



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

Jacqueline Arguelles requests a Permit --	Special Exception No:.....	VA-2023-00324
Carport for Lot 13, Rancho Alegre	Project No:	PR-2023-009519
Subdivision, located at 2444 Iris Road NW,	Hearing Date:	11-19-24
zoned R-A [Section 14-16-5-5(F)(2)(a)(3)] Ref.	Closing of Public Record: ..	11-19-24
14-16-6-6 (G)]	Date of Decision:	12-04-24

On the 19th day of November, 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 ZHE finds that the Applicant has authority to pursue this Application.
3. All property owners within 100 feet and affected neighborhood association(s) were notified.
4. The ZHE finds that the proper “Notice of Hearing” signage was posted as required by Section 14-16-6-4(K)(4).
5. The City of Albuquerque Integrated Development Ordinance Section 14-16-6-6(G)(3) 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)3 (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.*
6. 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).
7. 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).
8. Applicant appeared and gave evidence in support of the application.
9. Applicant has met its burden of providing evidence that establishes that the proposed carport would strengthen or reinforce the architectural character of the surrounding area. Specifically, Applicant testified that the carport would be constructed in harmony with

existing improvements on the Subject Property, which would strengthen the architectural character of the surrounding area.

10. Applicant has met its burden of providing evidence that establishes that the proposed carport complies with IDO Subsection 14-16-5-5(F)(2)(a)(3) (Carports), based on the justification letter, site plan, drawings, and other evidence in the record.
11. Applicant has met its burden of providing evidence that establishes that the proposed carport is not taller than the primary building on the lot, based on written submittals and testimony.
12. Much of the evidence in the record centers on whether the proposed carport would or would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community. Essentially, the final issue for decision appears to be whether the proposed carport harms adjacent properties by negatively impacting views in an impermissible manner.
 - a. The City Traffic Engineer submitted a report stating no objection to the Application.
 - b. Applicant testified that no negative impacts would result from the proposed carport and it is integrated into the design of the overall Subject Property.
 - c. Opponents Richard and Nancy Glantz testified that their views would be negatively impacted by the proposed carport.
 - d. The backyard of the Glantz residence faces east and abuts the side yard of the Subject Property. The Subject Property faces north and abuts the Glantz property to the west. The Glantz residence and the Subject Property are in two different residential subdivisions.
 - e. Glantz and the Applicants submitted numerous photos showing their respective properties and views from the Glantz property.
 - f. Applicant constructed the proposed carport pursuant to a building permit issued by City Building Safety during the pendency of the appeal of the ZHE's prior approval of the permit for the carport. That ZHE approval was ultimately remanded for hearing de novo, based on insufficient notice by Applicants. Construction of the carport is complete and has received final inspection approval by City Building Safety. The carport extends northward from Applicant's residence, with the western roofline of the carport roughly contiguous with the western wall of their residence, approximately 10 to 12 feet from the Glantz property boundary.
 - g. Applicants have erected a tan colored screen running north-south near the Glantz property rear boundary line, which obstructs views to the east from the Glantz property. This screen is semi-opaque, and photos reveal the carport and trees through the screen.
 - h. The Glantz property has an approximately 5 to 6 foot tall, cinder block, stucco-ed wall of variable height along its rear boundary. Above that wall, it appears from photos and testimony that portions of the Sandia Mountains and trees could be seen to the east of the Glantz property. A portion of that wall is notched lower to increase views to the east. Applicant's proposed carport blocks much of these views.
 - i. Realtor Paul Wilson submitted a written letter and also testified that views are a significant factor in determining both the value and salability of a property and that, based on his in-person review of the Glantz backyard patio area, the carport negatively affects valuation and salability of the Glantz property.
 - j. Realtor Eva Price submitted a written letter consistent with Realtor Wilson's letter and testimony, but did not testify.

