



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

Jacqueline Arguelles requests a Permit --
Carport for Lot 13, Rancho Alegre, located at
2444 Iris Road NW, zoned R-A [Section 14-16-
5-5(F)(2)(a)(3)]

Special Exception No:..... **VA-2023-00324**
Project No: **PR-2023-009519**
Hearing Date: 10-15-24
Closing of Public Record: .. 10-15-24
Date of Decision: 10-30-24

On the 15th day of October, 2024, property owner Jacqueline Arguelles (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a permit to allow a carport (“Application”) upon the real property located at 2444 Iris Road NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a permit to allow a carport.
2. The Application comes before the ZHE after remand from the LUHO for a hearing de novo on the merits of the Application.
3. The Application was originally accompanied by an application for a setback variance, which was also subject of the LUHO remand. However, Applicant has withdrawn the variance application, because the proposed carport is located within all setback requirements. Therefore, only the Application for a carport permit is before the ZHE.
4. The ZHE finds that the Applicant has authority to pursue this Application.
5. Based on correspondence in the record, all property owners within 100 feet and affected neighborhood association(s) were notified in accordance with City of Albuquerque Integrated Development Ordinance (“IDO”) requirements.
6. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
7. Regarding carport permits, the IDO Section 14-16-6-6(L)(3)(d) requires that:
 - a. *The proposed carport would strengthen or reinforce the architectural character of the surrounding area.*
 - b. *The proposed carport would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community.*
 - c. *The design of the carport complies with the provisions in Subsection 14-16-5-5(F)(2)(a)2 (Carports).*
 - d. *No carport wall is a hazard to traffic visibility, as determined by the Traffic Engineer.*
 - e. *The carport is not taller than the primary building on the lot.*
8. The applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).

9. The applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
10. Applicant appeared and gave evidence in support of the application. Opponents also appeared and testified in opposition to the Application.
11. As a preliminary matter, the ZHE will here address questions and complaints regarding the fact that Applicants have constructed the existing carport pursuant to a City-issued building permit. The ZHE approved the Application for carport permit (but denied the now-withdrawn variance) on January 3, 2024, after which appellants appealed that permit approval. On April 19, 2024, the LUHO remanded the decision to the ZHE for lack of notice, requiring a hearing *de novo*, which is now where we are procedurally. On March 27, 2024, which was between the ZHE approval and the LUHO remand, Applicants obtained a City-issued building permit (BP-2024-02485) for the carport, apparently based on the approved, but appealed, carport permit. Applicants constructed the carport pursuant to BP-2024-02485, and the carport passed final building inspection on May 17, 2024. IDO Section 6-4(T)(4) states that

Any actions taken by an applicant or property owner after a final decision has been made by the relevant decision-making body in Table 6-1-1, but before the time for appeal of that decision has expired or before any appeal has been decided by the last appeal body, are at the risk of the applicant or property owner, and the City shall not be liable for any damages incurred for actions taken during those times.

- Applicant therefore undertook construction of the carport at Applicant's own risk, and if the Application is denied, Code Enforcement may require removal of the carport. Nevertheless, removal of the carport is not an issue before the ZHE, nor is it within the ZHE's jurisdiction to require removal of the carport. Consequently, the ZHE will not entertain any further evidence regarding requests for removal of the carport.
12. Also, Applicant and opponents have submitted extensive evidence and testimony regarding matters immaterial to the merits of the Application. For instance, evidence regarding posts erected at or near the Applicant's or neighbors' property lines by Applicant or neighbors, which are not part of the subject carport. The ZHE will not entertain further evidence regarding such matters.
 13. However, the ZHE has questions regarding whether or not the proposed carport would be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Two real estate agents submitted letters stating their opinion that the carport could adversely affect the value of a neighboring property; however, the letters did not provide any factual basis for those opinions and the authors were not subject to cross examination by Applicant or any other party. Applicant maintains in testimony that the carport as currently constructed does not impact views for neighbors or otherwise cause any injury. However, it is unclear from evidence in the record whether and, if so, how the carport may cause injury. Taken together, the photographs submitted to date are inconclusive. The ZHE finds that it would be appropriate to defer this case to the next ZHE hearing to allow Applicant and other concerned parties to submit evidence regarding the existence or nonexistence of any injury to adjacent properties, the surrounding neighborhood, or the larger community, and to respond to evidence already in the record.
 14. The City Traffic Engineer submitted a report stating no objection to the Application.

15. The ZHE respectfully reminds the parties and the public to focus any further evidence submitted to the merits of the Application at hand.

DECISION:

DEFERRAL of the ZHE hearing on the Application to the November 19, 2024, ZHE hearing which begins at 9:00 a.m.

APPEAL:

If you wish to appeal this decision, you must do so by November 14, 2024 pursuant to Section 14-16-6-4(V), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

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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cc: ZHE File
Zoning Enforcement
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