



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

Garcia Alfonso Eloy, Gonzales Maria Isela and Garcia Giovanni (Agent, Deysi Garcia) request a conditional use to allow a family home daycare for Lot 41, Westview Townhomes Addn, located at 9731 Western AVE SW, zoned R-T [Section 14-16-4-2]

Special Exception No:..... **VA-2020-00075**
Project No: **Project#2020-003467**
Hearing Date: 06-16-20
Closing of Public Record: 06-16-20
Date of Decision: 07-01-20

On the 16th day of June, 2020, Deysi Garcia, agent for property owner Garcia Alfonso Eloy, Gonzales Maria Isela and Garcia Giovanni (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a family home daycare (“Application”) upon the real property located at 9731 Western AVE SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a family home daycare.
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. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-4(N)(1).
4. Applicant provided evidence that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
5. Applicant provided evidence that all property owners and neighborhood association entitled to notice were notified of the Application.

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 access to affordable daycare in the neighborhood 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.
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. 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. 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. The City Traffic Engineering Division stated no objection.
13. The criteria within IDO Section 14-16-6-6(A)(3) are satisfied.
14. IDO Section 14-16-4-3(F)(7) requires the following Use-Specific Standards for a Family Home Daycare:
 - (a) *The operator of this use must obtain and maintain in effect at all times any city or state permit or license required for the operation of this use.*
 - (b) *Only members of the residing household may provide care.*
 - (c) *Any outdoor play area shall be enclosed by an opaque wall, fence, or vegetative screen at least 6 feet in height.*
 - (d) *Only a sign meeting the requirements for a home occupation is allowed.*

15. Applicant has met its burden of providing evidence that establishes that the operator of this use will obtain and maintain in effect at all times any city or state permit or license required for the operation of this use. Specifically, Applicant testified and confirmed in written submittals the same. No evidence was submitted to the contrary.
16. Applicant has met its burden of providing evidence that establishes that only members of the residing household may provide care. Specifically, Applicant testified to the same. No evidence was submitted to the contrary.
17. Applicant has met its burden of providing evidence that establishes that any outdoor play area will be enclosed by an opaque wall, fence, or vegetative screen at least 6 feet in height. Specifically, Applicant testified and confirmed in written submittals the same. No evidence was submitted to the contrary.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow family home daycare.

CONDITIONS:

- A. The operator of this use must obtain and maintain in effect at all times all city and state permits and licenses required for the operation of this use.
- B. Only members of the residing household may provide care.
- C. Any outdoor play area shall be enclosed by an opaque wall, fence, or vegetative screen at least 6 feet in height.
- D. Only a sign meeting the requirements for a home occupation is allowed.

APPEAL:

If you wish to appeal this decision, you must do so by July 16, 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
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