



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

Patsy Garcia-Barboa (Agent, Maria Elena Barboa-Reyes) requests a conditional use to allow a horse in an R-1B (Residential) zone for Lot 14, Vista Alta Addn, located at 900 Alta Vista CT SW, zoned R-1B [Section 14-16-4-3(F)(3)(d)]

Special Exception No: **VA-2023-00102**
Project No: **Project#2023-008504**
Hearing Date: 08-15-23
Closing of Public Record: 08-15-23
Date of Decision: 08-30-23

On the 15th day of August, 2023, Maria Elena Barboa-Reyes, agent for property owner Patsy Garcia-Barboa (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a horse in an R-1B zone (Residential) zone (“Application”) upon the real property located at 900 Alta Vista CT SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a horse in an R-1B (Residential) zone.
2. The Applicant has authority to pursue this Application.
3. The Subject Property is currently zoned R-1B.
4. 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, or there is a condition of approval that any Variances or Waivers needed to comply with any of these provisions must be approved or the Conditional Use Approval will be invalidated pursuant to Subsection (2)(c)2 above;*
 - (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) *On a project site with existing uses, it will not increase non- residential activity within 300 feet in any direction of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.;*
 - (f) *It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.*

5. Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
6. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
7. Applicant appeared and gave evidence in support of the application.
8. All property owners within 100 feet and affected neighborhood association(s) were notified as required by the IDO.
9. 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).
10. The Subject Property is located within an Area of Consistency.
11. “Animal Keeping” is an allowable accessory use in the R-1 zone district. The IDO defines Animal Keeping as the “keeping of animals as allowed by Article 9-2 of ROA 1994 (Humane and Ethical Animal Rules and Treatment [HEART]).” In turn, HEART includes horses in its definition of domestic animals.
12. IDO Section 4-3(f)(3) sets out the requirements for Animal Keeping, which are, in pertinent part:
 - 4-3(F)(3)(a) *The use shall comply with all applicable City, State, and federal regulations related to animal care and protection.*
 - 4-3(F)(3)(b) *Animal species and number shall be regulated pursuant to Article 9-2 of ROA 1994 (Humane and Ethical Animal Rules and Treatment [HEART]), enforced by the City Animal Welfare Department.*
 - 4-3(F)(3)(c) *This use may be operated outside an enclosed structure. Animals shall be contained on the property by a wall, fence, vegetated screen, retaining wall, pen, or enclosure that complies with requirements in Section 14-16-5-7 (Walls and Fences).*
 - 4-3(F)(3)(d) *In Residential zone districts other than R-A or any Mixed-use zone district, keeping cows and horses on a property shall require a Conditional Use Approval pursuant to Subsection 14-16-6-6(A), provided that both of the following requirements are met.*
 1. *The property contains at least ½ acre of gross land area.*
 2. *The number of animals does not exceed 1 cow or horse for each 10,000 square feet of net lot area, or equivalent combination. Animals under 4 months old are not counted.*
13. Consequently, keeping a horse on the Subject Property requires a conditional use approval, pursuant to IDO Section 4-3(F)(3)(d).
14. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended.
 - a. The Subject Property is located within the Southwest Mesa Community Planning Area of the Comp. Plan., as to which the Comp. Plan states, “this area is still developing, and its identity and sense of community is still emerging.”
 - b. Applicant submitted evidence that, despite its R-1 zoning, the property is in an area of historic agricultural use.
 - c. The keeping of one horse is in furtherance of Policy 13.5.2(a) of the Comp. Plan, which seeks to “Promote family gardens, community gardens, farms, and livestock raising”

