



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 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: ....	<b>VA-2023-00294</b>
	Project No: .....	<b>PR-2023-009345</b>
	Hearing Date: .....	07-16-24
	Closing of Public Record:	07-16-24
	Date of Decision: .....	07-31-24

On the 16<sup>th</sup> day of July, 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 for a heavy vehicle fueling station in IDO zone NR-BP (“Application”) upon the real property located at 1701 12<sup>th</sup> 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 a heavy vehicle fueling station in IDO zone NR-BP.
1. The Application came before the ZHE upon remand by the City of Albuquerque Land Use Hearing Officer (“LUHO”) and after continuance from the ZHE hearing on the Application held on Tuesday, June 18, 2024
2. At the July 16, 2024, ZHE hearing on the Application, Applicant’s agent and numerous community members and concerned parties testified regarding the Application. The ZHE office received Applicant’s cumulative impacts analysis after the regular ZHE submission deadline for the July 16 hearing. Also, because of the July 4 holiday, Applicant and the public had only a few days after receiving the ZHE Notification of Decision from the June 18 hearing to submit evidence for the July ZHE hearing. For these reasons, the ZHE suggested to Applicant that it may be appropriate to defer the hearing on the requested heavy vehicle fueling use to a ZHE hearing after July, and to continue to hear the nicotine retail and liquor retail conditional use requests at the July hearing. Applicant responded that it could not afford further continuances or delays, because of business deadlines, and therefore requested that the Application be heard at the July 16 hearing. Per Applicant’s request, the ZHE heard the Application and will now render a decision based on the evidence in the record. The ZHE has admitted into the record the following documents, which were submitted late, but were shown on-screen at the July 16 or described or read into the record:
  - a. Applicant’s cumulative impact statement and associated submittals;
  - b. Response to traffic impact analysis submitted by John Nawn, P.E., dated July 14, 2024, which Applicant’s agent addressed in testimony and legal argument;

3. 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. 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).
7. The 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).
8. Regarding the requirement that the requested Conditional Use Approval be consistent with the ABC Comp. Plan, as amended, Applicant submits that the proposed conditional use supports the following Comp Plan Goals, Policies, and Strategies (with regard to its Comp Plan analysis, Applicant’s justification does not clearly distinguish between the requested conditional uses for heavy vehicle fueling, nicotine retail and liquor retail; the analysis in this paragraph of this Notification of Decision focuses on the heavy vehicle fueling use):
  - a. Applicant states that the Subject Property is in an activity center. However, Comp Plan Figures 5-2 and 5-6, and other evidence in the record, establish that the activity center at 12th Street and I-40 is located entirely north of I-40, while the Subject Property is located entirely south of I-40. The Subject Property therefore is not in an activity center. Applicant states that the proposed heavy vehicle fueling is consistent with Comp Plan Goal 2.4.6, Policy 5.1.1, Policy 5.1.6, which pertain to development in activity centers or along corridors. However, the Subject Property is not located in an activity center. While I-40 is a commuter corridor, 12th Street is not a corridor. According to Applicant’s traffic study, the proposed use would divert traffic off of the I-40 commuter corridor and onto 12th street, which is not a corridor. The proposed use does not appear to be consistent with the Comp Plan Goals and policies cited in this paragraph.

