

# COLORADO AVENUE TIRE SHOP

## Planning Commission August 14, 2024

Staff Report by Case Planner: William Gray, Senior Planner



**SITE**

### Quick Facts

#### Applicant/Property Owner

John G Nolan

#### Address / Location

822 West Colorado Avenue

#### TSN(s)

7413118011

#### Zoning and Overlays

MX-M (Mixed-Use Medium Scale)

#### Site Area

13,100 square feet

#### Proposed Land Use

Minor Automobile and Light Vehicle Repair and Accessory Outdoor Display of Goods

#### Applicable Code

Unified Development Code

### Project Summary

The Applicant is proposing a Conditional Use for a Minor Automobile and Light Vehicle Repair and Accessory Outdoor Display of Goods use and a Non-Use Variance to allow a 16-foot separation between the nearest point of the building in which repair activity occurs to any residential zone district where 100-feet is required. The use has been conducted on the site since 2019; these applications were submitted in response to an enforcement case from the Colorado Springs Neighborhood Services Division.

File Number	Application Type	Decision Type
CUDP-24-0005	Conditional Use	Quasi-Judicial
NVAR-24-0004	Non-Use Variance	Quasi-Judicial

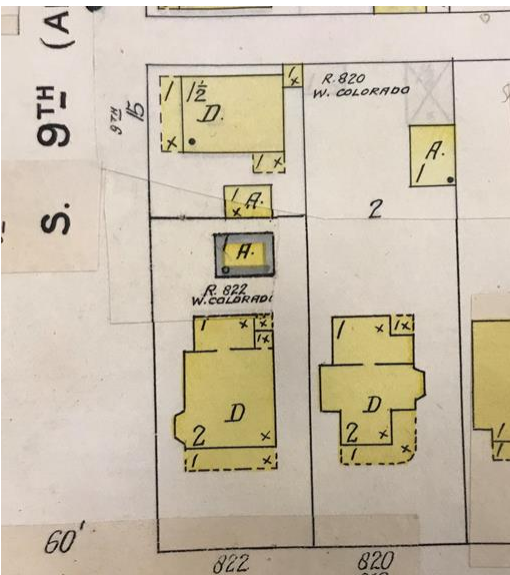
## Background

### Prior Land-Use History and Applicable Actions

Action	Name	Date
Annexation	Town of Colorado Springs	September 1, 1872
Subdivision	Cahn's Additional to Colorado Springs	August 14, 1890
Master Plan	Westside Master Plan	January 22, 1980
Prior Enforcement Action	ENF23-10920 Notice and Order	April 3, 2024
	EN23-10929 Violation Notice	December 11, 2023

### Site History

The site is 13,100 square feet in area and is comprised of the South 102 feet of Lot 1 and all of Lot 2, Block 2, Cahn's Addition to Colorado Springs. The Cahn's Addition was originally platted in 1890. This area was annexed into the city in 1872. These two (2) lots were originally developed with three (3) primary dwellings each having an accessory dwelling unit in the late 1890's. The 1907 Sanborn Map below shows this early development. Only the main residence at 15 S 9<sup>th</sup> Street remains.



The zoning of the property is MX-M (Mixed-Use Medium Scale) which was previously C-5 (Intermediate Business) under Previous Chapter 7 Zoning and Subdivision Ordinance ("Chapter 7"). Both zoning districts, past and present, allowed for a mix of residential, commercial and industrial use types. In fact, the predominant zoning along the W. Colorado Avenue Corridor from Chestnut Street on the east to the city limits on the west is mixed use. This zoning has been in place since the 1950's. The 1980 Westside Plan indicated that the use of the site was commercial, and this plan was carried out in the latter part of the 1970's. There is evidence of the property being used as a gas station from the 1960's based on the age of the building (El Paso County Assessor, Year Built 1962) and photographs provided with the application. The use of the site as a gas station may have existed on the property through the early 1980's, the last time when gas was \$1.18 per gallon. See photo at the top of page 3. In the 1990's and 2000's the use transitioned to retail. The last retail use was "The Trimming Store". In 2017, the Applicant purchased the property, and it is just after this that the

current used tire sales and installation use commenced. Based on a meeting with the Applicant this use began in 2019. In 2019, the property had a zoning designation of C-5 (Intermediate Business) under Chapter 7. The use type of tire sales and service in Chapter 7 was Automotive Service. Automotive Service was a permitted use and subject to the Use-Specific standards below:

