

**CITY PLANNING COMMISSION AGENDA
NOVEMBER 21, 2019**

STAFF: HANNAH VAN NIMWEGEN

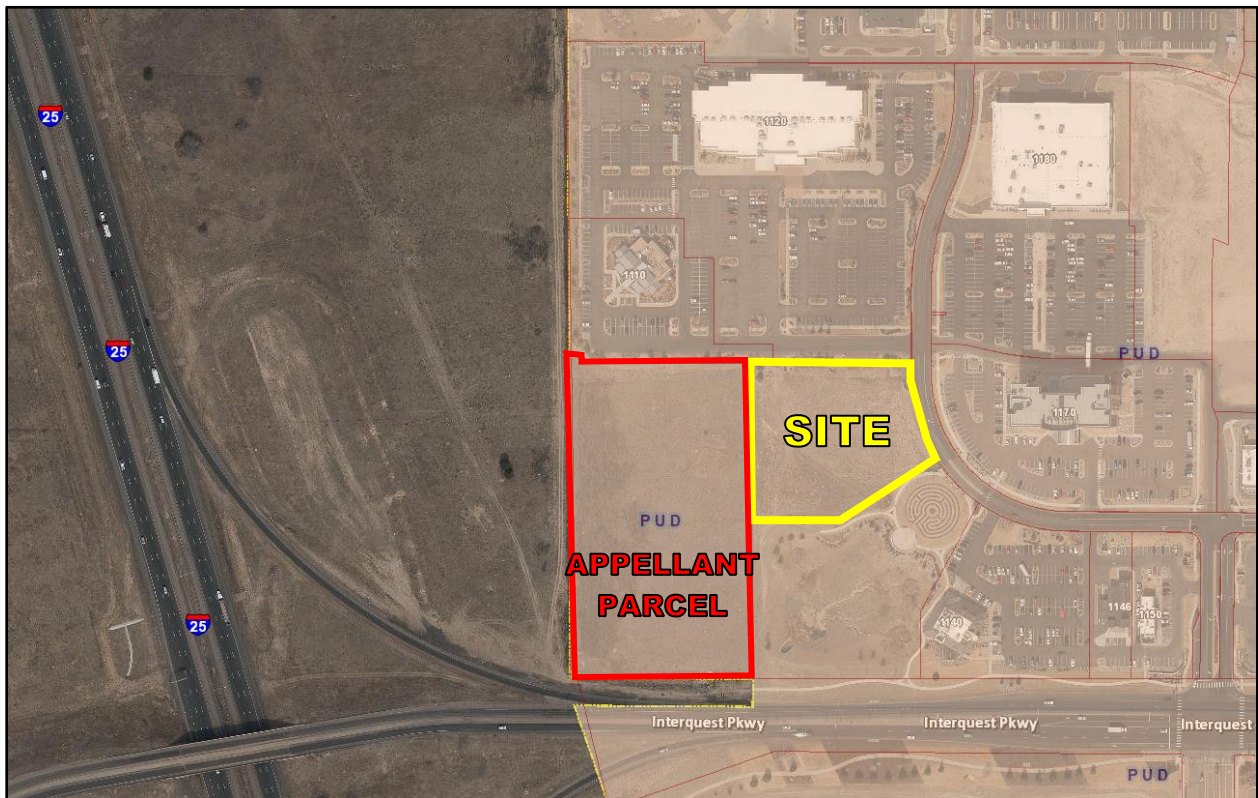
FILE NO(S):
AR PUD 19-00491 – QUASI-JUDICIAL
AR FP 19-00492 – QUASI-JUDICIAL
CPC PUD 05-00098-A2MJ09-MM03 – QUASI-JUDICIAL

PROJECT: AN APPEAL OF THE APPROVAL OF MARKETPLACE AT INTERQUEST FILING NO. 20

OWNER: MARKETPLACE AT INTERQUEST LLC

CONSULTANT REPRESENTATIVE: NASS DESIGN ASSOCIATES

APPEALANT: SOUTHWEST EQUITY ASSOCIATES LLP



PROJECT SUMMARY:

1. **Project Description:** On October 22, 2019, City Planning staff approved a development plan, final subdivision plat, and a minor modification for a project known as Marketplace at Interquest Filing No. 20. The development plan illustrates a 4-story, 69,803 square foot hotel with 125 rooms, associated parking, and landscaping (**FIGURE 1**). The final subdivision plat formally establishes a single lot that is 2.318 acres in size intended for the commercial use (**FIGURE 2**). The minor modification illustrates a minor encroachment of a drive aisle onto the adjacent lot to the south under the same ownership (**FIGURE 3**).

