



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

Ruben Perez and Graciela Silva request a conditional use to allow an accessory dwelling unit without a kitchen for Lot 42, Block 4B, Dennis - - W B, located at 338 Cutler Ave NE, zoned R-1B [Section 14-16-4-2]

Special Exception No:..... **VA-2020-00122**  
Project No: ..... **Project#2020-003825**  
Hearing Date: ..... 08-18-20  
Closing of Public Record: ..... 08-18-20  
Date of Decision: ..... 09-02-20

On the 18th day of August, 2020, property owners Ruben Perez and Graciela Silva (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow an accessory dwelling unit without a kitchen (“Application”) upon the real property located at 338 Cutler Ave NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow an accessory dwelling unit without a kitchen.
2. The City of Albuquerque Code of Ordinances Section 14-16-6-6(A)(3) (Review and Decision Criteria– Conditional Use) reads: *“An application for a Conditional Use Approval shall be approved if it meets all of the following criteria:*
  - (a) It is consistent with the ABC Comp. Plan, as amended;*
  - (b) It complies with all applicable provisions of the IDO, including, but not limited to any Use-Specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in any prior permit or approval affecting the property;*
  - (c) It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community;*
  - (d) It will not create material adverse impacts on other land in the surrounding area, through increases in traffic congestion, parking congestion noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts;*
  - (e) It will not increase non-residential activity within 300 feet of a lot in any residential zone district between the hours of 8:00 pm and 6:00 am;*
  - (f) It will not negatively impact pedestrian or transit connectivity without appropriate mitigation*
3. Applicant appeared and gave evidence in support of the application.
4. All property owners within 100 feet and affected neighborhood association(s) were notified.
5. The subject property is currently zoned R-1B.
6. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended.

Specifically, Applicant's testimony that the community would benefit from an attractive and harmoniously designed accessory structure to allow uses compatible with single family dwellings demonstrates that the requested Conditional Use approval would help "create healthy, sustainable communities with a mix of uses that are conveniently accessible from surrounding neighborhoods" as stated as a goal in ABC Comp. Plan Policy 5.2.1. No evidence was submitted to the contrary.

7. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval complies with all applicable provisions of the IDO, including, but not limited to any Use-Specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in any prior permit or approval affecting the property. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements. No evidence was submitted to the contrary. No prior permits or approvals apply.
8. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact and would in fact enhance property values of the subject site and thereby to the neighboring parcels. No evidence was submitted to the contrary.
9. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not create material adverse impacts on other land in the surrounding area, through increases in traffic congestion, parking, congestion, noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact and would not increase traffic congestion, parking, congestion, noise, or vibration. No evidence was submitted to the contrary.
10. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not increase non-residential activity within 300 feet of a lot in any residential zone district between the hours of 8:00 pm and 6:00 am. Specifically, Applicant testified that non-residential activity would not increase in any prohibited manner. No evidence was submitted to the contrary.
11. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Specifically, Applicant testified that no negative impact on pedestrian or transit connectivity would result. No evidence was submitted to the contrary.
12. Applicable Use-Specific Standards include the following:
  - 4-3(F)(5) Dwelling Unit, Accessory (With or Without Kitchen)*
    - 4-3(F)(5)(a) One (1) accessory dwelling unit is allowed per lot.*
    - 4-3(F)(5)(c) In any Residential or Mixed-use zone district, a detached accessory dwelling unit shall be located behind the rear wall of a primary building. On corner lots, the accessory dwelling unit shall have the same minimum street side setback requirement as the primary building.*

*4-3(F)(5)(d) A detached accessory dwelling unit shall comply with any applicable provisions of Subsection 14-16-5-11(C)(2)*

*4-3(F)(5)(i) Accessory dwelling units with kitchens are prohibited in the R-1 zone district*

13. Applicant testified that his requested Conditional Use approval would comport with all Use-Specific standards. No evidence to the contrary was submitted.

DECISION:

APPROVAL of a conditional use to allow an accessory dwelling unit without a kitchen.

APPEAL:

If you wish to appeal this decision, you must do so by September 17, 2020 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  
Ruben Perez and Graciela Silva, perez.lorena2856@yahoo.com