHE makes no finding on this element as the other required elements of a successful application are not met.
14. 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.

DECISION:

DENIAL of a CONDITIONAL USE to allow an existing carport in the required front setback.

NOTE: The ZHE would not consider a new application, for a different carport that is in harmony with the site and not injurious to the community, as prohibited by Rule B(4) of the Zoning Hearing Examiner Rules of Procedure.

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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