

# Planning Department

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## CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

Elizabeth Montoya appeals the Zoning Hearing Examiner's Denial of 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).

Appeal No: ..... 15BOA-20006  
Special Exception No: ... 15ZHE-80241  
Project No:..... 1010597  
Hearing Date: ..... 12/22/15  
Decision Date: ..... 12/22/15

In the matter of **15BOA-20006**, 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:

### 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 a carport in the R-1 zone [Zoning Code §14-16-2-6(B)(3)(c)].
2. The subject site is described as Lot 26, Block 2, Parkside Estates, containing approximately 0.21 acre and located at 700 Monte Alto Dr. NE (the "subject property"). The subject property is not within the boundaries of the Supper Rock Neighborhood Association and the Sandia Foothills 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 Sandia Foothills 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 western side, be approximately 7 feet from the northern property line, approximately 26 feet from the southern property line, and approximately 82 feet from the eastern property line (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 (a) and (b).

While the record does contain evidence presented by the appellant regarding the proposed carport's harmony with the building site, an elevation, sample drawing with the residence or sample photo with the residence showing the carport was not submitted. Furthermore, the site plan does not contain any notes regarding style, color, or finish of the carport or the existing home.

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 Zoning Hearing Examiner (ZHE) found that the evidence presented, though minimal, was adequate to sustain the applicant's burden. The applicant stated that the proposed conditional use would not be injurious to the adjacent property, the neighborhood, or the community because: In the winter, the carport will keep frost off the windshield and snow and water off the driveway, and will provide safe walking for Mr. and Mrs. Montoya, and will also reduce heat from inside of the vehicle in the summer. The carport would allow full view of traffic and would not disrupt the view from the street.

7. A nearby resident, block captain Anne Hickman, testified that there are no other carports on the block. She also stated that the proposed carport would be out of character and is opposed by the neighborhood. The proposed carport would not be in harmony with the house on the subject site and the otherwise homogeneous streetscape. The applicant did not offer evidence to rebut the allegations, and did not believe that referral to the Land Use Facilitation program would have been worthwhile. Therefore, a facilitated meeting was not required and the case was not continued to a subsequent hearing.
8. Based on Zoning Code Section 14-16-2-6(B)(3)(c), and the testimony of Anne Hickman, the ZHE found that the proposed carport would not be harmonious to the building site.
9. 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, she states that she was out of the country on the October 20, 2015 hearing date, that she hired an agent to represent her, and that not all evidence was introduced at the hearing. The applicant requests that the BOA either hear and/or accept her information or remand the matter back to the ZHE. Staff points out that the BOA cannot accept new evidence pursuant to the BOA Rules of Conduct of Business, Section B.10.

10. 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 **January 6, 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.

Suzanne Lubar, Planning Director

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