



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

RICHARD FAJARDO requests a special exception to Section 14-16-3-3(B)(2)(e) : a VARIANCE of 10 ft to the required 10 ft separation for an existing accessory structure to a dwelling on the side for all or a portion of Lot 1-P1, Block 21, Parkwest Unit 2 zoned RD, located on 8023 BASALT AV NW (G-9)

Special Exception No: ..... **15ZHE-80202**  
Project No:..... **Project# 1010555**  
Hearing Date:..... 09-15-15  
Closing of Public Record:..... 09-15-15  
Date of Decision: ..... 09-23-2015

On the 15th day of September, 2015 (hereinafter “**Hearing**”) RICHARD FAJARDO (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 10 ft to the required 10 ft separation for an existing accessory structure to a dwelling on the side (hereinafter “**Application**”) upon the real property located at 8023 BASALT AV NW (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 10 ft to the required 10 ft separation for an existing accessory structure to a dwelling on the side.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) “SPECIAL EXCEPTIONS – VARIANCE” reads in part: “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 ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: (i) contrary to the public interest, (ii) injurious to the community; or (iii) injurious to the property/improvements located in the nearby vicinity of the Subject Property.

4. The Applicant testified that the project, including carport and wall, does not present a safety/fire hazard and does not interfere with egress or emergency access.
5. The Applicant further testified that the project does not interfere with lines of sight or obstruct the views of others.
6. The Applicant offered evidence of substantial support for the project in the neighborhood, further evidence that the proposal is no injurious or contrary to the public interest.
7. A letter from the Courtyards Neighborhood Association and testimony at the hearing indicate the following concerns: 1) the project was constructed without permits and the request is for after-the-fact variances, 2) negative comments about the appearance of the carport and 3) storm water runoff off of the carport.
8. The first concern is not relevant to the ZHE's consideration and is not an element of the required analysis under Code § 14-16-4-2 (C) (2). The existence of the structure does not work in favor of the application if it does not otherwise meet the code requirements. Rather, the ZHE's focus is solely on code compliance and there is no basis in the code to deny a variance because the Applicant failed to ask permission of the City or the Neighborhood Association first (there may well be other penalties that apply in that instance).
9. Concerns about aesthetics could rise to the level of injury to the community or vicinity in a particular instance and are properly a consideration in the variance analysis.
10. However, that analysis must also be based on substantial evidence in the record. Here, there is no explanation of the basis for the negative comments and no witnesses who could be questioned testified regarding the project's aesthetic qualities.
11. The project consists of a wall not unlike the surrounding walls, and a carport that would otherwise be permitted. The ZHE has no basis on which to determine that the appearance of the project is affected by the requested variances. That is to say that some might find its appearance objectionable on its own merits, but there is no evidence supporting the proposition that it is more objectionable based on its location in an area of the lot requiring a variance.
12. Finally, the increase in storm water runoff could be found injurious if not properly addressed.
13. The Applicant stated that a gutter could be installed to direct storm water onto the subject property.
14. With those three objections addressed the ZHE finds that the application is not injurious or contrary to the public interest.
15. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that this property is particularly susceptible to wind-blown sand, silt and dust from the nearby bluffs and adjacent retention pond that damage vehicles in the absence of the wall and carport, and it is not protected like the remaining properties in the neighborhood [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]. Also, the property features a large vacant area that the Applicant relied on for storage in his purchase decision, but

that is susceptible to damage to vehicles stored there because of the wind-blown debris.

16. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that the subject property is particularly susceptible to wind blown debris, which is a situation over which the Applicant has no control and for which the Applicant was not responsible, and which constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
17. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
18. Applicant testified at the Hearing that 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 (B) (4).

### **CONCLUSIONS OF LAW:**

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

### **DECISION:**

**APPROVAL WITH CONDITIONS** of a **VARIANCE** of 10 ft to the required 10 ft separation for an existing accessory structure to a dwelling on the side.

### **CONDITIONS OF APPROVAL:**

The Applicant shall install a gutter on the carport capable of directing all rainwater onto Applicant’s property.