15. Applicant has met the 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. Agent testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements. No prior permits or approvals apply.
16. Applicant has met the 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.
 - a. The residents of a property next door to the Subject Property oppose the Application, expressing concerns and complaints that the horse on the Subject Property causes foul odors from urine and feces, which attract flies and other insects. These opponents testified that they cannot use their yard at times because of these foul odors and flies. The opponents also testified that their dwelling is in close proximity to the area where the horse is kept.
 - b. Applicant testified and stated in written submittals that she places flycatching devices and tries to diligently clean up animal waste. Still, it appears that additional measures could be taken to mitigate the adverse impact on the next-door neighbors.
 - c. Applicant volunteered plans to build a six-foot tall opaque fence along her property line along the side yard between the Subject Property and the next-door opponents. Applicant also proposed placing a vegetative buffer between the horse's area and the neighboring property, using aromatic lavender or sage, which are safe for horses. These measures would serve to mitigate adverse impacts of keeping a horse on the Subject Property.
 - d. Also, IDO Section 4-3(D)(3)(c), pertaining to General Agriculture, provides that "[a]ny building, pen, or corral for agricultural animals or birds is prohibited within 20 feet in any direction of any residential dwelling on the subject property or any adjacent lot. While this section is not applicable to the Application, it is instructive of the IDO's intent for buffering standards. It appears that the corral on the Subject Property complies with this standard.
 - e. Applicant submitted multiple reports from the City of Albuquerque Animal Welfare Department, resulting from officer visits in response to calls from the next-door neighbor, all stating that the horse was well cared-for, in a clean environment, and with minimal animal waste, as would be expected. One report indicated that the animal waste should be cleaned at least daily.
 - f. The City HEART Ordinance contains several provisions regarding cleaning animal waste, depending on the context. Most pertinent:
 - i. HEART Section 9-2-2-2-2(B)(1), applying to standards for mammals and birds kept on residential property, requires that "[f]eces and soiled bedding must be removed at least weekly to prevent odors and possible dangerous or toxic exposure or contamination by fecal material, mold or internal and external parasites that could harm the Animal or cause the spread of disease to other Animals or humans."
 - ii. HEART Section 9-2-2-2-4(A)(3), applying to standards for mammals and birds kept at boarding kennels, guard dog sites, animal shelters and pet

stores, requires that “[f]eces and urine must be removed at least twice daily from Companion Animal living quarters to prevent odors and possible dangerous or toxic exposure or contamination by fecal material, mold or internal and external parasites that could harm the Animal or cause the spread of disease to other Animals or humans.”

- iii. HEART Section 9-2-2-2-4(A)(3), applying to standards for grooming parlors and doggie day care facilities, requires that “[f]eces and urine shall be removed as necessary to prevent the Animals from becoming soiled and to prevent odors but under no circumstances less than twice each day or every time a new Animal is placed in a temporary enclosure.”
 - g. Considering the foregoing HEART provisions, the City Animal Welfare Reports, and the proximity of the horse-keeping area to the next-door neighbor’s dwelling, it appears reasonable that Applicant adhere to the standard that feces and urine shall be removed as necessary to prevent the Animals from becoming soiled and to prevent odors but under no circumstances less than daily.
17. Applicant has met the 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. Applicant provided evidence that the requested Conditional Use approval would not create any adverse impact and would not increase traffic congestion, parking, congestion, noise, or vibration. The City Traffic Engineer submitted a report stating no objection to the Application.
 18. The proposed use will not increase non-residential activity within 300 feet of a lot in any residential zone between the hours of 10:00PM and 6:00AM as required by Section 14-16-6-6(A)(3)(e). Applicant states that the proposed use will not contain any non-residential component.
 19. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Applicant confirmed in written submittals and testimony that no negative impact on pedestrian or transit connectivity would result.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow a horse in an R-1B (Residential) zone.

CONDITIONS:

- A. Animal waste must be removed from the yard of the Subject Property, placing it in odor-proof waste bins, as often as necessary to avoid any odors from animal waste wafting onto adjacent properties, but in any case, no less than daily.
- B. Flycatching devices must be placed in reasonable quantities in areas on the Subject Property to which the horse has access.
- C. A six-foot tall opaque fence or wall must be built and maintained along the side property line between the Subject Property and the next-door neighbor to the north.
- D. A vegetative buffer between the horse corral and the neighboring property to the north must be built and maintained, using aromatic lavender, sage, or other aromatic plants that are safe for horses.