- b. Applicant states that Comp Plan Goal 2.4.2. “Growing Inward” favors infill development that would be supported by the proposed conditional use. This appears correct, provided that the project is appropriately placed and sustainably developed as stated in Goal 2.4.2.
- c. Applicant cites Comp Plan Strategy 4.1.2.1: “Areas of Change.” This Project site is in an Area of Change. (Comp Plan Figure 5-6). This strategy calls for “Directing higher density and intensity development in the City to Areas of Change.” This is a higher intensity development favored by this strategy.
- d. Applicant cites Comp Plan Comp Plan Policy 5.3.1 Infill Development: Support additional growth in areas with existing infrastructure and public facilities and Policy 5.3.2 Leapfrog Development: Discourage growth in areas without existing infrastructure and public facilities, which appear to be supported by the proposed use.
- e. Applicant states that the proposed project advances Comp Plan Policy 7.2.1 Walkability: “Ensure convenient and comfortable pedestrian travel. Improve the pedestrian environment through coordinated design of subdivisions, streets, development sites, and buildings. b) Improve pedestrian safety and comfort by providing wider sidewalks, street trees and landscape buffers, lighting, on-street parking, street furniture, and waiting areas and median refuges at large or busy intersections. c) Ensure the location and design of sidewalks reflects the existing or planned character and intensity of surrounding land uses. d) Enhance existing streets and trails as linear paths connecting destinations throughout the region.” Although Applicant points out that the project would provide sidewalks, cycling trails, lighting, landscaping and street trees, it is not clear how pedestrians would be protected when attempting to cross the two proposed entrances to the for heavy vehicle fueling along 12<sup>th</sup> Street. It appears that there is insufficient evidence to determine whether the Application is consistent or inconsistent with this Policy.
- f. Applicant states that the proposed project fosters Comp Plan Policy 8.1.2 Resilient Economy, which encourages “economic development efforts that improve quality of life for new and existing residents and foster a robust, resilient, and diverse economy. a) Maximize opportunities for economic development that furthers social, cultural, and environmental goals. b) Encourage the production, local sale, and export of locally-grown and made goods. c) Prioritize local job creation, employer recruitment, and support for development projects that hire local residents. d) Grow the community’s economic base through recruitment, retention/expansion, and new business startups to bring additional income into the region. e) Encourage livable wages and high-quality work environments.” Applicant posits that the record shows extensively that this Project will bring good paying jobs, hire local residents, provide excellent benefits and modern, clean safe working environments. However, it is unclear how the proposed project diversifies the economy, given that there are similar uses within several blocks of the Subject Property. It is unclear what social, cultural or environmental goals would be furthered by for heavy vehicle fueling. There does not appear to be evidence of any significant locally-grown and made goods to be produced or sold. The proposed business is not a startup, but an existing company. It is unclear what Applicant means by “good paying” jobs and whether pay would provide a living

wage. Opponents argue that a heavy vehicle fueling station hinders social, cultural, and environmental goals in this area and that a claim of sustainability is incompatible with a fuel that produces carbon and adds to climate change. Furthermore, opponents state that QuikTrip would not be providing any electric vehicle fueling stations—solely because including EV stations is cost prohibitive. Opponents argue that, with no plan to provide for electric vehicle charging or to utilize any renewable energy in its operation, QuikTrip has made clear it will not provide a healthy, positive long-term amenity to the neighborhood. Rather, it will continue the exploitation of poorer neighborhoods, already disproportionately impacted by environmental pollution. On balance, it appears that the Application is more inconsistent than consistent with this Policy.