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

RICHARD FAJARDO requests a special exception to Section 14-16-3-3(B)(2)(a) : a VARIANCE of 1% to exceed the 25 % allowed for an accessory structure to occupy the side and rear yards for all or a portion of Lot 1-P1, Block 21, Parkwest Unit 2 zoned RD, located on 8023 BASALT AV NW (G-9)

Special Exception No: ..... **15ZHE-80203**  
Project No:..... **Project# 1010555**  
Hearing Date:..... 09-15-15  
Closing of Public Record:..... 09-15-15  
Date of Decision: ..... 09-23-2015

On the 15th day of September, 2015 (hereinafter “**Hearing**”) RICHARD FAJARDO (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 1% to exceed the 25 % allowed for an accessory structure to occupy the side and rear yards (hereinafter “**Application**”) upon the real property located at 8023 BASALT AV NW (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 10 ft to the required 10 ft separation for an existing accessory structure to a dwelling on the side.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) “SPECIAL EXCEPTIONS – VARIANCE” reads in part: “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 ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: **(i)** contrary to the public interest, **(ii)** injurious to the community; or **(iii)** injurious to the property/improvements located in the nearby vicinity of the Subject Property.
4. The Applicant testified that the project, including carport and wall, does not present a safety/fire hazard and does not interfere with egress or emergency access.

5. The Applicant further testified that the project does not interfere with lines of sight or obstruct the views of others.
6. The Applicant offered evidence of substantial support for the project in the neighborhood, further evidence that the proposal is no injurious or contrary to the public interest.
7. A letter from the Courtyards Neighborhood Association and testimony at the hearing indicate the following concerns: 1) the project was constructed without permits and the request is for after-the-fact variances, 2) negative comments about the appearance of the carport and 3) storm water runoff off of the carport.
8. The first concern is not relevant to the ZHE's consideration and is not an element of the required analysis under Code § 14-16-4-2 (C) (2). The existence of the structure does not work in favor of the application if it does not otherwise meet the code requirements. Rather, the ZHE's focus is solely on code compliance and there is no basis in the code to deny a variance because the Applicant failed to ask permission of the City or the Neighborhood Association first (there may well be other penalties that apply in that instance).
9. Concerns about aesthetics could rise to the level of injury to the community or vicinity in a particular instance and are properly a consideration in the variance analysis.
10. However, that analysis must also be based on substantial evidence in the record. Here, there is no explanation of the basis for the negative comments and no witnesses who could be questioned testified regarding the project's aesthetic qualities.
11. The project consists of a wall not unlike the surrounding walls, and a carport that would otherwise be permitted. The ZHE has no basis on which to determine that the appearance of the project is affected by the requested variances. That is to say that some might find its appearance objectionable on its own merits, but there is no evidence supporting the proposition that it is more objectionable based on its location in an area of the lot requiring a variance.
12. Finally, the increase in storm water runoff could be found injurious if not properly addressed.
13. The Applicant stated that a gutter could be installed to direct storm water onto the subject property.
14. With those three objections addressed the ZHE finds that the application is not injurious or contrary to the public interest.
15. It is also worth noting that the requested variance constitutes a minimal variance of 1% of the overall lot area.
16. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that this property is particularly susceptible to wind-blown sand, silt and dust from the nearby bluffs and adjacent retention pond that damage vehicles in the absence of the wall and carport, and it is not protected like the remaining properties in the neighborhood [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]. Also, the property features a large vacant area that the Applicant relied on for storage in his purchase decision, but

that is susceptible to damage to vehicles stored there because of the wind-blown debris.

17. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that the subject property is particularly susceptible to wind blown debris, which is a situation over which the Applicant has no control and for which the Applicant was not responsible, and which constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
18. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
19. Applicant testified at the Hearing that 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 (B) (4).

### **CONCLUSIONS OF LAW:**

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

**APPROVAL WITH CONDITIONS** of a VARIANCE of 1% to exceed the 25% allowed for an accessory structure to occupy the side and rear yards.

### **CONDITIONS OF APPROVAL:**

The Applicant shall install a gutter on the carport capable of directing all rainwater onto Applicant’s property.

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.

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Zoning Hearing Examiner

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

RICHARD FAJARDO requests a special exception to Section 14-16-3-3(B)(2)(a) : a VARIANCE of 4 feet to exceed the 6 ft allow wall height on a public right of way to allow for a 12 ft accessory structure on the corner side yard for all or a portion of Lot 1-P1, Block 21, Parkwest Unit 2 zoned RD, located on 8023 BASALT AV NW (G-9)

Special Exception No: ..... **15ZHE-80204**  
Project No:..... **Project# 1010555**  
Hearing Date:..... 09-15-15  
Closing of Public Record:..... 09-15-15  
Date of Decision: ..... 09-23-2015

On the 15th day of September, 2015 (hereinafter “**Hearing**”) RICHARD FAJARDO (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Variance of 4 feet to exceed the 6 ft allow wall height on a public right of way to allow for a 12 ft accessory structure on the corner side yard (hereinafter “**Application**”) upon the real property located at 8023 BASALT AV NW (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Variance of 10 ft to the required 10 ft separation for an existing accessory structure to a dwelling on the side.
2. The City of Albuquerque Zoning Code of Ordinances Section § 14-16-4-2 (C) (2) “SPECIAL EXCEPTIONS – VARIANCE” reads in part: “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 ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the Application is not going to be: **(i)** contrary to the public interest, **(ii)** injurious to the community; or **(iii)** injurious to the property/improvements located in the nearby vicinity of the Subject Property.

