



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

CHARLES AND LORRIE HERNANDEZ requests a special exception to Section 14-16-2-6-(B)(3) and Pg 57(A)(1) Tower-Unser SDP : a CONDITIONAL USE to allow a carport in the required front yard setback for all or a portion of Lot 11, Block C, Rolling Hills Unit 1 zoned R-D R-1, located on 7409 AUTUMN CANYON RD SW (M-10)

Special Exception No:..... **17ZHE-80068**
Project No:..... **Project# 1011200**
Hearing Date:..... 05-16-17
Closing of Public Record:..... 05-16-17
Date of Decision: 05-31-17

On the 16th day of May, 2017, CHARLES AND LORRIE HERNANDEZ (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a carport in the required front yard setback (“Application”) upon the real property located at 7409 AUTUMN CANYON RD SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a carport in the required front 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 carport design coordinates with the house (as required by Section 14-16-2-6 (B)(3)(c)) and otherwise is harmonious with the Subject Property.
6. The design and location of the carport ensure that it will not block views or light to other properties.
7. Approval will not result in increased intensity of use of the Subject Property.
8. Concern was expressed about the design and condition of the carport, but it is not clear how those aspects result in an injurious condition.
9. The support of numerous area residents is further evidence of the lack of injury.

10. The evidence in the record on balance supports the finding that the carport is not injurious, in accordance with the Code.
11. 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).
12. 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).
13. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

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

If you wish to appeal this decision, you must do so by June 15, 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.

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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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CITY OF ALBUQUERQUE
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ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

CHARLES AND LORRIE HERNANDEZ requests a special exception to Section 14-16-3-19(A)(2)(a) and Pg 57 (A)(1) Tower-Unser SDP : a VARIANCE of 3 ft to the 3 ft to allow an existing 6 ft fence in the required front setback for all or a portion of Lot 11, Block C, Rolling Hills Unit 1 zoned R-D R-1, located on 7409 AUTUMN CANYON RD SW (M-10)

Special Exception No:..... **17ZHE-80069**
Project No:..... **Project# 1011200**
Hearing Date:..... 05-16-17
Closing of Public Record:..... 05-16-17
Date of Decision: 05-31-17

On the 16th day of May, 2017, CHARLES AND LORRIE HERNANDEZ (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of an existing 6 ft fence in the required front setback (“Application”) upon the real property located at 7409 AUTUMN CANYON RD SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of an existing 6 ft fence in the required front setback.
2. The City of Albuquerque Zoning Code of Ordinances Section 14-16-4-2 (C)(2) (Special Exceptions – Variance) reads: “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 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. Here, there is disputed testimony regarding whether the Application is: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property or improvements located in the vicinity as required by Section 14-16-4-2 (C)(2)(a).

5. However, I do not make a finding on that aspect of the Application due to my finding as to special circumstances.
6. Applicant states that the special circumstances supporting the Application are the ongoing conflict with the neighbor on that side of the Subject Property.
7. Based on previous review of a ZHE decision, the Board of Appeals has clarified that the need for a fence in circumstances very similar to this, alone, does not constitute a special circumstance entitling the Applicant to a variance.
8. Therefore, I cannot find that 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, as required by Section 14-16-4-2(C)(2)(b).
9. 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).
10. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-4-2(C)(2) of the Albuquerque Zoning Code are satisfied.

DECISION:

DENIAL of a variance of an existing 6 ft fence in the required front setback.

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