



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

YEI ROGERS (SUSIE ROGERS, AGENT) requests a special exception to Section 14-16-2-23 (A) and Barelás SDP pg. 71 & 14-16-2-9(A)(2): CONDITIONAL USE to allow for RT uses in a SU-2 R-1 zone for all or a portion of Lot 24, Nuanes Addn zoned SU-2 R-1, located on 1311 BARELAS RD SW (K-14)

Special Exception No:..... **18ZHE-80034**
Project No:..... **Project# 1011519**
Hearing Date: 04-17-2018
Closing of Public Record: 04-17-2018
Date of Decision: 05-02-2018

On the 17th day of April, 2018, SUSIE ROGERS (“Agent”) acting as agent on behalf of the property owner YEI ROGERS (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow RT uses in a SU-2 R-1 zone (“Application”) upon the real property located at 1311 BARELAS RD SW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow RT uses in a SU-2 R-1 zone.
2. The SU-2/R-1 Zone corresponds to the R-1 Zone, and includes uses permissive in the R-T zone as conditional uses.
3. The R-T Zone, § 14-16-2-9, includes townhouses as conditional uses.
4. 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.*”
5. 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).
6. 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).
7. The Applicant offered substantially un rebutted testimony that:
 - a. The footprint of the existing structure will not be expanded, with all work to occur on the interior.
 - b. The project will result in renovation and use of a previously vacant and dilapidated property.
 - c. The project is consistent with the majority of adjacent structures that have multiple dwellings on the lots.
8. In addition, the Application assists in the Barelás Sector Development Plan (BSDP) “major goal” of “To provide affordable housing in Barelás,” when making the

reasonable assumption that the three smaller units will be more affordable than the single family residence.

9. The Application helps meet the BSDP home affordability goal of ensuring that “A mix of rental and home ownership options should be explored” and the housing policy that “The City shall support the development of new mixed-income housing of a variety of types and price ranges on properly zoned vacant and underutilized properties to increase the housing options for both buyers and renters.”
10. Adequate parking (5 spaces to meet a 4.5 space requirement) will help ensure that the BSDP design guideline of providing off street parking is met.
11. The code criteria have been adequately addressed, subject to the concerns raised during the application process.
12. Concerns expressed at the hearing and in the facilitated meeting include increases in density and traffic, communication problems with the Applicant, the type of tenants who will be occupying the unit, property setbacks, site egress, the purpose of a new water line installed and what other residential uses might be proposed for the lot.
13. It is not clear that three separate studio/one bedroom units would present any additional actual increase in population density. In any event, an increase in density, alone, does not indicate injury to the community or neighborhood. Rather, increased density often results in the more efficient use of infrastructure than does less compact development. There is no evidence in the record as to how density may increase or what potential injurious effects might be associated with that increase. I cannot make a determination as to this issue, as there is not the required substantial evidence on which to make such a determination.
14. Any increase of traffic would be associated with the change from a single family residence to three separate studio/one bedroom units. The evidence in the record does not reflect what, if any, increase could be expected nor does it reflect what the existing traffic conditions, including levels of service, is. On this point the evidence is also insubstantial.
15. Communication problems between an applicant and interested parties is always a concern, as are any attempts to circumvent the required processes. It appears that the facilitated meeting process did to some extent assist in that communication. Concerns aside, however, neither the quality of communication nor prior actions by the Applicant related to the property are elements of the conditional use analysis, nor is it evidence on which I can base a decision.
16. The ZHE has no ability to control the “type” of tenants that may occupy any particular residence, nor is that a proper role for the ZHE. Concerns about who new neighbors might be, while to some extent understandable, cannot dictate decisions on individual applications. So long as those tenants follow the law, they both have a right to live in the place of their choosing and they have the ability to offer diversity and vibrance to the neighborhood.
17. Property setbacks are governed by zoning, and no request for a variance has been made, therefore any existing requirements continue to apply.
18. There does not appear to be limitations on egress from the site.
19. Whatever the purpose of a new water line, other than to replace a previously existing deficient line, that purpose, without more, cannot logically be the basis of a finding of injury.

20. Finally, no other residential uses are proposed for the Subject Property. The below condition of approval will ensure that any further expansion from the current proposal is subject to a transparent and public process.
21. The ZHE finds that the proposed use will not be significantly damaged by surrounding structures or activities as required by Section 14-16-4-2(C)(1)(b).
22. 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).
23. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow RT uses in a SU-2 R-1 zone.

CONDITIONS OF APPROVAL:

This approval for RT uses on the Subject Property is limited to the proposed three studio/one bedroom apartment units proposed in this Application. Any additional dwellings proposed for the Subject Property will require an amendment to this approval.

If you wish to appeal this decision, you must do so by May 17, 2018, 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.



Christopher L. Graeser, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
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