APPEAL:

If you wish to appeal this decision, you must do so by September 14, 2023 pursuant to Section 14-16-6-4(V), 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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Rafael Juarez juarez73r@gmail.com



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

Patsy Garcia-Barboa (Agent, Maria Elena Barboa-Reyes) requests a conditional use to allow a horse in an R-1B (Residential) zone for Lot 15, Vista Alta Addn, located at 900 Alta Vista CT SW, zoned R-1B [Section 14-16-4-3(F)(3)(d)]

Special Exception No: **VA-2023-00103**
Project No: **Project#2023-008504**
Hearing Date: 08-15-23
Closing of Public Record: 08-15-23
Date of Decision: 08-30-23

On the 15th day of August, 2023, Maria Elena Barboa-Reyes, agent for property owner Patsy Garcia-Barboa (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a horse in an R-1B zone (“Application”) upon the real property located at 900 Alta Vista CT SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a horse in an R-1B zone.
2. The Applicant has authority to pursue this Application.
3. The Subject Property is currently zoned R-1B.
4. 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, or there is a condition of approval that any Variances or Waivers needed to comply with any of these provisions must be approved or the Conditional Use Approval will be invalidated pursuant to Subsection (2)(c)2 above;*
 - (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) *On a project site with existing uses, it will not increase non- residential activity within 300 feet in any direction of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.;*
 - (f) *It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.*

5. Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
6. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
7. Applicant appeared and gave evidence in support of the application.
8. All property owners within 100 feet and affected neighborhood association(s) were notified as required by the IDO.
9. 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).
10. The Subject Property is located within an Area of Consistency.
11. “Animal Keeping” is an allowable accessory use in the R-1 zone district. The IDO defines Animal Keeping as the “keeping of animals as allowed by Article 9-2 of ROA 1994 (Humane and Ethical Animal Rules and Treatment [HEART]).” In turn, HEART includes horses in its definition of domestic animals.
12. IDO Section 4-3(f)(3) sets out the requirements for Animal Keeping, which are, in pertinent part:
 - 4-3(F)(3)(a) *The use shall comply with all applicable City, State, and federal regulations related to animal care and protection.*
 - 4-3(F)(3)(b) *Animal species and number shall be regulated pursuant to Article 9-2 of ROA 1994 (Humane and Ethical Animal Rules and Treatment [HEART]), enforced by the City Animal Welfare Department.*
 - 4-3(F)(3)(c) *This use may be operated outside an enclosed structure. Animals shall be contained on the property by a wall, fence, vegetated screen, retaining wall, pen, or enclosure that complies with requirements in Section 14-16-5-7 (Walls and Fences).*
 - 4-3(F)(3)(d) *In Residential zone districts other than R-A or any Mixed-use zone district, keeping cows and horses on a property shall require a Conditional Use Approval pursuant to Subsection 14-16-6-6(A), provided that both of the following requirements are met.*
 1. *The property contains at least ½ acre of gross land area.*
 2. *The number of animals does not exceed 1 cow or horse for each 10,000 square feet of net lot area, or equivalent combination. Animals under 4 months old are not counted.*
13. Consequently, keeping a horse on the Subject Property requires a conditional use approval, pursuant to IDO Section 4-3(F)(3)(d).
14. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended.
 - a. The Subject Property is located within the Southwest Mesa Community Planning Area of the Comp. Plan., as to which the Comp. Plan states, “this area is still developing, and its identity and sense of community is still emerging.”
 - b. Applicant submitted evidence that, despite its R-1 zoning, the property is in an area of historic agricultural use.
 - c. The keeping of one horse is in furtherance of Policy 13.5.2(a) of the Comp. Plan, which seeks to “Promote family gardens, community gardens, farms, and livestock raising”

