

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

LOREEN PACHECO (EMPHASIS CONSTRUCTION, LLC, ANDREW GOMEZ, AGENT) request(s) a special exception to Section 14-16-2-6(B)(12): a CONDITIONAL USE to allow a proposed covered patio in the rear yard setback area for all or a portion of Lot(s) 146, OXBOW NORTH zoned SU-3, located on 4304 ATHERTON WAY NW (F-11)

Special Exception No:..... **12ZHE-80163**  
Project No:..... **Project# 1009268**  
Hearing Date: ..... June 19, 2012  
Closing of Public Record: ..... June 19, 2012  
Date of Decision: ..... July 5, 2012

On June 19, 2012, the Interim Zoning Hearing Examiner, Stanley D. Harada heard Project# 1009268, 12ZHE-80163, a conditional use to allow a proposed covered patio in the rear yard setback area at 4304 Atherton Way NW.

**SUMMARY:**

1. Andrew Gomez (Emphasis Construction, LLC), agent for Loreen Pacheco requests a proposed patio in the rear yard setback area at 4304 Atherton Way NW.
2. Mr. Gomez testified that the owners have lived at 4304 Atherton Way NW for 5 years and are in need of efficient relief from the sunlight that beats down on the Pacheco residence.
3. Mr. Gomez testified that the conditional use request will not be injurious to the adjacent properties, the neighborhood or the community due to the fact that there is open space (Rio Grande River) to the east of the subject property.
4. Mr. Gomez testified that the request will not significantly damage the surrounding structures or activities because it faces open space and will not be damaged or damage any structures in the community.
5. Mr. Gomez stated that there are no neighbors to the east, and that is the side that the patio will face.
6. Mr. Gomez testified that no building wall will be built within the required setback area; it is going to remain open.
7. There are no letters of opposition in the file nor was there any opposition at the hearing.
8. The yellow signs were posted.

**CONCLUSIONS:** The burden has been met for a conditional use to allow a proposed covered patio in the rear yard setback area.

**DECISION:** Approved with conditions.

**CONDITIONS:**

1. No part of the shade structure will be within three feet of a property line.
2. No building wall is ever built within the required setback area.
3. No more than 50% of the required yard setback area is covered by a roof.
4. The structure will not exceed 12 feet in height nor shall it exceed the height of the principal building on the site.
5. A second floor deck is prohibited.

**If you wish to appeal this decision, you may do so by 5:00 p.m., on July 20, 2012 in the manner described below:**

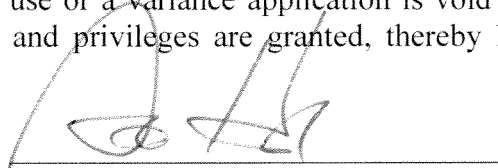
Appeal is to the Board of Appeals within 15 days of the decision. A filing fee of \$105.00 shall accompany each appeal application, as well as a written explanation outlining the reason for appeal and a copy of the ZHE decision. Appeals are taken at 600 2nd Street, Plaza Del Sol Building, Ground Level, 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.



Stanley D. Harada, Esq.  
Interim Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Loreen Pacheco, 4304 Atherton Way NW, 87120  
Emphasis Construction, LLC, Andrew Gomez, 2034 Lakeview Rd SW, 87105