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

THOMAS KELLY (KELSEY MORGAN AFFORDABLE-SOLAR, AGENT) requests a special exception to Section 14-16-2-6(B)(3) : a CONDITIONAL USE to allow a proposed carport in the required sideyard setback for all or a portion of Lot A-1, Block 14, Vista Larga zoned R-1, located on 1601 HARVARD DR NE (J-15)

Special Exception No:..... **16ZHE-80301**
Project No:..... **Project# 1011047**
Hearing Date:..... 01-03-17
Closing of Public Record:..... 01-03-17
Date of Decision: 01-18-17

On the 3rd day of January, 2017, KELSEY MORGAN AFFORDABLE-SOLAR ("Agent") acting as agent on behalf of the property owner THOMAS KELLY ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a conditional use to allow a proposed carport in the required side-yard setback ("Application") upon the real property located at 1601 HARVARD DR NE ("Subject Property"). Below are the ZHE's findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a proposed carport in the required side-yard setback.
2. The City of Albuquerque Code of Ordinances Section 14-16-4-2(C)(1) (Special Exceptions – Conditional Use) reads: *"A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:*
   (a) Will not be injurious to the adjacent property, the neighborhood, or the community;
   (b) Will not be significantly damaged by surrounding structures or activities.
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-2(C).
4. The ZHE finds that in the proposed use will not be injurious to the adjacent property, the neighborhood, or the community as required by Section 14-16-4-2(C)(1)(a).
5. Specifically, the ZHE finds that the proposed carport will be designed to coordinate with the house (as required by Section 14-16-2-6 (B)(3)(c)) and otherwise be harmonious with the subject property, will not block views or light to other properties and will not result in increased intensity of use of the subject property.
6. The Applicant adequately addressed a series of questions raised by a concerned resident, and stated that he had addressed the vehicle parked in the cul de sac.
7. The ZHE finds that in the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b).

8. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
9. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a conditional use to allow a proposed carport in the required side yard setback.

If you wish to appeal this decision, you must do so by February 2, 2017, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

> 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.
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> 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.
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> 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.
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> 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.

Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
thomas.kelly@pnmresources.com
kelsey.morgan@affordable-solar.com
blake.richards@affordable-solar.com
keleherkelly@hotmail.com