15. Applicant has met the 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. Agent testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements. No prior permits or approvals apply.
16. Applicant has met the 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.
 - a. The residents of a property next door to the Subject Property oppose the Application, expressing concerns and complaints that the horse on the Subject Property causes foul odors from urine and feces, which attract flies and other insects. These opponents testified that they cannot use their yard at times because of these foul odors and flies. The opponents also testified that their dwelling is in close proximity to the area where the horse is kept.
 - b. Applicant testified and stated in written submittals that she places flycatching devices and tries to diligently clean up animal waste. Still, it appears that additional measures could be taken to mitigate the adverse impact on the next-door neighbors.
 - c. Applicant volunteered plans to build a six-foot tall opaque fence along her property line along the side yard between the Subject Property and the next-door opponents. Applicant also proposed placing a vegetative buffer between the horse's area and the neighboring property, using aromatic lavender or sage, which are safe for horses. These measures would serve to mitigate adverse impacts of keeping a horse on the Subject Property.
 - d. Also, IDO Section 4-3(D)(3)(c), pertaining to General Agriculture, provides that "[a]ny building, pen, or corral for agricultural animals or birds is prohibited within 20 feet in any direction of any residential dwelling on the subject property or any adjacent lot. While this section is not applicable to the Application, it is instructive of the IDO's intent for buffering standards. It appears that the corral on the Subject Property complies with this standard.
 - e. Applicant submitted multiple reports from the City of Albuquerque Animal Welfare Department, resulting from officer visits in response to calls from the next-door neighbor, all stating that the horse was well cared-for, in a clean environment, and with minimal animal waste, as would be expected. One report indicated that the animal waste should be cleaned at least daily.
 - f. The City HEART Ordinance contains several provisions regarding cleaning animal waste, depending on the context. Most pertinent:
 - i. HEART Section 9-2-2-2-2(B)(1), applying to standards for mammals and birds kept on residential property, requires that "[f]eces and soiled bedding must be removed at least weekly to prevent odors and possible dangerous or toxic exposure or contamination by fecal material, mold or internal and external parasites that could harm the Animal or cause the spread of disease to other Animals or humans."
 - ii. HEART Section 9-2-2-2-4(A)(3), applying to standards for mammals and birds kept at boarding kennels, guard dog sites, animal shelters and pet

stores, requires that “[f]eces and urine must be removed at least twice daily from Companion Animal living quarters to prevent odors and possible dangerous or toxic exposure or contamination by fecal material, mold or internal and external parasites that could harm the Animal or cause the spread of disease to other Animals or humans.”

- iii. HEART Section 9-2-2-2-4(A)(3), applying to standards for grooming parlors and doggie day care facilities, requires that “[f]eces and urine shall be removed as necessary to prevent the Animals from becoming soiled and to prevent odors but under no circumstances less than twice each day or every time a new Animal is placed in a temporary enclosure.”
 - g. Considering the foregoing HEART provisions, the City Animal Welfare Reports, and the proximity of the horse-keeping area to the next-door neighbor’s dwelling, it appears reasonable that Applicant adhere to the standard that feces and urine shall be removed as necessary to prevent the Animals from becoming soiled and to prevent odors but under no circumstances less than daily.
17. Applicant has met the 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. Applicant provided evidence that the requested Conditional Use approval would not create any adverse impact and would not increase traffic congestion, parking, congestion, noise, or vibration. The City Traffic Engineer submitted a report stating no objection to the Application.
 18. The proposed use will not increase non-residential activity within 300 feet of a lot in any residential zone between the hours of 10:00PM and 6:00AM as required by Section 14-16-6-6(A)(3)(e). Applicant states that the proposed use will not contain any non-residential component.
 19. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Applicant confirmed in written submittals and testimony that no negative impact on pedestrian or transit connectivity would result.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow a horse in an R-1B (Residential) zone.

