



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

MARK GONZALES & JOSEPH GONZALES requests a special exception to Section 14-16-2-16(B)(7) : a CONDITIONAL USE for a proposed dwelling in a C-1 Zone on all or portion of Tract one (1) of the plat of Tracts 1 and 2 Lands of Jose E Ortega Estate. for all or a portion of Lot 1, Tract(s) 1, ORTEGA-JOSE E ESTATE zoned C-1, located on 2100 EDNA AV NW (J13)

Special Exception No:..... **15ZHE-80149**  
Project No:..... **Project# 1010473**  
Hearing Date:..... 08-18-15  
Closing of Public Record:..... 08-18-15  
Date of Decision: ..... 08-27-15

On the 18th day of August, 2015 (hereinafter “**Hearing**”) MARK GONZALES & JOSEPH GONZALES (hereinafter “**Applicant**”) appeared before the Zoning Hearing Examiner (hereinafter “**ZHE**”) requesting a Conditional Use for a proposed dwelling in a C-1 Zone (hereinafter “**Application**”) upon the real property located at 2100 EDNA AV NW (“**Subject Property**”). Below are the findings of facts:

**FINDINGS:**

1. Applicant is requesting a Conditional Use for a proposed dwelling in a C-1 Zone.
2. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (a) “SPECIAL EXCEPTIONS” reads in part: “*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be injurious to the adjacent property, the neighborhood, or the community.*”
3. Applicant testified at the Hearing that the Conditional Use, if approved, will not be injurious to the adjacent property, neighborhood, or the community. Applicant’s testimony can be summarized as follows:
  - The Gonzales family has owned the property for many years and has no plans to develop the remainder at this time.
  - The subject tract includes an historic adobe residence dating back as early as 1890 and previously used for rental housing, and is surrounded by residential uses, including the adjoining Tract 2 that currently has a conditional residential use and on which residential and small business uses have harmoniously coexisted since a similar conditional use was granted in 2004.

- The requested residential use is less intensive than the already-permitted commercial uses.
  - Due to the unique shape of the subject parcel it is not conducive to use for commercial purposes as it is zoned.
  - The proposed structure is of modest size and designed in the appropriate vernacular.
  - Numerous residential neighbors support the proposed conditional use.
4. The ZHE accepts and adopts Applicant's testimony as being supported by the record and substantiating Applicant's request for a conditional use.
  5. The ZHE further finds that the proposed residential use will be less intense than the otherwise-permitted commercial uses, which include office, service, institutional and limited commercial uses (§ 14-16-2-16(A)).
  6. In addition to significant support by neighbors, several owners of neighboring properties expressed their concern about the application. Those concerns can be broadly classified as relating to future development of the subject parcel beyond the currently contemplated residential structure, traffic impact to Edna Avenue, including the potential for through traffic from Rio Grande Boulevard, and the need for a buffer along the property to the West.
  7. The ZHE finds the concern about the potential for significant residential development well placed, and therefore will limit the current approval as conditioned below.
  8. Regardless of current traffic conditions on Edna Ave., the subject property is currently zoned C-1 and has access to Edna. Commercial uses have the potential for significantly increased traffic as compared to lower density residential uses. *See, e.g.*, Institute of Transportation Engineers, Common Trip Generation Rates (PM Peak Hour), from Trip Generation Manual, 9<sup>th</sup> ed.
  9. Several neighbors requested a traffic impact analysis, which is not code-required for this application. Although the record does not disclose either the current level of service (LOS) for the affected intersections or what the impact of the current application would be, the marginal impact of the current application will be minimal, and most likely lower than alternate, already-allowed uses.
  10. The Applicant states that the potential for Rio Grande cut-through traffic is addressed by a gate currently in place, and this approval will be conditioned on maintaining that gate.
  11. Neighbors also expressed concern about construction materials stockpiled on the subject site. The Applicant committed to storing any materials remaining after construction indoors.
  12. The ZHE finds that the Applicant's screening proposal adequately and reasonably screens that portion of the subject property from the neighboring property to the West.
  13. Finally, neighbors' concern regarding placement of a telephone pole is not within the purview of the ZHE, but to the extent that any portion of the pole or its

supporting infrastructure is in the way of the proposed driveway, Applicant will necessarily have to address the conflict in order to secure access.

14. The City of Albuquerque Code of Ordinances Section § 14-16-4-2 (C) (1) (b) “SPECIAL EXCEPTIONS” reads in part: “A *conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed will not be significantly damaged by surrounding structures or activities.*”
15. Applicant testified at the Hearing that the proposed conditional use, will not be significantly damaged by the surrounding residential and commercial structures or activities because it will be generally subject to the same type of use as the closer structures and activities, and the small scale commercial uses existing in the area have proven to be compatible with the existing residential development.
16. The yellow “Notice of Hearing” signs were posted for the required time period as articulated within City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.
17. The Applicant has adequately justified the Conditional Use request pursuant to City of Albuquerque Code of Ordinances § 14-16-4-2 SPECIAL EXCEPTIONS.

### **DECISION:**

**APPROVAL WITH CONDITIONS** of a CONDITIONAL USE for a proposed dwelling in a C-1 Zone.

### **CONDITIONS OF APPROVAL:**

- A. Applicant may only construct the proposed residential structure. Any additional residential structures will require modification of this condition of approval by the ZHE.
- B. Applicant shall erect and/or maintain a gate that prevents through traffic from Rio Grande Boulevard to Edna Avenue. The gate may be placed anywhere on property owned by the owner of the subject property so long as it serves this purpose. The gate shall include provisions for emergency access as required by the Fire Department.

If you wish to appeal this decision, you may do so 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.

  
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