When the use was initially established it did not meet the standard number 4 above. This site is separated from an R-2 (Two-Family)

1. Body and fender work are not allowed;
2. All work is done within a building;
3. Outside storage of automotive parts or junk vehicles is prohibited; and
4. The nearest point of the building in which the activity occurs is more than one hundred feet (100') from the boundary of a residential district measured in a straight line.

zone district by 16-feet. Therefore, the use when it commenced was non-conforming under adopted zoning code at the time. The non-conforming use existed and operated without any issues until the fall of 2023. The business name of this non-conforming use is SouthCO Tire.

In the fall of 2023, Neighborhood Services received a complaint about commercial vehicles being parked in the street as well as in the out-lawn area between the sidewalk and curb on S. 9<sup>th</sup> St. Neighborhood Services did a site inspection in early December 2023, and it revealed a tire sales and service and U-Haul business in operation on the property. Based on the characteristics of the complaint, it was the U-Haul business that drew attention to the property and uncovered the non-conforming use(s) on the property. By this time, the City of Colorado Springs had adopted a new zoning and development code, the Unified Development Code of the City of Colorado Springs ("UDC"). A Notice of Violation Letter ("**Attachment 1-Violation Notice**") was sent to the Applicant on December 11, 2023, citing violations for parking and zoning.

The UDC established the MX-M (Mixed-Use Medium Scale) zone district. Both Minor Automobile and Light Vehicle Repair (SouthCO Tires) and Automobile and Light Vehicle Sales and Rental (U-Haul) are Conditional Uses in the MX-M (Mixed-Use Medium Scale) zone district, and these uses did not have a Conditional Use as required. This is the reason Neighborhood Services cited the zoning violations.

A Pre-Application meeting request was submitted by the Applicant in January of this year to address the violations. To address the parking problem, it was discussed that the Applicant and SouthCO Tire would cease operating U-Haul, and tire sales and service use would be addressed by a Conditional Use application. The Conditional Use application would be for a Minor Automobile and Light Vehicle Repair ("Minor Vehicle Repair") use with Accessory Outdoor Display of Goods ("Outdoor Display").

There was some delay in pursuing the Conditional Use by the Applicant because of a literal interpretation of the UDC related to

- 1. Automobile and Light Vehicle Repair, Minor and Major**
  - a. All work on vehicles shall be done entirely within an enclosed building.
  - b. Automotive parts or junk vehicles may not be stored outside.
  - c. The nearest point of the building in which the repair activity occurs shall be more than one hundred (100) feet from the boundary of any residential zone district.

adopted Use-Specific Standards. Minor Vehicle Repair use is subject to complying with a set of adopted Use-Specific standards that

are shown above. The interpretation that needed to be addressed was whether a distance standard that is a part of a Use-Specific standard could be varied. It was initially decided that there was no flexibility at all in the UDC to vary any Use-Specific Standards. This meant that the Applicant had no means to pursue legalizing the property other than having SouthCO Tire vacate the property or wait until the City issued a decision that was appealable (i.e., Notice of Violation and Order to Abate). Up to this point the city had only notified the Applicant of the violation by letter requesting voluntary compliance. To address this issue, the Planning Manager issued a written interpretation that Administrative Adjustments, Non-Use Variances, and Development Standard Adjustments are available for any dimensional or numerical standard contained within Article 7.3, Use Regulations (see "Attachment 2-7.3 Written Interpretation"). The Use-Specific Standards for Minor Vehicle Repair are in UDC Section 7.3.303. With this new interpretation City Staff finalized its pre-application meeting comments to include direction for applying for a Conditional Use and Non-Use Variance to cure the zoning violation. The pre-application comments were sent to the Applicant on March 14, 2024. To ensure progress was being made on resolving the matter a deadline to submit the applications was set for April 2, 2024. There was a slight glitch with this email notification and City Staff assumed that the Applicant disregarded the pre-application summary. This was not the case, but a Notice of Violation and Order to Abate was issued on April 3, 2024 (see "Attachment 3-Notice and Order") because there had been no response. The reason was the email was simply overlooked as it went only to one (1) of two (2) email addresses for the Applicant, and the address it was sent to is the one checked less frequently. However, once the Notice and Order was received there was an immediate response from the Applicant. The applications recommended to address the zoning problem for the tire sales and service use were submitted on April 16, 2024, and the U-Haul business ceased immediately after receiving the Notice and Order.

