



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

Quik Trip, LLC/ Eagle Investors, Inc. (Agent, Michael Cadigan, Cadigan Law Firm, P.C.) requests a Conditional Use to allow Nicotine retail in the NR-BP for Lot A2C2, Clifford West Bus. Park Unit 3, located at 521 Unser Blvd NW, zoned NR-BP [Section 14-16-4 Table 4-2-1]

Special Exception No: **VA-2024-00306**
Project No: **PR-2024-011181**
Hearing Date: 12-17-24
Closing of Public Record: 12-17-24
Date of Decision: 01-02-24

On the 17th day of December, 2024, Michael Cadigan, Cadigan Law Firm, P.C.) , agent for property owner, Quik Trip, LLC/ Eagle Investors, Inc. (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow Nicotine retail in the NR-BP (“Application”) upon the real property located at 521 Unser Blvd NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow Nicotine retail in the NR-BP zone.
2. The Subject Property is located within 1,000 feet of a preexisting nicotine retail use.
3. The IDO’s Use Specific Standards pertaining to nicotine retail use provide, in pertinent part, in Section 4-3(D)(40), that nicotine retail “use is prohibited within 1,000 feet in any direction of a lot containing any other primary nicotine retail use.”
4. Applicant has filed a companion application for a variance to the 1,000 feet requirement in Section 4-3(D)(40).
5. It appears that if the companion variance application fails, then this Application must fail as well. See IDO Section 6-6-(A)(2)(c)(2): “If any Variance or Waiver is required in order to make an approved conditional use comply with this IDO, the DPM, or other adopted City regulations and such Variance or Waiver is not approved, the Conditional Use Approval is invalidated.
6. The ZHE has deferred the companion variance application to be heard at the January 21, 2025 ZHE hearing, which begins at 9:00 a.m.
7. This Application should likewise be deferred to be heard at the January 21, 2025 ZHE hearing, which begins at 9:00 a.m.

DECISION:

DEFERRAL of the ZHE hearing on the Application to the January 21, 2025, ZHE hearing, which begins at 9:00 a.m.

APPEAL:

Pursuant to Section 14-16-6-4(T)(2) of the Integrated Development Ordinance, a deferral is not a final decision and cannot be appealed.

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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Quik Trip, LLC/ Eagle Investors, Inc. (Agent, Michael Cadigan, Cadigan Law Firm, P.C.) requests a Variance of 640 ft to the required 1000 ft separation for a lot containing nicotine retail for Lot A2C2, Clifford West Bus, Park Unit 3, located at 521 Unser Blvd NW, zoned NR-BP [14-16-4-3(D)(40)(b)]

Special Exception No:..... **VA-2024-00307**
Project No: **PR-2024-011181**
Hearing Date: 12-17-24
Closing of Public Record: 12-17-24
Date of Decision: 01-02-24

On the 17th day of December, 2024, Michael Cadigan, Cadigan Law Firm, P.C.) , agent for property owner, Quik Trip, LLC/ Eagle Investors, Inc. (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 640 ft to the required 1000 ft separation for a lot containing nicotine retail (“Application”) upon the real property located at 521 Unser Blvd NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 640 ft to the required 1000 ft separation for a lot containing nicotine retail.
2. The Subject Property is located within 1,000 feet of a preexisting nicotine retail use.
3. The IDO’s Use Specific Standards pertaining to nicotine retail use provide, in pertinent part, in Section 4-3(D)(40), that nicotine retail “use is **prohibited** within 1,000 feet in any direction of a lot containing any other primary nicotine retail use.” (Emphasis added).
4. At the December 17, 2024 ZHE hearing on the Application, the ZHE questioned whether a variance could be granted to a use prohibition expressed with reference to a distance, such as that in Section 4-3(D)(40).
5. IDO Section 14-16-6-6(O) regarding variance applications before the ZHE, “applies to all requests for Variances from an IDO **standard**.” (Emphasis added).
6. It is unclear from the record whether the distance prohibition in Section 4-3(D)(40) is an IDO standard to which the ZHE may lawfully grant a variance.
7. Variances may be granted to dimensional standards, but not to uses or to prohibitions of uses. See IDO Section 7-1, defining “variance” to mean “[e]xceptions to dimensional standards or variations from the strict, literal application of standards in this IDO or the DPM.”
8. This Application should be deferred to be heard at the January 21, 2025 ZHE hearing, which begins at 9:00 a.m., to allow Applicant to justify why a variance can and should be granted to the distance prohibition in Section 4-3(D)(40).

DECISION:

DEFERRAL of the ZHE hearing on the Application to the January 21, 2025, ZHE hearing, which begins at 9:00 a.m.

APPEAL:

Pursuant to Section 14-16-6-4(T)(2) of the Integrated Development Ordinance, a deferral is not a final decision and cannot be appealed.

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