



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

Marcus Hill requests a conditional use to allow for cannabis cultivation within 300 ft of a school or daycare for Lots 22-23, Block 3, Mesa Verde Addn, located at 134 Tennessee ST NE, zoned MX-M [Section 14-16-4-3(E)(2)(c)]

Special Exception No:..... **VA-2022-00174**
Project No: **Project#2022-007277**
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 Marcus Hill (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for cannabis cultivation within 300 ft of a school or daycare (“Application”) upon the real property located at 134 Tennessee ST NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for cannabis cultivation within 300 ft of a school or daycare.
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. 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.
11. 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.
12. 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 and would in fact enhance the Subject Property, Applicant’s business, and the neighborhood by providing jobs in a much-needed area, while maintaining a clean and secure facility that would appear as any other commercial site, not attracting attention to itself as a cannabis business.
 - b. Several opponents objected to the Conditional Use request, arguing that the proposed use would cause harm in the form of increased traffic, crime, cannabis smell, and addiction.
 - c. Applicant stated that there would be no retail sales that would drive traffic. The only traffic would be generated by the few workers and occasional deliveries, just as any other commercial site. Applicant will operate a secure facility and implement technology to prevent any cannabis-related odors from escaping. Retail sales or use of cannabis on site would be prohibited.
 - d. 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 discreet nature of Applicant's proposed use and the factors discussed, above.

13. 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 12, above.
14. 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.
15. 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.
16. IDO Section 14-16-4-3(E)(2) requires the following Use-Specific Standards for Cannabis Retail:

4-3(E)(2)(a) *Cannabis cultivation 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 cultivation 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(E)(2)(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 or, where allowed as a conditional use in Table 4-2-1, as an approved conditional 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) below.*

4-3(E)(2)(c) *Within 300 feet of a school or child day care facility, this use shall require a Conditional Use Approval pursuant to Subsection 14-16-6-6(A), except as specified in Subsection (b) above.*

4-3(E)(2)(d) *This use shall be conducted within the fully enclosed portions of a building, with the following exceptions.*

1. *In any Non-residential zone district, an incidental storage area is allowed outside of the fully enclosed portions of a*

building but must be screened from view from each property line as described in Subsection 14-16-5-6(G) (Screening of Mechanical Equipment and Support Areas).

2. *In any Non-residential zone district, a Conditional Use Approval pursuant to Subsection 14-16-6-6(A) is required in order to conduct any other specific activities outside of the fully enclosed portions of a building.*

4-3(E)(2)(e) *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.*

4-3(E)(2)(f) *In any Mixed-use zone district, this use shall not exceed 10,000 square feet of gross floor area.*

4-3(E)(2)(g) *This use is prohibited in the Old Town - HPO-5.*

17. 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 cultivation within 300 ft of a school or daycare.

CONDITIONS:

- A. Applicant will prevent any cannabis-related odors from escaping the buildings on the Subject Property.
- B. Retail sales or use of cannabis are prohibited on the Subject Property.
- C. Any signage visible from outside the Subject Property will not advertise that the Subject Property is being used for cannabis cultivation.

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.



Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement
Marcus Hill, fromrags2richesmh@gmail.com
Hue Huynh, 121 Tennesse, 87108
Bernardo Garcia, 121 Tennesse, 87108
PattiGarcia, 121 Tennesse, 87108