On the 15th day of January, 2019, property owner Rosa Otero (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a family home daycare up to 8 children (“Application”) upon the real property located at 505 Sky Tower ST 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 up to 8 children.
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 applicable Use-Specific Standard for Family Home Daycare is Section 14-16-4-3(F)(7).
4. 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).
5. A site plan was submitted.
6. A certified interpreter was sworn in and provided translation for Applicant.
7. All property owners within 100 feet and the affected neighborhood association were notified of the application.
8. Route 66 West Neighborhood Association is the affected NA.
9. Rosa Otero, owner appeared and present evidence in support of the Application.
10. The subject property is currently zoned R-1A.
11. An e-mail sent by Paul Fava, Vice-President of the Route 66 West NA, dated 12-5-2018 was submitted indicating the application was outside the boundary of the NA, and expressed no opinion to the Application.
12. The Application will help broaden housing options to meet a range of incomes and lifestyles.
13. The Application will assist families in the area so they are able to work.
14. Child care will be provided by resident members of the household.
15. The subject residence is new construction.
16. The driveway is large and could accommodate 3 vehicles simultaneously.
17. There would be no on-street parking by any parents.
18. The hours for day care services will be from 6:00 am to 6:00 pm.
19. There will be no activities in the neighborhood outside of those hours.
20. The outdoor play area is protected by a 6 foot block wall with fencing.
21. No one appeared in opposition to the Application.
22. Transportation reports no objection to the Application.
23. The applicant has all required state and City permits, certificates and licenses to operate a family home day care.
24. The application complies with applicable Use-Specific Standards of the IDO, the DPM and other City regulations.
25. There will not be any excess noise and the application will not negatively impact the adjacent properties or the surrounding area.
26. The play area has a high fence which ensures the safety of the children.
27. There are no other conditions applied on the property by a prior permit or approval.
28. The proposed use is consistent with the ABC Comp. Plan, as amended, as required by Section 14-16-6-6(A)(3)(a).
29. The proposed use 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; any conditions specifically applied to the development of the property in a prior permit or approval affecting the property, as required by Section 14-16-6-6(A)(3)(b).
30. The proposed use will not create significant adverse impacts on the adjacent properties, the surrounding neighborhood or the larger community, as required by Section 14-16-6-6(A)(3)(c).
31. The proposed use will not create material adverse impacts on other land in the surrounding area through increased traffic congestion, parking congestion, noise or vibration as required by Section 14-16-6-6(A)(3)(d).
32. The proposed use will not increase non-residential activity within 300 feet of a lot in any residential zone between the hours of 8:00PM and 6:00AM as required by Section 14-16-6-6(A)(3)(e).
33. The proposed use will not negatively impact pedestrian or transit connectivity, as required by Section 14-16-6-6(A)(3)(f).
34. The ZHE finds that the proper “Notice of Hearing” signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
35. The ZHE finds that the Applicant has authority to pursue this Application.
DECISION:

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

CONDITIONS: Applicant shall comply with all applicable Use-Specific Standard Sections, specifically Section 14-16-4-3(F)(7) Family Home Daycare.

APPEAL

If you wish to appeal this decision, you must do so by February 14, 2019 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.

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Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Rosa Otero, 505 Sky Tower ST SW, 87121