

CITY PLANNING COMMISSION AGENDA
MARCH 17, 2022

STAFF: RYAN TEFERTILLER

FILE NOS:

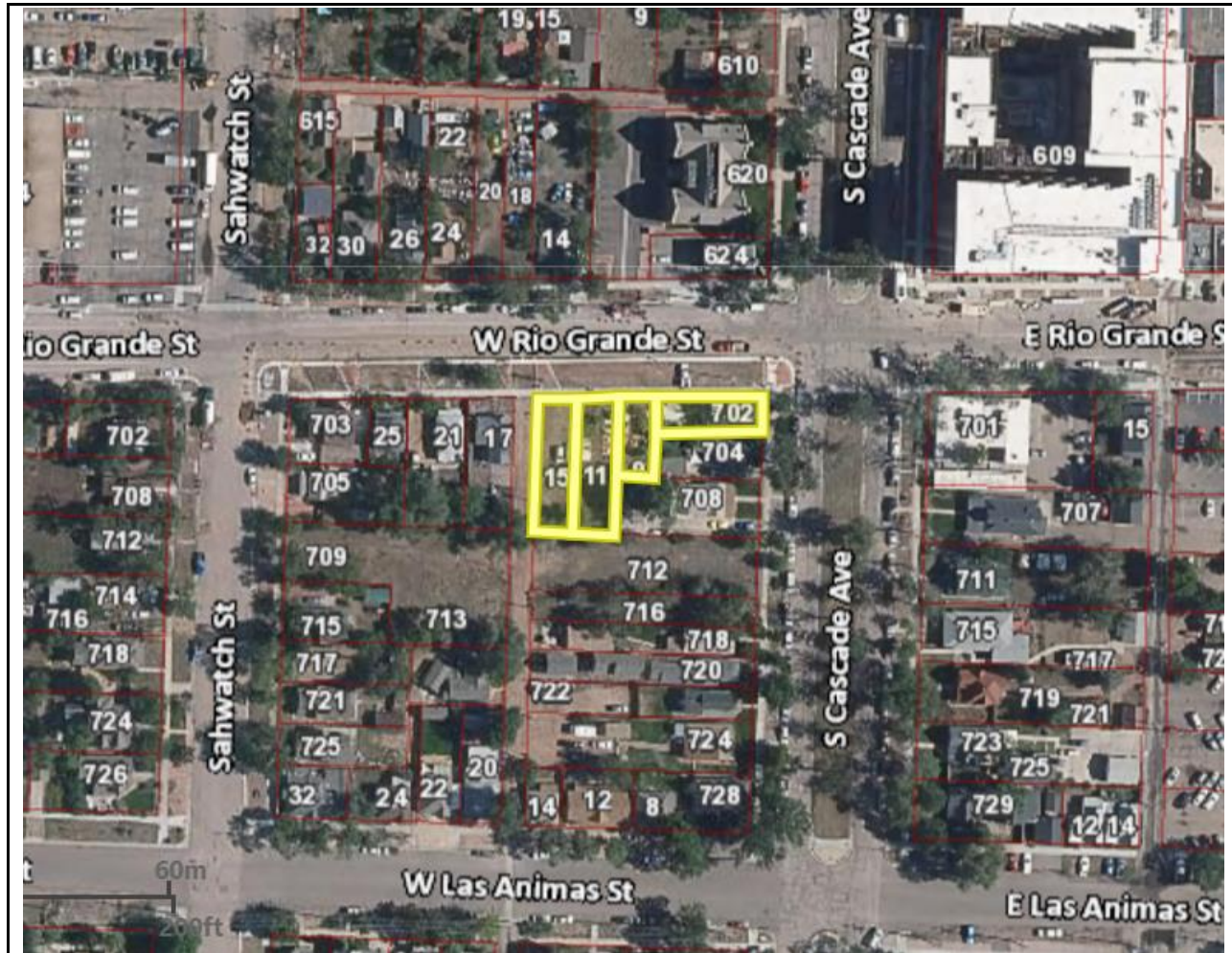
A. - CPC UV 21-00138 – QUASI-JUDICIAL

B. - CPC NV 21-00139 – QUASI-JUDICIAL

PROJECT: SHUGA'S EXPANSION

OWNER: MULLENS FAMILY INVESTMENT LLP

DEVELOPER: KEVIN DEXTER



PROJECT SUMMARY:

