



Legislation Text

File #: APPL-24-0001, **Version:** 1

An appeal of the City Planning Commission decision to approve both The Market at Pine Creek Major Concept Plan Amendment changing 7.87 acres from Commercial to Commercial and Residential and the Royal Pine Apartments Development Plan establishing multi-family residential consisting of 7.87 acres located at 4150 Royal Pine Drive.
(Quasi-Judicial)

Presenter:

Katelynn Wintz, Planning Supervisor, Planning + Neighborhood Services
Logan Hubble, Planner II, Planning + Neighborhood Services
Peter Wysocki, Director, Planning + Neighborhood Services

Summary:

Owner: BG Development, LLC
Developer: DBG Properties, LLC
Representative: Drexel, Barrell & Co.
Location: 4150 Royal Pine Drive

The application is an appeal of two City Planning Commission approvals. A development plan approval which proposes an apartment complex on 7.87 acres of property zoned MX-M (Mixed-Use Medium Scale), and a concurrent concept plan amendment approval which would allow residential uses on the property.

Background:

The project includes two different applications a concept plan amendment and a development plan. After a pre-application meeting, where the applicant identified the proposed use as residential development, Staff identified that a concept plan amendment and development plan would be required. The concept plan amendment, submitted on June 2, 2023, was submitted prior to the effective date of the UDC and applicant elected to have the application reviewed under the previous code, known as Chapter 7. The development plan was submitted after the effective date of the UDC, July 3, 2023, and therefore subject to all the standards of the UDC. This is a unique scenario where the applications under review were initially submitted separately and are subject to different review criteria. The statements below further reinforce the applicable code for each application.

The applicant requests an amendment to the previously approved concept plan to allow for residential uses on the property. While multi-family residential is an allowed use type in the Mixed-Use - Medium Scale zone district, the previous concept plan illustrated only commercial uses. Staff determined that an amendment is required to support residential uses on the subject site. The proposed concept plan amendment adds residential uses as permitted for the subject properties and carries forward all conditions of record from previous concept plan on the site.

The applicant applied for a new development plan to allow a multi-family residential development on the site. The Development Plan illustrates a complex with three 4-story buildings and a single-story clubhouse. The clubhouse is the only structure that is placed in the area subject to a 38-foot maximum height restriction per the concept plan. The buildings contain a mix of 1-, 2-, and 3-bedroom apartments. City parking requirements have been met through a combination of covered and uncovered surface parking spaces. Amenities provided onsite include the clubhouse, flexible indoor recreation areas, fitness area, community gardens, a playground, and a dog run. The applicant also provides a few areas of green space, with 10% of the total site area being considered active green space. Staff has reviewed the relevant maps and confirmed that this property is not within the Preble's Meadow Jumping Mouse habitat.

Detailed analysis of how the above applications satisfy the code criteria as discussed at the City Planning Commission Meeting can be found in the City Planning Commission staff report, attached. The referenced report also includes more detailed analysis of how the various City agencies reviewed and determined the proposed plans satisfy their review criteria.

After the approval from City Planning Commission, prior to the appeal hearing of the Royal Pine project staff identified an error related to the avigation easement acknowledged on the development plan. The plan presented to Planning Commission included a reference to the Colorado Springs Airport avigation easement, which is applicable to properties within the Airport Overlay. This property is not subject to the Airport Overlay but is subject to the US Air Force Academy overlay which requires a different avigation easement than the one provided. Staff requested that the applicant revise the development with the appropriate US Air Force Academy avigation notes and statements consistent with the Unified Development Code prior to approval and prior to any appeal hearings on this item. The corrected development plan was submitted on February 9, 2024, and determined to meet all applicable criteria satisfying the compliance requirements with the US Air Force Academy Overlay.

An appeal of the Planning Commission decision filed with the Clerk's Office on January 18, 2024, staff review of the appeal identified that the initial appeal included an appellant party, Preserve Pine Creen Village, LLC, that did not have standing per the UDC appeal criteria. After discussion with the legal representatives of the Preserve Pine Creen Village, LLC, the representatives were able to modify the submitted appeal to include an appellant who had standing per the criteria in the UDC. The appeal statement, attached, include several citations for areas where the appellants allege that the approval of the applications is counter to the provisions of the applicable codes.