The property is zoned PUD (Planned Unit Development: Office/Commercial, 135-foot maximum building height) and is part of a larger commercial shopping center known as Marketplace at Interquest which is located northeast of the I-25 and Interquest Parkway interchange. The Concept Plan that accompanied the rezoning states all land uses permitted in the PBC (Planned Business Center) are allowed within the PUD—hotels being permitted by right.

The decision to approve the above applications was appealed by Southwest Equity Associates on October 31, 2019 claiming the proposed development does not provide adequate access to the Southwest Equity Associates owned parcel directly to the west of the subject parcel. Southwest Equity Associates states the approved development plan is not substantially compliant with the planned access as shown on the Concept Plan.

2. **Applicant's Project Statement:** (**FIGURE 4**)
3. **Appellant's Statement:** (**FIGURE 5**)
4. **Planning and Development Team's Recommendation:** City Planning staff recommends denial of the appeal thus upholding staff's decision to approve the subject applications.

BACKGROUND:

1. **Site Address:** The subject site has not been addressed, but is generally located northeast of the I-25 and Interquest Parkway intersection.
2. **Existing Zoning/Land Use:** PUD (Planned Unit Development)/Vacant, undeveloped
3. **Surrounding Zoning/Land Use:** North: PUD (Planned Unit Development: Office/Commercial, 135-foot maximum building height)/Movie theater
South: PUD (Planned Unit Development: Office/Commercial, 135-foot maximum building height)/Detention pond
East: PUD (Planned Unit Development: Office/Commercial, 135-foot maximum building height)/Hotel
West: PUD (Planned Unit Development: Commercial, 45-foot maximum building height)/Vacant, undeveloped (**FIGURE 6**)
4. **PlanCOS Vision:** Newer Development Neighborhood, New/Developing Activity Center
5. **Annexation:** The subject site was annexed in 2003 as part of the Stout Allen Addition No. 2
6. **Master Plan/Designated Master Plan Land Use:** Interquest Marketplace
7. **Subdivision:** Unplatted
8. **Zoning Enforcement Action:** None
9. **Physical Characteristics:** The site is currently undeveloped with little change in grade.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The development plan, final subdivision plat, and minor modification applications were received on August 13, 2019. Shortly after, City Planning mailed postcard to 14 property owners within 1,000-feet of the subject site including the appellant. The site was also posted with a sign indicating the application submittal.

The appellant contacted City Planning staff on August 24, 2019 indicating their objection to the development plan because of a lack of access points on the subject property's west side leading to the appellant's property. Following this comment, the applicant revised the drawings to illustrate two drive

aisles as shown on the approved development plan (**FIGURE 1**). The appellant believes these access points are insufficient and not substantially compliant with the concept plan stating the provided drive aisles are sourced from a “parking area” versus from a “road” as illustrated on the active concept plan. More information and discussion on the appeal are in following sections of this report.

The applications were approved on October 22, 2019, and staff received the appeal application on October 31, 2019. According to Code Section 7.5.906, appeals of administrative decisions shall be placed on the agenda of the next regularly scheduled City Planning Commission hearing occurring a minimum of twenty (20) days and a maximum of forty-eight (48) days following the date of the appeal. In preparation for the November 21, 2019 (21 days after the date of appeal), 14 postcards were mailed to the same property owners within 1,000-feet of the subject site. The site was also posted with a sign indicating the date, time, and location of the appeal hearing.

The applications were sent to the standard internal and external agencies for review and comment. Review comments were received and all have been addressed. Review agencies for this project include Colorado Springs Utilities, City Traffic, City Engineering, City Fire Department and Police/E-911, the United States Air Force Academy, and Enumerations.

