

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

SERGIO PARRA request(s) a special exception to Section 14-16-2-9(E)(4)(A) and 14-16-2-9(E)(4)(a): a VARIANCE of 14' to the 15' rear yard setback area requirement for an existing carport on all or a portion of Lot(s) 4, Block(s) 3, TAPIA MEADOWS zoned R-T, located at 1057 RIGEL ST SW (L-12)

Special Exception No:..... ***IR* 09ZHE-80446**
Project No:..... **Project# 1008123**
Hearing Date:..... 08-17-10
Closing of Public Record:..... 08-17-10
Date of Decision:..... 08-31-10

STATEMENT OF FACTS: The applicant, Sergio Parra, requests a variance of 14' to the 15' rear yard setback area requirement for an existing carport. This matter was remanded back to this office by the Board of Appeals. Their findings were that "the applicant, a Spanish speaker, did not understand the applicable zoning requirements well enough to put forward a defensible case. This lack of understanding was based entirely on the applicant's inability to understand the English language." At the initial hearing of February 16, 2010, the City of Albuquerque provided an interpreter who translated, verbatim, questions and responses from the applicant. At the subsequent hearing, the same services were provided. There was an interpreter to assist the applicant in their presentation as well as in understanding any questions, and responding to any questions and testimony of the opponents.

At the August 17, 2010 hearing, Mr. Parra was represented by Ronald Taylor, Esq. Mr. Taylor presented a number of areas in which he believed the applicant's request would warrant approval. He provided 8 points which he submits would be grounds for exceptionality.

1. Lot size.
2. Lot is trapezoidal.
3. Elevation differences, to wit the client's property are eight inches higher than the neighbors to the south.
4. The single carport which is on the property is no longer used as a carport.
5. He argues that this lot is larger on the west side than other lots.
6. The applicant is denied accessibility.
7. The side yard carport was in place when the house was purchased four years ago.
8. There are other carports similarly situated in the neighborhood.

Once again, the opponents were represented by Ms. Terri Gallegos who again stated that all properties in the vicinity are similar. The side yard carport has caused continued drainage damage to the side yard adjacent property. The covenants in the area do not allow for side yard structures. Ms. Gallegos further points out that other carports requested in this area have been denied.

Ms. Bishop testified in opposition, arguing that carports have been deemed to be a fire hazard by the Fire Department. The elevation differences were caused by the applicant. The side yard carport has a negative affect to the side yard property owner. Runoff from this carport has a negative impact. And as to the question of triangular lots, the opponents argue that all of the lots in the area are triangular.

The initial determination was based upon an on-site inspection as well as the testimony. The present case is reviewed on the basis of the same standards as required by the Zoning Ordinance. While Mr. Taylor presents cogent arguments, they do not rise to the level of the requirements of exceptionality. It was initially determined that this parcel is not exceptional as compared to other parcels in the vicinity. That determination remains.

The Zoning Enforcement Division conducted an inspection and swept the entire area and determined, and cited, many of the property owners for building carports without permits. This is a townhome development with existing single car garages. The addition of carports has created considerable density problems and detracts from the initial streetscape of the development.

Based on all of the testimony and a review of the entire file, it is determined that there is substantial evidence to make the following findings and conclusions:

FINDINGS AND CONCLUSIONS: I find that this parcel is not exceptional as compared to other parcels in the vicinity and, therefore, it does not meet the test for the granting of a variance as provided for by Section 14. 16. 4. 2. I further find that the regulations do not produce an unnecessary hardship in that it will not limit the owner's reasonable use of the property and/or deprive the owner of a reasonable return on the property. Finally, the variance will significantly interfere with the enjoyment of other land in the vicinity and is inconsistent with the spirit of the Zoning Ordinance, substantial justice and the general public interest.

DECISION: Denied.

If you wish to appeal this decision, you may do so by 5:00 p.m., on September 15, 2010 in the manner described below:

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.

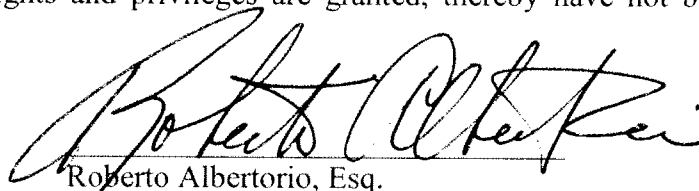
An appeal shall be heard by the Board of Appeals within 45 days of the appeal period and concluded within 75 days of the appeal period. The Planning Division shall give written

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.



Roberto Albertorio, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
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Ronald Taylor, 708 Marquette NW, 87102
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