- g. Comp Plan Policy 5.3.7 “Locally Unwanted Land Uses: “Ensure that land uses that are objectionable to immediate neighbors but may be useful to society are located carefully and equitably to ensure that social assets are distributed evenly and social responsibilities are borne fairly across the Albuquerque area. “a) Minimize the impacts of locally unwanted land uses on surrounding areas through policies, regulations, and enforcement. b) Ensure appropriate setbacks, buffers, and/ or design standards to minimize offsite impacts.” The Applicant states it is committed to “minimizing impacts” by mitigating traffic problems, improving pedestrian and bike facilities, and using high tech security and lighting to avoid the facility from becoming a nuisance. The Applicant states that it would “minimize the impacts” of the allegedly locally unwanted land uses through infrastructure “policies” “enforcement” and “buffers.” Again, however, it is unclear how pedestrians and bicyclists would be protected when trying to navigate across and in the vicinity of the Subject Property once the access points for heavy vehicle fueling are built. It appears that there is insufficient evidence to determine whether the Application is consistent or inconsistent with this Policy.
- h. Opponents of the Application point out that in adopting the current Comp Plan, the City recognized it as a “regional plan for healthy growth, efficient transportation, infrastructure needs, and land use policies to ...better serve all demographics, support alternative transportation modes to the automobile and improve efforts to grow and develop in ways that are sustainable, respect and preserve natural and cultural resources and improve the quality of life for all citizens.” R-16-108, pp. 1-2. The entire Comp Plan is built around a community- and value-based framework of Guiding Principles including:
  - STRONG NEIGHBORHOODS** • Neighborhoods provide quality of life and remain distinct, vibrant places to live. • **Development in established neighborhoods matches existing character and promotes revitalization where desired.** • **Established neighborhoods are protected, preserved, and enhanced.**
  - MOBILITY** • **Complete, walkable neighborhoods** with a range of housing and amenities **make non-auto transportation options safer and more accessible.**
  - EQUITY** • Community Planning Area assessments in the City and Sector Planning in the County **identify existing conditions and use equity measures to prioritize revitalization.**

SUSTAINABILITY • Strong and vibrant neighborhoods foster social connections and encourage resource-sharing. • **Sustainable neighborhood design integrates green infrastructure.**

COMMUNITY HEALTH • **Healthy neighborhoods protect residents from hazards,** encourage physical activity, and foster positive social interactions. • A range of **amenities in neighborhoods reduces the need to drive,** increasing active transportation opportunities

2017 Comp. Plan, pp. 3-8 (emphasis added). Opponents maintain that the proposed project is inconsistent with the emphasized principles.

- i. Opponents also submit that the Comp Plan provides for the City to undertake extensive community engagement focused on area specific planning and development through periodic Community Planning Area (CPA) Assessments. The proposed location for QuikTrip’s heavy vehicle fueling falls within the Central Albuquerque CPA. According to the Draft Assessment Report for the Central Albuquerque CPA, issued November 2023 (Draft CPA Report), the Central Albuquerque area contains some of the highest recorded temperatures in the City due to the heat island effect, and has a long history of noise and air pollution. The Draft CPA Report further reveals that during the area assessment, community members and stakeholders frequently expressed concern about industrial contamination and pollution, including air, water, soil, noise, and light pollution; raised a range of planning priorities for the CPA related to reducing pollution; and expressed strong support for green infrastructure and sustainable resource management. Opponents argue that a heavy vehicle fueling station is not in line with these community priorities for green and sustainable development, and would exacerbate concerns related to pollution. The Draft CPA Report also reveals that walkability and bike access were among the highest reported priorities for community members in the Central ABQ area. Opponents argue that Development of a heavy vehicle fueling station at 1701 12th Street, which would increase semi-truck and other vehicle traffic, is not in line with community priorities for a more walkable and bike-friendly environment, and poses an increased safety risk for non-motorists.
  - j. Opponents state that Comp Plan Policy 5.5.5(f) provides the City “[e]ncourage the location, intensity, and design of new development to respect existing neighborhood values, natural environmental conditions and carrying capacities.” Opponents observe that community members were vocal through the CPA assessment process about valuing walkability, green infrastructure, and sustainable resource management, and about their concern with environmental pollution. Opponents argue that the location of a heavy vehicle fueling station at the Subject Property therefore does not respect known, existing neighborhood values nor does it recognize the carrying capacity of the surrounding area for another environmentally polluting industry development.
  - k. Based on the foregoing, the ZHE finds that the proposed heavy vehicle fueling use is not consistent with the Comp Plan.
9. The evidence and justification in the record fails to establish that the proposed heavy vehicle fueling use: 14-16-6-6(A)(3)(c) will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community; 14-16-6-

6(A)(3)(d) 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; or 14-16-6-6(A)(3)(f) will not negatively impact pedestrian or transit connectivity without appropriate mitigation, for the following reasons:

