

# ASTROZON CULTIVATION RELOCATION

## Planning Commission September 11, 2024

Staff Report by Case Planner: Allison Stocker, AICP



### Quick Facts

#### Applicant

Ryan Moore, Representative

#### Property Owner

Astrozone Plaza Investments LLC

#### Developer

N/A

#### Address / Location

3758 Astrozon Blvd

#### TSN(s)

6434112003

#### Zoning and Overlays

Current: MX-L/P/SS-O/AP-O

#### Site Area

2.4 Acres

#### Proposed Land Use

Medical Marijuana Cultivation Facility

#### Applicable Code

UDC

### Project Summary

A Use-Variance to allow the establishment of a Medical Marijuana Cultivation use consisting of 2.4 acres located at 3758 Astrozon Blvd.

#### File Number

UVAR-24-0002

#### Application Type

Use-Variance with Land Use Statement

#### Decision Type

Quasi-Judicial

## Background

### Prior Land-Use History and Applicable Actions

<i>Action</i>	<i>Name</i>	<i>Date</i>
Annexation	Pikes Peak Park Addition #8	April 1970
Subdivision	Astrozon Plaza Colorado Springs Blk 1 Lot 3	1984
Master Plan	South Academy Master Plan	August 2011
Prior Enforcement Action	N/A	

### Site History

The subject property was annexed into the City of Colorado Springs in 1970 and was later rezoned from R-5 to C-6/P. This rezoning was approved via Ordinance 83-86 and came with several restrictions that limited the dimensions of development as well as the allowable uses. This Ordinance established that the sixteen point seven (16.7) acre district shall be limited to the following C-6 uses (based on the 1983 Zoning Code):

1. One fast food restaurant (3,500 SF)
2. One sit down restaurant (4,000 SF)
3. One convenience store (3,500 SF)
4. Retail (19,000 SF)
5. Office, warehouse (90,000 SF)
6. One car wash (N/A)
7. One bowling alley (N/A)
8. One car dealership (N/A)

Since the adoption of the Ordinance, the site was developed in 1985 and the subject property has been in operation as a commercial center. In June of 2015, a Medical Marijuana Cultivation Facility license was acquired for a tenant space within this property. Prior to 2016 and the adoption of Ordinance 16-53, medical marijuana cultivation facilities were permitted by right in the C-6 zone district, which is why the prior license holder did not receive an entitlement to establish the use on site. However, it is unknown whether or not the prior license holder completed a pre-application with Land Use Review or if the prior license holder was aware of the restriction of uses set forth in Ordinance 83-86.

The previous license for Medical Marijuana Cultivation was surrendered on May 15<sup>th</sup>, 2023, and would no longer meet the criteria for Section 7.5.804E, Nonconforming Uses. This Code section specifically states that a nonconforming use is to be considered discontinued if normal operation has ceased for a continuous period of twelve (12) months. As such, to establish this use legally on site and have the necessary entitlements to receive a medical marijuana cultivation license from the City Clerk's office, the Applicant has submitted a use-variance to allow the use to be re-established on site.

### Applicable Code

The subject application was submitted after the implementation date (06/05/2023) of the ReTool project, and as such, the application shall be reviewed per all applicable UDC Code standards. All subsequent references within this report that are made to “the Code” and related sections are references to the Unified Development Code.

## Surrounding Zoning and Land Use

### Adjacent Property Existing Conditions

	<i>Zoning</i>	<i>Existing Use</i>	<i>Special Conditions</i>
North	MX-L	Commercial Center	Sand Creek
West	MX-L	Self-Storage	Sand Creek
South	MX-L / MX-M	Commercial Center	
East	MX-L / MX-M	Misc. Commercial / Industrial Uses	

### Zoning Map



## Stakeholder Involvement

### Public Notice

Public Notice Occurrences (Poster / Postcards)	At Administrative Review / Prior to City Planning Commission Hearing
Postcard Mailing Radius	1000 Feet
Number of Postcards Mailed	110 Postcards
Number of Comments Received	2 Comments Received

### Public Engagement

This application was noticed on two occasions. The first notice was completed as the application was beginning its administrative review and a subsequent notice was completed to alert the neighboring property owners of the upcoming public hearing. Two public comments were received from owners and managers of nearby commercial properties. Both comments were in regards to safety concerns, ongoing issues with unhoused populations, and concerns with crime.

