



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

MARIBEL RODRIGUEZ requests a special exception to Section 14-16-2-8(B)(1) and 14-16-2-6(B)(5): a CONDITIONAL USE to allow 12 children for a Home Daycare for all or a portion of Lot 83, Stormcloud Unit 1 zoned SU-2 R-LT, located on 1415 SUMMER BREEZE DR NW (J-8)

Special Exception No:..... **16ZHE-80314**
Project No:..... **Project# 1011063**
Hearing Date:..... 01-03-17
Closing of Public Record:..... 01-03-17
Date of Decision: 01-18-17

On the 3rd day of January, 2017, MARIBEL RODRIGUEZ (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow 12 children for a Home Daycare (“Application”) upon the real property located at 1415 SUMMER BREEZE DR NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow 12 children for a Home Daycare.
2. The City of Albuquerque Code of Ordinances Section 14-16-4-2(C)(1) (Special Exceptions – Conditional Use) reads: “*A conditional use shall be approved if and only if, in the circumstances of the particular case and under conditions imposed, the use proposed:*
 - (a) *Will not be injurious to the adjacent property, the neighborhood, or the community;*
 - (b) *Will not be significantly damaged by surrounding structures or activities.*
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 14-16-4-2(C).
4. The ZHE finds that in the proposed use will not be injurious to the adjacent property, the neighborhood, or the community as required by Section 14-16-4-2(C)(1)(a).
5. Specifically, the ZHE finds that there will be no significant increase in intensity of use, noise or traffic over otherwise-permissible uses and the proposed use will not detrimentally impact neighborhood character or security.
6. Applicable state regulations require adequate staffing, supervision and safety of client children, including a fenced outdoor area and that they not be allowed to play in the front yard or in the street.
7. The executive director of the New Mexico Early Care and Learning Association testified to the need for the extra capacity in the neighborhood and community to *avoid injury* to children.
8. Concerned neighbors raised valid concerns, which can be addressed as conditions of approval to avoid an injurious situation.

9. Concerned neighbors also raised several concerns that appear more associated with Applicant's own children than with client children, or possibly with other children in the neighborhood. The ZHE has no authority over Applicant's control or raising of her own children.
10. Several parties expressed concerns over their property values. However, there is no evidence on the record on which to deny the Application based on effects on property values.
11. The ZHE finds that in the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b).
12. The ZHE finds that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-4-2(B)(4).
13. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow 12 children for a Home Daycare.

CONDITIONS OF APPROVAL:

1. Clients will be directed not to park or turn around on private property other than the subject premises.
2. Garbage cans shall not be overfilled, and shall be taken in within 24 hours of collection.

If you wish to appeal this decision, you must do so by February 2, 2017, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department's Land Development Coordination counter and is required at the time the Appeal is filed.

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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