### Applicable Code

All references within this report that are made to "the Code" and related sections are references to the Unified Development Code ("UDC")

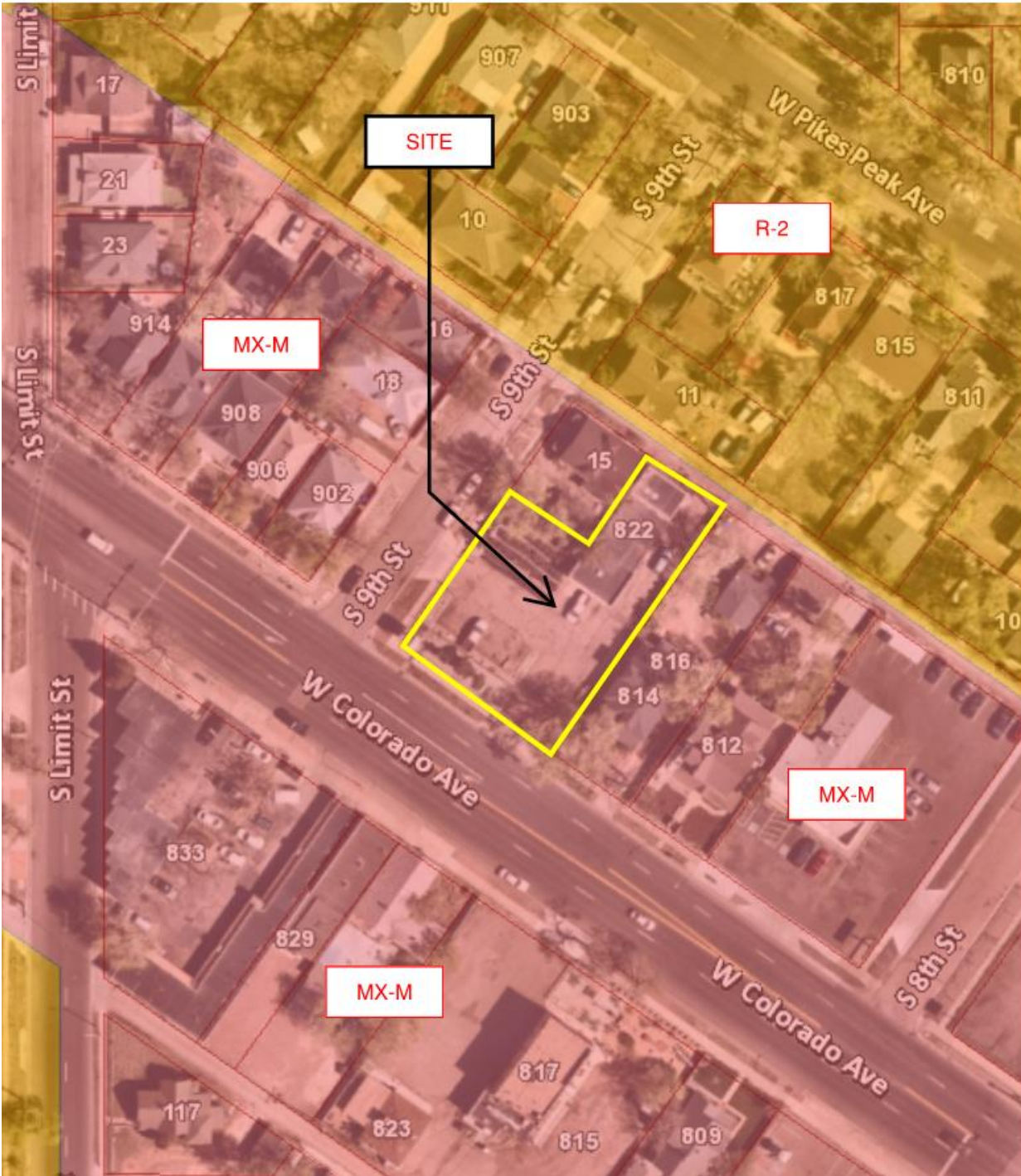
## Surrounding Zoning and Land Use

### Adjacent Property Existing Conditions

	<i>Zoning</i>	<i>Existing Use</i>	<i>Special Conditions</i>
North	R-2 (Two-Family)	Detached Single Family	
West	MX-M (Mixed-Use Medium Scale)	Detached Single Family	
South	MX-M (Mixed-Use Scale)	Auto Parts Store and Multi-Family Apartments	
East	MX-M (Mixed-Use Scale)	Detached Single Family	



Zoning Map (see "Attachment 4-Zoning Map")





Context Map (See "Attachment 5-Context Map")



Stakeholder Involvement

## Public Notice

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Public Notice Occurrences (Poster / Postcards)	2, Initial Review and Planning Commission Public Hearing
Postcard Mailing Radius	1,000 feet, plus Organization of Westside Neighbors
Number of Postcards Mailed	292, mailed 2 Times
Number of Comments Received	A total of two (2) public comments were received, one (1) in support and the second opposing the proposed conditional use and non-use variance.

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### IN-SUPPORT:

(1) Steve Wright

This is to inform you and your office that it's about time that the City is checking out the Westside people: for years that place has been doing business just as always and they have helped the neighborhood by staying operational as much as possible. They might have overstepped their limits at times with the Rental vehicles and trailers on the street but it's a City street so be it. I feel that if they need someone's approval to stay in operation then it should be given without any delay. As a born native of this City I have personal thoughts of just how the City Government handles most matters of this side of town. Whatever is needed for this person to stay in business and stay operational should be granted.

