



## Legislation Details (With Text)

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<b>Type:</b>	Planning Case	<b>Status:</b>		Passed	
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<b>On agenda:</b>	10/10/2023	<b>Final action:</b>		10/10/2023	
<b>Title:</b>	Use Variance to allow an animal care facility use within an MX-M (Mixed-Use Medium) zone district consisting of 25,903 square feet located at 5929 Delmonico Drive.				
	<b>Presenter:</b> Kerri Schott, Planner II, Development Review Enterprise. Peter Wysocki, Planning Director, Planning & Development Department				
<b>Sponsors:</b>	Planning Department				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. Staff Report_KLS_Catology, 2. Land Use Statement_KLS_Catology, 3. PlanCOS Vision Map, 4. 7.5.527 USE VARIANCE, 5. UV Catology CC Presentation_staff, 6. UV Catology Presentation_Applicant				

Date	Ver.	Action By	Action	Result
10/10/2023	2	City Council	approved	Pass

Use Variance to allow an animal care facility use within an MX-M (Mixed-Use Medium) zone district consisting of 25,903 square feet located at 5929 Delmonico Drive.

**Presenter:**

Kerri Schott, Planner II, Development Review Enterprise.  
Peter Wysocki, Planning Director, Planning & Development Department

**Summary:**

Applicant: Catology, LLC  
Property Owner: CSJ NO 7, LLC  
Location: 5929 Delmonico Road

The applicant requests a Use Variance for an animal care facility on a commercial property at 5929 Delmonico Road. The Use Variance request would allow the establishment of an animal care facility consisting of a cat kennel in an MX-M/HS (Mixed Use Medium Scale with Hillside Overlay) zone district. Under the old Chapter 7, the property was zoned PBC/HS (Planned Business Commercial with Hillside Overlay) and kennels were a permitted use. Under the new UDC, the kennel use was not transferred over to the newly established MX-M/HS (Mixed Use Medium Scale with Hillside Overlay) zone district. Additionally, a kennel now falls under the “animal care facility” use which is not permitted nor conditional within the MX-M zone. Staff has determined that this use was inadvertently omitted in the recent code rewrite (Retool) and therefore this application is appropriate to rectify that oversight.

### Use Variance Review Criteria - UDC Section 7.5.527.E

The City Council may approve the application or approve it with conditions if Council finds that the following criteria have been met;

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 Use Variance would result in undue property loss and not solely a mere inconvenience or financial disadvantage;
2. That the Use Variance is necessary for preservation and enjoyment of a property right of the and if not approved, the property or structure cannot yield any beneficial use;
3. That the Use Variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners of property;
4. That the hardship is not the result of the applicant's own actions;
5. That because of these conditions, the application of the UDC prohibition on the requested use on the subject property would effectively prohibit or unreasonably restrict the use of the property; and
6. That the Use Variance is not being requested primarily to avoid the time or expense of complying with UDC standards generally applicable to similar properties and development.

#### **Background:**

With the animal care facility use, the Applicant proposes a boarding kennel for cats with ancillary services include cat kenneling/boarding, professional cat grooming and behavior consultations. The applicant does not propose to expand the existing building footprint or change the existing site conditions therefore no additional amendment applications are required by City staff.

Staff finds that the proposed Use review criteria have been satisfied. The proposed land use is compatible with the surrounding area. This area has a mix of office/medical office, commercial, retail, and residential (single-family and multi-family). The MX-M (Mixed-Use Medium Scale) zone district is one of the new zone districts in the newly adopted Unified Development Code (UDC). The purpose of this zone district is to:

*“Accommodate the development of new activity centers in emerging growth areas, as well as to promote the adaptive reuse or redevelopment of commercial centers that are vacant or underused, or of other obsolete buildings or properties.”*

The proposed animal care facility use will utilize an existing vacant building and further supports infill commercial development while stabilizing the existing commercial and benefiting surrounding businesses and residents. Catology has already operated as a permitted use within the Chapter 7 PBC zone district at another location at 4703 Centennial Boulevard since 2016 without complaints from neighboring businesses and has proven to be successful in multi-tenant shopping centers. There are also residents within convenient proximity to the proposed project to provide a reliable customer base.

The proposed use for animal care facility is considered a less intense use than the existing restaurant

use as identified on the previously approved development plan. Therefore, the site will continue to meet all parking requirements and already has adequate traffic circulation as City Traffic Engineering provided no comments or concerns with the proposed use.

City staff finds that the request will not be detrimental to public welfare, nor will it be injurious to the property or improvements of other surrounding property owners. Because this business is specific to only cats and not dogs with only indoor accommodations, there would be no noise impacts to neighbors nor environmental impacts stemming from hosing animal waste down drains. And while this proposal is considered a kennel under the animal care facility use, there is emphasis on the business being only indoor luxury boarding for cats which is less impactful to the surrounding area than an outdoor kennels for dogs.

Staff further determined that the hardship is not the result of the Applicant's own actions and that the Use Variance request was not to avoid time and expense of complying with UDC standards.

Staff has evaluated the proposed application for conformance with the City's current comprehensive plan (herein referred to as "PlanCOS"), adopted in January 2019. PlanCOS identifies the area as an 'Established Suburban Neighborhood'. One of the primary recommendations in the established neighborhoods typology encourages redevelopment of commercial areas. In this instance, the proposed use will locate in an existing commercial space and provide a new service to residents in a suburban neighborhood. Established neighborhoods are predominantly built-out but should expect some degree of infill and redevelopment. The intent is to offer integrated support and services to nearby neighborhoods. The project site supports the demand for integrated services to surrounding neighborhoods and further provides a future mix of use types in this area.

Staff finds that the proposed Use Variance to be in compliance with the goals, policies and strategies within PlanCOS.

**Previous Council Action:**

N/A.

**Financial Implications:**

N/A.

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

At the Planning Commission September 13, 2023, the project application was heard without discussion under the Consent Calendar portion of the hearing. As such, there were no questions nor comments on this agenda item. The Planning Commission voted 7-0 to approve the project application (2 members excused - Commissioner McMurray and Commissioner Raughton).

**Stakeholder Process:**

The application was sent to the standard internal and external agencies for review. No comments or concerns were received from review agencies for this proposed use. Internal review agencies for this project included City Traffic, City Engineering, City Fire Department, Colorado Springs Utilities, City

## Stormwater and City Development Impact.

Out of 303 postcards that were noticed within 1,000 feet of the property during the initial review and again prior to Planning Commission hearing, one comment was received in opposition during the internal review. The neighbor's concerns were daytime traffic, smell and devaluing surrounding home values. However, City Traffic Engineering reviewed the application and had no concerns or comments regarding the proposed use meeting traffic requirements. Also, staff has determined that any potential odor impacts are mitigated by the fact that this use is completely indoors.

### **Alternatives:**

1. Approved the Use Variance as recommended by the Planning Commission
2. Deny the Use Variance, based on the determination that it does not meet the Use Variance review criteria
3. Approve the Use Variance subject to conditions

### **Proposed Motion:**

Approve the Use Variance to allow an animal care facility use at 5929 Delmonico Drive, based upon the findings that the request complies with the Use Variance criteria as set forth in City Code Section 7.5.527.E.

N/A