

CITY PLANNING COMMISSION AGENDA

STAFF: MIKE SCHULTZ

FILE NO(S):

CPC ZC 18-00050 – QUASI-JUDICIAL

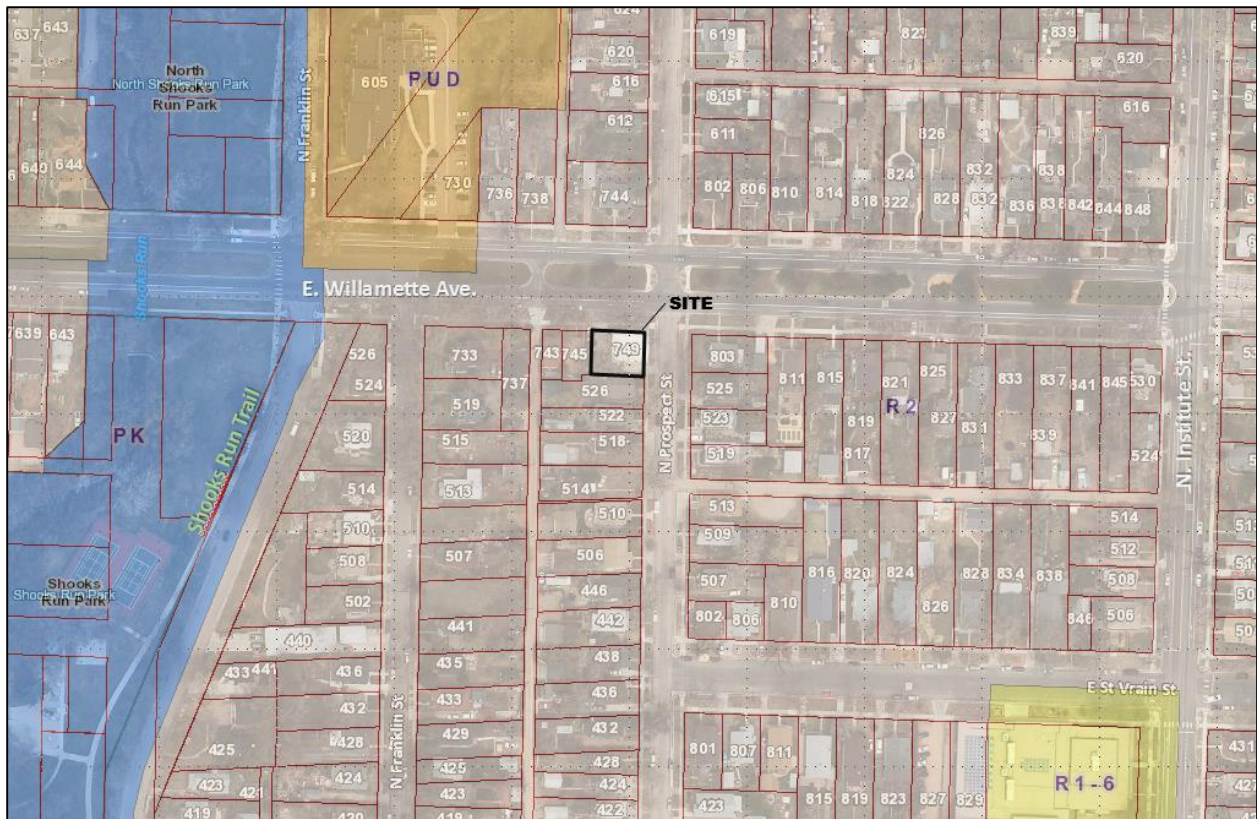
CPC DP 18-00051 – QUASI-JUDICIAL

CPC NV 18-00052 – QUASI-JUDICIAL

PROJECT: LIL' MARKET (WILLAMETTE MARKET)

APPLICANT: LIL' MARKET LLC

OWNER: LIL' MARKET LLC



PROJECT SUMMARY

1. Project Description: This project includes concurrent applications for a zone change, development plan and non-use variance for the property located at 749 E. Willamette Avenue. The proposed zone change is from R-2 (Two-family Residential) to C-5/CR (Intermediate Business with conditions of record). The development plan demonstrates the existing building on the site, on-street parking and proposed patio addition. The non-

use request is to allow zero (0) parking stalls where sixteen (16) are required. All of the applications relate to legalizing the existing non-conforming use of the property.