Thank you for the opportunity to speak

### OPPOSED-TO:

(1) Dean and Mary Whitman

We are writing to OPPOSE the variance for Colorado Ave. Tire Sales and Service Shop variance for "minor" automotive and "light" vehicle repair use. There will be constant noise from the air impact guns used in doing this sort of work 20 feet from our backyard in a zoned residential neighborhood all around them.

## Public Engagement

Public engagement for the application was the City's required public notice requirements for a Conditional Use and a Non-Use Variance. Postcards were sent to property owners of record within 1,000 feet of the site and a Poster was placed on the property. As indicated above, two (2) comments were received by email.

No neighborhood meeting was held for this application.

## Timeline of Review

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Initial Submittal Date	April 16, 2024
Number of Review Cycles	3 review cycles

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## Agency Review

### Traffic Impact Study

A Traffic Impact Study (TIS) is not required for the proposed commercial use.

### SWENT

No site disturbance is proposed.

### Engineering

Engineering reviewed the application and stated that they have no issues or comments for the application.

### Colorado Springs Utilities

Colorado Springs Utilities reviewed the application and provided the following comment:

"Fencing shall not stop access to utility lines or conflict with utility equipment."

### Fire

Conditional use is acceptable. Required access around the building is met from the public street. No requirements for fire apparatus to drive on site. The outside and/or inside storage of tires is required to comply with Chapter 34, Tire Rebuilding and Tire Storage, Fire Code of the City of Colorado Springs.

