



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

Una Esquina LLC (Agent, Consensus Planning) requests a conditional use to allow for the retail of cannabis located within 600 ft of another cannabis retail establishment for Lot 3, Block 2, Bel Air, located at 2837 San Mateo BLVD NE, zoned MX-L [Section 14-16-4-3(D)(35)(c)]

Special Exception No:..... **VA-2022-00080**
Project No: **Project#2022-006815**
Hearing Date: 06-21-22
Closing of Public Record: 06-21-22
Date of Decision: 07-06-22

On the 21st day of June, 2022, Consensus Planning, agent for property owner Una Esquina LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for the retail of cannabis located within 600 ft of another cannabis retail establishment (“Application”) upon the real property located at 2837 San Mateo BLVD NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for the retail of cannabis located within 600 ft of another cannabis retail establishment.
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. Agent for Property Owner appeared and gave evidence in support of the application.
6. 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, Agent 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.
7. 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, Agent testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements. No prior permits or approvals apply.
8. 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. Agent testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact and would in fact enhance the property as several commercial businesses will benefit from the additional customers generated by the Cannabis Retail Establishment.
 - b. Opponents of Applicant’s application objected to the Conditional Use request, arguing that having cannabis retailers within 600 feet of each other would create competition, and therefore directly impact the future success of the already established cannabis retailer and the new cannabis retailer. However, opponents pointed to no provision of either the IDO or the ABC Comp. Plan that would address business competition, much less curtail competition. Rather, 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).
 - c. Opponents also appeared to argue that having a failed cannabis retail establishment would increase crime by creating a vacancy of commercial space. However, no provision of the IDO or Comp Plan were referenced that would support this argument, nor was any reference made to any other instance outside cannabis retail where the IDO or Comp plan seek to prohibit or curtail business competition as a way of avoiding vacancies in commercial space. Weighing on the merits, the ZHE finds that any business competition resulting from allowing cannabis retailers within 600 feet of each other does not create a significant

adverse impact to adjacent properties, the surrounding neighborhood, or the larger community.

- d. Additionally, property owners within 100 feet and affected neighborhood association(s) stated no objection to Applicant's application.
 - e. On balance, 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.
9. 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, Agent 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.
 10. 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, Agent confirmed in written submittals that non-residential activity would not increase in any prohibited manner.
 11. 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, Agent confirmed in written submittals that no negative impact on pedestrian or transit connectivity would result.
 12. IDO Section 14-16-4-3(D)(35) requires the following Use-Specific Standards for Cannabis Retail:
 - (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*
 - (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*
 - (c) *If located within 600 feet of another 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*
 - (d) *This use is prohibited within 300 feet of any school or child daycare facility.*
 - (e) *This use shall not include a storage or display area outside of fully enclosed portions of a building.*

(f) 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 commercial on-site cannabis consumption, which is licensed separately by the State under Sections 26-2C-1 to 26-2C-42 NMSA 1978.

(g) If the cannabis retail establishment is licensed by the State for commercial on-site cannabis consumption, and smoking or vaporizing is proposed to occur on-site, an 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 relevant

(h) In the MX-T zone district, this use is prohibited, unless associated with an establishment licensed by the State as a cannabis microbusiness

13. Applicant has met its burden of providing evidence that establishes that these use-specific criteria are satisfied.
14. The City Traffic Engineer submitted a report stating no objection to the Application.
15. All property owners within 100 feet and affected neighborhood association(s) were notified.
16. 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).
17. The ZHE finds that the Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a conditional use to allow for the retail sale of cannabis located within 600 ft of another cannabis retail establishment.

APPEAL:

If you wish to appeal this decision, you must do so by July 21, 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

Consensus Planning, cp@consensusplanning.com, Johnson@consensusplanning.com

Adam Amestoy adam@amestoy.net

Ernest Baca, 5716 Menaul NE, 87110

Pierre Amestoy, 5737 Menaul BLVD NE, 87110

Sarah Hennesy, 4820 Summersville DR NW, 87120

Franci Gabaldon, 20 Brazos TRL CT, 87043