



## Legislation Details (With Text)

**File #:** AR DP 21-00813      **Version:** 3      **Name:** Kum & Go Appeal

**Type:** Planning Case      **Status:** Passed

**File created:** 6/6/2022      **In control:** City Council

**On agenda:** 8/9/2022      **Final action:** 8/9/2022

**Title:** An appeal of the Planning Commission’s decision to deny a Development Plan (AR DP 21-00813) for a Kum & Go gas station, convenience store and associated parking and landscaping on a 1.04-acre site located at the southeast corner of south 8th street and West Brookside Street.

(Quasi-Judicial)

Related File: AR FP 21-00814

**Presenter:**

Matthew Alcuran, Planner II, Planning and Community Development Department  
Peter Wysocki, Planning and Community Development Director, Planning and Community Development Department

**Sponsors:**

**Indexes:** Appeals

**Code sections:**

**Attachments:** 1. CC\_AppealStatement\_Kum&Go, 2. Staff Presentation\_Kum & Go Gas Station Appeal CC\_MDA 080922, 3. Kum&GoCCPresentation, 4. CC\_LetterUrbanStrategies, 5. CPC\_StaffReport\_Kum&GoGasStationAppeal, 6. Approval Letter Development Plan, 7. Approved Plan Set, 8. CPC\_Appeal Statement\_Urban Strategies, 9. CPC\_kum&goappellantexhibit, 10. CPC\_Appeal Statement\_Severson, 11. CPC\_Applicant Appeal Response, 12. CPC\_PublicComments, 13. Additional Public Comments, 14. BrooksideGardens\_JanelleWalters, 15. Map of known nearby gas stations, 16. Context Map, 17. Vicinity Map, 18. PlanCOS Vision Map, 19. CPC\_Minutes\_Kum&Go\_draft, 20. 7.5.906 (B) Appeal of Commission-Board, 21. 7.5.502.E Development Plan Review, 22. CC\_PostponementRequest\_Kum&Go

Date	Ver.	Action By	Action	Result
8/9/2022	3	City Council	approved	Pass
7/26/2022	2	City Council	postpone to a date certain	Pass
6/16/2022	1	City Planning Commission	approved	Pass

An appeal of the Planning Commission’s decision to deny a Development Plan (AR DP 21-00813) for a Kum & Go gas station, convenience store and associated parking and landscaping on a 1.04-acre site located at the southeast corner of south 8th street and West Brookside Street.

(Quasi-Judicial)

Related File: AR FP 21-00814

**Presenter:**

Matthew Alcuran, Planner II, Planning and Community Development Department

Peter Wysocki, Planning and Community Development Director, Planning and Community Development Department

**Summary:**

Owner: Sterling Wolf, Inc. and Kosgove Metal

Developer: Kum & Go, L.C.

Representative: Entitlement and Engineering Solutions, Inc.

Location: Southeast corner of South 8<sup>th</sup> Street and West Brookside Street.

Planning Staff administratively approved a Development Plan to allow construction of a new convenience store, fuel canopy, associated drives, parking and landscaping, and a Final Plat to combine five (5) parcels into a single parcel for the Kum & Go gas station, on a 1.04-acre site located at the southeast corner of South 8th Street and West Brookside Street.

An appeal was filed by 352, LLC, which is represented by Mr. Les Gruen of Urban Strategies, Inc. A 2nd appeal was then filed by Eric and Anna Nicol and Jon Severson and Melinda Edwards. The City's Planning Commission held a public hearing on June 16, 2022, where they reversed the administrative decision to approve thus denying both the Development Plan and the Final Plat on a 4 to 1 vote. The Planning Commission found that the proposal did not meet the approval criteria requiring the use to be compatible and harmonious with the neighborhood per City Code Section 7.5.502.E.1 "*The details of the use, site design, building location, orientation and exterior building materials are compatible and harmonious with the surrounding neighborhood, buildings and uses, including not-yet-developed uses identified in approved development plans.*" An appeal of Planning Commission's decision was filed by the representatives of Kum & Go. The City Clerk's office has scheduled this appeal to be heard on August 9, 2022.

**Background:**

The project area totals roughly 1.04 acres of land at the southeast corner of South 8th Street south and West Brookside Street. The site is not within a master plan designated area but is along a commercial corridor along 8th Street. While not located within the Ivywild Neighborhood Master Plan, 8th Street is identified on the Site Survey Map as Auto-Related Commercial. In addition, the project site is located within the Ivywild Neighborhood Homeowners Association boundary map, but the document is not an adopted City plan. After multiple rounds of formal review, Planning Staff administratively approved a development plan and subdivision plat, to allow construction of the 3,968 square-foot convenience store, gas station, fuel canopy, associated parking, and other off-site street improvements.

Both applications were found to be consistent with City standards for the C-5 (Intermediate Business) zone district, parking requirements, landscaping standards, grading standards, and all applicable review criteria. A convenience store and gas station is a permitted use, by right, in the C-5 zoning district. The entitlements required were a Development Plan and a Final Plat, both of which are administrative decisions. Staff approved the applications after finding the Development Plan met the review criteria in Section 7.5.502.E and the required standards within Chapter 7 Article 4. The Final Plat met the replat requirement of Section 7.7.305 and the requirements of Section 7.7.303 of the City Code more specifically, staff found that the details of the use, the site layout, setbacks, buffering, and landscaping (etc...) were compatible and harmonious with the neighborhood given its location at the corner of a principal arterial and major collector street and the fact that there are other gas station/convenience stores on this same corridor and elsewhere in the City of Colorado Springs with similar locational characteristics (see Map of known nearby gas stations).

