



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

Jana Quintero requests a conditional use to allow for cannabis retail within 600 ft of another cannabis retail location for Lot 6, Block 8, Mesa Grande Addn, located at 4012 Central Ave SE, zoned MX-M [Section 14-16-4-3(D)(35)(c)]

Special Exception No:..... **VA-2022-00155**
Project No: **Project#2019-002179**
Hearing Date: 08-16-22
Closing of Public Record: 08-16-22
Date of Decision: 08-31-22

On the 16th day of August, 2022, property owner Jana Quintero (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for cannabis retail within 600 ft of another cannabis retail location (“Application”) upon the real property located at 4012 Central Ave SE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for cannabis retail within 600 ft of another cannabis retail location.
2. 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;*
 - (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 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).

4. The 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).
5. Applicant appeared and gave evidence in support of the Application.
6. The City Traffic Engineer submitted a report stating no objection to the Application.
7. All property owners within 100 feet and affected neighborhood association(s) were notified.
8. 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)(4).
9. The ZHE finds that the Applicant has authority to pursue this Application.
10. A facilitated meeting was held among Applicant and community members, and resulted in a Land Use Facilitation Program Project Meeting Report, in the record on this matter.
11. Applicant provided evidence that:
 - a. Applicant’s existing business at the Subject Property, Duke City Herbs, has been in business for over seven years.
 - b. Applicant’s shop offers over 200 herbal formulations for its customers in a holistic and health oriented offering.
 - c. Cannabis would be added to this product line if the Application is approved.
 - d. Adding cannabis would help existing customers as well as any new customers learn about the herbs and what may help them.
 - e. Offering recreational cannabis would also provide another option for customers who wait in long lines at the adjacent dispensary, thereby alleviating traffic and congestion.
 - f. Applicant’s business has received a State license to retail cannabis products as well as a courier service license to deliver such products.
12. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval is consistent with the ABC Comp. Plan, as amended. Specifically, Applicant testified and confirmed in submitted written evidence that the community and surrounding neighborhoods would benefit from the approval of the requested Conditional Use as it would help create new jobs within a new market sector and aid towards the growth and expansion of local small businesses and entrepreneurship within the community and neighborhood. This aligns with the goals and policies of the ABC Comp. Plan, as one of its goals is to “foster a culture of creativity and entrepreneurship and encourage private businesses to grow.” ABC Comp. Plan Goal 8.2. Further, the ABC Comp. Plan encourages the “cluster [of] compatible businesses to allow for more efficient movement of goods, services, and workers”. ABC Comp. Plan Policy 8.2.3(c).
13. Applicant has met its 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. Specifically, 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.

14. Applicant has met its 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. Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact, but would in fact enhance the Subject Property, Applicant's business, and its customers by expanding the existing product line offered in a holistic herbal health store offering.
 - b. Several opponents objected to the Conditional Use request, arguing that having cannabis retailers next-door to one another would violate the IDO, but did not identify any specific harm that would result from approval of the Application.
 - c. Similarly, several supporters voiced general support without citing any benefit or why no adverse conditions would result.
 - d. Other opponents argued that City Council Amendment B12, which passed and is incorporated into the IDO to create the 600-foot distance requirement for cannabis retailers without a conditional use permit, states in its narrative explanation that "This amendment seeks to strike a balance between the economic development opportunities that recreational cannabis offers, while still ensuring that no area or areas, have significant clusters of businesses." However, it appears that this narrative explanation is set forth by the amendment's sponsor and may not represent the intent of the City Council as a whole, or of any other Councilor, regarding the amendment. Accordingly, it appears that this narrative language lacks the force of law or official City policy.
 - e. On the other hand, the ABC Comp. Plan, which is formally adopted City policy, encourages the "cluster [of] compatible businesses to allow for more efficient movement of goods, services, and workers". ABC Comp. Plan Policy 8.2.3(c).
 - f. Supporters voiced that Applicant's shop attracts a different clientele than other cannabis establishments, because Applicant's customers are more interested in medicinal and health reasons rather than using cannabis as an intoxicant.
 - g. Weighing the evidence on its merits, the ZHE finds that substantial evidence exists to establish that the requested Conditional Use approval will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community, given the holistic nature of Applicant's product line and that approval of the Application would result only in the addition of cannabis to that existing line.
15. Applicant has met its 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. Specifically, Applicant confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact and would not increase traffic congestion, parking, congestion, noise, or vibration. See also the evidence and arguments cited in paragraph 14, above.
16. Applicant has met its burden of providing evidence that establishes that the requested Conditional Use approval will not increase non-residential activity within 300 feet of a lot in any residential zone district between the hours of 10:00 pm and 6:00 am. Specifically,

Applicant confirmed in written submittals that non-residential activity would not increase in any prohibited manner.