Some statements included in the appeal statement are outside the scope of the Land Use Review purview. The following section will highlight the areas that specifically reference City review criteria and how those criteria are found to be met.

The appellant notes that there is inadequate parking to serve the proposed development and cites a separate development as an example of the parking burden that may occur should this development be approved. Sheet 1 of the development plan includes a parking table which illustrates the codified requirements and the total number of provided parking spaces for the proposed development. Parking requirements for multi-family projects are determined by a mix of the bedrooms offered per unit, based on the total unit count of 232 with a mix of 1, 2, and 3-bedroom units the total minimum number of parking space required by code is 308 spaces. The proposed development plan includes 339 parking spaces, exceeding the required parking by 31 spaces.

School capacity to accommodate additional students in local district schools remains a critical concern for the appellants. The appellant specifically references comments made by Planning staff at the neighborhood meeting and subsequent conflicting information provided by the District related to the nature of the District comments to the City. After these concerns raised by residents to Planning staff, Planning conducted 3 meetings with the District leadership to better understand their involvement in the Land Use Review process and ensure consistency moving forward. Planning staff acknowledged on several occasions the comments made by District 20 leadership after these meetings and relayed the District's position that fees in lieu of land dedication for this residential development satisfies their obligations and that the District is able to serve all resident students in the District. After the Planning Commission meeting in January 2024 when this item was discussed, staff reached out to the District via email and the District Chief Operating Officer provided the attached response, see "D20 Response". District 20 states that they will not attend meetings, they will accept fees in lieu of land dedication (for this development), and the District remains able to serve all resident students in the District.

The appeal statement notes that wildlife impacts are also inadequately addressed in the approval of the applications. There are no provisions in the City Code that require wildlife or habitat studies to be conducted as part of the Land Use Review process. Additionally, where a property may be subject to state or federal requirements, it is the applicant's responsibility to ensure compliance with those agencies. When properties are in known habitat areas, such as the Preble's Meadow Jumping Mouse habitat, Planning does require that applicants submit their application to the US Fish and Wildlife Service for review and consideration, but that does not limit or impact the applicant's ability to obtain land use approvals. In this case, the available US Fish and Wildlife habitat data for endangered species shows that no such habitat exists on the 7.87 acres proposed for development. Given the resident concerns about the impact of development within the commercial center on surrounding wildlife, Planning staff conducted additional outreach to Colorado Parks and Wildlife for feedback. The letter prepared by Colorado Parks and Wildlife notes that some presence of wildlife may impact this area, including the presence of black bears, and suggest that the developer consider installation of bear-safe trash receptacles on site. Colorado Parks and Wildlife did not raise any additional concerns related to the development within the project area and destruction of habitat area.

City Traffic Engineering reviewed the provided Traffic Impact Analysis, agrees with the findings and supports the four recommendations of the report. Emergency response personnel, including City Fire, confirm that the plans follow their codified requirements.

Previous Council Action:

Council first acted on this property in 1982 when the property was annexed as part of the larger Briargate Addition No. 5 annexation. The property is subject to the Briargate Master Plan, which Council voted to deem implemented under the Chapter 7 zoning code, acknowledging that the master planned area was greater than 85% built out and effectively achieved the intent and overall vision for the area in Spring of 2021.

Council adopted a rezoning ordinance establishing PBC (Planned Business Center) now referred to as MX-M [Mixed Use Medium Scale since the adopting of the Unified Development Code (UDC)] in November 2006. Accompanying the rezoning request is the establishment of The Market at Pine Creek Concept Plan, approved by Council on the same date.

Financial Implications:

N/A

City Council Appointed Board/Commission/Committee Recommendation:

Planning Commissioner Briggs expressed concerns that District 20 was unwilling to attend the Planning Commission meeting and shared that without more direct response from the District he felt that he was unable to support the proposed changes. Commissioner Hensler noted that the role of Planning Commission is to review the proposal against the criteria and acknowledged that while the commercial zoning existed for the property that residential use types were permitted with conditions requiring a hearing and current code allows the use by-right. She also stated that in her perspective, there is a housing demand in Colorado Springs and that she would be in support of the proposal.