- a. Several reports by professional engineers concerning traffic were submitted into the record:
  1. Letter re Traffic Impact Analysis of the proposed QuikTrip #7000, dated June 12, 2024, prepared by John A. Nawn, P.E., on behalf of opponents;
  2. Letter in response to the above-cited Traffic Impact Study, dated June 12, 2024, by Lee Engineering, prepared on behalf of Applicant;
  3. Letter re Bicycle Interaction with Heavy Fueling Station Location, dated June 12, 2024, prepared by Timothy Brown, P.E., Traffic Engineering Division Manager, Department of Municipal Development, City of Albuquerque;
  4. Traffic Impact Study (“TIS”), dated July 2024, by Lee Engineering, prepared on behalf of Applicant;
  5. Letter re Traffic Impact Analysis of the proposed QuikTrip #7000, dated July 14, 2024, prepared by John A. Nawn, P.E., on behalf of opponents.
- b. The June 12 Nawn letter pointed out discrepancies and potential problems with the locations of access points near merging through traffic lanes, vehicle trip counts, and compatibility with other transportation modes on 12<sup>th</sup> Street. Many, but not all of these concerns were addressed by Lee Engineering’s June 12 letter, and the site plan was apparently revised to include only right-in, right-out and left-out access at the proposed southern access point.
- c. The LUHO remand stated that during the LUHO’s review, there was no direct evidence of how heavy vehicle fueling would negatively impact pedestrian and bicycle transit, including the proposed Rail Trail. The June 12, 2024 Brown letter expressly shows how the heavy vehicles pose unique dangers to pedestrians and cyclists, which Mr. Brown concludes are not mitigated by the proposed deceleration lane.
- d. Counsel for Applicant cross-examined Mr. Nawn and elicited an admission from Mr. Nawn that it was contrary to regulations governing professional engineers for Mr. Nawn to testify in a New Mexico venue as to New Mexico project when Mr. Nawn is not a New Mexico-licensed professional engineer. However, whether Mr. Nawn is or is not violating regulations governing his professional licensing appears to have no binding effect on whether the ZHE may consider Mr. Nawn an expert regarding traffic engineering, which the ZHE does based on Mr. Nawn’s resume, background, and testimony.
- e. In the record, there is substantial discussion as to whether or not the proposed project is a “truck stop.” Counsel for Applicant adamantly denied that the project is a truck stop. Nevertheless, the July Lee Engineering Traffic Impact Study uses the Truck Stop (ITE 950) category (in addition to the Gasolene/Service Station ITE 944 category) to calculate traffic numbers.
- f. Based on the square footage of the proposed convenience store, the ZHE finds, as pointed out by the July 14 Nawn letter, that the ITE 945 Convenience Store/Gas

Station category is the more appropriate category than the Gasolene/Service Station ITE 944 category employed by the TIS. Mr. Nawn's July 14 letter shows that using the ITE 945 Convenience Store/Gas Station category results in an additional 89 peak AM trips and an additional 76 peak pm trips over that shown in the TIS.

- g. The ZHE recognizes that some of the trips to the Subject Property would be attracted into the site from traffic already passing by on the adjacent thoroughfares. These trips are referred to as "pass-by" trips. At the June 18, 2024, hearing, testimony on behalf of Applicant indicated that it was not the intention of the Applicant to draw traffic off adjacent I-40 to the proposed Quick Trip. Nonetheless, based on the Applicant's TIS, between 57% and 63% will be traffic drawn from the adjacent roadways and not new trips to the site.
  - h. There does not appear to be substantial evidence in the record as to how the additional traffic beyond what is shown in the TIS would be mitigated. It is not the ZHE's role to engineer potential mitigation measures. Rather, the burden is upon the Applicant, pursuant to IDO Sections 14-16-6-4(E)(3) and -4(E)(4) to establish a sound justification for the requested decision, based on substantial evidence, and to show compliance with required standards through analysis, illustrations, or other exhibits as necessary. On balance, there is insufficient evidence to determine that Applicant has met these burdens.
10. Because all prongs of the conditional use test must be satisfied and, as stated above, the Application failed to satisfy IDO Section 14-16-6-6(A)(3)(a), (c), (d) and (f), the Application must be denied.
  11. Out of considerations of administrative and quasi-judicial economy, the ZHE will not summarize any analysis of the remaining prongs of the conditional use test in this Notification of Decision.

