



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

Jo Ann Yates (Agent, Kenyatta Harris)	Special Exception No:	VA-2024-00032
request a conditional use to allow cannabis	Project No:	PR-2024-009347
consumption for Lot 7B1, Block D,	Hearing Date:	4-16-24
County Addn, located at 1302 Broadway	Closing of Public Record:	4-16-24
Boulevard NE, zoned NR-LM [Section	Date of Decision:	5-01-24
14-16-4-3(D)(35)(i)]		

On the 16th day of April, 2024, Kenyatta Harris, agent for property owner, Jo Ann Yates (“Applicant”), appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow cannabis consumption (“Application”) upon the real property located at [] (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow on-site cannabis consumption.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. Applicant has duly authorized Agent to act on Applicant’s behalf regarding the Application.
4. All property owners within 100 feet and affected neighborhood association(s) were notified.
5. 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).
6. The subject property is currently zoned NR-LM. Therefore, pursuant to the IDO, a Conditional Use Approval is required for the requested use.
7. 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 adopted ABC Comp Plan, as amended.*
 - (b) *It complies with all applicable provisions of this 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 a 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.*
8. 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).
 9. 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).
 10. An existing cannabis retail business operates on the Subject Property.
 11. The Application fails to establish that the proposed conditional use will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community (as required by IDO Section 14-16-6-6(A)(3)(c)), because:
 - a. A next-door neighbor testified that cannabis odors are already smelled in his residence, which odors emanate from Applicant’s existing cannabis retail establishment and a nearby cannabis business.
 - b. These odors have a negative impact on the neighbor’s residence and home business, as testified under oath by the neighbor.
 - c. No odor control plan was submitted to provide evidence of how such and other odors may be eliminated.
 - d. A community association representative submitted written evidence and testified that allowing cannabis consumption would create significant adverse impacts on the surrounding neighborhood, or the larger community by increases in traffic, congestion, adverse environmental impacts through odors and potential toxins, and location in proximity to nearby schools.
 12. Because all prongs of the conditional use test must be satisfied and, as stated above, the Application failed to satisfy IDO Section 14-16-6-6(A)(3)(c), the Application must be denied.
 13. Out of considerations of administrative and quasi-judicial economy, the ZHE will not summarize any analysis of the remaining prongs of the test in this Notification of Decision.

DECISION:

DENIAL of a conditional use to allow on-site cannabis consumption.

APPEAL:

If you wish to appeal this decision, you must do so by May 16, 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:

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