## Timeline of Review

Initial Submittal Date	June 18th, 2024
Number of Review Cycles	2 Review Periods
Item(s) Ready for Agenda	August 8th

## Agency Review

The review agencies did not have concerns regarding this application. All comments were informational. There is no objection to this use.

## Section 7.5.527 – Use-Variance

### Summary of Application

The Applicant proposes to acquire a medical marijuana cultivation license and lease an existing tenant space to cultivate medical marijuana on premises. The Applicant does not propose adding a retail component or manufacturing of medical marijuana products to the allowable uses on site. The tenant space would not be open to customers and is expected to have limited deliveries coming and going from the site.

At this time, there are no proposed changes to the existing building's exterior or the general site configuration. Only small interior remodeling will be required for the Applicant to make the space usable for their operation and meet the State's guidelines for safety and security for medical marijuana cultivation facilities. Since no changes are proposed to the exterior of the building and the

site is an established commercial center, the Applicant was able to submit a land use statement in lieu of a land use plan per UDC Section 7.5.514.B3. No further Land Use Review applications are required as of this time.

This application is intended to support a continuation of a previous use that lost its legally non-conforming status. As such, this application is not increasing intensity within the site from what it was operating at previously. The Planned Provisional overlay (Ordinance 83-88) restricts the permitted uses for the area in a way not seen in other Mixed-Use Large Scale (MX-L) properties, where this use would otherwise be required to go through a conditional use permit process.

## Application Review Criteria

Below are the three review criteria outlined in UDC Section 7.5.527. The Applicant meets these criteria as follows:

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;

The Planned Provisional overlay restrictions that were placed on this site in the 1980's severely limit the number of allowable uses within the zone district and the Ordinance has not been updated to consider new land uses that have since been included within the Land Development Code. Since Medical Marijuana was not a contemplated use at the time of this Ordinance, it could not have been included within the list of allowable uses. Comparable to the standard MX-L (Mixed-use Large Scale) zone district, this 16.7 acre Planned Provisional district is not permitted to have almost many of the uses that would be permitted by right under the standard MX-L (Mixed-Use Large Scale) zone district.

2. That the Use Variance is necessary for the preservation and enjoyment of a property right of the and if not approved, the property or structure cannot yield any beneficial use;

Due to the limitation of uses and the change in real estate market demands, it may be very challenging for this commercial center to maintain occupancy of its tenant units. Allowing for deviations to the Planned Provisional restrictions would mean that the property has a better chance of full utilization.

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;

Since the site was previously occupied by a medical marijuana cultivation center, and there were no known issues from this period. Staff does not believe that there will be any negative consequences to the continuance of this use on site. Through this application's administrative review, there were no concerns from Colorado Springs Police Department, the Fire Department's Development Review, or any other agencies who could speak to possible safety or wellbeing concerns.

Additionally, medical marijuana cultivation centers are required to comply with additional regulation from the City Clerk's Office and State standards for medical marijuana facilities. With this additional ongoing oversight, there is a much higher likelihood that the site will be upkept to proper safety and sanitation standards.

4. That the hardship is not the result of the applicant's own actions;

The Applicant purchased this site because they believed it to be an allowable use given that the site was previously used for the same purpose. They were unaware of the Planned Provisional Overlay restrictions that were placed on the site.

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

The subject restrictions are not the cause of the UDC or any other zoning code update. A previous landowner chose to pursue the Planned Provisional Overlay when rezoning from R-5 to C-6 in the 1980's. However, the Planned Provisional restrictions can be seen as prohibitive and unreasonably restrictive under the current UDC as the uses permitted within the Ordinance are very limited and did not take into account the possibility that other uses may need to be contemplated in the future.

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

The Applicant has no other option for legalizing the proposed use on their site aside from completing a zone change application.

Staff has evaluated this application based on the review criteria for Use-Variance (Section 7.5.527) application and have found that this application meets these criteria.

### Compliance with Development Standards

The existing structure and lot configuration is not proposed to change with this application. All dimensional standards and parking shall remain as is through this application.