1. Project Description: The subject applications were initiated to allow Shuga's restaurant at 702 S. Cascade Ave. to retain a temporary expanded outdoor seating area that was approved under relaxed COVID policies. The expanded outdoor seating area totals roughly 1,100 square feet and

is located to the west of the previously approved outdoor seating on three R2 (Two-Family Residential) zoned parcels that front W. Rio Grande St. The site is 12,828 square feet in size and is located at the southwest corner of S. Cascade Ave. and W. Rio Grande St. **(See FIGURE 1 for the project's Use Variance Development Plan)**

2. Applicant's Project Statement: **(FIGURE 2)**
3. Planning and Development Team's Recommendation: **Approval of the applications**

BACKGROUND:

1. Site Address: 702 S. Cascade Ave. together with 9, 11, and 15 W. Rio Grande St.
2. Existing Zoning/Land Use: OR (Office Residential) and R2 (Two-Family Residential) / Existing Restaurant and vacant parcels **(FIGURE 3)**
3. Surrounding Zoning/Land Use:
North: OR & R2 / Office and Single-Family Residential
South: OR & R2 / Residential and Vacant
East: OR & R2 / Office and Residential
West: R2 / Single Family and Two-Family Residential and Vacant
4. PlanCOS Vision: The subject property is found within the Downtown Activity Center and Downtown Neighborhood and on the edge of the Downtown Renowned Cultural Center. **(FIGURE 4)**
5. Annexation: Town of Colorado Springs (1872)
6. Master Plan/Designated Master Plan Land Use: Experience Downtown Master Plan (2016) and the Mill Street Neighborhood Plan (2019). The Experience Plan identifies the subject property as being within the General Residential future land use area and the New South End District. The Mill Street Neighborhood Plan identifies the subject property as being within a General Residential land use category.
7. Subdivision: Town of Colorado Springs Addition No. 2 (1874)
8. Zoning Enforcement Action: none
9. Physical Characteristics: The site is relatively flat with an existing structure (built in 1910) that was converted into a restaurant in 2001; the R2 zoned parcels to the west of the restaurant have been vacant for many years.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The public process involved with the review of these applications included posting of the site and sending 174 postcards to all property owners within a 1,000-foot buffer area. Staff received one letter of support in response to the public notification; a communication from the Downtown Partnership is included as **FIGURE 5**. An additional round of postcards will be mailed and a poster posted on site prior to the Planning Commission hearing.

The application was reviewed by all standard City agencies including, Public Works, Traffic Engineering, Colorado Springs Utilities, Water Resource Engineering, Parks and Recreation, and others. All reviewers support the project and no additional modifications are needed at this time.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Background:
The subject property is located near the southwestern edge of Downtown Colorado Springs and the northern edge of the Mill Street Neighborhood. The primary parcel, at 702 S. Cascade, was granted approval of a Use Variance in 2001 to operate a restaurant in the OR (Office Residential) zone district. A parking variance was also approved at that time allowing a restaurant to operate with zero off-street parking stalls where 9 were required. Since that time, the restaurant has added small outdoor seating areas. Each time, new parking variances were granted since additional off-street parking stalls were required by code but not provided.

Customer and staff parking has always been provided on-street along both sides of W. Rio Grande St. and S. Cascade. While much of the area relies on parallel parking, the south side of W. Rio Grande St. is parked with 90 degree stalls greatly increasing on-street parking supply in the area. Roughly 19 on-street parking stalls are available on the south side of W. Rio Grande

St. between S. Cascade Ave. and the public alley; all are immediately adjacent to the subject property.

In 2020 as the COVID pandemic began affecting restaurant and bar businesses locally and across the country, City Planning Staff developed a set of policies that allowed temporary outdoor seating areas to be easily and quickly established. Permitting and review procedures were minimal as agreement was widely held that enforcing standard procedures and code would lead to widespread restaurant and bar failure in our community. The primary standard that was temporarily paused was the requirement for expanded outdoor dining areas to provide additional off-street parking. The logic behind this decision was that the indoor dining areas were now sitting vacant due to Health Department occupancy restrictions so parking demand wasn't actually increasing.

