



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

Hosni Collections LLC (Agent, Alan Selmilovic) requests a conditional use to allow for cannabis retail within 600 feet of another cannabis retail for Lot 1A, Block 5, Saraton Heights Subdivision, located at 5704 Lomas BLVD NE, zoned MX-M [Section 14-16-4-2]

Special Exception No: **VA-2023-00101**
Project No: **Project#2023-008503**
Hearing Date: 05-16-23
Closing of Public Record: 05-16-23
Date of Decision: 05-31-23

On the 16th day of May, 2023, Alan Selmilovic, agent for property owner Hosni Collections LLC (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for cannabis retail within 600 feet of another **cannabis** retail (“Application”) upon the real property located at 5704 Lomas 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 cannabis retail within 600 feet of another **cannabis** retail.
2. Although there was some question as to mailed and emailed notice, all property owners within 100 feet and affected neighborhood association(s) were notified as required by the IDO.
3. 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).
4. The ZHE finds that the Applicant has authority to pursue this Application.
5. The City Traffic Engineer submitted a report stating no objection to the Application.
6. 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*
- 7. 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).
- 8. 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).
- 9. Agent for Applicant appeared and gave evidence in support of the 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, 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.
- 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, 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.
- 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. 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 business 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. Additionally, concerns were expressed that an existing cannabis microbusiness would be disproportionately and impermissibly impacted by the proposed conditional use. The owner of the microbusiness argued that the IDO protects microbusinesses by prohibiting other cannabis retailers from locating within 600 feet of the existing microbusiness. The ZHE does not read the IDO as going so far.

IDO Section 16-14-4-3(D)(35)(c) states that, “[i]f 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.” This means, essentially that cannabis microbusinesses are given an advantage over any other cannabis retailer in that cannabis microbusinesses do not have to obtain a conditional use to locate within 600 feet of any other cannabis retail establishment. This is not the same, however, as prohibiting any new cannabis retailer from locating within 600 feet of a pre-existing cannabis business.

- d. 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.
 - e. 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. Other than concerns regarding business competition, there were few complaints or evidence of adverse impacts submitted regarding the proposed conditional use. Therefore, 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.
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, 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.
 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, Agent 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, Agent confirmed in written submittals that no negative impact on pedestrian or transit connectivity would result.
 16. 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) 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.*

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

DECISION:

APPROVAL 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 June 15, 2023 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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