2. Applicant's Project Statement: (Refer to FIGURE 1)
3. Planning and Development Team's Recommendation: Staff recommends approval of the zone change, development plan (**FIGURE 2**) and non-use variance.

BACKGROUND

1. Site Address: 749 E. Willamette Avenue
2. Existing Zoning/Land Use: R-2 (Two-family Residential)/Commercial
3. Surrounding Zoning/Land Use:
 - North: R-2 (Two-family Residential)/Residential
 - South: R-2/Residential
 - East: R-2/Residential
 - West: R-2/Residential

(Note: Most of the homes surrounding the subject property are single-family residential with several homes being listed as "Duplex/Triplex" by the El Paso County Assessor)
4. Comprehensive Plan/Designated 2020 Land Use: General Residential
5. Annexation: Original Town Center
6. Master Plan/Designated Master Plan Land Use: Shooks Run Redevelopment Plan and Envision Shooks Run Corridor (Facilities Master Plan)
7. Subdivision: Willamette Place
8. Zoning Enforcement Action: City Zoning Enforcement/Neighborhood Services was recently called to the site by several surrounding property owners, partly in response to the Land Use applications to legalize the property. City Zoning Enforcement Officers did not find any violations, the Officer is aware the property owner is seeking to resolve the legal non-conforming status of the property.
9. Physical Characteristics: The site is fully developed, the existing building is 1,921 square feet, the area west of the building has been paved and enclosed with a fence; a shed exists in the southwest portion of the property. The area south of the building is also paved and fenced.

STAKEHOLDER PROCESS AND INVOLVEMENT

The public process included posting the site and sending postcards to 289 property owners within a 1000-foot buffer as well as to the Mid-Shooks Run Neighborhood Association at the time of application submittal. A second mailing will be sent to a 1000-foot buffer prior to the Planning Commission hearing notifying residents of the public hearing.

City Planning Staff held a neighborhood meeting on May 10th at Epicentral Co-working offices located at 415 North Tejon Street; approximately 65 residents attended the meeting. Attendees included both supporters and opponents to the proposed project; Staff would estimate that audience consisted of a slight majority in favor of the applications.

Discussion and comments included:

- Use of C-5 zoning in lieu of utilizing a use variance (a use variance would limit the property to a singular use; future change in use would require a new use variance);
 - Concern of allowing other uses within the neighborhood under C-5 zone;
 - Concern of becoming exclusively a restaurant;
- Hours of operation (there are no current restrictions on hours of operation);

- Parking issues along both Willamette and Prospect, more problematic when nearby Masonic Lodge has meetings;
- Allowance of alcohol within the neighborhood;
- Noise from customers, music, etc.
- Many residents voiced support of the applications citing:
 - The history of the market;
 - The shopping convenience to the neighborhood;
 - Providing the neighborhood a sense of place;
 - The operation is well done by the current tenants;
 - Understanding that the business (model) may need to evolve to remain financial viable.

Public Comments

See attached for resident comments received:

In support (**FIGURE 3**)

In opposition (**FIGURE 4**)

The e-mails in opposition generally express the following concerns:

- Available parking/customer parking on Willamette and Prospect;
- Concern of allowing beer/liquor within the neighborhood;
- Allowing C-5 zoning within the neighborhood/other potential uses;
- Commercial should not be mixed with residential neighborhoods;
- Additional noise with patio seating/allowance of alcohol.

The e-mails in support generally express the following support:

- Provides walkability within the neighborhood;
- Convenience of grocery/food items;
- Provides the neighborhood a “sense of place”/meeting spot;
- Parking is not that much of an issue;
- The market provides “eyes on the street”/additional safety;
- It’s an amenity to the neighborhood; some residents cited the presence of the market as the reason why they wanted to live within the neighborhood.

