



Legislation Text

File #: CPC ZC 18-00050, **Version:** 3

Ordinance No. 18-75 amending the zoning map of the City of Colorado Springs pertaining to 4,590 square feet from R-2 (Two-family Residential) to C-5/CR (Intermediate Business with Conditions of Record).

(QUASI-JUDICIAL)

Presenter:

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Summary:

Applicant: Lil' Market LLC
Owner: Lil' Market, LLC
Location: 749 East Willamette Avenue

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.

Previous Council Action:

City Council took action on the zone change, development plan and nonuse variance at its July 24, 2018 under the public hearing portion of the agenda. City Staff presented the background and Land Use applications under consideration and presented City Planning Commission's recommendation to support all three (3) applications with the additional conditions that additional bike parking up to fifteen (15) stalls and landscaping be provided on the proposed patio. City Council then heard public comment from five (5) property owners, two (2) in support and three (3) in opposition to the project.

Councilwoman Gaebler motioned, seconded by Councilman Bennett to approve the change of zone from R-2 (Two-family Residential) to C-5/cr (Intermediate Business with conditions of record, conditions of record are listed on the proposed ordinance). The motion was approved on an 8-1 vote (Councilman Strand voted in opposition).

Councilwoman Gaebler motioned, seconded by Councilman Murray to approve the Lil' Market Development Plan citing the operational conditions (as currently noted on the development plan), however excluding the two (2) additional conditions suggested by the City Planning Commission in regards to the additional bike rack and landscaping on the patio. The motion was approved on a 6-3

vote (Councilmembers Strand, Knight and Pico).

Councilman Murray, seconded by Councilmember Gaebler to approved the non-use variance supporting the allowance of zero (0) parking stalls where sixteen (16) are required. The motion was unanimously (9-0) approved.

Background:

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.

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.

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.

The City Planning Commission staff report outlines both the conditions of record that will be tied to the zoning of the property as well as the operational restrictions that will be noted on the development plan and tied to any use of the property.

Financial Implications:

N/A

Board/Commission Recommendation:

The City Planning Commission recommended approval of the change of zone, accompanying development plan and non-use variance, all on unanimous votes (9-0) subject to two recommendations by the Commission; 1) to add additional bike racks (up to 12 bike stalls, there is current a 4-bike rack located on the north side of the building) to encourage bike ridership to the site; 2) to add vegetative screening around the west side of the proposed patio adjacent to an existing home.

Staff supports the additional bike racks for bike parking on the property; however the request to add landscaping along the west property line may pose some difficulties as the concrete slab already exists.

Please reference the minutes from the hearing for a detailed record.

Stakeholder Process:

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 estimates 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.

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.

Please see the Planning Commission staff report for more details.

Alternatives:

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Reverse the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration

Proposed Motion:

Adopt an ordinance amending the zoning map of the City of Colorado Springs pertaining to 4,590 square feet 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 within the ordinance.

An ordinance amending the zoning map of the City of Colorado Springs pertaining to .105 acre (or 4,590 square feet) from R-2 (Two-family Residential) to C-5/CR (Intermediate Business with Conditions of Record) with following conditions of record:

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