17. 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. Specifically, Applicant confirmed in written submittals that no negative impact on pedestrian or transit connectivity would result.
18. IDO Section 14-16-4-3(D)(35) requires the following Use-Specific Standards for Cannabis Retail:

- 4-3(D)(35)(a) *Cannabis retail is allowed, provided that the establishment complies with all New Mexico State law requirements, including but not limited to any required spacing from other uses or facilities. For the purposes of the IDO, all measurements for this use shall be from the lot(s) that include the cannabis retail establishment to be licensed by the State as a “licensed premises” as defined by Sections 26-2C-1 to 26-2C-42 NMSA 1978.*
- 4-3(D)(35)(b) *Establishments with a valid license from the State under the medical cannabis program as of April 1, 2022 pursuant to Sections 26-2B-1 to 26-2B-10 NMSA 1978 (the Lynn and Eric Compassionate Use Act) are entitled to continued and uninterrupted operations and are allowed permissively as a cannabis retail use after issuance of a license(s) from the State under Sections 26-2C-1 to 26-2C-42 NMSA 1978. These establishments are not subject to the distance separation requirements in Subsection (c) or (d) below or the prohibition in Subsection (h) below.*
- 4-3(D)(35)(c) *If located within 600 feet of any other cannabis retail establishment, this use shall require a Conditional Use Approval pursuant to Subsection 14-16-6-6(A), unless associated with an establishment licensed by the State as a cannabis microbusiness. Nothing herein prohibits multiple licenses from operating from a single “licensed premises” as defined by Sections 26-2C-1 to 26-2C-42 NMSA 1978.*
- 4-3(D)(35)(d) *This use is prohibited within 300 feet of any school or child day care facility.*
- 4-3(D)(35)(e) *This use shall not include a storage or display area outside of fully enclosed portions of a building.*
- 4-3(D)(35)(f) *Cannabis products or cannabis paraphernalia shall not be displayed within 5 feet of a window or door.*
- 4-3(D)(35)(g) *A locked vault or safe or other secured storage structure shall be installed in the building, bolted to the floor or walls, to store cash and cannabis products overnight.*
- 4-3(D)(35)(h) *A drive-through or drive-up facility is prohibited as accessory to cannabis retail, pursuant to IDO Subsection 14-16-4-3(F)(4).*
- 4-3(D)(35)(i) *All of the following provisions are required for licensed on-site cannabis consumption.*

1. *Notwithstanding other provisions in this Subsection 14-16-4-3(D)(35), this use requires a Conditional Use Approval pursuant to Subsection 14-16-6-6(A) when proposed to include licensed on-site cannabis consumption, which is licensed separately by the State under Sections 26-2C-1 to 26-2C-42 NMSA 1978.*
2. *If the cannabis retail establishment is licensed by the State for on-site cannabis consumption, and smoking or vaporizing is proposed to occur on-site, a cannabis odor control plan approved by the City is required pursuant to Subsection 14-16-6-5(G) (Site Plan – Administrative), Subsection 14-16-6-6(I) (Site Plan – DRB), or Subsection 14-16-6-6(J) (Site Plan – EPC), as applicable.*
3. *Licensed on-site cannabis consumption areas that allow smoking or vaporizing shall be conducted within fully enclosed portions of a building.*

4-3(D)(35)(j) In the MX-T zone district, this use is prohibited, unless associated with an establishment licensed by the State as a cannabis microbusiness, in which case this use shall not exceed 10,000 square feet of gross floor area.

4-3(D)(35)(k) This use is prohibited in the Old Town - HPO-5.

19. Applicant has met its burden of providing evidence that establishes that these use-specific criteria are satisfied.

DECISION:

APPROVAL WITH CONDITIONS of a conditional use to allow for cannabis retail within 600 ft of another cannabis retail location.

CONDITIONS:

- A. Applicant is prohibited from conducting retail sales of cannabis at the Subject Property without also operating a holistic herbal remedy shop in line with Applicant's current operations at the Subject Property, as described in the Findings, above.

APPEAL:

If you wish to appeal this decision, you must do so by September 15, 2022 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.



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