Staff input is outlined in the following section of this report. Staff sent plans to the standard internal and external review agencies for comments. Besides Land Use Review comments, the review agencies had no comments on the proposed applications. Commenting agencies included City Engineering, City Traffic and City Fire.

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

1. Review Criteria / Design & Development

a. Background & History

The project proposes concurrent Land Use applications to address a historic legal non-conforming commercial use of a property located at 749 E. Willamette Avenue. The applications include a change of zone, an accompanying development plan and a non-use variance relating to off-street parking. The rezone request would be to rezone the site from R-2 (Two-family Residential) to C-5/cr (Intermediate Business with conditions of record); Planning Staff is suggesting conditions of record to be

attached to the zoning, see below comments and attached proposed prohibited uses, to minimize impacts to the surrounding neighborhood.

The building was originally constructed in 1909, Staff's research shows the building being used as a neighborhood grocery and retail market beginning around 1910 (it may have originated in 1909 with the construction of the building); the market was originally known as Bowers & Son (Polk Directories, Pikes Peak Library District – Penrose Library). Around 1917 it was purchased by Roy J. Harter and the market became known as Harter's Grocery and remained in business until around the mid-1970's when it later became the Minute Mart. Around 1990 the market became known as T & L Market until around 2001; from 2002 until around 2016 it operated as the Lil' Market. The market recently changed ownership again and is now known as the Willamette Market & Deli.

The current tenants of the building are seeking to expand the use of the property to allow the serving of alcohol and expanding the restaurant use, both within the building and outside of the building on the westerly patio. Staff considered the proposal to as an expansion of the legal non-conforming use of the property forcing the owners to consider rezoning the property. Staff has recommended to address the property as a restaurant use rather than as a market/specialty food sales with restaurant service, this was partly to address the possibility of a "worst case scenario" of the building becoming solely a restaurant in the future and addressing both the zoning and parking at this time.

Legal Non-conforming

The City first adopted zoning regulations in 1926, which was the same year a Supreme Court Case upheld single-use zone districts, which became known as Euclidean zoning. The City's zoning was divided into seven (7) districts, 'A' through 'G', districts 'A', 'B', 'C' and 'D' were largely residential zone districts that varied in residential density and allowed uses; district 'E' was a commercial zone, district 'F' was an industrial zone and district 'G' was an "unrestricted zone".

The 1926 Zoning Code adopted minimum building setbacks and maximum building heights as well, establishing minimum development standards within each of the respective districts. Based on the 1926 Zoning Map, the subject property and surrounding neighborhood was placed in district 'B', which allowed single-family and two-family residential dwellings, fraternity houses and boarding and lodging houses.

It wasn't until 1951 when the City adopted a new Zoning Code that established many of the zone districts that are still in place today as well as the adoption of off-street parking regulations. Staff notes that the 1951 Zoning Code had established a 'C-4: Neighborhood Business' zone district, this zone district was largely utilized in neighborhood areas that may have had properties historically used as commercial properties; one of these examples is the property located at the southwest corner of Cache La Poudre and North Institute Street (approximately 3 blocks north of the subject property).

In 1980, with the adoption of a new City Zoning Code, the C-4 zone district was eliminated from the Zoning Code, any properties with this zone district were rezoned to an existing commercial zone district, using either C-5 or PBC (Planned Business

Center). The above noted property on Cache la Poudre Street was rezoned from C-4 to PBC (Planned Business Center) in 1980.

The subject property's use and the structure itself are deemed legal non-conforming by the current City Zoning Code, in that the use as a retail grocery/specialty food store is not permitted within the R-2 zone district nor does the building meet current development standards such as minimum building setbacks or off-street parking. To legalize the use of the property, the property owner is seeking the change of zone, development plan and non-use variance.

b. Zone Change to C-5/cr

The rezoning request from R-2 to C-5 with conditions of record was partly due to the commercial standards of the City Zoning Code, Section 7.3.204. The consideration to utilize the OC (Office Complex) and PBC (Planned Business Center) were negated by the fact that both require a minimum district size, 10,000 square feet and 1 acre, respectively; use of either of these zones would have required a non-use variance to the zone district size. The OR (Office Residential) zone was considered, but both specialty food sales and restaurants are prohibited within the zone district. The C-6 (General Business) zone district was also considered, however this zone is utilized for heavier commercial land use types.

