



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

Nia Harris (Agent, Jose Castanda Jr.) requests a conditional use to allow for cannabis retail within 600 ft of another cannabis establishment for Lot 10, Block 8, University Heights, located at 138 Harvard DR SE, zoned MX-L [Section 14-16-4-3(D)(35)(c)]

Special Exception No: **VA-2023-00135**
Project No: **Project#2023-008753**
Hearing Date: 07-18-23
Closing of Public Record: 07-18-23
Date of Decision: 08-02-23

On the 18th day of July, 2023, Jose Castanda, agent for property owner, Nia Harris (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow for cannabis retail within 600 ft of another cannabis establishment (“Application”) upon the real property located at 138 Harvard DR SE (“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 ft of another cannabis establishment.
2. The Applicant has authority to pursue this Application.
3. The subject property is currently zoned MX-L.
4. 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, or there is a condition of approval that any Variances or Waivers needed to comply with any of these provisions must be approved or the Conditional Use Approval will be invalidated pursuant to Subsection (2)(c)2 above;*
 - (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) *On a project site with existing uses, it will not increase non- residential activity within 300 feet in any direction of a lot in any Residential zone district between the hours of 10:00 P.M. and 6:00 A.M.;*

- (f) *It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.*
5. 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).
 6. 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).
 7. Applicant appeared and gave evidence in support of the application.
 8. All property owners within 100 feet and affected neighborhood association(s) were notified as required by the IDO.
 9. 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).
 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.
 - a. 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.
 - b. Applicant also states that the proposed project is consistent with the ABC Comprehensive Plan as the subject site is located within a Major Transit Corridor with a strong transportation network.
 - c. The proposed site is located in a mixed-use neighborhood where development of a mix of residential and other uses are encouraged. The proposal would provide additional commercial goods to residents of and visitors to the neighborhood.
 - d. A community member pointed out that the Subject Property is located within the University Metropolitan Redevelopment Area Plan area, which promotes offering of food items, but is silent as to cannabis businesses. Applicant states that the proposed cannabis business would provide its customers a variety of edible goods, which would appear consistent with the cited redevelopment plan.
 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. 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. 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.*

13. Applicant has met its burden of providing evidence that establishes that these use-specific criteria are satisfied.
14. 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 area as several commercial business will benefit from the additional customers generated by the proposed cannabis retail establishment.
 - b. The owner of the existing cannabis establishment expressed opposition for this request as it may impact his business. However, it does not appear to the ZHE that business competition is an adverse impact sought to be prevented or mitigated pursuant to IDO Section 14-16-6-6(A)(3).
 - c. Also, Applicant differentiated her business from the existing business, because of the therapeutic and holistic approach of Applicant.
 - d. Several community members stated that if the proposal were approved, the consumers would have a licensed pharmacist providing goods and services, which would be unique to cannabis retail across Albuquerque.
 - e. Several community members expressed support for this request and stated that granting the conditional use will encourage diverse business owners and diverse business offerings in the area.
 - f. Community members expressed support for this request as the uniqueness of the proposal will be in line with the uniqueness of the area where the business is located, explaining that the “Bricklight District” is made up of unique businesses easily accessible to college students, and the proposed use would be consistent with the area.
15. 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. Applicant provided evidence that the requested Conditional Use approval would not create any adverse impact and would not increase traffic congestion, parking, congestion, noise, or vibration. The Subject Property has its own parking lot and is located in an area with substantial public transit resources. The City Traffic Engineer submitted a report stating no objection to the Application.
16. 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). Applicant states that the proposed project will not have hours of operation between 10:00 PM and 6:00 AM.
17. . 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.

DECISION:

APPROVAL of a conditional use to allow cannabis retail within 600 ft of another cannabis establishment.

APPEAL:

If you wish to appeal this decision, you must do so by August 17, 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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cc:

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