#### DECISION:

DENIAL of a conditional use to allow heavy vehicle fueling.

#### APPEAL:

If you wish to appeal this decision, you must do so by August 15, 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

Michael Cadigan cadigan@cadiganlaw.com

Cathy Garland garland@quiktrip.com

Hess Yntema hess@yntema-law.com

Marianne Billy 2401 12th St NW, 87104

Matt Myers 1401 Central Ave NW, 87104

Peggy Norton 3810 11th St NW,

Madeline Skilmadine 1409 8th St NW, 87102

Mary Beth Thorn 4530 San Isidro St NW, 87107

Doreen McKnight 1426 7th St,

Ricardo Guillermo 1108 11th St NW

Bryan Dombrowski 5323 La Colonia Drive

Marit Tully 1107 La Poblama Rd NW

Art Hull 1771 Band Saw Place, 87104

Eliza Frank 1226 8th St NW, 87102

Debra Thornton 1221 12th St NW, 87104

Dianne Jones 1400 Lumberton Dr NW, 87104





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NOTIFICATION OF DECISION

Mountain Run Partners, LTD (Agent, QT South LLC) requests a conditional use to allow 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: ....	<b>VA-2023-00295</b>
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On the 16<sup>th</sup> day of July, 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 for nicotine retail in an NR-BP zone (“Application”) upon the real property located at 1701 12<sup>th</sup> 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 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;*
  - (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) *It will not increase non-residential activity within 300 feet of a lot in any residential zone district between the hours of 8:00 pm and 6:00 am;*
  - (f) *It will not negatively impact pedestrian or transit connectivity without appropriate mitigation*
3. 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).
4. The 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).
5. The IDO use-specific standards for a nicotine retail are found in Section 4-3(D)(40).

6. 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.”*
7. 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.
8. 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.”*
9. 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 12<sup>th</sup> Street. It does not appear that Applicant or anyone else disputes the fact of this Lot line to lot line measurement.
10. 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.
11. 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. The record includes correspondence from the City Zoning Enforcement Officer (“ZEO”) agreeing with this analysis, that the appropriate measurement for nicotine retail separation requirement is from lot line to lot line. Pursuant to IDO Section 6-2(B)(1)(c), the ZEO is “a member of the City Planning Department staff and has authority to interpret this IDO pursuant to Subsection 14-16-6-4(A) (Interpretation).”
12. The ZHE concludes that 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 is 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, as stated above, 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.
13. Based on evidence in the record, the Walgreens property has a primary nicotine retail use. Although there are other uses of the Walgreens property, IDO Section 4-1(D)(1) provides that “[a] development may include multiple primary uses.” Applicant’s agent conceded that nicotine retail is a primary use of the Walgreens Property. The applicable use-specific requirements are not satisfied, and therefore the Application fails to satisfy IDO Section 14-16-6-6(A)(3)(b).
14. Because all prongs of the conditional use test must be satisfied and, as stated above, the Application failed to satisfy IDO Section 14-16-6-6(A)(3)(b), the Application must be denied.
15. Out of considerations of administrative and quasi-judicial economy, the ZHE will not summarize any analysis of the remaining prongs of the conditional use test in this Notification of Decision.

DECISION:

DENIAL of a conditional use to allow nicotine retail in an NR-BP zone.

