



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

Mountain Run Partners, LTD (Agent, QT South LLC) requests a conditional use to allow for a heavy vehicle fueling station in IDO zone NR-BP for Lot 78A, MRGCD Map 36, located at 1701 12TH ST NW, zoned NR-BP [Section 14-16-4-2]	Special Exception No:	VA-2023-00294
	Project No:	PR-2023-009345
	Hearing Date:	6-18-24
	Closing of Public Record:	6-18-24
	Date of Decision:	7-03-24

On the 18th day of June, 2024, QT South, LLC, agent for property owner Mountain Run Partners, LTD (“Applicant”), through its agent, appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow a heavy vehicle fueling station in IDO zone NR-BP (“Application”) upon the real property located at 1701 12TH ST NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow a heavy vehicle fueling station in IDO zone NR-BP.
2. The Application came before the ZHE at the May 21, 2024 hearing upon remand by the City of Albuquerque Land Use Hearing Officer (“LUHO”).
3. Agent for Applicant requested that the ZHE hearing on the Application be deferred to Tuesday, June 18, 2024, beginning at 9:00 a.m.
4. At the June 18, 2024, ZHE hearing on the Application, Applicant’s agent and numerous community members testified regarding the Application.
5. 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 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.”

6. The IDO use-specific standards for heavy vehicle fueling are found in Section 4-3(D)(17), which states:

4-3(D)(17) Heavy Vehicle and Equipment Sales, Rental, Fueling, and Repair

4-3(D)(17)(a) This use must comply with stormwater quality requirements found in the DPM.

4-3(D)(17)(b) The lot must be graded and surfaced pursuant to DPM standards and shall be maintained in a level and serviceable condition.

4-3(D)(17)(c) This use must be screened as required by Subsection 14-16-5-6(G)(4) (Outdoor Storage Areas for Vehicles, Equipment, and Materials). The Planning Director may require a taller wall, fence, or vegetative screen to provide an adequate buffer for an abutting Residential zone district or lot containing a residential use in any Mixed-use zone district from the reasonably anticipated visual or noise impacts of this use.

4-3(D)(17)(d) For fueling station canopies, all under-canopy lighting shall be recessed so that no light lens projects below the canopy ceiling. The canopy fascia shall not be internally illuminated.

4-3(D)(17)(e) Vehicle repair, servicing, and maintenance shall be conducted within fully enclosed portions of a building.

4-3(D)(17)(f) Any building that contains vehicle repair, servicing, and maintenance is prohibited within 25 feet in any direction of any Residential zone district or lot containing a residential use in any Mixed-use zone district

4-3(D)(17)(g) If located within 330 feet of any Residential zone district, this use shall require a Conditional Use Approval pursuant to Subsections 14-16-5-2(E) and 14-16-6-6(A).

4-3(D)(17)(h) This use is prohibited within 330 feet in any direction of Major Public Open Space.

4-3(D)(17)(i) A cumulative impacts analysis may be required at the time of application submittal for projects within the Railroad and Spur Small Area, pursuant to Subsections 14-16-5-2(E) (Cumulative Impacts) and 14-16-6-4(H) (Cumulative Impacts Analysis Requirements).

6. It does not appear to the ZHE that there is substantial evidence in the record to establish all of these use-specific requirements.

7. It might be that compliance with certain of these use-specific criteria could be conditions of approval, were the Application approved, but there is insufficient evidence in the record to establish the appropriateness, scope, or applicability of such potential conditions.
8. The ZHE finds that a cumulative impacts analysis for the Application is required pursuant to 4-3(D)(17)(i) and the IDO sections referenced therein, including without limitation IDO section 5-2(E)(1).
 - a. As to Section 5-2(E)(1)(a), the Subject Property is located within the Railroad and Spur Small Area (i.e. within 2,640 feet [1/2 mile] of the BNSF railroad or 1,320 feet [1/4 mile] of the Sawmill Spur).
 - b. As to Section 5-2(E)(1)(b), the Subject Property is within 1,320 feet (1/4 mile) of a Residential zone district.
 - c. As to Section 5-2(E)(1)(c), the Application requests a conditional use to allow heavy vehicle fueling.
 - d. As to Section 5-2(E)(1)(d), the Subject Property is within 660 feet of at least one other use described in Section 5-2(E)(1)(c).
9. The Application should be continued to the July 16, 2024, hearing, beginning at 9:00 a.m., to allow Applicant and any interested parties to submit additional evidence regarding the Application. If a cumulative impacts analysis cannot be completed prior to the evidence submittal deadline for the July 16, 2024 hearing, the ZHE would request that Applicant notify the ZHE and interested parties of the date by which the cumulative impacts analysis will be submitted into the record by the applicable submittal deadline for subsequent hearing by the ZHE.
10. This NOD reserves judgment as to the satisfaction or failure to satisfy the other prongs of the Conditional Use criteria under 14-16-6-6(A)(3) not discussed here. Given the abundance of evidence on other criteria, the ZHE requests that additional evidence focus on the criteria discussed in this Notification of Decision. Nevertheless, new evidence on other conditional use criteria may be submitted.