After holding the neighborhood meeting on May 10th and taking into consideration both the interests of the surrounding property owners as well as those of the property owner, Staff proposed to limit the use of the property taking into consideration those uses currently allowed within the current R-2 zone district and those allowed within the C-5 zone district. Some uses that were allowed by approval of a conditional use within the R-2 zone were largely continued as a conditional use within the proposed conditions of record. Uses within the C-5 zone district that were considered to a possible nuisance to the neighborhood were either prohibited outright or changed to being required to seek conditional use approval for the use.

Proposed Conditions of Record

The attached Conditions of Record / Zone District Comparison (**FIGURE 5**) further illustrates the permitted, conditional and restricted uses to be allowed on the subject property as well as providing a side-by-side comparison of the existing zoning along with other zone districts that were considered.

Below Staff outlines the uses that will be permitted within the zone (permitted as a use by right), uses that will be conditional and need City Planning Commission approval, and those uses that will be outright prohibited.

Permitted Uses: The following uses are permitted within the proposed zone:

Residential Use Types

- Single-family Residential;
- Two-family Residential;
- Manufactured home (this is not considered a Mobile Home);
- Accessory Dwelling Unit;
- Domestic violence safe house;
- Family support residence;
- Human service home;

- Human service residence;
- Family care home

Office Use Types

- Financial services;
- General offices

Commercial Use Types

- Consumer convenience services;
- Consumer repair services;
- Convenience food sales (without gas);
- Consumer repair services;
- Convenience food sales;
- Specialty food sales;
- Mixed commercial-residential;
- Mixed office-residential;
- Personal consumer services;
- Personal improvement services;
- Quick serve restaurant;
- Sit down – served at table;
- Retail, General – Neighborhood serving retail;

Civic Use Types

- Community gardens;
- Daycare home

Conditional Uses: The following uses require conditional use approval within the proposed zone:

Residential Use Types

- Human service facility;
- Hospice;
- Residential childcare facility;
- Large family care home;
- Human service shelter;
- Drug or alcohol treatment facility;
- Multi-family dwelling;
- Retirement home

Office Use Types

- Medical offices, labs and/or clinics

Commercial Use Types

- Mixed office/residential use;
- Bed and breakfast inn;
- Business office support services;
- Kennel – Indoor Only;
- Liquor sales;
- Pet services;
- Pharmacy;

- Veterinary service – Small animal clinic;

Civic Use Types

- Cultural services;
- Daycare home – large;
- Semipublic community recreation

Prohibited Uses: All other uses not identified below, either now or in the future, are prohibited uses on the subject property; prohibited uses include, but are not limited to:

Residential Use Type

- Rooming or boarding house

Office Use Type

- Call Center

Commercial Use Type

- Agricultural sales and service;
- All uses under Automotive and equipment services;
- Bar;
- Business Park;
- Campground;
- Commercial center;
- Communication services;
- Construction sales and services;
- Crematory services;
- Data center;
- General food sales;
- Funeral services;
- Hookah bar;
- Hotel/motel;
- Kennel – Outdoor;
- All marijuana related facilities;
- Mini-warehouses;
- Indoor entertainment;
- Indoor sports and recreation;
- Drive-in or Fast food;
- Large retail establishment;
- Sexually oriented business;
- Teen club/young adult club;

Civic Uses

- Cemetery;
- Club (membership, social and recreational);
- Daycare center;
- All Educational Institutions;
- Hospital;
- Public assembly;
- Religious institution;

- All Industrial use types;
- All Parking use types;
- All Transportation use types;
- All Agriculture use types;
- All Miscellaneous use types