## Conditional Use and Non-Use Variance

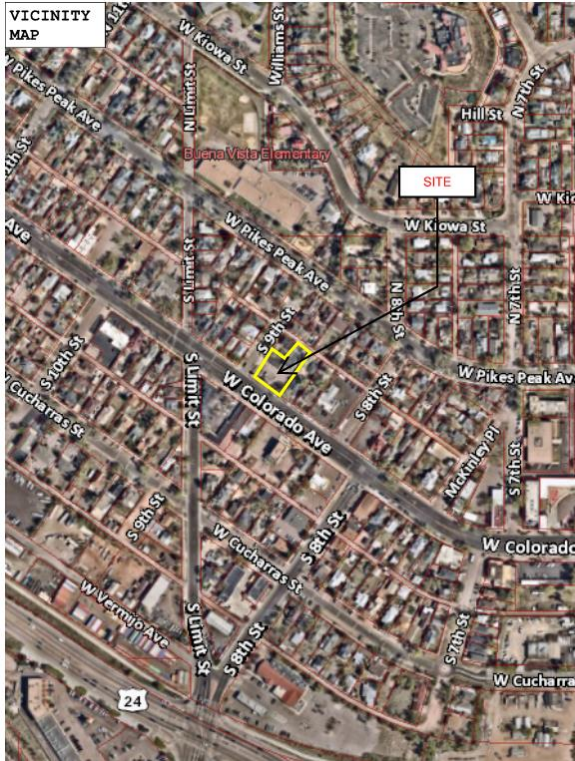
### Summary of Application



The proposed project includes an application for a Conditional Use and Non-Use Variance for a Minor Vehicle Repair use with Accessory Outdoor Display and its required proximity to a residential zone district. (see "Attachment 6-Project Statement" and "Attachment 7-Review Criteria Statement").



The location of the project is 822 West Colorado Avenue at the northeast corner of the West Colorado Avenue and S 9<sup>th</sup> Street



intersection in Old Colorado City (see “Attachment 8-Vicinity Map”).

The property is zoned MX-M (Mixed-Use Medium Scale). Minor Vehicle Repair and Accessory Outdoor Display of Goods are Conditional Uses. Further, the proposed Minor Vehicle Repair use is subject to Use Standards. The Use Standards applicable to the proposed application are as follows:

The two (2) most limiting factors for this proposal are standard (1a) that requires all work to be done entirely within an enclosed building and standard (2b) requiring repair activity to be more than 100-feet from any residential zone district. The building is relatively small for a repair shop. It is 1,652 square feet and the drive aisle for vehicles to enter and exit the repair bay is narrow, approximately 12-feet wide with a tight radius. This has resulted in occasions where the repair or service activity takes place outside. The proposed use (location of repair activity) is located 16-feet from an R-2 (Two-Family) zone district. The 100’ separation standard is not achievable on this site. The standard is in place to avoid nuisance issues between residential and vehicle related uses (i.e., noise, odor, etc.). To address this, the Applicant has proposed a Non-Use Variance to reduce the required separation to 16-feet, the width of the adjacent alley (see “Attachment 9-Site Plan”).

## I. Vehicle-Related

### 1. Automobile and Light Vehicle Repair, Minor and Major

- a. All work on vehicles shall be done entirely within an enclosed building.
- b. Automotive parts or junk vehicles may not be stored outside.
- c. The nearest point of the building in which the repair activity occurs shall be more than one hundred (100) feet from the boundary of any residential zone district.

The site is accessed from Colorado Avenue, 9<sup>th</sup> Street and the adjacent alley on the north side of the property. There are seven (7) existing off-street parking spaces, and three (3) on-street parking spaces. Parking standards for a Vehicle Repair use are 1 space per 350 square feet of indoor sales/office area plus 1 space per bay. Parking for this application was calculated for the gross floor area of the building, which is 1,652 square feet, which equates to 5 parking spaces. The site has a total of nine (9) parking spaces with three (3) on-street parking spaces. One (1) of the on-site spaces will need to be marked and signed as a van accessible parking space, which will drop the total of off-street spaces to eight (8) (see "Attachment 9-Site Plan").

A unique aspect of the proposed use is the outdoor display of the tires. As a used tire store, the ability to provide for inspection of tires prior to purchase is integral to its success. This means there is a considerable number of tires being displayed outside for customers to view. It also amounts to this really looking like a tire storage yard rather than the display of goods. This aspect of the business is the reason why the conditional use includes accessory outdoor display (see "Attachment 9-Site Plan"). Attachment 9 illustrates existing conditions and improvements to better address review criteria for the conditional use, non-use variance, and use-specific standards to be discussed in the following section of the staff report.

