



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

Niurka Alvarez Rodriguez requests a conditional use to allow for a family home day care for Lot 11, Block 31, Mesa Park Addn Mankins Replat of Blk 31, located at 737 Kentucky St SE, zoned R1-C [Section 14-16-4-3(F)(8) Table 4-2-1]

Special Exception No: **VA-2024-00297**
Project No: **PR-2024-011156**
Hearing Date: 12-17-24
Closing of Public Record: 12-17-24
Date of Decision: 01-02-24

On the 17th day of December, 2024, property owner, Niurka Alvarez Rodriguez (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for a family home day care (“Application”) upon the real property located at 737 Kentucky St SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a family home daycare for up to 12 children.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. All property owners within 100 feet and affected neighborhood association(s) were notified.
4. 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(J)(4).
5. 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*
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 appeared and gave evidence in support of the application.
9. 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. Specifically, Applicant's written submittals support that it provides at-home daycare for local households and supports Section 6, Equity Plan, of the ABC Comp. Plan.
10. 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 confirmed in written submittals that the requested Conditional Use approvals would comport with all requirements.
11. 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 confirmed in written submittals that the requested Conditional Use approvals would not create significant adverse impacts.
12. 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 confirmed in written submittals that the requested Conditional Use approvals would not create material adverse impacts.
13. 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 testified and confirmed in written submittals that non-residential activity will not increase in any prohibited manner.
14. 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.
15. IDO Section 14-16-4-3(F)(8) 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. 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. 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. Applicant testified that a wall enclosing a lawn area is at least 6-feet tall; however, that wall appears to be wrought iron view fencing and not opaque. Nevertheless, Applicant should be allowed to comply with this condition, provided that the outdoor play area enclosure comports with all other requirements of the IDO and the DPM.
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 to the same.
20. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL WITH CONDITION of a conditional use to allow for Family home Day Care.

CONDITION:

Any outdoor play area must be enclosed by an opaque wall, fence, or vegetative screen at least 6 feet in height.

APPEAL:

If you wish to appeal this decision, you must do so by January 17, 2025 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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cc: ZHE File
Zoning Enforcement
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