DECISION:

CONTINUANCE to Tuesday, July 16, 2024, beginning at 9:00 a.m.

APPEAL:

If you wish to appeal this decision, you must do so by July 18, 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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NOTIFICATION OF DECISION

Mountain Run Partners, LTD (Agent, QT South LLC) requests a conditional use to allow for nicotine retail in an NR-BP zone for Lot 78A, MRGCD Map 36, located at 1701 12TH ST NW, zoned NR-BP [Section 14-16-4-2]	Special Exception No:	VA-2023-00295
	Project No:	PR-2023-009345
	Hearing Date:	6-18-24
	Closing of Public Record:	6-18-24
	Date of Decision:	7-03-24

On the 18th day of June, 2024, QT South, LLC, agent for property owner Mountain Run Partners, LTD (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a conditional use to allow nicotine retail in an NR-BP Zone (“Application”) upon the real property located at 1701 12TH ST NW (“Subject Property”). Below are the ZHE’s finding of fact and decision:

FINDINGS:

1. Applicant is requesting a conditional use to allow for nicotine retail in an NR-BP Zone.
2. The Application came before the ZHE at the May 21, 2024 hearing upon remand by the City of Albuquerque Land Use Hearing Officer (“LUHO”).
3. Agent for Applicant requested that the ZHE hearing on the Application be deferred to Tuesday, June 18, 2024, beginning at 9:00 a.m.
4. At the June 18, 2024, ZHE hearing on the Application, Applicant’s agent and numerous community members testified regarding the Application.
5. 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;*
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 - (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.”

6. The ZHE requests additional evidence on whether the proposed conditional use for nicotine retail is consistent with the ABC Comp. Plan, as amended, as required by Section 14-16-6-6(A)(3)(a).
7. Applicant and the LUHO remand state that Comp. Plan Policy 5.3.7 should only apply if an immediate neighbor finds a land use objectionable, which had not been the case up to the LUHO remand. However, now there is evidence in the record of an objection to the proposed conditional use by Extra Space Storage, located immediately across 12th Street from the Subject Property, and therefore an analysis of Policy 5.3.7 is warranted. The ZHE points Applicant, opponents and all concerned parties to the discussion of equitable distribution of locally unwanted land uses discussed in the ZHE’s Notification of Decision prior to appeal to the LUHO.
8. Of course, as the LUHO remand points out, individual Comp. Plan policies are not regulatory tools; they provide guidance for shaping land uses to guide the proper use and development of land. Therefore, the ZHE requests a more robust analysis by Applicant, opponents and all other concerned parties as to whether the proposed conditional use is consistent with the ABC Comp. Plan, as amended, as required by Section 14-16-6-6(A)(3)(a).
9. The ZHE also requests additional evidence on whether the proposed conditional use for nicotine retail will not create significant or material adverse impacts as discussed in Sections 14-16-6-6(A)(3)(a) and (b) and, if so, whether any conditions of approval would be appropriate to mitigate such adverse impacts
10. Applicant has mentioned several mitigating steps it would take as to any adverse impacts. However, several of these mitigations are specific to the Applicant and may prove difficult for City Code Enforcement to enforce on any subsequent owner or operator of the Subject Property. As a reminder, conditional use approvals run with the land and accrue to the benefit of future users. The ZHE would want any mitigating conditions to be enforceable as to any future user of the Subject Property. Other mitigations proposed by Applicant may not be specific enough, because they are tied to a future site plan yet to be developed. It also appears that opponents and the public have not had sufficient time to review and comment as to the site plan and use revisions discussed by Applicant’s agents at the June 18, 2024 ZHE hearing.
11. The Application should be continued to allow submittal of evidence regarding potential significant or material adverse impacts under Sections 14-16-6-6(A)(3)(a) and (b), and any appropriate mitigation measures.
12. The IDO use-specific standards for a nicotine retail are found in Section 4-3(D)(40).
13. Section 4-3(D)(40)(b) states that *“If allowed as a conditional primary use in Table 4-2-1 (i.e. indicated as “C” in the table), this use is considered a primary use for the purposes of this IDO, regardless of the use, area, or purpose of any other primary uses on the same premises and shall meet all of the following requirements, except where it is allowed as a permissive accessory use pursuant to IDO Subsection (c) below.”*