Development Standard	Required	Proposed
Lot Area	N/A	2.4 Acres
Lot Width	N/A	300 Feet
Setbacks (all sides)	Per Ordinance 83-88	Existing – No proposed changes
Front Parking Setback	20 Feet	55 Feet
Parking (Commercial Center: 1 per 400 SF)	46 stalls	59 stalls
Height	65 Feet	Existing Single-Story

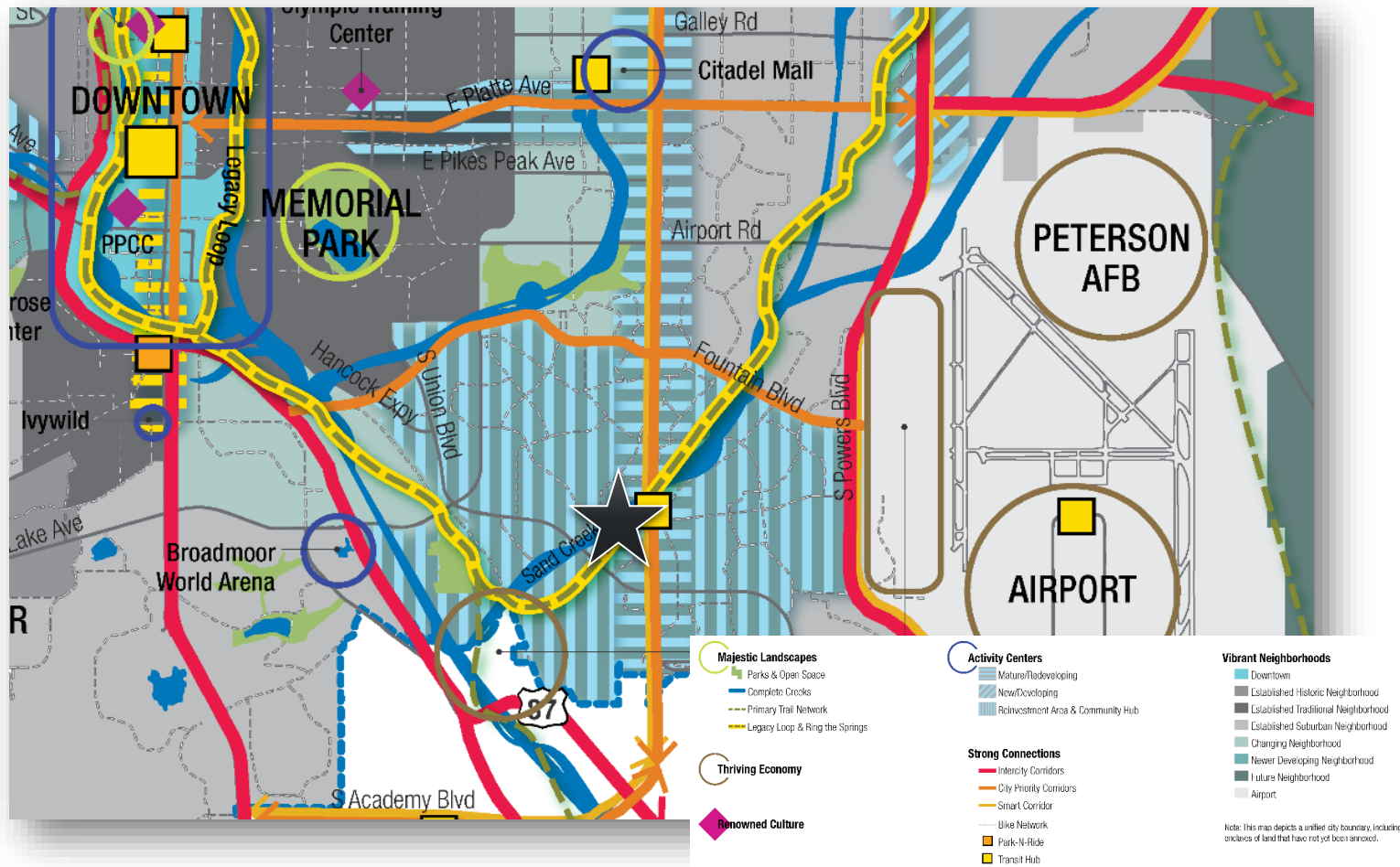
### Compliance with Relevant Guiding Plans and Overlays

#### Academy Boulevard Corridor Great Streets Plan

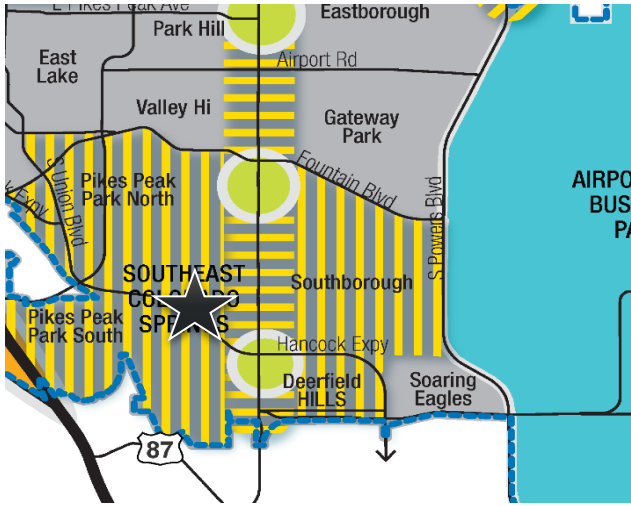
Per the Academy Boulevard Corridor Great Streets Plan, "the intent of this Great Streets Plan is to establish a vision for this segment of Academy Boulevard that integrates land use and transportation at the Corridor level. Its overall purpose is to support the needs of existing residents and businesses in the area while encouraging reinvestment, revitalization, and long-term sustainability. In short, facilitating the re-purposing of Academy Boulevard to be a "Great Street"." The proposed use supports the intent of this Plan by integrating a commercial business onto a lot that has been vacant for a considerable amount of time, thus encouraging and supporting reinvestment and revitalization into this retail center.

# Compliance with PlanCOS

## PlanCOS Vision



Within the PlanCOS Vision Map, this site is located on the border of two distinct typologies, including Reinvestment Area and Community Hubs and Mature/Redeveloping. Neighborhoods within the areas intended for reinvestment and an innovative mix of uses. Additionally, these mature and redeveloping areas are places anticipated to change, as is legitimized through the South Academy Corridor Great Streets Plan.



**Predominant Typology**

- Neighborhood Centers
- Community Activity Centers
- Entertainment and Commercial Centers
- Regional Employment and Activity Centers
- Downtown
- Mature/Redeveloping Corridors
- New/Developing Corridors
- Reinvestment Area and Community Hub

**Unique Places**

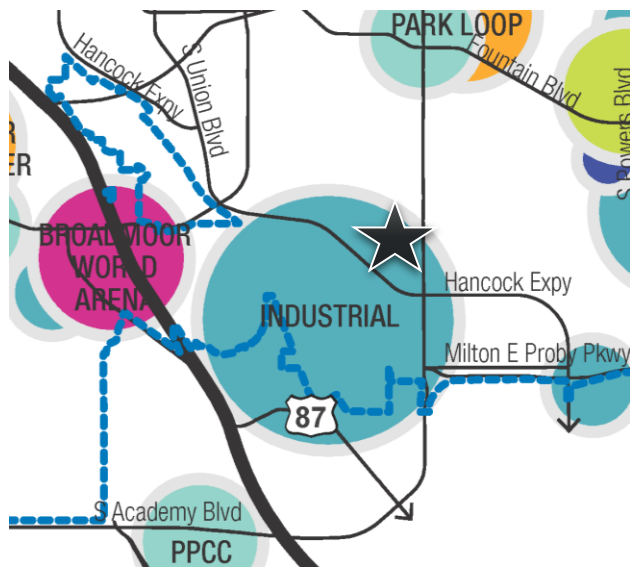
The subject property is near the border of two distinct typologies, including “mature /redeveloping corridors” and “reinvestment area and community hub”. Both typologies emphasize the opportunity for change and enhancement of the existing areas.

This proposed use-variance supports the below policy and strategy:

**Policy UP-2.A** is being reflected in this project as proposing a new use in a “mature and developed” area of the City.

**Strategy UP-2.A-4:** to support ongoing and potential infill projects, and employ problem-solving approaches...

**Strategy UP-2.A-5:** revise zoning and building regulations to be more streamlined and flexible regarding infill, redevelopment, and mixed-use development, especially in older, underutilized commercial areas



**Predominant Typology**

- Cornerstone Institutions
- Spinoffs and Startups
- The Experience Economy
- Life and Style
- Industry Icons
- Critical Support
- City Boundary
- ➔ Interstate 25
- Major Roads

**Thriving Economy**

The proposed use-variance is supportive of the below strategy, as the proposed use-variance would be located in an area with minimal impact on residential or other incompatible land uses.

**Strategy TE-2.A-4** is reflected by proposing to locate in an area separate from residential areas, thus reducing impacts on residents.

**Statement of Compliance**

**UVAR-24-0002**

After evaluation of the Astrozon Cultivation Relocation Use-Variance, the application meets the review criteria.