



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

ELIZABETH MONTOYA (AUSTIN'S CARPORTS, 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 26, Block 2, Parkside Estates zoned R-1, located on 700 MONTE ALTO DR NE (K-23)

Special Exception No:..... **15ZHE-80241**  
Project No:..... **Project# 1010597**  
Hearing Date:..... 10-20-15  
Closing of Public Record:..... 10-20-15  
Date of Decision: ..... 10-30-15

On the 20th day of October, 2015(hereinafter "**Hearing**") ELIZABETH MONTOYA (hereinafter "**Applicant**") through AUSTIN'S CAPORTS, agent, 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 700 MONTE ALTO DR 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. Section 14-16-2-6(B)(3)(c) also requires that "*The specific carport proposed is in harmony with the building site.*"
4. Applicant provided evidence and testimony that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community because:

In winter this carport will keep frost off windshield; snow, ice and water off driveway, to provide safe walking for Mr. and Mrs. Montoya. Carport will also reduce heat from inside of vehicle in summer months.

This carport is 9'0" from property line on North side and 1'0" from West side, which is where driveway is located. Carport is constructed of steel for strength, durability and easy up keep, attractive in appearance, it also has rain gutters and down spouts to control water drainage onto owners own property.

Also, allows full view of traffic, and does not disrupt the view from street. There is nothing in the area (structures, etc.) that is effected by carport.

September 2, 2015 letter from Gilbert F. Austin.

5. In the absence of any further indication of injury this evidence, though minimal and less explanatory than ideal, would generally be adequate to sustain Applicant's burden.
6. A nearby resident of Monte Alto Drive NE, block captain Anne Hickman, testified that there are no other carports on the block, that the proposed carport is out of character and would "stick out like a sore thumb" and is opposed by the neighborhood.
7. The neighborhood concerns expressed by Ms. Hickman relate as much to harmony with the entire block as just the building site, but certainly the concerns express extend to the position that the carport is not in harmony with the particular house on any otherwise homogenous streetscape.
8. No other objections to the Application were raised.
9. Applicant did not offer evidence to rebut the objection that the new, and only, carport on the block would not be in harmony.
10. Applicant did not feel that referral to the Land Use Facilitation Program would be worthwhile.
11. The initial question for the ZHE is whether aesthetics alone can present an injury sufficient to deny an otherwise conforming application.
12. As a threshold matter, in *Temple Baptist Church, Inc. v. City of Albuquerque*, 1982-NMSC-055 ¶22, 98 N.M. 138 our Supreme Court dealt with the constitutionality of making zoning decisions on the basis of aesthetic considerations and held, "aesthetic considerations alone do justify the exercise of police power."
13. Thus, it is not impermissible to base zoning decisions on aesthetics. Moreover, as demonstrated in the *Temple Baptist* case at least some City regulations (there, the sign code) permit denial of an application on aesthetic grounds alone.
14. Making a narrow ruling based on this particular location, and the particular design of the proposed carport, the ZHE finds that the proposed use would not be harmonious with the building site.

### **DECISION:**

**DENIAL** of a CONDITIONAL USE to allow for a proposed carport in the front yard setback.

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

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