



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

Dominic Holguin requests a conditional use to allow cannabis consumption for Lot 5, Block 0000, San Mateo Heights Addn, located at 1027 San Mateo Boulevard SE, zoned MX-L [Section 14-16-4-3(D)(35)(i)]

Special Exception No: **VA-2024-00018**
Project No: **Project#2024-009885**
Hearing Date: 3-19-24
Closing of Public Record: 3-19-24
Date of Decision: 04-03-24

On the 19th day of March, 2024, Dominic Holguin (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow cannabis consumption (“Application”) upon the real property located at 1027 San Mateo Blvd SE, (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow cannabis consumption.
2. The ZHE finds that the Applicant has authority to pursue this Application.
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 adopted ABC Comp Plan, as amended.*
 - (b) *It complies with all applicable provisions of this 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 a 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.

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. Agent and Applicant appeared and gave evidence in support of the application.
7. Several other community members also appeared and testified, some opposed to and some in favor of the Application. The ZHE also received written submittals for and against the Application.
8. The subject property is currently zoned MX-L.
9. Regarding the requirement that the proposed conditional use be consistent with the ABC Comp. Plan, as amended, Applicant stated that his establishment is an entrepreneurial local business that has created jobs in the community and seeks to create additional new jobs with this proposed cannabis consumption use. Applicant stated that he seeks to provide a safe space for legal use of cannabis. Applicant stated that these efforts under the proposed new use would “foster entrepreneurship and encourage private business to grow.” Opponents argue that potential negative impacts of the consumption use could adversely affect neighboring businesses ability to grow, based on potential odor problems. On balance, however, with the Conditions of approval stated in this NOD to mitigate any potential negative impacts based on odor, the ZHE finds that the proposed use is consistent with the ABC Comp. Plan, as amended.
10. Regarding the requirement that the proposed use comply with all applicable provisions of this 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, the ZHE finds that with the Conditions of approval stated in this NOD to mitigate any potential negative impacts based on odor via a City-approved odor control plan, this element is satisfied.
 - a. Applicant submitted a cannabis odor control plan signed and stamped by a New Mexico-licensed professional engineer.
 - b. The odor control plan details architectural, mechanical, environmental, and other measures that would be implemented to control cannabis odor.
 - c. Several community members, including without limitation members of the public who testified under oath that they have professional experience as engineers, provided sworn testimony regarding the proposed odor control plan. During this testimony, it was pointed out that moving the cannabis odor filtration exhaust systems away from neighboring residential uses could better control odors. It was also pointed out that bathroom exhausts were not filtered under the current plan, creating a risk for escape of unfiltered odors. The ZHE finds that addressing these risks would mitigate potential weaknesses in the odor control plan stated by opponents.
11. Regarding the criteria that the proposed use “will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community” and “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”, the evidence centers on

concerns regarding the proximity of public schools to the Subject Property (as well as the potential odor problems discussed, above). Neighbors raised concerns that having cannabis users leaving the subject property intoxicated would create adverse impacts on the public by increasing the likelihood of traffic accidents, including without limitation accidents involving pedestrian children and families walking to and from school for regular classes and before- and after-school programs. Opponents cited studies purporting to find that cannabis use impairs driving, while Applicant cited studies purporting to find that cannabis does not unduly impair driving skills. Applicant also responded that all employees would abide by training programs and all federal and state regulations and best practices regarding serving cannabis and prohibiting serving to intoxicated persons. The ZHE finds that the risk to the public cited may be mitigated by Applicant's employees' adherence to the training and standards cited, as well as by limiting hours of cannabis consumption at the Subject Property to begin two-hours after regular school classes are dismissed and to end no later than 10:00PM on days school is in session.

12. 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), because of the relevant condition stated herein.
13. With the conditions of approval imposed, the proposed use will not negatively impact pedestrian or transit connectivity, as required by Section 14-16-6-6(A)(3)(f). Further, City Transportation issued a report stating no objection to the Application.

DECISION:

APPROVAL WITH CONDITIONS of the requested conditional use to allow cannabis consumption.

CONDITIONS:

- A. Applicant must obtain approval of its cannabis odor control plan by City Code Enforcement, with the following revisions:
 - 1) All cannabis filtration exhaust vents must be moved as far away as reasonably practicable from existing residential uses.
 - 2) All bathroom exhausts must not vent directly to the outside, but instead must be routed through the cannabis odor filtration system.
- B. On days school is in session, cannabis consumption on the Subject Property is limited to begin two-hours after regular school classes are dismissed and ending no later than 10:00PM. On days school is not in session, cannabis consumption on the Subject Property is prohibited between the hours of 10:00 P.M. and 6:00 A.M.

APPEAL:

If you wish to appeal this decision, you must do so by April 18th, 2024 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.

A handwritten signature in blue ink, appearing to read "Robert Lucero".

Robert Lucero, Esq.
Zoning Hearing Examiner

cc:

ZHE File
Zoning Enforcement