CONDITIONS:

- A. Animal waste must be removed from the yard of the Subject Property, placing it in odor-proof waste bins, as often as necessary to avoid any odors from animal waste wafting onto adjacent properties, but in any case, no less than daily.
- B. Flycatching devices must be placed in reasonable quantities in areas on the Subject Property to which the horse has access.

- C. A six-foot tall opaque fence or wall must be built and maintained along the side property line between the Subject Property and the next-door neighbor to the north.
- D. A vegetative buffer between the horse corral and the neighboring property to the north must be built and maintained, using aromatic lavender, sage, or other aromatic plants that are safe for horses.

APPEAL:

If you wish to appeal this decision, you must do so by September 14, 2023 pursuant to Section 14-16-6-4(V), 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
Maria Elena Barboa-Reyes, mariaebreyes@gmail.com
Rafael Juarez juarez73r@gmail.com



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

Patsy Garcia-Barboa (Agent, Maria Elena Barboa-Reyes) requests a conditional use to allow a horse in an R-1B (Residential) zone for Lot 16, Vista Alta Addn, located at 900 Alta Vista CT SW, zoned R-1B [Section 14-16-4-3(F)(3)(d)]

Special Exception No: **VA-2023-00104**
Project No: **Project#2023-008504**
Hearing Date: 08-15-23
Closing of Public Record: 08-15-23
Date of Decision: 08-30-23

On the 15th day of August, 2023, Maria Elena Barboa-Reyes, agent for property owner Patsy Garcia-Barboa (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a horse in an R-1B zone (“Application”) upon the real property located at 900 Alta Vista CT SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a horse in an R-1B zone.
2. The Applicant has authority to pursue this Application.
3. The Subject Property is currently zoned R-1B.
4. 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:*
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 - (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) *On a project site with existing uses, it will not increase non- residential activity within 300 feet in any direction of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.;*
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5. Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
6. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
7. Applicant appeared and gave evidence in support of the application.
8. All property owners within 100 feet and affected neighborhood association(s) were notified as required by the IDO.
9. 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).
10. The Subject Property is located within an Area of Consistency.
11. “Animal Keeping” is an allowable accessory use in the R-1 zone district. The IDO defines Animal Keeping as the “keeping of animals as allowed by Article 9-2 of ROA 1994 (Humane and Ethical Animal Rules and Treatment [HEART]).” In turn, HEART includes horses in its definition of domestic animals.
12. IDO Section 4-3(f)(3) sets out the requirements for Animal Keeping, which are, in pertinent part:
 - 4-3(F)(3)(a) *The use shall comply with all applicable City, State, and federal regulations related to animal care and protection.*
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13. Consequently, keeping a horse on the Subject Property requires a conditional use approval, pursuant to IDO Section 4-3(F)(3)(d).
14. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended.
 - d. The Subject Property is located within the Southwest Mesa Community Planning Area of the Comp. Plan., as to which the Comp. Plan states, “this area is still developing, and its identity and sense of community is still emerging.”
 - e. Applicant submitted evidence that, despite its R-1 zoning, the property is in an area of historic agricultural use.
 - f. The keeping of one horse is in furtherance of Policy 13.5.2(a) of the Comp. Plan, which seeks to “Promote family gardens, community gardens, farms, and livestock raising”