## Application Review Criteria

### UDC Section 7.5.601, Conditional Use

An application for Conditional Use is subject to the following Criteria for Approval:

#### Section 7.5.601.C.2 Criteria for Approval

- a. *The application complies with any use-specific standards for the use in Part 7.3.3 (Use-Specific Standards).*

#### **A Minor Vehicle Repair Use is subject to the following use-specific standards:**

1. *Automobile and Light Vehicle Repair, Minor and Major*
  - a. *All work on vehicles shall be done entirely within an enclosed building.*

The existing building has a service bay that would allow for work to be done entirely inside. It has been observed over the course of the review of this application where work has been conducted outside, at time under a temporary tent shelter. The Applicant has stopped the using the temporary tent shelter to do repair activity.

- b. *Automotive parts or junk vehicles may not be stored outside.*

The proposed use sells, installs and repairs used tires. The application indicates that the tires that are outside are for display. In this case, the used tires must be viewed as automotive parts. Effectively, the entire inventory of tires that is on-site is being displayed so that customers can inspect and select their tires prior to purchase and installation. This is important because a customer would want to ensure that they are purchasing quality used tires. The outdoor display, however, can be characterized more as tire storage than display or a combination thereof. It occupies a considerable amount of area to the west and east of the building. The Applicant has done a considerable amount of work to shrink and consolidate the outdoor display. There is a real need to differentiate between outside display and tire storage. As this section addresses outdoor use the following portion of the staff report is a review of the application with the required conditions for accessory outdoor display.

#### **Accessory Outdoor Display of Goods is subject to the following Accessory Use-Specific standards:**

- *The outdoor display may not be placed in required vehicular parking, maneuvering, or access areas, and its location must be in proximity to the main entrance of the primary structure.*

The current outdoor display is not placed in vehicular parking, maneuvering or access areas. It does crowd the access lane used to the service bay. See the photos at the top of page 11. Even with this tire storage/display in this location access to service bay is not hindered.





- *The outdoor display area shall be delineated on required plans.*

The outdoor display area is identified on the plan provided.

- *The outdoor display shall be screened from public rights-of-way and from adjacent land uses that are in a different land use category (as shown on Table 7.3.2-A: Base and NNA-O District Use Table) than the subject property (for example, a Retail Sales, Large use in the Retail Sales and Services use category shall be screened from an Entertainment or Recreation, Outdoor use in the Entertainment and Recreation use category.) Buffer screening is considered adequate regardless of topographic conditions if it includes a screening wall or an opaque fence that is at least seven (7) feet in height, and materials and merchandise may not be stacked or stored higher than the wall or fence. Buffer screening is not required for the display of vehicles for sale or rental if permitted by an approved Development Plan.*

The outdoor display is setback from Colorado Avenue but is pushed up against the property line on the



west adjacent to 9<sup>th</sup> Street. It is not screened. There is a black steel fence on the west and south property line. The photo above shows the display up to the fence on the west and the style of the existing fence on the street frontages. Improved screening and limiting the height of the stacked tires would also be

beneficial. For example, stacked tire displays could be limited to 4-5 feet in height. All fencing could be updated to match the existing picket style fence or change to a solid fence, or plant material is added to rocky landscape areas adjacent the sidewalk. The photos below show examples of perimeter fence type



and stacked tire display.

- *The display of merchandise adjacent to the entrance of the principal building is allowed if:*
  - It is adjacent to the main structure;
  - It provides a minimum of five (5) feet of unimpaired sidewalk or pedestrian way width; and
  - It does not block fire access or impede the traffic flow in front of the building.