APPEAL:

If you wish to appeal this decision, you must do so by August 15, 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  
Michael Cadigan cadigan@cadiganlaw.com  
Cathy Garland garland@quiktrip.com  
Hess Yntema hess@yntema-law.com  
Marianne Billy 2401 12th St NW, 87104  
Matt Myers 1401 Central Ave NW, 87104  
Peggy Norton 3810 11th St NW,  
Madeline Skilmadine 1409 8th St NW, 87102  
Mary Beth Thorn 4530 San Isidro St NW, 87107  
Doreen McKnight 1426 7th St,  
Ricardo Guillermo 1108 11th St NW  
Bryan Dombrowski 5323 La Colonia Drive  
Marit Tully 1107 La Poblama Rd NW  
Art Hull 1771 Band Saw Place, 87104  
Eliza Frank 1226 8th St NW, 87102  
Debra Thornton 1221 12th St NW, 87104  
Dianne Jones 1400 Lumberton Dr NW, 87104



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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 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*
3. 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).

4. 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).
5. Agent appeared at the ZHE hearing on this matter and gave evidence in support of the Application.
6. 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. Specifically, Applicant submitted the following 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 character of design, placing new development in appropriate zone districts, and providing employment and services for the area.
7. 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. Applicant testified and confirmed in written submittals that the requested Conditional Use approval would comport with all applicable requirements.
8. Applicant has demonstrated compliance with the use-specific standards in IDO Section 14-16-4-3(D)(39).
9. 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. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact other than as would be effectively limited by the use-specific standards and other requirements of the IDO, with which Applicant will comply. Opponents raised concerns regarding the potential for increases in crime resulting from alcohol sales. Agent pointed out the policies and best practices followed by Applicant and regulatory limitations that mitigate the risks of higher crime and other potential adverse impacts. Although Applicant proposed certain conditions of approval aimed at mitigating potential adverse effects, many of them were not applicable to the liquor retail use, while others were simply restatements of what would be legally required in the absence of such conditions. The ZHE will not impose such conditions. On balance, the requested Conditional Use approval will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community.
10. 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. Specifically, Applicant testified and confirmed in written submittals that the requested Conditional Use approval would not create any adverse impact, given that the proposed use is secondary to a permissive light vehicle fueling use (the ZHE denied the heavy vehicle fueling request submitted by Applicant in its companion application).
11. Applicant has met its burden of providing evidence that establishes that, on a project site with existing uses, the requested Conditional Use approval 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. This subsection is inapplicable, because there are no existing uses on the Subject Property.

12. 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. The traffic concerns in the record apply more specifically to the denied heavy vehicle fueling use, and Applicant submitted evidence that the proposed liquor retail would not negatively impact pedestrian or transit connectivity without appropriate mitigation.
13. The criteria within IDO Section 14-16-6-6(A)(3) are satisfied.

**DECISION:**

APPROVAL of a conditional use to allow for liquor retail sales in an NR-BP zone.

**APPEAL:**

If you wish to appeal this decision, you must do so by August 15, 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  
Michael Cadigan cadigan@cadiganlaw.com  
Cathy Garland garland@quiktrip.com  
Hess Yntema hess@yntema-law.com  
Marianne Billy 2401 12th St NW, 87104  
Matt Myers 1401 Central Ave NW, 87104  
Peggy Norton 3810 11th St NW,  
Madeline Skilmadine 1409 8th St NW, 87102  
Mary Beth Thorn 4530 San Isidro St NW, 87107  
Doreen McKnight 1426 7th St,  
Ricardo Guillermo 1108 11th St NW  
Bryan Dombrowski 5323 La Colonia Drive  
Marit Tully 1107 La Poblama Rd NW

Art Hull 1771 Band Saw Place, 87104  
Eliza Frank 1226 8th St NW, 87102  
Debra Thornton 1221 12th St NW, 87104  
Dianne Jones 1400 Lumberton Dr NW, 87104