15. Applicant has met the 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. Agent testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements. No prior permits or approvals apply.
16. Applicant has met the 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.
 - a. The residents of a property next door to the Subject Property oppose the Application, expressing concerns and complaints that the horse on the Subject Property causes foul odors from urine and feces, which attract flies and other insects. These opponents testified that they cannot use their yard at times because of these foul odors and flies. The opponents also testified that their dwelling is in close proximity to the area where the horse is kept.
 - b. Applicant testified and stated in written submittals that she places flycatching devices and tries to diligently clean up animal waste. Still, it appears that additional measures could be taken to mitigate the adverse impact on the next-door neighbors.
 - c. Applicant volunteered plans to build a six-foot tall opaque fence along her property line along the side yard between the Subject Property and the next-door opponents. Applicant also proposed placing a vegetative buffer between the horse's area and the neighboring property, using aromatic lavender or sage, which are safe for horses. These measures would serve to mitigate adverse impacts of keeping a horse on the Subject Property.
 - d. Also, IDO Section 4-3(D)(3)(c), pertaining to General Agriculture, provides that "[a]ny building, pen, or corral for agricultural animals or birds is prohibited within 20 feet in any direction of any residential dwelling on the subject property or any adjacent lot. While this section is not applicable to the Application, it is instructive of the IDO's intent for buffering standards. It appears that the corral on the Subject Property complies with this standard.
 - e. Applicant submitted multiple reports from the City of Albuquerque Animal Welfare Department, resulting from officer visits in response to calls from the next-door neighbor, all stating that the horse was well cared-for, in a clean environment, and with minimal animal waste, as would be expected. One report indicated that the animal waste should be cleaned at least daily.
 - f. The City HEART Ordinance contains several provisions regarding cleaning animal waste, depending on the context. Most pertinent:
 - iv. HEART Section 9-2-2-2-2(B)(1), applying to standards for mammals and birds kept on residential property, requires that "[f]eces and soiled bedding must be removed at least weekly to prevent odors and possible dangerous or toxic exposure or contamination by fecal material, mold or internal and external parasites that could harm the Animal or cause the spread of disease to other Animals or humans."
 - v. HEART Section 9-2-2-2-4(A)(3), applying to standards for mammals and birds kept at boarding kennels, guard dog sites, animal shelters and pet

stores, requires that “[f]eces and urine must be removed at least twice daily from Companion Animal living quarters to prevent odors and possible dangerous or toxic exposure or contamination by fecal material, mold or internal and external parasites that could harm the Animal or cause the spread of disease to other Animals or humans.”

- vi. HEART Section 9-2-2-2-4(A)(3), applying to standards for grooming parlors and doggie day care facilities, requires that “[f]eces and urine shall be removed as necessary to prevent the Animals from becoming soiled and to prevent odors but under no circumstances less than twice each day or every time a new Animal is placed in a temporary enclosure.”
 - g. Considering the foregoing HEART provisions, the City Animal Welfare Reports, and the proximity of the horse-keeping area to the next-door neighbor’s dwelling, it appears reasonable that Applicant adhere to the standard that feces and urine shall be removed as necessary to prevent the Animals from becoming soiled and to prevent odors but under no circumstances less than daily.
17. Applicant has met the 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. Applicant provided evidence that the requested Conditional Use approval would not create any adverse impact and would not increase traffic congestion, parking, congestion, noise, or vibration. The City Traffic Engineer submitted a report stating no objection to the Application.
18. The proposed use will not increase non-residential activity within 300 feet of a lot in any residential zone between the hours of 10:00PM and 6:00AM as required by Section 14-16-6-6(A)(3)(e). Applicant states that the proposed use will not contain any non-residential component.
19. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Applicant confirmed in written submittals and testimony that no negative impact on pedestrian or transit connectivity would result.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow a horse in an R-1B (Residential) zone.

CONDITIONS:

- A. Animal waste must be removed from the yard of the Subject Property, placing it in odor-proof waste bins, as often as necessary to avoid any odors from animal waste wafting onto adjacent properties, but in any case, no less than daily.
- B. Flycatching devices must be placed in reasonable quantities in areas on the Subject Property to which the horse has access.

- C. A six-foot tall opaque fence or wall must be built and maintained along the side property line between the Subject Property and the next-door neighbor to the north.
- D. A vegetative buffer between the horse corral and the neighboring property to the north must be built and maintained, using aromatic lavender, sage, or other aromatic plants that are safe for horses.