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

1. Review Criteria / Design & Development Issues:

a. Background

The Marketplace at Interquest shopping center was annexed into the City of Colorado Springs in 2003 as part of the Stout Allen Addition No. 2 annexation and an annexation agreement was established. Accompanying the annexation was a master plan (Interquest Marketplace), a zone district establishment of PBC (Planned Business Center), and a Concept Plan. In 2007, this shopping center was rezoned to its current zone district (Planned Unit Development: Office/Commercial, 135-foot maximum building height) with a new concept plan. This concept plan has been amended six times, with the most recent amendment occurring mid-2018 (**FIGURES 7, 8**). None of the amendments altered the subject parcel.

The Southwest Equity Associates' (appellant) parcel was annexed into the City of Colorado Springs in 2007 and an annexation agreement was established. Accompanying this annexation was a zone district establishment of PUD (Planned Unit Development: Commercial, 45-foot maximum building height) and a concept plan (**FIGURE 9**). This concept plan has not been amended.

b. Development Plan

The development plan illustrates a 2.3 acre parcel with a 4-story, 69,803 square foot hotel with 125 rooms. The site plan shows 112 on-site parking stalls with five ADA compliant spaces. The minimum parking requirement for hotels is one stall per guestroom plus additional parking for any restaurant and meeting spaces. The remaining 13 required parking spaces are being accommodated on the adjacent northern property that is under the same ownership and has a surplus of parking stalls. This shopping center is subject to a common use agreement solidifying this arrangement. City code Section 7.4.204.C *Alternative Parking Options* also allows this type of arrangement by giving discretion to the Manager to reduce the number of on-site required stalls by up to 20% (25 stalls) for a formalized and recorded shared parking agreement as long as those spaces are located no further than 400-feet from the subject site.

Code Section 7.3.606 outlines review criteria for PUD development plans. Staff believes the subject development plan supports and is compliant with these review criteria:

- Consistency with City Plans and the Zoning Code:

City Planning staff is of the opinion the development plan is compliant with the Interquest Marketplace Master Plan, the PUD zone district, and the Interquest Marketplace Concept Plan. The development plan meets all applicable Zoning Code requirements as well other City Code requirements evaluated by other internal and external review agencies.

- **Compatibility of the Site Design with the Surrounding Area:**
City Planning staff believes the site design is compatible with the surrounding commercial center and that it provides adequate access to the appellant's parcel (further discussed below).
- **Pedestrian and Traffic Circulation:**
As discussed in more detail in the following sections, staff believes the provided access points to the adjacent parcel are sufficient for the uses allowed within that parcel's PUD zone district. The larger concept plan illustrates a larger pattern of traffic circulation that was reviewed by City Traffic Engineering. The development plan also provides for safe pedestrian circulation and adequate facilities for those in need of ADA parking spaces. Staff believes the parking area is adequately sized for the average occupancy of the hotel, but also provides additional parking spaces within a short walk when the hotel has no vacancy.
- **Public Facilities:**
City Planning staff believes the subject site will not overburden public facilities as all applicable review agencies voiced no concern over the site's development.
- **Landscaping:**
The City's Landscape Architect reviewed the development plan for compliance with the Landscape Code and Manual. After a few minor revisions, they determined the proposed landscape plan was compliant with all applicable requirements.

c. Minor Modification

The minor modification illustrates a minor encroachment of the southern drive aisle onto the adjacent lot that contains the shopping center's required detention pond. The slight encroachment does not change the size or operation of this detention pond. Water Resources Engineering reviewed the subject applications and was not concerned with the planned drive aisle's location.

The minor modification is to the development plan that outlined the specifics of the detention pond. This alteration is permissible in the Minor Modification review criteria found in 7.5.503.C.

d. Final Subdivision Plat

The final subdivision plat outlines ownership and maintenance of the tracts, the exact property line dimensions, establishes new easements, and has the United States Air Force standard note regarding potential noise among other required notes. The final subdivision plat does not govern site layout or land use.

The final subdivision plat was reviewed by the City's Professional Land Surveyor who has recommended approval of the document. Staff is of the opinion the plat is compliant with the review criteria, found in Code section 7.7.303, and that all required notations are present.

e. Appeal

Southwest Equity Associates is appealing the decision to approve the above applications for the following reasons:

1. The provided access points on the subject site are insufficient for future development of their parcel. The illustrated access points are insufficient because:
 - a. They are reached by driving through a “parking area” versus direct access from a private road.
 - b. The driveways require “complex” turning movements through the parking area to be reached—a condition not exhibited elsewhere in the development.
2. An agreement between the subject property’s owner, the City, and the appellant was breached that required a 140-foot long road adjacent to the east side of the appellant parcel.
3. The development plan’s layout and the provided access points result in a “landlocked” parcel.