As positioned now, outdoor display areas are near the front entrance, do not impair any pedestrian way, do not block fire access or impede traffic. Its location could be optimized to be near main and secondary entrances and have an overall better configuration to the building and customers. This change would also support adding new landscape material along street frontages to improve outdoor display screening

- *In the OR and MX-N zone districts, outdoor storage of materials and display of merchandise related to nonresidential uses is prohibited.*

N/A

**This completes the review of the Accessory Use-Specific standards that are applicable to Accessory Outdoor Display of Goods, and the staff report transitions back to the final Use-Specific standard for a Minor Vehicle Repair use and the approval criteria for a Conditional Use.**

- c. *The nearest point of the building in which the repair activity occurs shall be more than one hundred (100) feet from the boundary of any residential zone district.*

The repair activity occurs in the north end of the building adjacent to the alley. In this location, the repair activity is 16' or the width of the alley from an R-2 (Two-Family) zone district. To meet this standard, the building would need to be relocated to the parking spaces that are located along the street frontage of the property. The Applicant is requesting that this standard be reduced to reflect the existing separation of the building to a residential district and the developed condition and configuration of the property. In addition, another reason is that the building had been used previously for vehicle related use.

- b. *Describe how the size, scale, height, density, traffic impacts, and other impacts of the use are compatible with existing and planned uses in the surrounding area, and any potential adverse impacts are mitigated to the extent feasible; and*

The area where the proposed use is located is zoned MX-M (Mixed-Use Medium Scale) and R-2 (Two-Family). The MX-M zoning is along and adjacent to W. Colorado Avenue and the R-2 zoning is all north of the alley. Uses adjacent to the site are detached single-family. The commercial uses are across Colorado Avenue to the south, east towards 8<sup>th</sup> Street, and north towards 10<sup>th</sup> Street. Noise and aesthetics are the primary potential adverse impacts. The impacts could be addressed with improvements to outside storage, outdoor display, screening, landscaping, and parking to improve overall accessibility Attachment 9-Site illustrates locations for these improvements (see "Attachment 9-Site Plan").

- c. *Describe how the City's existing infrastructure and public improvements, including but not limited to its street, trail, and sidewalk systems, have adequate capacity to serve the proposed development and any burdens on those systems have been mitigated to the maximum extent feasible.*

City infrastructure is adequate to serve the proposed use.

Staff finds that the approval criteria of UDC Section 7.5.601.C.2, which are applicable to a Conditional Use, are not met with this application.

### **UDC Section 7.5.526, Non-Use Variance**

An application for a Non-Use Variance may be approved if the Planning Commission determines that:

#### **Section 7.5.526.E Criteria for Approval**

1. *The application complies with any standards for the use in Part 7.3.3 (Use-Specific Standards);*

The proposed use does not comply with required use-specific standards for Minor Vehicle Repair or Accessory Outdoor Display (see discussion above). Improvement to the site and use related to landscaping, screening and buffering could be done to meet the intent of the separation standard for vehicle related uses and residential zone district (see "Attachment 9-Site Plan").

2. *The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zone district;*

The developed condition prevents meeting the required 100' separation standard to a residential district. This standard could be met if the building was relocated. The property itself, in terms of shape, size, topography is of similar condition to nearby properties. There is nothing exceptional or extraordinary about its conditions. Its as-built condition creates a problem when it comes to complying with the required distance standard for the proposed use. Again, this could be overcome through relocating the building or to meet the spirit of the standard through improvements that address aesthetics and address visual, noise and odor impacts. This could be done through screening, buffering and landscaping.

3. *That the extraordinary or exceptional physical condition of the property will not allow a reasonable use of the property in its current zone in the absence of relief;*

The condition of the property would allow for reasonable use of the property in its current zone.

4. *That the granting of the Non-Use Variance will not have an adverse impact upon surrounding properties; and*

The granting of the variance would not have an adverse impact upon surrounding properties so long as improvements are implemented that address aesthetics and address visual, noise and odor impacts.

Staff finds that the approval criteria of UDC Section 7.5.526.E, which are applicable to a Non-Use Variance, are not met with this application.



## Statement of Compliance

### **CUDP-24-0005**

City Planning has reviewed the proposed Conditional Use for the Colorado Avenue Tire Shop and finds that the proposed application does not meet the approval criteria as set forth in City Code Section 7.5.601.C.2.

### **NVAR-24-0004**

City Planning has reviewed the proposed Colorado Avenue Tire Shop Non-Use Variance and finds that the proposed application does not meet the Non-Use Variance Review Criteria as set forth in City Code Section 7.5.526.E.