APPEAL:

If you wish to appeal this decision, you must do so by September 14, 2023 pursuant to Section 14-16-6-4(V), 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
Maria Elena Barboa-Reyes, mariaebreyes@gmail.com
Rafael Juarez juarez73r@gmail.com



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

Patsy Garcia-Barboa (Agent, Maria Elena Barboa-Reyes) requests a conditional use to allow a horse in an R-1B (Residential) zone for Lot 17, Vista Alta Addn, located at 900 (904) Alta Vista CT SW, zoned R-1B [Section 14-16-4-3(F)(3)(d)]

Special Exception No: **VA-2023-00105**
Project No: **Project#2023-008504**
Hearing Date: 08-15-23
Closing of Public Record: 08-15-23
Date of Decision: 08-30-23

On the 15th day of August, 2023, Maria Elena Barboa-Reyes, agent for property owner Patsy Garcia-Barboa (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a horse in an R-1B zone (“Application”) upon the real property located at 900 (904) Alta Vista CT SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a horse in an R-1B zone.
2. The Applicant has authority to pursue this Application.
3. The Subject Property is currently zoned R-1B.
4. 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, or there is a condition of approval that any Variances or Waivers needed to comply with any of these provisions must be approved or the Conditional Use Approval will be invalidated pursuant to Subsection (2)(c)2 above;*
 - (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) *On a project site with existing uses, it will not increase non- residential activity within 300 feet in any direction of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.;*

- (f) *It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.*
5. Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
 6. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
 7. Applicant appeared and gave evidence in support of the application.
 8. All property owners within 100 feet and affected neighborhood association(s) were notified as required by the IDO.
 9. 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).
 10. The Subject Property is located within an Area of Consistency.
 11. “Animal Keeping” is an allowable accessory use in the R-1 zone district. The IDO defines Animal Keeping as the “keeping of animals as allowed by Article 9-2 of ROA 1994 (Humane and Ethical Animal Rules and Treatment [HEART]).” In turn, HEART includes horses in its definition of domestic animals.
 12. IDO Section 4-3(f)(3) sets out the requirements for Animal Keeping, which are, in pertinent part:
 - 4-3(F)(3)(a) *The use shall comply with all applicable City, State, and federal regulations related to animal care and protection.*
 - 4-3(F)(3)(b) *Animal species and number shall be regulated pursuant to Article 9-2 of ROA 1994 (Humane and Ethical Animal Rules and Treatment [HEART]), enforced by the City Animal Welfare Department.*
 - 4-3(F)(3)(c) *This use may be operated outside an enclosed structure. Animals shall be contained on the property by a wall, fence, vegetated screen, retaining wall, pen, or enclosure that complies with requirements in Section 14-16-5-7 (Walls and Fences).*
 - 4-3(F)(3)(d) *In Residential zone districts other than R-A or any Mixed-use zone district, keeping cows and horses on a property shall require a Conditional Use Approval pursuant to Subsection 14-16-6-6(A), provided that both of the following requirements are met.*
 1. *The property contains at least ½ acre of gross land area.*
 2. *The number of animals does not exceed 1 cow or horse for each 10,000 square feet of net lot area, or equivalent combination. Animals under 4 months old are not counted.*
 13. Consequently, keeping a horse on the Subject Property requires a conditional use approval, pursuant to IDO Section 4-3(F)(3)(d).
 14. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended.
 - g. The Subject Property is located within the Southwest Mesa Community Planning Area of the Comp. Plan., as to which the Comp. Plan states, “this area is still developing, and its identity and sense of community is still emerging.”
 - h. Applicant submitted evidence that, despite its R-1 zoning, the property is in an area of historic agricultural use.

