DOUG MALECKI requests a special exception to Section 14-16-2-6(E)(4)(a): VARIANCE request of 9ft 8in to the required 10ft side yard setback for all or a portion of Lot 8, Block 3, Stardust Skies Unit 2 zoned R-1, located on 7013 EDWINA AV NE (G-19)

Special Exception No:............ 18ZHE-80023
Project No:........................ Project# 1011512
Hearing Date:...................... 03-16-18
Closing of Public Record....... 03-16-18
Date of Decision:............... 03-30-18

On the 16th day of March, 2018, DOUG MALECKI (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 9ft 8in to the required 10ft side yard setback (“Application”) upon the real property located at 7013 EDWINA AVE NE (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 9ft 8in to the required 10ft side yard 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. The ZHE finds that Application is not: (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. The carport matches the style of the house, will be painted, and is not situated in a manner to interfere with light, views or access to other properties. It has been reviewed by the Traffic Engineer to ensure no traffic safety hazards exist.
6. The carport will not change the intensity of use or character of the Subject Property, and has no other potential for injury other than as addressed herein.
7. One neighbor did appear at the hearing, expressing concern about the potential for storm water runoff from the carport onto the neighboring property. The condition imposed on this approval should adequately address that concern.

8. The ZHE finds 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. Specifically, the ZHE finds that there are two large, mature Ponderosa pines overhanging the one outdoor parking spot on the Subject Property, which leave sap, needles and bird droppings on Applicant’s vehicle.

10. The limited side setback, potentially interfering with back yard access, is also a special circumstance.

11. Additionally, this may be a case in which Section 14-16-3-3(A)(3)(b), “A setback variance may be approved… even though there is only a minimal showing as to exceptional physical conditions [for] houses located on lots created when side-yard setback requirements were less severe and the lot’s dimensions make it unreasonable to require the current side-yard setback requirements,” apply.

12. The ZHE finds that 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 district, as required by Section 14-16-4-2(C)(2)(c).

13. Applicant is not responsible for creating the special circumstances, but is subject to unnecessary hardship should the Application not be granted.

14. An alternative to leaving the vehicle exposed to bird droppings and tree detritus would be to cut the overhanging limbs off the trees, which would be damaging to the trees as well as the aesthetics and shading of both the Subject Property and the abutting property on which the trees are rooted.

15. The only other potential location for the carport, on the opposite side of the house, is too narrow and with an imposing gas meter.

16. The ZHE finds that substantial justice will be done if this Application is approved, as required pursuant to Section 14-16-4-2(C)(2)(d).

17. 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).

18. 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:

APPROVAL WITH CONDITIONS of a variance of 9ft 8in to the required 10ft side yard setback.
CONDITIONS OF APPROVAL:

A full gutter capable of handling a 90th percentile storm event as defined in Section 14-5-2-4 and directed to flow all storm water onto the Subject Property shall be installed prior to final approval.

If you wish to appeal this decision, you must do so by April 16, 2018, 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.
cc: Zoning Enforcement  
    ZHE File  
    Doug Malecki, 7013 Edwina NE, 87110  
    Jim Hess, 7012 Elna Ct NE, 87110  
    Tom LaFountain, 1604 Los Alamos Ave SW, 87104