Under these policies, Shuga's was granted a temporary use permit to expand outdoor dining areas on the residentially zoned parcels immediately west of their existing patio (**FIGURE 6**). The area for temporary dining was significant, totaling roughly 6,400 square feet of new dining area. It should be noted however, that the owner and operator of the restaurant took care to provide a low density of seating within the area. This accomplished two goals: 1) diners felt exceptionally safe due to generous social distancing between tables, and 2) the number of diners was limited to an amount that could still be managed by limited staff and a modest kitchen facility. As the pandemic continued, the original temporary use was renewed and extended into 2022. To date, Planning Staff has not received any complaints from neighbors about the expanded outdoor dining area.

2. Review Criteria / Design & Development Issues:

a. Project Details

The development plan (**FIGURE 1**) illustrates the retention of a portion of the outdoor dining area that was approved in 2020 under relaxed policies. While the area that is licensed for liquor sales and will be controlled with a roper barrier is still relatively large, two defined customer dining areas are defined on the plan: the first a roughly 400 square foot concrete pad with a partial awning; and the second a roughly 700 square foot tepee that establishes a hybrid dining experience that is a little bit of an outdoor feel with the comfort and protection against weather and the elements.

Taking the two areas together creates a request for permanent retention of 1,100 square feet of outdoor dining which according to City Code, requires 6 additional off-street parking stalls. The two applications necessary in order to permanently retain the expanded outdoor seating areas are: 1) a use variance to allow the dining area on residentially zoned parcels, and 2) a parking variance to allow the expansion even though no off-street parking stalls are available.

b. Use Variance

As stated above, the expanded outdoor dining area to the west of the original restaurant is within the R2 (Two Family Residential) zone district. Restaurants are not permitted uses in the R2 zone. There are only two ways to allow the outdoor dining to continue on the residentially zoned parcels: 1) change the zone to a district which permits restaurants; or 2) grant a use variance allowing the specific use to continue.

Planning Staff and the applicant considered the feasibility of a zone change for the entire property to a zone district that permits restaurants (e.g. the OC – Office Commercial district). However, zoning the subject properties to a commercial zone could also lead to more intense uses (beyond a restaurant) in the future. For example, a range of retail and service uses are permitted in the OC zone. Should the existing restaurant fail in the future, the largely vacant rear parcels could be redeveloped for new commercial uses under the new zoning designation.

Conversely, a Use Variance is very specific to a proposed use and the associated use variance development plan. Stakeholders and nearby residents know exactly what is being proposed and should the restaurant fail in the future and the use of the property cease for 12 consecutive months, the property would revert to the residential zone and only residential uses could be established on the site. It is also noteworthy that a Use Variance application was used just over 20 years ago to establish the initial restaurant at 702 S. Cascade Ave.; it is logical to use the same tool to expand the restaurant's outdoor seating area.

Approval of a Use Variance requires evaluation of the three review criteria found in Section 7.5.803.B. of City Code:

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same zone so that a denial of the petition would result in undue property loss; and
2. That such variance is necessary for the preservation and enjoyment of a property right of the petitioner; and also
3. That such variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners of property.

Planning Staff have evaluated the three criteria and determined that they are met by this request. The applicant has used the area in question for outdoor seating for nearly two years throughout the COVID pandemic without any complaints or concerns from neighboring residents or property owners. While indoor dining limits have long been lifted, many diners still prefer to sit outdoors when weather permits. While the area of outdoor dining is significant, the limited number of staff and limited kitchen size affect the density of outdoor diners and thereby limit noise, traffic and parking demands on the area. Staff finds that granting of the request is necessary for the continued success of Shuga's and will not negatively impact the area.

c. Non-Use Variance for Parking

The retention of the expanding outdoor dining area demands 6 additional off-street parking stalls where zero stalls are available. While multiple parking variances have been granted previously to this business (2001, 2002, and 2006) for modest expansions to outdoor dining areas, the proposed request warrants specific analysis and consideration.