Staff would like to further clarify the difference between the allowance of serving alcohol within a restaurant and that classified as a “bar” (see **FIGURE 6**). The proposed restricted use of a bar on the property would require the current or future tenant of the building to operate as a restaurant in order to serve alcohol. The tenant would also have to meet the additional zoning standards outlined in the City Code which would require liquor sales to constitute less than 50% of the establishment’s gross income and the bar area cannot constitute more than 35% of the floor area. (The bar area generally includes the bar area itself and high top tables, it does not include areas of general seating or outdoor patios).

c. Development Plan

The development plan demonstrates the existing building footprint, not currently noted on the plan is the intent to add an outdoor seating area on the west side of the building. The non-use variance request addresses the City Code requirement of off-street parking; the request takes into consideration of a “worst-case scenario” if the building were to be used exclusively as a restaurant.

Proposed Use Restrictions

Based on resident input during the neighborhood meeting on May 10th along with emails received by Staff, Land Use Review staff has proposed the following use restrictions to mitigate certain issues as they relate to the existing use and potential impacts to the surrounding neighborhood:

- Hours of Operation:
 - Sunday – Thursday: No earlier than 6 a.m. / no later than 8 p.m.
 - Friday and Saturday: No earlier than 6 a.m. / no later than 10 p.m.
 (Note: Closing hours should not imply that customers would not be permitted to finish a meal/drink and have vacated the building by that time. Service to customers should end at or before required closing time; the owner/tenant should make efforts to ensure customers are off the premises within a reasonable amount of time after closing).
- Outdoor Seating: Outdoor patio seating is limited to the west patio only. The existing picnic tables located within the boulevard/tree lawn may remain.
- Music: No amplified music, including speakers, may be used on the patio.
- Smoking: No smoking allowed on the patio.
- Signage: Illuminated signage is limited to backlit or internally lit signage. Any exposed neon or excessively bright signage is prohibited anywhere on the building or displayed within a window.

- Employee Parking: Employees should be encouraged to either use alternative transportation (i.e. walking, biking, motorcycle, moped, mass transit, etc.) or encouraged to park west along Willamette Ave. (Note: Staff and the owner understand that the enforceability of this provision may be difficult; owner and tenant(s) should work with their staff and the neighborhood regarding on-street parking).
- Amendments: Amendments to these provisions may be administratively reviewed and amended at any time, however, notification to property owners within 1,000-feet of the property and to the neighborhood organization must be given to allow citizen comment.

d. Non-use Variance

The non-use variance request to allow zero (0) parking stalls where sixteen (16) are required was based on a “worst case scenario” assumption if, in the event, the use of the property were converted entirely from a specialty food sales/market/deli use to a restaurant. The rationale was to address the parking situation and need for a non-use variance now, along with the zone change and development plan, in lieu of attempting to address it with another non-use variance when/if there was a change in use.

The City Code requires an off-street parking requirement of one (1) parking stall for every 300 square feet for specialty food sales and retail market. The requirement for restaurant is one (1) parking stall for every 100 square feet and one (1) parking stall for every 200 square feet for outdoor patio seating.

The request for the non-use variance regarding off-street parking is somewhat of a misnomer given that the City Zoning Code is largely based on “suburban” development standards that assume larger lots can accommodate both the building/use of the property along with off-street customer parking. The City has recognized that providing off-street parking may be difficult or impossible in some instances and has adopted several ordinances to ease off-street parking standards.

The City has created and adopted two parking exempt districts, the downtown area and Old Colorado City, both areas provide an abundance of on-street parking, surface parking lots (public and private) and structured parking (public and private). The West Colorado Avenue Overlay district allows a parking reduction in required off-street parking, taking into consideration available on-street parking along West Colorado Avenue.

The City has also recently adopted the Alternative Parking Options that allows Staff to take into consideration on-street parking as “credit” to meeting off-street parking requirements. The Code also allows for off-street parking reductions based on close proximity (400’) of bike lanes or trails, designated transit stops, public or private parking lots as well as provisions for agreed upon shared parking and credit for on-street parking immediately adjacent to the frontage of the subject property. See City Code Section 7.4.204 (**FIGURE 7**).