For clarification, the applicant has been approved for a 12-foot side yard landscape setback from the required 15-foot landscape setback, which is not under a nonuse variance or an administrative relief, but a request for alternative landscape design. Per City Code Section 7.4.307, *a request may be made for flexibility in the application of landscaping regulations when a standard is inapplicable or inappropriate to a specific use or design proposal, or when a minor problem arises with the strict application of development standards.* A landscape buffer is required along the common property line between an adjacent nonresidential use and a residential use or vacant residentially zoned property. A landscape buffer shall be at least (15') wide where required. The applicant requested a reduced buffer width to 12-feet and to place the required (6) buffer trees elsewhere on site to satisfy the tree requirement. A minimum 10 shrubs will be planted to satisfy the remaining (1) tree and 44 extra shrubs to be planted within the east buffer on top and below the retaining wall to soften the wall façade. The alternative landscape design is due to site constraints, only 12-feet of width is available on the east side of the site for a landscape buffer. This area also includes a retaining wall which is necessary for the overall grading of the site and landscape planting is impeded in this area.

The City's Stormwater staff reviewed and approved the development plan, plat, and drainage report for compliance with the drainage criteria manual and other relevant requirements. The City's Traffic Engineers reviewed and accepted the proposed access points and associated public improvements as indicated in the Traffic Impact Analysis. Colorado Springs Utilities has accepted the project's public facilities to adequately serve the building with water, wastewater, gas, and electric services. The development plan was also reviewed by other agencies, such as CSPD (Colorado Springs Police Department), who accepted the security plan, CSFD (Colorado Springs Fire Department) had no exceptions, and City Engineering accepted the geologic hazard waiver and off-site street improvements. The project's subdivision plat was reviewed by all agencies, including the City's surveyor, and was found to meet all standards and requirements of the subdivision code; the plat is currently being held by City Staff for recordation.

Both appellants raised concerns during the review process and the applicant addressed those comments. In their March 18, 2022, letter, the applicant responded to public feedback and concerns by confirming that a gas station/convenience food sales use is an allowed by right in the C-5 (Intermediate Business) zone district, that acceptable access points, safe pedestrian circulation, site layout of the building blocking the canopy lighting from the residential district, and a reduced building footprint to fit within the site were being provided.

Regarding the appeal of the staff approval, City Code Section 7.5.906.A.4 includes the criteria to be used to evaluate an appeal of an administrative decision. The appellant must identify the ordinance provisions which are in dispute, must show how the administrative decision was incorrect (e.g., against zoning provisions, unreasonable, erroneous, contrary to law), and must identify the benefits and impacts of the decision and show that the burdens on the appellant outweigh the benefits accrued by the community. The formal appeal statements cite a number of concerns about the approved applications, which have already been addressed by City staff and City internal and external reviewers during the application process.

An appeal of Planning Commission's decision was filed by Kum & Go, L.C., the original applicant, on June 23, 2022, the appeal statement cites that City Planning Commission's decision was against the express language of the Colorado Springs zoning ordinances. The statement further states that the proposed use is a principal permitted use under the existing C-5 zone and is consistent with the established land use patterns along the South 8<sup>th</sup> Street corridor. Furthermore, the applicant states,

the denial of the use is erroneous and clearly contrary to law.

**Previous Council Action:**

City Council has taken no action on the properties affected by this appeal in the recent past.

**Financial Implications:**

N/A

**City Council Appointed Board/Commission/Committee Recommendation:**

On June 16, 2022, the Planning Commission reversed the administrative decision to approve thus denying the proposed Development Plan and Final Plat. Discussion lasted roughly two hours and focused on stormwater related issues, traffic concerns, environmental issues, homeless issues, noise and light concerns, and compatibility with the surrounding neighborhood. There were several members of the public who spoke in opposition to the project.

**Stakeholder Process:**

The public process involved with the review of these applications included posting of the site and sending of postcards on five (5) separate occasions. The initial submittal included postcards to 147 property owners within 1,000 feet, and poster that was posted from January 3, 2022, to January 13, 2022. The second occasion was for a virtual neighborhood meeting that was held On February 28, 2022, which included postcards to 147 property owners within 1,000 feet and poster that was posted from February 18, 2022, to February 28, 2022. Due to technical difficulties outside the scope of planning staff, the call-in feature was not functional. City Staff determined that a second neighborhood meeting would be required, and an in-person neighborhood meeting was held on April 12, 2022, which included postcards to 147 property owners within 1,000 feet and a poster that was posted from April 2, 2022, to April 12, 2022. The fourth occasion was for the appeal to Planning Commission, which included postcards to 147 property owners within 1,000 feet and a poster that was posted from June 6, 2022, to June 16, 2022. The fifth occasion was for the appeal to City Council, which included postcards to 147 property owners within 1,000 feet and a poster that was posted from July 16, 2022, to July 26, 2022.

Comments received prior to the City Planning Commission meeting had general concerns to traffic, homelessness, compatibility, pedestrian safety, and light and noise pollution. The applicant and city staff had addressed these comments throughout the submittal process.

**Alternatives:**

1. Affirm the decision of the City Planning Commission to deny the proposed Development Plan and Final Plat; or
2. Reverse the decision of the City Planning Commission and approve the Development Plan and Final Plat; or
3. Modify the decision of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration.

**Proposed Motions:**

Grant the appeal and approve the Development Plan for the Kum & Go Gas Station, based upon the finding that the application complies with the review criteria in City Code Section 7.5.502.E, and that the appeal criteria found in City Code Section 7.5.906.A.4 and B are not met.

or

Deny the appeal and uphold the Planning Commission's denial of the Development Plan for the Kum & Go Gas Station, based upon the finding that the application does not comply with the review criteria in City Code Section 7.5.502.E, and that the appeal criteria found in City Code Section 7.5.906.A.4 and B are met.

N/A