



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

Petra Longoria requests a conditional use to allow for a family home daycare for Lot 47, Block P1, Towers Sub Unit -2, located at 9108 Rialto Ave SW, zoned R-1A [Section 14-16-4-3(F)(8)]

Special Exception No: VA-2023-00351
Project No:..... Project#2023-009629
Hearing Date:..... 1-16-24
Closing of Public Record:..... 1-16-24
Date of Decision:..... 01-31-24

On the 16th day of January, 2024, property owner Petra Longoria (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for a family home daycare (“Application”) upon the real property located at 9108 Rialto AVE SW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for a family home daycare.
2. Applicant provided evidence that the proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(4).
3. Applicant provided evidence that all property owners and neighborhood association entitled to notice were notified of the Application.
4. Applicant has authority to pursue this Application.
5. The City of Albuquerque Integrated Development Ordinance (IDO) 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 impact.*
 - (e) *On a project site with existing uses, it will not increase non-residential activity within 300 feet 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.

6. 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).
7. 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).
8. Applicant has met the burden of providing evidence that established that the requested Conditional Use Approval is consistent with the ABC Comp. Plan, as amended. Applicant's testimony and written submittals establish that the community would benefit from access to safe and educational daycare in the neighborhood demonstrates that the requested Conditional Use approval would help "create healthy, sustainable communities with a mix of uses that are conveniently accessible from surrounding neighborhoods" as stated as a goal in ABC Comp. Plan Policy 5.2.1.
9. 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. Applicant testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements. No prior permits or approvals apply.
10. 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. Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any significant adverse impact. No concerns raised by evidence in the record submitted by persons other than Applicant rose to the level of a significant adverse impact.
11. 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.
 - a. Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact.
 - b. A homeowner's association (HOA) representative testified that he received complaints from neighbors who work from home regarding children playing outside. However, the IDO states in Section 14-16-2-3(B)(1) that the purpose of the R-1 zone district is to provide for neighborhoods of single-family homes with a variety of lot sizes and dimensions. Primary land uses include single-family detached homes on individual lots, with limited civic and institutional uses to serve the surrounding residential area. Allowable uses are shown in Table 4-2-1, which lists as permissive, in addition to residential use, community centers, parks and open space, religious institutions, and outdoor residential community amenities (defined in the IDO definitions section to include without limitation a clubhouse, exercise room, swimming pool, tennis court, and other uses). These allowable uses reasonably would entail some level of outdoor noise, including from children playing. Even a single family home could house a family with many children who

- could play outside without violating any IDO provision applicable to the R-1 zone. Also, Applicant stated that the children at the Subject Property would not be playing outside for more than one hour at a time.
 - c. The HOA representative also expressed concerns that having up to twelve children being dropped off or picked up at the same time would cause traffic and parking problems. However, Applicant stated that not all children are dropped-off or picked up at the same time. It appears reasonable and enforceable to require Applicant to coordinate with persons dropping-off and picking-up children to ensure that no more than three children are being dropped-off or picked-up at the same time.
12. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval 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. Applicant confirmed in written submittals that non-residential activity would not increase in any prohibited manner.
 13. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation.
 14. The City Traffic Engineering Division stated no objection.
 15. IDO Section 14-16-4-3(F)(7) requires the following Use-Specific Standards for a Family Home Daycare:
 - (a) *The operator of this use must obtain and maintain in effect at all times any city or state permit or license required for the operation of this use.*
 - (b) *Only members of the residing household may provide care.*
 - (c) *Any outdoor play area shall be enclosed by an opaque wall, fence, or vegetative screen at least 6 feet in height.*
 - (d) *Only a sign meeting the requirements for a home occupation is allowed.*
 16. Applicant has met its burden of providing evidence that establishes that the operator of this use will obtain and maintain in effect at all times any city or state permit or license required for the operation of this use. Specifically, Applicant testified and confirmed in written submittals the same.
 17. Applicant has met its burden of providing evidence that establishes that only members of the residing household may provide care. Specifically, Applicant testified to the same.
 18. Applicant has met its burden of providing evidence that establishes that any outdoor play area will be enclosed by an opaque wall, fence, or vegetative screen at least 6 feet in height. Specifically, Applicant testified the same.
 19. Applicant has met its burden of providing evidence that establishes that only a sign meeting the requirements for a home occupation is allowed. Applicant testified she would comply with these requirements.
 20. The criteria within IDO Section 14-16-6-6(A)(3) are satisfied.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow for a family home daycare for up to 12 children.

CONDITIONS:

- A. Children at the family home daycare must not be playing outside for more than one hour at a time.
- B. No more than three children at the family home daycare may be dropped-off or picked-up at the same time.

APPEAL:

If you wish to appeal this decision, you must do so by February 15, 2024 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
Greg Peralta, The Towers HOA