Commissioner Almy specifically addressed the resident initiated evacuation study noting that while he commended the commitment and ingenuity of organizing the effort, that in some ways he found the effort was flawed as it did not account for the other efforts that emergency responders and personnel would deploy in an evacuation scenario. He also references back to the criteria that developments are harmonious with the surrounding area. In his analysis, the proposal for residential development in a commercial center, adjacent to Powers Boulevard and North Union Boulevard is compatible with the surrounding development and may offer some benefits to the adjacent residents, like noise mitigation after construction of the apartment buildings.

Commissioner Rickett stated that the purpose of the code is to “enhance the quality, diversity, and safety of neighborhoods by encouraging pride & investment” and notes that the concept plan criteria applicable to this application. He notes that both the master plan and concept plan have, for many years, referenced that the property would be developed commercially, and residents made personal decisions based on that information, so consistent with his voting record, he would not support the request to modify the concept plan to allow residential and thus would not support the development plan.

Commissioner Hente notes that he shares similar frustrations with the other Commissioners related to the involvement of the school district in the planning process. He then addresses evacuation concerns noting that, consistent with Deputy Fire Marshal Kris Cooper’s statements, this area is not at significant risk to wildfire concerns.

City Planning Commission voted to approve both the major concept plan amendment and development plan applications in a 5-2-2 vote (Commissioners Briggs and Rickett voting no, Commissioners Foos and McMurray absent)

Stakeholder Process:

Public Notification occurred on six (6) occasions. After the initial notification, many residents expressed their opposition to the proposed application. The Public Comments, attached, mostly cite concerns of traffic, evacuation, change of use, intensity of residential use, school capacity concerns, lack of amenities, and height of buildings. City Planning Staff required the applicant to hold a neighborhood meeting. The meeting was held on August 3, 2023, at Library 21C. Concerns like those noted above were raised at the neighborhood meeting.

Planning Staff compiled a list of all emails written on the sign in sheets and those who wrote comments via email to Staff to create a listserv for all interested parties in the project. As noted above

that listserv consists of 184 unique emails. As of February 1, 2024, staff sent fourteen (14) emails to this listserv providing project updates to those interested in the project. These emails typically included notification that revised plans are publicly available for review, requests for additional comments related to the revised project documents, and directions for how to view the project files.

At the Planning Commission meeting Planning staff was made aware that the virtual link published with the meeting agenda directed interested residents participating virtually to an incorrect meeting link. The Planning Commission took a break for staff to resolve the issue. During the break Planning staff coordinated with the appellants to send the corrected meeting link to the City maintained listserv and then distribute that link through their neighborhood channels as well. While there were some issues initially with virtual participation, staff worked proactively to troubleshoot the issues in real time to ensure that residents were able to participate virtually.

On January 25, 2024, an email sent to the listserv notified the interested parties that this application the Planning Commission approved was appealed and that follow up communication with directions to participate in the meeting will follow when the meeting agenda is finalized by Council and made available to the public.

Proposed Motion:

COPN-23-0015 - Major Concept Plan Amendment

Motion to Approve:

Approve the appeal and overturn the approval of The Market at Royal Pine Major Concept Plan Amendment based upon the findings that the appeal criteria as set forth in UDC Section 7.5.415 are met and the review criteria for Concept Plans as set forth in City Code Section 7.5.501 are not met.

Motion to Deny:

Deny the appeal and uphold the approval of The Market at Royal Pine Major Concept Plan Amendment based upon the findings that the appeal criteria as set forth in UDC Section 7.5.415 are not met and the review criteria for Concept Plans as set forth in City Code Section 7.5.501 are met.

DEPN-23-0141- Development Plan

Motion to Approve:

Approve the appeal and overturn the approval of The Royal Pine Apartment Development Plan based upon the findings that the appeal criteria as set forth in UDC Section 7.5.415 are met and the review criteria for Development Plans as set forth in UDC Section 7.5.515 are not met.

Motion to Deny

Deny the appeal and uphold the approval of The Royal Pine Apartment Development Plan based upon the findings that the appeal criteria as set forth in UDC Section 7.5.415 are not met and the review criteria for Development Plans as set forth in UDC Section 7.5.515 are met.

N/A