



## Legislation Details (With Text)

**File #:** CPC NV 18-00052    **Version:** 2    **Name:**

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

**File created:** 6/4/2018    **In control:** City Council

**On agenda:** 7/24/2018    **Final action:** 7/24/2018

**Title:** A non-use variance to allow zero (0) parking stalls where sixteen (16) parking stalls are required.  
(QUASI-JUDICIAL)

Related Files: CPC DP 18-00051, CPC ZC 18-00050

**Presenter:**  
Peter Wysocki, Director Planning and Community Development  
Mike Schultz, Principal Planner, Planning and Community Development

**Sponsors:**

**Indexes:** The Lil' Market

**Code sections:**

**Attachments:** 1. 7.5.802 Nonuse Variance

Date	Ver.	Action By	Action	Result
7/24/2018	2	City Council	approved	Pass
6/21/2018	1	Planning Commission	referred	Pass

A non-use variance to allow zero (0) parking stalls where sixteen (16) parking stalls are required.  
(QUASI-JUDICIAL)

Related Files: CPC DP 18-00051, CPC ZC 18-00050

**Presenter:**

Peter Wysocki, Director Planning and Community Development  
Mike Schultz, Principal Planner, Planning and Community Development

**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:**

There has not been any previous City Council action on this item.

**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 addition bike racks to the property to encourage bike ridership to the site; 2) to add landscaping along the west side of the proposed patio adjacent to an existing home.

Staff supports the additional bike racks for bike parking on the property (noting that a bike rack exists on the property); however the request to add landscaping along the west property line may pose some difficulties. A concrete slab already exists for the proposed patio

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:**

Approve the non-use variance request relating to the Lil' Market zone change and development plan, based on the findings that the property meets the non-use variance review criteria in City Code Section 7.5.802(B).

N/A