



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

Kinsella Investment Company, LLC (Agent, Matt Chadwick) requests a conditional use to allow cannabis retail within 600 feet of another cannabis retail for Lot A, Block 14, Miramontes Park Unit 1, located at 5715 Menaul BLVD NE, zoned MX-M [Section 14-16-4-3(D)(35)(c)]

Special Exception No:..... **VA-2022-00082**
Project No: **Project#2022-006817**
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, Matt Chadwick, agent for property owner Kinsella Investment Company, LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow cannabis retail within 600 feet of another cannabis retail (“Application”) upon the real property located at 5715 Menaul BLVD NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow cannabis retail within 600 feet of another cannabis retail.
2. This matter came before the ZHE after continuance of the Application from the May 2022 ZHE hearing, at which the ZHE requested that the parties supplement the record with additional evidence regarding whether the requested conditional use would create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community. Despite the ZHE’s request, no additional evidence was submitted during the period between the May and June ZHE hearings.
3. 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

4. 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).
5. 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).
6. All property owners within 100 feet and affected neighborhood association(s) were notified.
7. 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).
8. The ZHE finds that the Applicant has authority to pursue this Application.
9. Agent for property owner appeared and gave evidence in support of the Application. Several community members also appeared and spoke in opposition to the Application.
10. Regarding IDO Section 14-16-6-6(A)(3)(c), Applicant has failed to establish that the requested conditional use will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.
 - a. The owner of the restaurant located next door to the Subject Property appeared and testified that her restaurant is located in a strip-mall type shopping center, where there is an existing cannabis retail establishment next door and immediately to the east of her restaurant, while the Subject Property is located next door and immediately to the west of her restaurant. Accordingly, the restaurant shares walls with both the existing cannabis retail to the east and the proposed cannabis retail to the west. The restaurant owner testified that her restaurant and the entire shopping center has experienced increases in traffic, congestion, and visitors who have exhibited harassing behavior since the establishment of the existing cannabis retail establishment next door, and that these adverse impacts are a result of the existing cannabis retail establishment next door. The restaurant owner testified that the addition of another cannabis retail establishment would only compound these existing problems in the shopping center and for her restaurant.
 - b. Applicant cited no mitigating circumstances or measure that would be taken to prevent these adverse impacts, other than the operation of its business pursuant to applicable laws and best practices.
 - c. On balance, the ZHE finds that the Applicant did not establish upon substantial evidence that the requested conditional use will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.
11. Because all prongs of the conditional use test must be satisfied and, as stated above, Applicant failed to satisfy IDO Section 14-16-6-6(A)(3)(c), the Application must be denied. Consequently, in the interest of administrative and quasi-judicial economy, the ZHE will not examine the other prongs of the conditional use test.

DECISION:

DENIAL of a conditional use to allow for cannabis retail within 600 feet of another cannabis retail.

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.



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cc:

ZHE File
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