- k. Realtor Kyle Gonzales testified that although views can impact value and salability of real estate, in his opinion, based on the photographs of the properties, the view of the Sandia Mountains from the Glantz property would not constitute a view listing. Realtor Gonzales cites that trees beyond the Applicants' property to the east block the Glantz views of the Sandias more than the carport. Ms. Glantz countered that the view of the trees still constitutes a view, much more attractive than the approximately 8-inch carport roof structure. Realtor Gonzales responded that if an 8-inch roof structure blocks a view, it must not have been a very large view.
- l. Two neighbors within the subdivision of the Subject Property submitted letters of support, stating that the proposed carport does not diminish key views or otherwise diminish visual appeal of the community.
13. While the ZHE empathizes with the Glantz' distress of losing a portion of their views, it appears to the ZHE that, in the absence of express legislation, rulemaking, or private agreement to the contrary, there is no cognizable legal right to protect a view. Applicants, opponents and other public participants cited no New Mexico judicial decision on point and the ZHE found none. However, courts of many other states have held that, "[a]s a general rule, a landowner has no natural right to air, light or an unobstructed view and the law is reluctant to imply such a right." *Pacifica Homeowners' Assn. v. Wesley Palms Retirement Community*, 178 Cal.App.3d 1147, 1152 (1986). In line with that doctrine, courts have held that diminution of property value based on loss of a view where there is no right to a protected view cannot give rise to damages in a takings claim. *Pierce v. Northeast Lake Washington Sewer and Water District*, 870 P.2d 305, 123 Wn.2d 550 (1994). New Mexico appears to adhere to this regime that there is no common law right to views and light, given that the legislature enacted the Solar Rights Act, Sections 47-3-1 through 47-3-5 NMSA 1978, which would appear unnecessary if common law rights to views and light were to exist in New Mexico. Although local governments can create rights to views via ordinance, the IDO creates no rights to views that would be applicable in this case. The IDO does create View Protection Overlay (VPO) areas, but neither the Subject Property nor the Glantz property is located in a VPO. Similarly, although Character Protection Overlays (CPO) under the IDO can impose more restrictive setback requirements to protect views and other public policy priorities, neither the Subject Property nor the Glantz property is located in a CPO. The ZHE found no other IDO provision specifically protecting views that might be applicable to the Application, and no party cites such a provision. There is nothing in the record that indicates a restrictive covenant, easement or other private agreement would give rise to a right to protect views here. If there is no cognizable legal right to a view, then it would appear reasonable to conclude that the loss of a view is not a cognizable injury under the IDO.
14. Even if there were a cognizable legal right to protected views in this case, the ZHE is not convinced that any loss of views at issue here rise to the level of being injurious. The evidence provided by the realtors is contradictory as to whether the view before the carport was a marketable feature that provided value. Photos submitted by the Glantz show that the Sandias were visible primarily through the notch in their back wall, and then only through trees during the winter when they had no leaves, the view of the mountains being obstructed by foliage otherwise. Based on photos in the record, views of trees still remain, despite Applicants' carport. The relatively small views at issue make the properties at hand very different than those having panoramic views protected by VPO provisions.

15. On balance, the ZHE finds that the proposed carport would not be injurious to adjacent properties, the surrounding neighborhood, or the larger community.
16. However, it appears to the ZHE that the tan-colored screen erected by Applicants may be in violation of the IDO, and the ZHE encourages City Code Enforcement to inspect whether the screen is in violation and, if so, take any enforcement action it deems appropriate.

DECISION:

APPROVAL of a permit to allow a carport.

APPEAL:

If you wish to appeal this decision, you must do so by December 19, 2024 pursuant to Section 14-16-6-4(U), 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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc: ZHE File
Zoning Enforcement
Jacqueline Arguelles, jcandel40@msn.com
Richard and Nancy Glantz, rgredneck@comcast.net
Paul Wilson 328 Los Colinas Lane NE, 87113
Kyle Gonzales 8705 Democracy Rd NE, 87109