- i. The keeping of one horse is in furtherance of Policy 13.5.2(a) of the Comp. Plan, which seeks to “Promote family gardens, community gardens, farms, and livestock raising”
15. Applicant has met the 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. Agent testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements. No prior permits or approvals apply.
16. Applicant has met the 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.
 - h. The residents of a property next door to the Subject Property oppose the Application, expressing concerns and complaints that the horse on the Subject Property causes foul odors from urine and feces, which attract flies and other insects. These opponents testified that they cannot use their yard at times because of these foul odors and flies. The opponents also testified that their dwelling is in close proximity to the area where the horse is kept.
 - i. Applicant testified and stated in written submittals that she places flycatching devices and tries to diligently clean up animal waste. Still, it appears that additional measures could be taken to mitigate the adverse impact on the next-door neighbors.
 - j. Applicant volunteered plans to build a six-foot tall opaque fence along her property line along the side yard between the Subject Property and the next-door opponents. Applicant also proposed placing a vegetative buffer between the horse’s area and the neighboring property, using aromatic lavender or sage, which are safe for horses. These measures would serve to mitigate adverse impacts of keeping a horse on the Subject Property.
 - k. Also, IDO Section 4-3(D)(3)(c), pertaining to General Agriculture, provides that “[a]ny building, pen, or corral for agricultural animals or birds is prohibited within 20 feet in any direction of any residential dwelling on the subject property or any adjacent lot. While this section is not applicable to the Application, it is instructive of the IDO’s intent for buffering standards. It appears that the corral on the Subject Property complies with this standard.
 - l. Applicant submitted multiple reports from the City of Albuquerque Animal Welfare Department, resulting from officer visits in response to calls from the next-door neighbor, all stating that the horse was well cared-for, in a clean environment, and with minimal animal waste, as would be expected. One report indicated that the animal waste should be cleaned at least daily.
 - m. The City HEART Ordinance contains several provisions regarding cleaning animal waste, depending on the context. Most pertinent:
 - vii. HEART Section 9-2-2-2(B)(1), applying to standards for mammals and birds kept on residential property, requires that “[f]eces and soiled bedding must be removed at least weekly to prevent odors and possible dangerous or toxic exposure or contamination by fecal material, mold or internal and

external parasites that could harm the Animal or cause the spread of disease to other Animals or humans.”

viii. HEART Section 9-2-2-2-4(A)(3), applying to standards for mammals and birds kept at boarding kennels, guard dog sites, animal shelters and pet stores, requires that “[f]eces and urine must be removed at least twice daily from Companion Animal living quarters to prevent odors and possible dangerous or toxic exposure or contamination by fecal material, mold or internal and external parasites that could harm the Animal or cause the spread of disease to other Animals or humans.”

ix. HEART Section 9-2-2-2-4(A)(3), applying to standards for grooming parlors and doggie day care facilities, requires that “[f]eces and urine shall be removed as necessary to prevent the Animals from becoming soiled and to prevent odors but under no circumstances less than twice each day or every time a new Animal is placed in a temporary enclosure.”

n. Considering the foregoing HEART provisions, the City Animal Welfare Reports, and the proximity of the horse-keeping area to the next-door neighbor’s dwelling, it appears reasonable that Applicant adhere to the standard that feces and urine shall be removed as necessary to prevent the Animals from becoming soiled and to prevent odors but under no circumstances less than daily.

17. Applicant has met the 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. Applicant provided evidence that the requested Conditional Use approval would not create any adverse impact and would not increase traffic congestion, parking, congestion, noise, or vibration. The City Traffic Engineer submitted a report stating no objection to the Application.

18. The proposed use will not increase non-residential activity within 300 feet of a lot in any residential zone between the hours of 10:00PM and 6:00AM as required by Section 14-16-6-6(A)(3)(e). Applicant states that the proposed use will not contain any non-residential component.

19. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Applicant confirmed in written submittals and testimony that no negative impact on pedestrian or transit connectivity would result.

DECISION:

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APPEAL:

If you wish to appeal this decision, you must do so by September 14, 2023 pursuant to Section 14-16-6-4(V), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

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