The request for the non-use variance to off-street parking does provide a parking reduction to the required off-street parking with the existing striped bike lane along East Willamette Avenue (5% parking reduction, 1 stall) as well as giving credit to four

(4) on-street parking stalls; two (2) along Willamette Avenue and two (2) along Prospect Street. This provided an off-street parking reduction from 21 parking stalls down to 16 parking stalls; the non-use variance assumes these parking and alternative transportation credits.

The Alternative Parking Options does not necessarily take into consideration the walkability or the close proximity of customers to a particular business or use, which certainly could be considered with this scenario. Within a quarter (1/4) mile, which is typically considered a comfortable distance for most people to walk, there are approximately 600 dwelling units of the subject property (**FIGURE 8**). Staff can only estimate the number of residents that may walk or bike to the market, but would conservatively estimate 20% to 40% of the market's customers would occasionally walk or bike to the destination.

2. Conformance with the City Comprehensive Plan

The City's recently adopted Infill and Redevelopment chapter of the City Comprehensive Plan values integrating a mix of land uses within the infill boundary of the City citing that certain population segments (particularly both Millennial and Baby Boomer generations) seek "walkable neighborhoods, robust transit and accessibility to the urban core".

<https://coloradosprings.gov/planning-and-development/page/infill-and-redevelopment?mlid=33866>

The Infill Supplement cites the following goals:

- "Connectivity contributes to multimodal viability allowing for a range of choices for traveling between destinations in the community".
- "Support of neighborhoods and placemaking encourages better integration between neighborhoods and their adjoining communities for a more interconnected and livable city".

The Infill Supplement cites the following policy recommendations:

2 - SUPPORTIVE ZONING

With the exception of downtown zoning and parking regulations, city development requirements have a suburban and/or greenfield orientation and do not always adapt well to more mature areas. In addition to support for zone change requests that promote context sensitive infill and redevelopment – including mixed use, density and adaptive re-use, the recommendations are to:

- Revise development standards and the zoning code to include more infill-supportive standards and relief from "suburban" standards;
- Revise and extend the downtown form-based code (FBC) plan and consider additional targeted use of form-based zoning (FBZ);
- Pursue strategic infill-supportive zoning improvements related to use by right, accessory dwelling units and transit oriented development.

2001 Comprehensive Plan – Staff cites and recognizes the following strategies and objectives that support the proposed zone change, development plan and non-use variance.

Vision Statements

- Is truly a city of neighborhoods – with affordable housing, walkable destinations, convenient parks, and quality schools;
- Establishes positive connections between different land uses and achieves a well designed balance between their location and mix, encourages innovation and creativity in development and the creation of an aesthetically appealing community;
- Successfully integrates the uses and activities that meet the daily needs of residents, including housing, shops, work places, schools, parks, and civic facilities;

Strategy LU 203a: Locate the Places that People Use for Their Daily Needs and Activities Close to Each Other Group and link the places used for living, working, shopping, schooling, and recreating and make them accessible by transit, bicycle, and foot, as well as by car.

Strategy LU 301a: Support Mixed-use Development in Neighborhoods
Support mixed-use development through neighborhood plans and zoning revisions. Develop zoning guidelines and standards that support mixed-use development and pedestrian access by facilitating the integration of residential and non-residential land uses.

Objective LU 4: Encourage Infill and Redevelopment

Encourage infill and redevelopment projects that are in character and context with existing, surrounding development. Infill and redevelopment projects in existing neighborhoods make good use of the City's infrastructure. If properly designed, these projects can serve an important role in achieving quality, mixed-use neighborhoods. In some instances, sensitively designed, high quality infill and redevelopment projects can help stabilize and revitalize existing older neighborhoods.

Objective LU 3: Develop A Mix of Interdependent, Compatible, and Mutually Supportive Land Uses

Over the past several decades, the location and design of development have created a pattern of isolated, disconnected, single-purpose land uses. An alternative to this type of land use pattern is one that integrates multiple uses, shortens and reduces automobile trips, promotes pedestrian and bicycling accessibility, decreases infrastructure and housing costs, and in general, can be provided with urban services in a more cost-effective manner.