The granting of a non-use variance for parking requires consideration of three primary criteria found in Section 7.5.802.B. as well as two additional criteria for parking related variances found in Section 7.5.802.D.1. The criteria are:

1. The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district; and
2. That the extraordinary or exceptional physical condition of the property will not allow a reasonable use of the property in its current zone in the absence of relief; and
3. That the granting of the variance will not have an adverse impact upon surrounding properties.

and

- a. The proposed location of the vehicle will not create a pedestrian or vehicular safety problem.
- b. The granting of the variance will not have an adverse impact upon the surrounding properties or neighborhood.

After careful consideration Planning Staff has determined that all required non-use variance criteria are met. The property is on the edge of Downtown Colorado Springs immediately

outside of the Form-Based Zone to the northeast. Ample on-street parking is available both immediately adjacent to the site (roughly 19 on-street stalls along the south side of W. Rio Grande St. between S. Cascade Ave. and the public alley) as well as in the immediate area; metered stalls are present along both sides of S. Cascade Ave. to the north of Rio Grande St. while unmetered are present south of Rio Grande St.

Additionally, the area to the north and east has seen significant residential redevelopment in recent years with the Mae at Cascade (184 units on a half-block site) opening within the last few years. The influx in downtown residents actually lessens the demand for on-street parking as many customers of Shuga's and surrounding businesses are able to walk from their apartment to their ultimate destination. Additionally, Downtown's success and densification has led to new and improved mobility options throughout the area; both bike share and scooter share are now options for staff and customers to travel to the site without having to rely on on-street parking stalls in the area. Lastly, later this year (likely Spring of 2022), the City will be launching a free downtown shuttle to move people throughout downtown. The shuttle route will travel along Rio Grande St. immediately adjacent to the subject property; it's proposed hours of operation and frequency will make it a safe and convenient choice for people to travel to and from the site without having to use their personal vehicles.

3. Conformance with the City Comprehensive Plan:

The City's Comprehensive Plan, referred to as PlanCOS, was adopted in January of 2019. The plan describes the Vision, Big Ideas, Goals, Policies, and Indicators of Success for our City. PlanCOS drives a wide range of policy actions and can inform specific land use decisions. While the proposed project is minor in scope there are a number of notable PlanCOS provisions that support the request.

Most relevant to the project is the Vibrant Neighborhoods chapter where the plan describes the need to value and preserve healthy neighborhoods while also supporting improvements to other neighborhoods that lack access, mobility, and even safety. Specifically, Strategy VN-3.C-1 calls for the City to "assign land use designations and implement zoning to support and facilitate neighborhood activity centers within walking or biking distance of residential areas." Additionally, Strategy VN-3.E-3 reads "through a combination of Zoning Code changes and development review decisions, encourage and support flexible site and building designs and residential density that are adaptable to the specific site."

The Unique Places chapter of PlanCOS also supports the proposed project. Goal UP-1 reads "Enrich the texture and livability of the city as a tapestry of unique, vibrant, and walkable places" while Policy UP-2.A reads "Support infill and land use investment throughout the mature and developed areas of the city." The proposed use variance supports infill development, mixed use neighborhoods, and walkability all while still protecting the residential character of the properties to the south and west.

4. Conformance with the Area's Master Plans:

As stated above, the site falls within two different master plans: the Experience Downtown Master Plan and the Mill Street Neighborhood Plan. While both plans identify the site as "general residential" on their future land use maps, it is important to know that this particular designation is not intended to exclude all non-residential uses. Furthermore, both plans encourage walkability, infill, and sustained success of existing businesses. While commercial encroachment is a concern expressed in the Mill Street Plan, the plan also recognizes the need and value for community gathering spaces which allow residents to increase social engagement. Specifically, Goal #17 within the Mill Street Plan reads "incentivize private commercial uses to include gathering spaces. Outdoor dining and indoor gathering spaces associated with businesses should be encouraged."

STAFF RECOMMENDATIONS:

Item No: A - CPC UV 21-00138 – SHUGA’S EXPANSION USE VARIANCE

Approve the requested use variance based upon the finding that the application complies with the review criteria in City Code Section 7.5.803.B.

Item No: B - CPC NV 21-00139 – SHUGA’S EXPANSION PARKING VARIANCE

Approve the proposed non-use variance to allow zero off-street parking stalls where 6 additional stalls are required by code to retain the roughly 1,100 square foot outdoor seating area based upon the finding that the application complies with the review criteria in City Code Sections 7.5.802.B. and 7.5.802.D.1.