



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

Central Ave & Atrisco Pros Real Est LLC c/o SLK Global Solutions America (Agent, New Mexico Accounting Specialists) requests a conditional use to allow for nicotine retail in an MX-M zone and within 500 ft of a residential zone district for Lot A, Rancho Village Partners, located at 4201 Central AVE NW, zoned MX-M [Section 14-16-4-3(D)(40)(b)(2)]

Special Exception No:..... **VA-2022-00218**
Project No: **Project#2020-004242**
Hearing Date: 09-20-22
Closing of Public Record: 09-20-22
Date of Decision: 10-05-22

On the 20th day of September, 2022, New Mexico Accounting Specialists, agent for property owner Central Ave & Atrisco Pros Real Est LLC c/o SLK Global Solutions America (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for nicotine retail in an MX-M zone and within 500 ft of a residential zone district (“Application”) upon the real property located at 4201 Central AVE NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a Conditional Primary Use to allow for nicotine retail in an MX-M zone and within 500 ft of a residential zone district.
2. The City of Albuquerque Code of Ordinances 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 10:00 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 ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-4(N)(1).
4. Aaron Sheridan with New Mexico Accounting Specialists, agent for property owner Central Ave & Atrisco Pros Real Est LLC c/o SLK Global Solutions America appeared and gave evidence in support of the application. A Letter of Authorization from the property owner was submitted by Applicant and is part of the record.
5. Applicant stated he is operating under a lease from property owners and the proposed business will primarily retail smoking products with a limited amount of snack food items and other smoking accessories.
6. All property owners within 100 feet and affected neighborhood association(s) were notified.
7. Southwest Alliance of Neighborhoods, Westside Coalition of Neighborhood Associations and Southwest Coalition of Neighborhood Associations are the affected NAs and were notified of the request.
8. No reply nor request for meeting or additional information has been submitted.
9. The subject property is currently zoned MX-M.
10. The subject property is not controlled by the Airport Protection Overlay (APO), Character Protection Overlay (CPO), Historic Protection Overlay (HPO), nor the View Protection Overlay (VPO) as evidenced by Zone Atlas Page K-12-Z.
11. Applicant submitted photographs and a site drawing of the subject project request site in support of the request.
12. Applicant stated an intent to hire local residents to promote local job creation and to bring additional income into the region.
13. This would promote and encourage a resilient economy, which helps achieve **ABC Comprehensive Plan, as Amended, Policy 8.1,2, A Resilient Economy: Encourage economic development efforts that improve quality of life for new and existing residents and foster a robust, resilient and diverse economy,**
14. The proposed request is consistent with the ABC Com Plan as required by Section 14-16-6-6(A)(3)(a).
15. Applicant specifically stated the business would comply with applicable state statutes governing sales of nicotine products, by required state issued identification to verify minimum age requirements for sale of nicotine products, prevent sales of products to minors, and limit entry of minors into the sales area of the business.
16. The proposed request 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 as required by Section 14-16-6-6(A)(3)(b).
17. There is a residential zone district to the west of the shopping center which is separated by an "unnamed" street.
18. This unnamed street is used exclusively for delivery to the businesses in the shopping center.
19. Applicant testified that the shopping center in which the business will operate opens only to the east and south and will have minimal impact on the residential area.
20. The business is small and located in a very active and business and will have a minimal impact on the bordering resident area.

21. The proposed request will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community as required by Section 14-16-6-6(A)(3)(c).
22. Applicant testified that the volume of sales anticipated will cause a minimal increase of traffic as a result of the requested use,
23. The proposed request 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 as required by Section 14-16-6-6(A)(3)(d).
24. Applicant testified the operating hours of the business will be from 8:00 am to 10:00 pm daily.
25. The proposed use will not increase non-residential activity within 300 feet of a lot in any residential zone between the hours of 10:00PM and 6:00AM as required by Section 14-16-6-6(A)(3)(e).
26. Applicant stated since his business volume will be small and traffic impact minimal, there will be small or no impact on pedestrian or transit connectivity.
27. The proposed use will not negatively impact pedestrian or transit connectivity, as required by Section 14-16-6-6(A)(3)(f).
28. Applicant agreed and stipulated to a prominent and permanent display of posters and materials encouraging and promoting the stopping of smoking nicotine products as a condition of the granting of the request use.
29. No one appeared or submitted anything in support or opposition of the request.
30. 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).
31. The ZHE finds that the Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

Applicant has submitted substantial evidence in support of his request for a Conditional Primary Use to allow nicotine sales in an MX-M zone under Section 14-16-6-6(A)(3) (Review and Decision Criteria– Conditional Use).

DECISION:

APPROVAL of a conditional use to allow for nicotine retail in an MX-M zone and within 500 ft of a residential zone district.

CONDITIONS:

Applicant shall permanently and prominently display posters and materials encouraging customers to stop smoking nicotine products.

APPEAL:

If you wish to appeal this decision, you must do so by October 20, 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 business 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.



Stan Harada, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement