



Quick Facts

Applicant

Humble Paws / Manuel Martinez

Property Owner

Mondial Investments, LLC / Jeff Slavens

Developer

Humble Paws / Manuel Martinez

Address / Location

925 W. Cucharras St.

TSN

7413228006

Zoning and Overlays

Current: MX-L/cr

Site Area

7,500 square feet

Proposed Land Use

Animal Care Facility

Applicable Code

UDC

Project Summary

A Use Variance request to allow an animal care facility use within the MX-L/cr (Mixed-Use Large with prior conditions of record) zone district consisting of 7,500 square feet located at 925 W. Cucharras St.

File Number	Application Type	Decision Type
UVAR-23-0005	Use Variance	Quasi-Judicial



Background

Prior Land-Use History and Applicable Actions

<i>Action</i>	<i>Name</i>	<i>Date</i>
Annexation	West Colorado Springs	March 1, 1890
Subdivision	Town of West Colorado Springs	January 28, 1888
Master Plan	Westside Master Plan	January 8, 1980
Prior Enforcement Action	ENF23-05700	July 27, 2023

Site History

The 7,500 square-foot site is zoned MX-L/cr (Mixed-Use – Large with previously established conditions of record) and includes a two-story, 2,009 square-foot commercial building constructed in 1973. On June 29, 2023, a dog training and kennel business named Humble Paws (defined by the UDC as an Animal Care Facility) opened on the property. On July 7, 2023, just over a week after the business began operating, the City received a complaint from neighboring property owners about dog noise from the site. Upon investigation, Neighborhood Services Enforcement Officer Shane Hardison determined that the use was prohibited on the site. An enforcement case (ENF23-05700) was initiated, and the owner and operator were informed that the violation must be abated (see attached July 27, 2023, enforcement notice). Dialog with Planning Staff began in late July and continued over the following months. A Use Variance application (UVAR-23-0005) was submitted on September 19, 2023. The use has continued during the processing of the requested use variance.

Applicable Code

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

Surrounding Zoning and Land Use

Adjacent Property Existing Conditions

	<i>Zoning</i>	<i>Existing Use</i>	<i>Special Conditions</i>
North	R2	Residential	N/A
West	R2 & LI	Residential & Light Industrial	N/A
South	LI	Vacant	N/A

East R2 & MX-L Office & Residential N/A

Zoning Map



Stakeholder Involvement

Public Notice

Public Notice Occurrences (Poster / Postcards)	Poster and postcards at application submittal and prior to Planning Commission public hearing
Postcard Mailing Radius	1,000'
Number of Postcards Mailed	213
Number of Comments Received	Approximately 11



Public Engagement

Planning Staff utilized standard public notice procedures for this application. A neighborhood meeting was not held. Communications received from neighbors and stakeholders voice concerns about noise and safety and the belief that the use is not appropriate on the site due to adjacent residential and professional uses, the lack of required buffering and separation for the outdoor space, and the frequent use of non-fenced and public spaces (e.g. neighborhood sidewalks) for animal-related activities. Staff did receive input from at least two stakeholders that support the application due to the positive nature of the business (rescuing and training dogs), as well as the increased daytime activity in the neighborhood which can potentially decrease crime in the area. See enclosed stakeholder communications for a direct understanding of community input and concerns.

Timeline of Review

Initial Submittal Date	September 19, 2023
Number of Review Cycles	1
Item Ready for Agenda	October 23, 2023

Agency Review

Traffic Engineering

No comments on this application.

School District

No comments received.

Parks

No comments received.

SWENT

No comments on this application.

Fire

No comments on this application.

Colorado Springs Utilities

Please provide a site plan to confirm any exterior modifications. Please show and label existing utility services (i.e. exterior utility poles).

Landscape Review

As a major application a final landscape and irrigation plan by a licensed landscape architect is required. The landscape plan must document how the site meets all landscape standards including screening, buffering, and animal run development requirements.

Use Variance



Summary of Application

After the property owner and business operator were informed by Neighborhood Services that the Animal Care Facility was prohibited at 925 W. Cucharras St., both parties initiated dialog with Planning Staff to explore options to abate the violation. Two options exist for abatement: 1) terminate the use on the site by closing the business or relocating the business to a site where the use is permitted; or 2) submitting a Use Variance application requesting permission to continue operating the prohibited use from the site despite the lack of compliance with the zoning code. Staff strongly encouraged option 1 as Staff's initial analysis concluded that the required criteria and standards were not met. However, the business operator instead chose to submit the Use Variance application on September 19, 2023. As is standard practice, the City has allowed the business to continue operating while the application is processed.

Compliance with Relevant Code Sections and Review Criteria

The applicant has submitted the necessary Use Variance application and fees to City Planning. While the operator's efforts to relocate their business to the site began prior to implementation of the UDC, they didn't begin operation until June 29, 2023, roughly 3 weeks after the implementation date of the City's current zoning code. The Use Variance application was submitted roughly 2.5 months later and is required by code to be processed under the UDC. However, an understanding of pre- and post-UDC code provisions for animal care facilities may be helpful and potentially relevant to the City's review of this application.

Chapter 7 of City Codes (the zoning regulations in place prior to the UDC) included multiple specific use categories that could be considered for the subject business. Specifically, the code included "kennels" which were defined as "*The primary uses of this category are dog daycare facilities and kennels. Other uses include veterinary service, retail sales, grooming, training, boarding, breeding and care services for dogs, cats and similar small animals on the premises on which more than four (4) dogs and cates over four (4) months of age are kept and maintained with or without charge. Typical uses may include boarding kennels, pet motels and dog daycares.*" The Kennel use included three sub-categories which in turn were listed as permitted, conditional or prohibited in the City's commercial zones. The three sub-categories were: "*Indoor Only: Services are completely contained within a building*"; "*Indoor and Outdoor: Services provided include outdoor exercise space*"; and "*Animal Shelters: Buildings or structures in which animals may be boarded, impounded, cared for or sole as pets and may include on site outdoor exercise space and facilities for disposing of lost, stray, unwanted, dead or injured animals.*" It may be valuable for decision makers to know that the subject business, Humble Paws, would have been considered a "Kennel – with Indoor and Outdoor" spaces which previously required approval of a Conditional Use Permit prior to operation at the subject property. A Conditional Use Permit was not pursued for this business at this site under the old zoning code.

The City's UDC, effective June 5, 2023, includes revised animal use definitions and restrictions for commercial and mixed-use zone districts. As a reminder, this project must be reviewed under the UDC. Currently, the UDC includes only two defined animal-related uses: *Animal Care Facility* and *Small Animal Clinic*. The applicant's business, Humble Paws, fits best within the Animal Care Facility use which is defined as: "A facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment, and preventing of animal diseases, including veterinary services or in which boarding, breeding, grooming, training and daytime or overnight care of more than four (4) domesticated animals is permitted. This use also includes public facilities for the temporary impoundment of animals found abandoned or removed from other locations due to improper care and may include an animal crematorium as an accessory use." While the use doesn't fit as well in this defined use as it would have under the "kennel" use within the pre-UDC Chapter 7, current code Section 7.3.105 ("Unlisted Uses") allows the Manager to determine that an unlisted use is so similar to a listed use that it shall be treated as the same use. Planning Department leadership have acknowledged that a number of animal related uses such as kennels, doggy daycares, animal training facilities, aren't clearly addressed in the UDC and are working to prepare updates to the Code to restore definitions similar to the pre-UDC Chapter 7. In the meantime,



HUMBLE PAWS USE VARIANCE

Planning Commission November 8, 2023
Staff Report by Case Planner: Ryan Tefertiller

Staff must process animal-related uses under UDC definitions and use restrictions. Of critical importance is the fact that an Animal Care Facility is prohibited at the MX-L zoned property located at 925 W. Cucharras St.

The UDC includes additional use-specific standards for many uses that have unique characteristics or impacts that must be mitigated in order to be harmonious and compatible with surrounding uses. Section 7.3.303.A.1. requires that Animal Care Facilities and Small Animal Clinics restrict all activities within a totally and permanently enclosed, soundproofed building (unless in the A zone), and that all buildings and associated animal run areas shall be constructed at least fifty-five (55) feet from any property line (applicable in all zone districts). The majority of the Humble Paws operation is located within the roughly 2,000 square foot building. While the site plan submitted with the application doesn't illustrate the building's setback from external property lines, Staff's review of available information concludes that the building is essentially abutting the eastern and western property lines. The site plan, as well as all other available evidence, also documents that the outdoor "dog play area" to the south of the building also abuts the east, west, and southern property lines. It is obvious that the business does not comply with the Animal Care Facility standards in Section 7.3.303.A.1. It should be noted that non-use variances are not currently available for Section 7.3.303 of the UDC.

As a prohibited use, the only application available to allow the use to continue operating at 925 W. Cucharras St. is a Use Variance. The granting of a Use Variance may be authorized when an unnecessary hardship would result from the strict enforcement of established regulations. Under the UDC, Use Variances require a public hearing and recommendation by the City's Planning Commission, then a final decision by City Council. Section 7.5.527.E. of the UDC lists six criteria that must be met in order for a Use Variance to be approved. The criteria are:

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 the 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.

Planning Staff have closely reviewed the applicant's use variance statement, the comments from stakeholders, the context of the area (e.g. zoning, land uses, planning history, etc.), and the required criteria and finds that the criteria are not met. There is nothing extraordinary about the property or the use. The MX-L zone permits a wide range of uses that are viable on the site and the subject building has previously housed viable businesses that complied with the zoning code. This application was initiated due to a neighbor complaint that led to a Neighborhood Services notice of violation. In addition to the initial complaint, Planning Staff has received numerous neighbor emails and letters expressing opposition to the continuation of the use due to noise and safety concerns. Some complaints about the operation of the business and the treatment of the animals at the kennel were elevated to the State of Colorado Pet Animal Care and Facilities Act (PACFA) inspectors for review. Planning Staff has included the PACFA investigation and findings within the



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Planning Commission agenda packet. Staff finds that the noise from a large number of dogs, especially when using the outdoor area, is detrimental to other property owners in the area. Any hardship that might be created by forcing the business to another location is of the applicant's own actions; there was no review of zoning standards or understanding of use restrictions prior to signing their lease and beginning operation on a site where the use is prohibited. Lastly, Staff finds that the requested use variance has largely been initiated to avoid the expense and inconvenience of relocating to another site.

Should the Planning Commission and City Council find that the required Use Variance criteria are met, Planning Staff strongly encourages the inclusion of multiple technical modifications to the application to clarify the details of the site and to minimize impact to surrounding properties. Specifically, the plan should be updated to address the following:

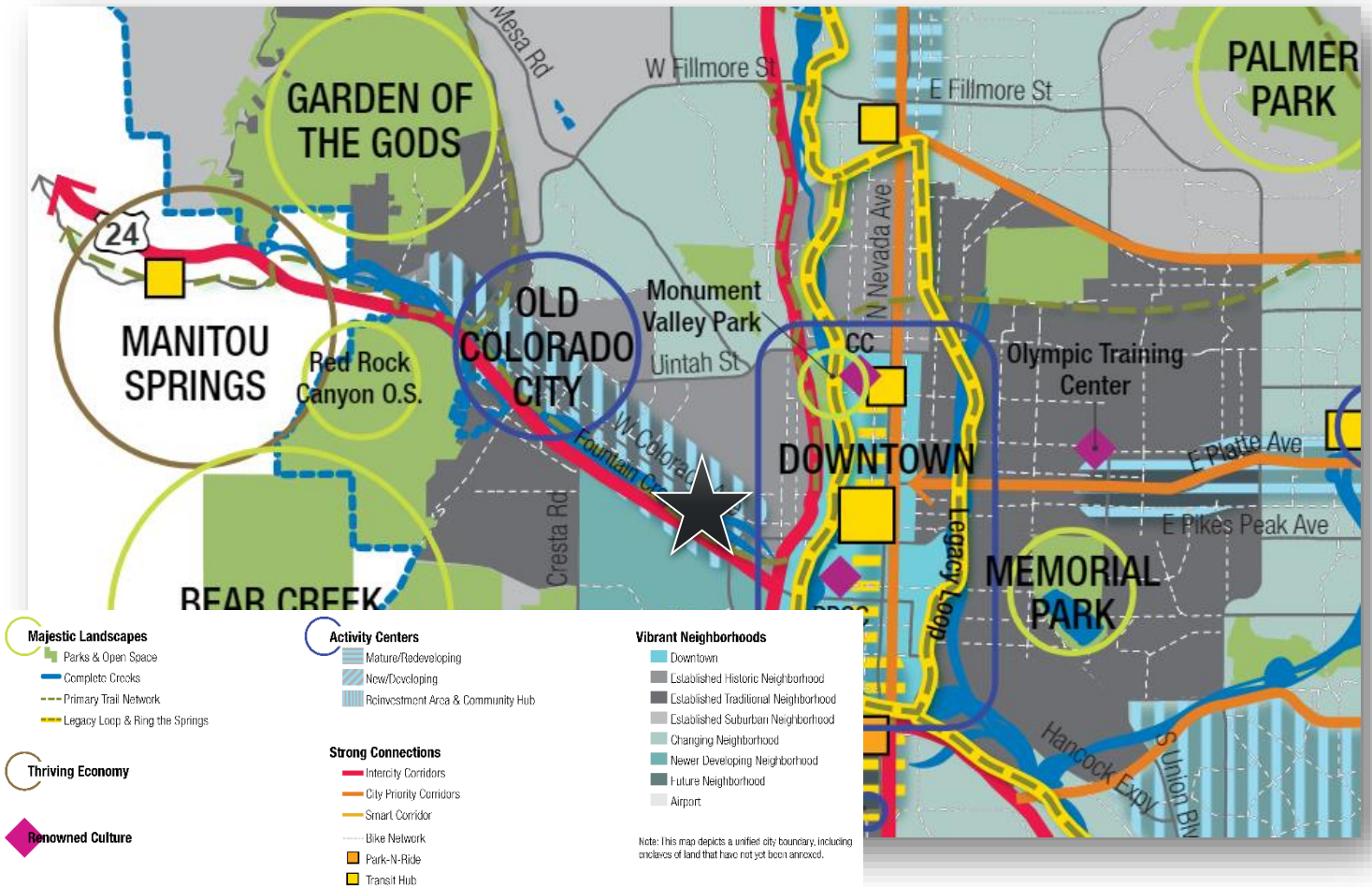
1. Update the site plan to clearly illustrate north arrow, property lines, building footprint, setbacks, parking, and all other standard site elements.s
2. Add a final landscape plan from a licensed landscape architect to the application documenting compliance with screening, buffering, and outdoor animal area standards.
3. Add a solid and opaque screen between all outdoor animal use areas and adjacent properties.
4. Add and label existing utility services to the plan.

Compliance with Relevant Guiding Plans and Overlays

The subject property falls within the 1980 Westside Plan boundary. The "Generalize Land Use" map found on page 18 of the plan identifies the site as being within the "Residential Low Density" land use category. Text within the plan does support some office use within residential areas but does not provide support for commercial uses. There are also a number of objectives relative to the "Vermijo-Cucharras" area where the subject property is located. Specifically, the plan calls for maintaining the area as a residential neighborhood; making certain that non-residential development prevents negative impacts on the residential neighborhood; and improving the relationship between residential areas and adjacent commercial and industrial uses.

Compliance with PlanCOS

PlanCOS Vision



The subject property falls within one of the City’s Reinvestment Areas & Community Hubs as illustrated on the PlanCOS Vision map. It is within an area that is shown as connecting the Downtown activity area to the Old Colorado City activity area.

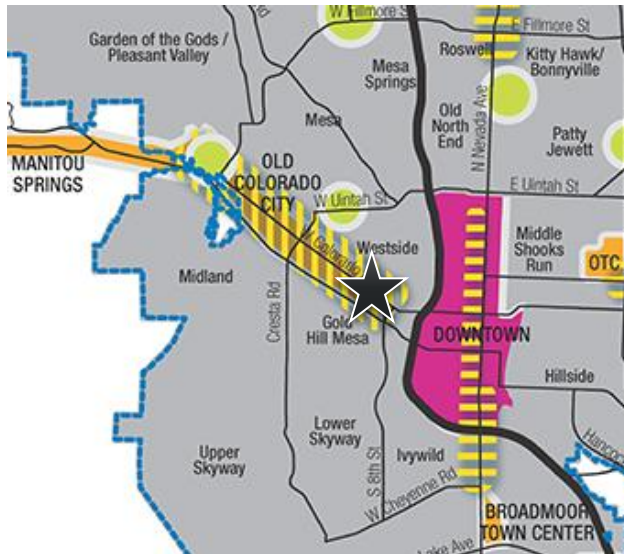


Predominant Typology

- Downtown
- Newer Developing Neighborhood
- Changing Neighborhood
- Established Historic Neighborhood
- Established Traditional Neighborhood
- Established Suburban Neighborhood
- Airport
- Future Neighborhood

Vibrant Neighborhoods

The subject property is within the Westside neighborhood as defined by the PlanCOS Vibrant Neighborhoods Framework map. The Westside neighborhood is identified as an Established Historic Neighborhood. The stated goal of established neighborhoods is to “recognize, support, and enhance the existing character of these neighborhoods, while supporting their ongoing investment and improved adaptation. The Vibrant Neighborhoods chapter of PlanCOS does include some Policies and Strategies applicable to mixed use areas. Specifically, Policy VN-3.E: Encourage and Support the Integration of Mixed Use Development in Neighborhoods and Strategy VN-3.E-1: Focus incentives for mixed-use development within parts of the City that have been identified as priority redevelopment areas or corridors that have the potential for enhanced multimodal access and walkability.

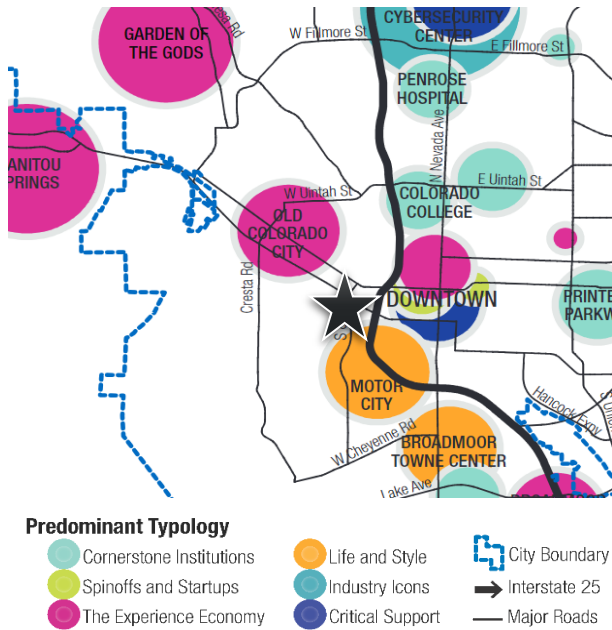


Predominant Typology

- 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 falls within the West Colorado Ave. Reinvestment Area and Community Hub. Specific Policies and Strategies that apply include Policy UP-2.A: Support Infill and Land Use Investment Throughout the Mature and Developed Areas of the City; Strategy UP-4.B-1: Evaluate development applications in and around unique centers with particular attention to their contribution to the integration and mixing of uses, orientation to the public realm, and their support of connections with multimodal transportation; and Strategy UP-4.C-1: Support additional mixing and integration of land uses as zoning use-by-right or administrative approval.



Thriving Economy

The subject property falls between the Downtown and Old Colorado City economic typology areas. One Strategy from the Thriving Economy chapter of PlanCOS that is applicable to this application is Strategy TE-1.C-5: Provide for convenient access to quality goods and services that support major employment areas, through a combination of proactive and responsive planning, zoning, and development approval actions.

Statement of Compliance

UVAR-23-0005 Humble Paws Use Variance

After evaluation of the Humble Paws Use Variance application, Planning Staff finds that the applicable review criteria found in Section 7.5.527.E. are not met.