When these issues were brought to City Planning’s attention, research was conducted of both parcels’ annexation, zoning, concept plan, master plan files. Staff researched review comments, public comments, staff reports, and minutes of public hearings and determined the following:

1. Staff cannot locate an agreement, in which the City is a party, stating the developer of the subject parcel must provide a 140-foot long road on the east side of the subject site to the appellant’s parcel. The appellant did not provide this agreement when City Planning asked if it could be furnished. Staff was able to surmise the following based on the research of the previous entitlement files:
 - The 2003 concept plan for Interquest Marketplace illustrated the shopping center’s internal private road ran adjacent to the appellant’s parcel (**FIGURE 10**). On this concept plan, there is 140-foot dimensioned and an arrow pointing into the appellant’s parcel and notes, “Point of Access 140 Feet.” In the staff report for this 2003 Interquest Marketplace concept plan, the City Planning staff planner notes, “Mr. Herman [Southwest Equity Associates] and the applicants have agreed to a 140’ wide access point into the site. The ultimate driveway/private drive width and location will be determined when Mr. Herman develops his property.” Southwest Equity Associates’ opposition letter to the 2003 applications states “Mr. Herman and the Applicants have agreed to a 140’ access point into the site.’ The verbal agreement made at the meeting held at the City Planning Group office on April 9, 2003 was that Mr. Herman would accept an alternative access on a public road provided that the access point (frontage) on this new road was at least 140’. At this meeting the Applicant’s representatives said that they agreed to the access width and agreed that the new road would be a public, not private road.” Further, the City Planning Commission minutes read, “If Mr. Herman should decide to annex, the location of the private drive would be determined within the 140 feet.”
 - The active Interquest Marketplace concept plan, established in 2007 (**FIGURES 7, 8**), relocated the primary internal private road and illustrates four arrows pointing into the appellant’s parcel and notes, “four possible locations for access provided to this out-parcel. Final grades on Interquest site at property line at access points will be plus or minus two feet along the west boundary line and plus or minus four feet along the south boundary.” This concept plan also illustrates a conceptual site layout for the subject parcel which shows a drive aisle along the western portion of the subject site which does not have parking spaces backing into the aisle for the first half, but does have parking spaces backing into the aisle for the second half. This arrangement appears to have completely replaced the 140-foot road as the neither the staff report nor minutes discuss this dimension.

- Shortly following the above rezoning, the appellant's parcel is annexed into the City of Colorado Springs and a PUD zone district is established along with a concept plan titled Interquest Marketplace Addition. This concept plan (**FIGURE 9**) also shows four arrows indicating general locations for access. No notes are placed on the concept plan that discuss the general points of access. Neither the staff report, the minutes, nor the annexation agreement details the access points—just that four locations are illustrated.

City Planning cannot determine if the original intended access point was supposed to be 140-feet wide, if there was supposed to be a single driveway, drive aisle, or road within that 140-foot dimension, or if there was supposed to be some type of roadway that was 140-feet long. Staff cannot locate a written agreement, and a verbal agreement is only mentioned in the appellant's letter of opposition. Regardless, the original 2003 Interquest Marketplace concept plan was replaced in 2007 when the shopping center was rezoned from PBC (Planned Business Center) to its current district and the active Interquest Marketplace concept plan was established.

2. The parcel is not landlocked because of the of the existing public access easement over the primary internal private road which circulates the shopping center, and the existing private access easement which connects the appellant's parcel to the private road. This private access easement is directly adjacent to the subject parcel and the appellant's parcel along the northern property line (approximate location illustrated in **FIGURE 6**). These easements were established in 2007. Further, the subject development plan and plat state that all driveways, drives, aisle ways, maneuvering, and parking areas within the development shall be for the common use of all users, public and private. Therefore, City Planning has determined that the parcel is not landlocked as rights to access the appellant's parcel through the shopping center and subject parcel are established.
3. Based on the 2003 statement found in the staff report, "the ultimate driveway/private drive width and location will be determined when Mr. Herman develops his property," it appears as though the exact dimensions of the access points were intended to be determined with a development plan application for the appellant's property. The development of the subject parcel should not be controlled by the timing of the appellant property's development. Also, the active Interquest Marketplace concept plan conceptually illustrates a site layout with the two access points. This conceptual site layout shows the second half of the drive aisle as having parking backing into the drive aisle across from the proposed location of an access point. This conceptual site layout still requires "complex" turning movements. Further, the two access points on the northern side of the appellant's parcel come off the drive aisle covered by the private access easement also used by the Colorado Mountain Brewery parcel—which is an example of the same working condition within the shopping center.

