



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

Smart Assets LLC (Agent Benjamin Franz) requests a conditional use to allow cannabis consumption on site for Lot 2a-2, Block 29, Snow Heights Division, located at 2120 Eubank Blvd NE, zoned MX-M, [Section 14-16-4-3(D)(35)(i)]

Special Exception No: ..... **VA-2024-00088**  
Project No: ..... **Project#2024-010162**  
Hearing Date: ..... 5-21-24  
Closing of Public Record: ..... 5-21-24  
Date of Decision: ..... 6-5-24

On the 21<sup>st</sup> day of May, 2024, Benjamin Franz, agent for property owner, appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow cannabis consumption on site (“Application”) upon the real property located at 2120 Eubank Blvd NE (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a conditional use to allow cannabis consumption on site.
2. The ZHE finds that the Applicant has authority to pursue this Application.
3. Applicant has duly authorized Agent to act on Applicant’s behalf regarding the Application.
4. All property owners within 100 feet and affected neighborhood association(s) were notified.
5. 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).
6. The Subject Property is zoned MX-T. Therefore, allowing on-site cannabis consumption on Subject Property requires a Conditional Use Approval pursuant to IDO Subsection 14-16-6-6(A).
7. The City of Albuquerque Code of Ordinances 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 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 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 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.”*

8. 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).
9. 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).
10. Agent appeared and gave evidence in support of the Application.
11. Applicant has met the burden of providing evidence that established that the requested Conditional Use Approval is consistent with the ABC Comp. Plan, as amended. Applicant submitted evidence supporting that the requested Conditional Use approval furthers the goals and policies of the ABC Comp. Plan by helping to ensure appropriate scale and location of development and character of design, placing new development along corridors, and providing employment and services for the area.
12. Applicant has met the 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. Applicant submitted evidence that, if granted this approval, development and operation of the Subject Property would take place in accordance with IDO requirements. It appears that no prior approvals would affect the Application.
13. Applicant has met the 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. Applicant submitted evidence that it will have a “more than adequate air filtration system” to address smoke and vapor from cannabis consumption. However, Applicant did not submit an odor control plan approved by City Code Enforcement. Applicant must prepare an odor control plan and obtain approval of that plan by City Code Enforcement as a condition of the proposed use.
14. Applicant has met the 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 Subject Property has ample parking and access, and therefore no negative impacts to congestion of traffic of parking would result. No noise or vibration would result.

15. Applicant has met the burden of providing evidence that establishes that the requested Conditional Use approval 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. Applicant confirmed in written submittals that non-residential activity would not increase in any prohibited manner.
16. Applicant has met their burden of providing evidence that establishes that the requested Conditional Use approval will not negatively impact pedestrian or transit connectivity without appropriate mitigation. Applicant submitted evidence that there will be no modification to the lot, sidewalks, traffic access, roadways, or any other areas that would negatively impact pedestrian or traffic connectivity.
17. The City Traffic Engineer submitted a report stating no objection to the Application.

DECISION:

APPROVAL WITH CONDITION of a conditional use to allow on-site cannabis consumption.

CONDITION:

Applicant must obtain City approval of a cannabis odor control plan pursuant to IDO Section 14-16-4-3(D)(35)(I).

APPEAL:

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



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Robert Lucero, Esq.  
Zoning Hearing Examiner

cc:

ZHE File

Zoning Enforcement