



Planning Department

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

Mike Mares appeals the Zoning Hearing Examiner's Denial of 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, EA Barnes, zoned R-1, located on 854 Los Arboles Ave. NW (G-14).

Appeal No: 16BOA-20001
Special Exception No: ... 15ZHE-80276
Project No: 1010642
Hearing Date: 2/23/16
Decision Date: 2/23/16

In the matter of **16BOA-20001**, the Zoning Board of Appeals (BOA) voted to **DENY** the Appeal, thereby **UPHOLDING** the Zoning Hearing Examiner's (ZHE's) decision based on the following findings:

PO Box 12911 **FINDINGS:**

1. This is an APPEAL of the Zoning Hearing Examiner's (ZHE) DENIAL of a CONDITIONAL USE pursuant to Zoning Code §14-16-4-2(C)(1), Special Exception: A Conditional Use to allow an existing carport in the setback area of an R-1 zoned property [Zoning Code §14-16-2-6(B)(3)(c)].
2. The subject site is described as Lot A, Lands of EA Barnes containing approximately 0.42 acre and located at 854 Los Arboles NW (the "subject property"). The subject property is within the boundaries of the North Valley Area Plan.
3. The subject property is zoned R-1 and is developed with a single-family home. It is surrounded by single-family residential properties that are also zoned R-1.
4. The Albuquerque/Bernalillo County Comprehensive Plan, the North Valley Area Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The subject site is zoned R-1 Residential Zone. Pursuant to Zoning Code §14-16-2-6(B)(3), a carport is a conditional use in the front or side yard setback area provided:
 - a. No part is within three feet of a property line, other than a right-of-way line.
 - b. No building wall is ever built within a required setback area.
 - c. The specific carport proposed is in harmony with the building site.

The site plan (Record, p. 29) shows that the proposed carport would abut the sidewalk (a right-of-way line) on the subject site's northern side and be sited wholly in front of the existing house, in the front setback area. It is unclear where the property line is, and it appears that the site plan is not to an accurate scale (a). Minimum setbacks in the R-1 zone are 20 feet (front), 5 feet (side), and 15 feet (rear). No walls are built within the required setback areas (b). The proposed conditional use complies with (b) and possibly with (a).

The carport is constructed of metal siding supported by columns and is notably taller than the existing house. The ZHE found that the carport is not in harmony with the building site (c) because it is a large, opaque visual intrusion that is out of character with the surrounding properties and is unattractive (Findings 9 and 10, Record, p. 23).

6. Zoning Code §14-16-4-2(C)(1), Special Exceptions, states that 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.

The applicant testified that he needs the carport because he is disabled, his garage is far into the back yard, and he seeks privacy and improved home security. The ZHE found that the applicant did not sufficiently address requirements related to lack of injury to the community [§14-16-4-2(C)(1)(a)] and harmony with the building site [§14-16-2-6(B)(3)(c)].

7. Two nearby residents, who live on the western side of the ditch, testified that the carport is large, taller than the house, and looks like an industrial building and therefore is out of character with the neighborhood. A Near North Valley Neighborhood Association (NNVNA) representative testified that the NNVNA board is concerned about the height of the carport, which they believe is out of scale and character with the neighborhood. None of the parties is opposed to the idea of a carport; they are opposed because the carport does not look like a residential carport and does not sufficiently match the existing house in terms of material.
8. Zoning Code Section 14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - (b) in the appealed action or decision, including its stated facts; and
 - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant did not specifically claim any of the above reasons for appeal. Rather, he states that the site matches the surrounding area, that the structure does not block light or views, and that he is willing to make adjustments to the structure. Staff believes that the appellant is citing (b) above, because he is pointing out what he believes to be errors in the stated facts upon which the ZHE decision was based.

9. Based on these findings, the Zoning Board of Appeals concludes that the decision of the Zoning Hearing Examiner (ZHE) in denying the conditional use request was CORRECT. Therefore, the appeal is DENIED and the decision of the ZHE is UPHELD.

If you wish to appeal this decision, you must do so by **March 9, 2016**, 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 TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

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