Ultimately, City Planning staff believes the issue boils down to if a site layout is formalized on a concept plan when there are not notes requiring certain specifics. Zoning code section 7.5.501 outlines the purpose of concept plans:

1. To ensure use to use compatibility between the proposed land uses, zone district with the surrounding area;
2. To minimize potential hazardous, adverse or objectionable effects of the proposal;
3. To ensure safe points of access to all future lots and adjacent properties;
4. To ensure, when used as or in conjunction with a preliminary plat, that all subdivision requirements such as right of way width and utility easement dedications can be met;
5. To ensure that all zone district development standards can be met;

6. To establish ranges of uses and square footages and other conditions of record for future development;
7. To evaluate existing and proposed road systems, utilities, schools, parks and other public facilities to determine if they are adequate to serve the proposed project; and
8. To provide City conceptual approval of the development project and to allow the applicant to proceed to seek City approvals of the necessary development plan, subdivision plat or other applications and requirements.

Because review and solidification of an individual site layout is not listed as a purpose for a concept plan; because the concept plan does illustrate an access point adjacent to a drive aisle with parking; and because there was not a formalization of the 140-foot roadway in the active concept plan; staff approved the applications on the basis that they substantially illustrate what is outlined. Additionally, staff believes the two provided access points on the east side of the subject property (in addition to the access points on the north side of the appellant's property) are sufficient for future development of the appellant's property. City Planning staff does not believe the approvals are against the express language or intent of the zoning ordinance, are unreasonable, erroneous, or contrary to law.

2. Conformance with the City Comprehensive Plan:

Staff has evaluated the proposed applications for conformance with the City's current comprehensive plan ("PlanCOS"). According to PlanCOS, the project site is identified on the plan's Vision map as a Newer Developing Neighborhood, is within a New/Developing Activity Center, and is indicated as an "Experience Economy." The intent of the Newer Developing Neighborhood (or Emerging Neighborhoods) typology is encouraging the strong development of livability and adaptability as these areas mature. The Experience Economy typology highlights the importance of regional and local destinations, large-scale retail, entertainment, and lodging.

The applicant's proposal for a hotel helps provide a service to those who may be visiting families in the area or students of the Air Force Academy. The subject parcel is located within a partially built out shopping center with other similar and supportive uses.

City Planning staff finds the Marketplace at Interquest Filing No. 20 project and its associated applications to be supportive of PlanCOS and its guidance.

3. Conformance with the Area's Master Plan:

The Interquest Marketplace Master Plan is considered operative, and illustrates the shopping center as "Regional Commercial." City Planning staff find that the Marketplace at Interquest Filing No. 20 project is compliant with this master plan.

STAFF RECOMMENDATION:

AR PUD 19-00491 – PUD Development Plan

Deny the appeal and uphold the administrative approval of the Marketplace at Interquest Filing No. 20 Development Plan, based upon the finding that the appellant did not meet the appeal criteria in City Code Section 7.5.906.A.4, and that the PUD development plan does meet the review criteria for such applications found in code section 7.3.606.

AR FP 19-00492 – Final Subdivision Plat

Deny the appeal and uphold the administrative approval of the Marketplace at Interquest Filing No. 20 Final Subdivision Plat, based upon the findings that the appellant did not meet the appeal criteria in City Code Section 7.5.906.A.4, and that the Final Subdivision Plat does meet the review criteria for such applications found in code section 7.7.303.

CPC PUD 05-00098-A2MJ09-MM03

Deny the appeal and uphold the administrative approval of the Marketplace at Interquest Filing No. 20 Minor Modification, based upon the findings that the appellant did not meet the appeal criteria in City Code Section 7.5.906.A.4, and that the Minor Modification does meet the review criteria for such applications found in code section 7.5.503.C.