4. The Applicant testified that the project, including carport and wall, does not present a safety/fire hazard and does not interfere with egress or emergency access.
5. The Applicant further testified that the project does not interfere with lines of sight or obstruct the views of others.
6. The Applicant offered evidence of substantial support for the project in the neighborhood, further evidence that the proposal is no injurious or contrary to the public interest.
7. A letter from the Courtyards Neighborhood Association and testimony at the hearing indicate the following concerns: 1) the project was constructed without permits and the request is for after-the-fact variances, 2) negative comments about the appearance of the carport and 3) storm water runoff off of the carport.
8. The first concern is not relevant to the ZHE's consideration and is not an element of the required analysis under Code § 14-16-4-2 (C) (2). The existence of the structure does not work in favor of the application if it does not otherwise meet the code requirements. Rather, the ZHE's focus is solely on code compliance and there is no basis in the code to deny a variance because the Applicant failed to ask permission of the City or the Neighborhood Association first (there may well be other penalties that apply in that instance).
9. Concerns about aesthetics could rise to the level of injury to the community or vicinity in a particular instance and are properly a consideration in the variance analysis.
10. However, that analysis must also be based on substantial evidence in the record. Here, there is no explanation of the basis for the negative comments and no witnesses who could be questioned testified regarding the project's aesthetic qualities.
11. The project consists of a wall not unlike the surrounding walls, and a carport that would otherwise be permitted. The ZHE has no basis on which to determine that the appearance of the project is affected by the requested variances. That is to say that some might find its appearance objectionable on its own merits, but there is no evidence supporting the proposition that it is more objectionable based on its location in an area of the lot requiring a variance.
12. Finally, the increase in stormwater runoff could be found injurious if not properly addressed.
13. The Applicant stated that a gutter could be installed to direct storm water onto the subject property.
14. With those three objections addressed the ZHE finds that the application is not injurious or contrary to the public interest.
15. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that there are "special circumstances" applicable to the Subject Property which do not apply generally to other property in the same zone and vicinity. Specifically, the Applicant provided testimony that this property is particularly susceptible to wind-blown sand, silt and dust from the nearby bluffs and adjacent retention pond that damage vehicles in the absence of the wall and carport, and it is not protected like the remaining properties in the neighborhood [as required pursuant to Section § 14-16-4-2 (C) (2) (b)]. Also, the property features a large vacant area that the Applicant relied on for storage in his purchase decision, but

that is susceptible to damage to vehicles stored there because of the wind-blown debris.

16. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that the special circumstances presented hereinabove were not “self-imposed”, and that those special circumstances create an unnecessary hardship upon the Applicant. Specifically, the Applicant provided testimony that the subject property is particularly susceptible to wind blown debris, which is a situation over which the Applicant has no control and for which the Applicant was not responsible, and which constitutes an “*unjustified limitation on the reasonable use of the Subject Property*” [as required pursuant to Section § 14-16-4-2 (C) (2) (c)]
17. The ZHE finds that the Applicant has met its burden of providing evidence (both oral testimony and written material) that establishes that substantial justice will be done if this Application is approved. [as required pursuant to Section § 14-16-4-2 (C) (2) (d)]
18. Applicant testified at the Hearing that 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 (B) (4).

### **CONCLUSIONS OF LAW:**

The Applicant has met their burden of submitting an Application that provides evidence that satisfies the elements required within §14-16-4-2 (C) (2) of the Albuquerque Zoning Code.

### **DECISION:**

**APPROVAL WITH CONDITIONS** of a VARIANCE of 4 feet to exceed the 6 ft allow wall height on a public right of way to allow for a 12 ft accessory structure on the corner side yard.

### **CONDITIONS OF APPROVAL:**

The Applicant shall install a gutter on the carport capable of directing all rainwater onto Applicant’s property.

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Christopher L. Graeser, Esq.  
Zoning Hearing Examiner

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