14. Section 4-3(D)(40)(c) does not apply to the Application, because the Subject Property is not zoned MX-M, MX-H, or NR-C, and because the proposed nicotine retail is not accessory to general retail or a grocery store. Therefore, Section 4-3(D)(40)(b)(1) applies.
15. Section 4-3(D)(40)(b)(1) states that nicotine retail “*is prohibited within 1,000 feet in any direction of a lot containing any other primary nicotine retail use.*”
16. Lot line to lot line, the Subject Property is located within 1,000 feet of a lot where nicotine retail sales is permitted, namely, the Walgreens property located north along 12th Street. It does not appear that Applicant or anyone else disputes the fact of this Lot line to lot line measurement.
17. Applicant asserts that the appropriate separation measurement should be from the building in which the nicotine sales is proposed to occur on the Subject Property to the nearest lot at which nicotine sales occur, and Applicant submits that such a measurement is greater than 1,000 feet.
18. Certain opponents of the Application assert that that the appropriate separation measurement should be from the nearest lot line of the Subject Property to the nearest lot line of the closest lot on which nicotine retail is a primary use.
19. Based on evidence and arguments in the record, it appears that the appropriate measure for separation of primary nicotine retail under Section 4-3(D)(40)(b)(1) is from the nearest lot line of the Subject Property to the nearest lot line of the closest lot on which nicotine retail is a primary use, for the following reasons:
 - a. The “Measurement” definition for “Separation of Uses” under IDO Section 14-16-7-1, states that, “[u]nless specified otherwise in this IDO, this distance shall be measured from the nearest point on the nearest lot line of the lot containing the regulated use to the nearest point on the nearest lot line of the lot containing the use, or in the zone district, from which the regulated use is required to be separated.”
 - b. Therefore, unless specified in a particular IDO regulation, separations of nicotine retail are measured from lot line to lot line.
 - c. The use-specific standards for nicotine retail do not specify anything to the contrary of this definition. The nicotine separation requirement is in contrast to other separation requirements in the IDO, such as liquor retail, which requires a conditional use approval when the building in which liquor retail is proposed is within 500 feet of a residential lot.
 - d. Applicant posits that the word “use” in Section 4-3(D)(40)(b)(1) requires measurement from the particular location of the use. However, the ZHE finds that the word “use” in the context of Section 4-3(D)(40)(b)(1) is not a specification of how distance shall be measured, but rather merely a label that the standards to be applied are those found in the “Separation of Uses” provisions under IDO Section 14-16-7-1, cited above.
 - e. Further, correspondence in the record from the City Zoning Enforcement Officer (ZEO), empowered under the IDO to interpret the provisions of the IDO, supports this conclusion. Even were the ZEO’s analysis not binding in this matter, it is evidence of an administrative gloss of regular interpretation and enforcement of nicotine retail separation measurements as being from lot line to lot line.
20. Based on evidence in the record, the Walgreens property has a nicotine retail use. However, there does not appear to be substantial evidence in the record to support a finding as to

whether or not the nicotine retail sales at Walgreens property is a “*primary nicotine retail use*,” as stated in Section 4-3(D)(40)(b)(1) (emphasis added).

21. The ZHE hearing on the Application should be continued to allow submittal of evidence as to whether or not the Walgreens property has a primary nicotine retail use or any other primary nicotine retail use is located within 1,000 feet of the Subject Property.
22. This NOD reserves judgment as to the satisfaction or failure to satisfy the other prongs of the Conditional Use criteria under 14-16-6-6(A)(3) not discussed here. Given the abundance of evidence on other criteria, the ZHE requests that additional evidence focuses on the criteria discussed in this Notification of Decision. Nevertheless, new evidence on other conditional use criteria may be submitted.

DECISION:

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If you wish to appeal this decision, you must do so by July 18, 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.

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