Strategy N 301a: Identify Non-Residential Land Uses that Support Neighborhoods

Identify the type, scale and nature of non-residential uses that contribute to the efficient functioning and attractiveness of neighborhoods.

The City's Zoning Code has become very suburban oriented in

3. Conformance with the Area's Master Plan: The subject property is located within both the Shooks Run Redevelopment Plan and the Envision Shooks Run Master Facilities Plan.

The Shooks Run Redevelopment Plan was originally adopted in 1980 and covered the area from Cache la Poudre Street on the north to the mouth of Shooks Run at Fountain Creek. The plan was a follow up to prior studies completed during the 1970's focusing on blight within the neighborhood, stabilizing housing, improving the creek and recreational opportunities and implementing public improvements.

The plan does not identify the subject property in terms of legal non-conforming or historical significance. The plan discusses "suggested zoning actions" regarding 16 properties within the designated area, but does not include the subject property.

The Envision Shooks Run Master Facilities Plan was adopted by City Council in 2017 and is largely considered a facilities plan identifying improvements not only to Shooks Run Creek, but also regarding the vehicular and pedestrian bridge replacement, drainage improvements and potential recreational opportunities. The plan briefly discusses land use opportunities that may exist with the eventual improvements to the creek and public infrastructure, (See **FIGURE 9**).

The subject property is located approximately one (1) block east of the Shooks Run Park and trail connection, there is a sidewalk along the south side of Willamette Street that connects pedestrians and bicyclists to the trail system. The City Parks Department is continuing work on completing the Legacy Loop trail system which will create a continuous trail loop around the core of downtown, the Shooks Run corridor will make up the easterly portion of that trail loop.

To read through the entire Envision Shooks Run Master Facilities Plan visit: www.envisionshooksrun.com/

STAFF RECOMMENDATION

CPC ZC 18-00050 – ZONE CHANGE

Recommend approval to City Council the zone change from R-2 (Two- Family Residential) to C-5/cr (Intermediate Business with conditions of record), based on the findings that the zone change request complies with the three (3) review criteria for granting a zone change in City Code Section 7.5.603(B), subject to the Conditions of Record listed in Figure 10, attached hereto.

CPC DP 18-00051 – DEVELOPMENT PLAN

Recommend approval to City Council the Lil' Market Development Plan located at 749 East Willamette Avenue subject to the below operational notes; this recommendation is based on the findings that this project meets the development plan review criteria in City Code Section 7.5.502(E), subject to the following conditions:

1. Hours of Operation:
 - a. Sunday – Thursday: No earlier than 6 a.m. / no later than 8 p.m.
 - b. Friday and Saturday: No earlier than 6 a.m. / no later than 10 p.m.
 - i. (Note: Closing hours should not imply that customers would not be permitted to finish meal/drink and have vacated the building by that time. Service to customers should end at or before required closing time; the owner/tenant should make efforts to ensure customers are off the premises within a reasonable amount of time after closing).

2. Outdoor Seating: Outdoor patio seating is limited to the west patio only. The existing picnic tables located within the boulevard/tree lawn may remain.
3. Music: No amplified music, including speakers, may be used on the patio.
4. Smoking: No smoking allowed on the patio.
5. Signage: Illuminated signage is limited to backlit or internally lit signage. Any exposed neon or excessively bright signage is prohibited anywhere on the building or displayed within a window.
6. Employee Parking: Employees should be encouraged to either use alternative transportation (i.e. walking, biking, motorcycle, moped, mass transit, etc.) or encouraged to park west along Willamette Ave. (Note: Staff and the owner understand that the enforceability of this provision may be difficult; owner and tenant(s) should work with their staff and the neighborhood regarding on-street parking).
7. Amendments: Amendments to these provisions may be administratively reviewed and amended at any time, however, notification to property owners within 1,000-feet of the property and to the neighborhood organization must be given to allow citizen comment.

CPC NV 18-00052 – NON-USE VARIANCE

Recommend approval to City Council the non-use variance request relating to the Lil' Market zone change and development plan; this recommendation is based on the findings that the property meets the non-use variance review criteria in City Code Section 7.5.802(B).