



**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT
FEBRUARY 20, 2024**

Application #: 2023-35
Application Name: City Market Fueling Station
Application Type: Appeal of Planning Commission Decision
Applicant: Brownstein, Hyatt, Faber, Shreck, LLP
Location: 437 W. Aspen Avenue
Zone: Downtown-Mixed Use (DMU)
Description: This is an appeal of the Fruita Planning Commissions decision on December 12, 2023, to deny a request for a Conditional Use Permit for a drive-thru facility for a retail fueling station on approximately .52 acres.

Project Description:

This is an appeal of the Fruita Planning Commission’s decision at its regular meeting on December 12, 2023, to deny a Conditional Use Permit application. Section 17.25.030 (A) states that, “*Any person aggrieved by a decision by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment may appeal such decision as outlined herein*” and that any application for appeal must be filed in writing with the Community Development Department within thirty (30) days of the decision.

The applicant submitted its application for appeal to the Community Development Department on January 11, 2024, and Staff deemed the application to be complete in accordance with Section 17.25.040 (A) on January 12, 2024.

Because this is an appeal of a decision made by the Planning Commission, Section 17.25.020 (B) states, “*The City Council shall have the authority to hear and decide all other appeals of decisions made by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment.*”

Section 17.25.040 (B) states, “*The party making the appeal (the appellant) shall have the burden of proving the necessary facts to warrant reversal or amendment of the decision being appealed. Such proof shall include applicable specific section references within this Code and shall be provided with the application. The application shall be based on the record established in the decision-making process.*”

Attachments with this Staff Report:

- Staff Report dated December 12, 2023, for Item 2023-35.
- Application to Planning Commission for Conditional Use Permit.
- Minutes of Planning Commission Meeting from December 12, 2023, pertaining to Item 2023-35.
- Appeal Submission Documents dated January 11, 2024.
- Letter of Completeness dated January 12, 2024.
- Supplemental Legal Notice for Appeal Application.

City Council shall consider the following, in accordance with Section 17.25.040 (E)(1)(i-iv), in determining whether to affirm, reverse or amend decision or interpretation made by the Planning Commission:

- i) The facts stated in the application, as presented by the appellant;
- ii) The requirements and intent of the applicable standards from this Code compared to the decision that is being appealed;
- iii) Evidence related to how the applicable standards from this Code have been administered or interpreted in the past; and
- iv) Consistency with the Comprehensive Plan.

SUMMARY OF DECEMBER 12, 2023, PLANNING COMMISSION MEETING MINUTES

Planning Commission Motion:

COMMISSIONER MULDER MOVED TO APPROVE APPLICATION 2023-35 THE CITY MARKET FUEL STATION CONDITIONAL USE PERMIT WITH THE CONDITION THAT ALL REVIEW COMMENTS BE ADEQUATELY ADDRESSED WITH THE SITE PLAN APPLICATION.

COMMISSIONER HANDLEY SECONDED THE MOTION.

MOTION IS DENIED 3-4

The following is a summary of the Planning Commission's discussion on the application (adopted meeting minutes attached with this application):

1. The proposed use would infringe upon the walkability and pedestrian use of this area.
2. Growing pains of the extension of growth and redevelopment along West Aspen Avenue.
3. Compatibility with existing residential land uses.
4. Some felt that Fruita needed a fuel station.

5. This investment by City Market into the City of Fruita was a good sign and could potentially have positive impacts on the current store.
6. There was middle ground between compatibility with surrounding uses and what redevelopment could be.
7. If car and pedestrian circulation was a deciding factor, it should be considered with the Circulation Plan, not a land use application like this.

SUMMARY OF THE APPLICANT'S APPEAL APPLICATION

The applicant's letter of appeal states elements from the City's 2022-2025 Strategic Plan and the Comprehensive Plan as a basis for requesting the City Council reverse the decision of denial made by the Planning Commission.

The applicant states that the Planning Commission failed to properly interpret and apply the Strategic Plan in the following areas:

1. Work with City Market Representatives and other property owners and business to expand and improve food and grocery shopping options within the City (Strategic Plan, pg. 19)
2. Engaging in strategic negotiations to encourage the development of larger and/or new grocery stores within the City is an objective expressly set forth in the Strategic Plan as the means to support this goal. (Strategic Plan, pg. 19)
3. The transportation goal of making the downtown area of the City pedestrian-oriented and easy for visitors and vehicles to navigate. (Strategic Plan, pg. 25)

The applicant states that the Planning Commission failed to properly interpret and apply the Comprehensive Plan in the following areas:

1. The Comprehensive Plan's Economic Development Goal #3 provides that "[t]he community would like to see improved grocery and food store options in Fruita, as there is only one full-services supermarket at present" and that "more good paying jobs are needed in Fruita". (Comprehensive Plan, pg. 50). Economic Development Goal #3 of the Comprehensive Plan specifically directs the City to "work with City Market representatives and other property owners and businesses to expand and improve food and grocery shopping options in Fruita." (Comprehensive Plan, pg. 54.)
2. As part of this goal, the Comprehensive Plan identifies the following policy: work with City Market representatives on options for renovating, expanding, or possibly relocating. (Comprehensive Plan, pg. 54.)
3. The Comprehensive Plan also sets forth the Transportation Goal #3 of making the downtown a pedestrian-oriented area that is easy for visitors and vehicles to navigate. (Comprehensive Plan, pg. 84.)
4. Pursuant to the Downtown Subareas Map of the Comprehensive Plan, the Property is designated as within the Downtown West subarea, not within the Downtown Core. (Comprehensive Plan, p. 41.) This issue was not raised by the applicant before the

Planning Commission and is not actually a relevant distinction in the Comprehensive Plan but was solely a means by which the City created residential and commercial design standards within these subareas but these subareas are not separate zoning classifications nor do they establish future land use or zoning.

The applicant states that the Planning Commission failed to properly interpret and apply the relevant provisions of the Land Use Code criteria for Conditional Use Permits as follows:

1. The proposed use is consistent with the provisions and purposes of the Code, with the purposes of the zone in which it is located, and with the Comprehensive Plan;
2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.05.080.C, providing that “compatibility” exists when a proposed land use can co-exist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s);
3. The proposed use will not materially endanger the public health or safety; and
4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use.

STAFF ANALYSIS OF THE LAND USE CODE – CONDITIONAL USE PERMIT

This is an excerpt from the Code showing permitted uses by right and those uses that are conditional or even prohibited – even though there appears to be some conflict (how could you have a gas station without a drive through) this is what the Code says and what must be applied. Conditional use permits, when granted, expire within a year if no action is taken to perfect the use.

Table 17.05.090 - LAND USE TABLE												
	RE	LLR	CR	SFR	MP	DMU	C-1	C-2	I	CSR	NCO	FLU
COMMERCIAL												
Retail Sales & Service												
Drive-Up/Drive-Through Facilities (with permitted use)	*	*	*	*	*	C	A	A	A	*	*	*
Fuel Sales, Automotive/Appliance (not including Drive-Up/Drive-Through uses)	*	*	*	*	*	A	A	A	A	*	*	*

* -Means not allowed

A - Means allowed outright in the indicated zone, subject to compatibility with surrounding properties, pursuant to Section 17.05.080.C, and any applicable special and supplementary zoning regulations and standards.

C - Allowed by Conditional Use Permit only, pursuant to Conditional Use Permit Section 17.05.030.

DENSITY AND DIMENSIONAL STANDARDS TABLE							
ZONE DISTRICT	MAX RES. DENSITY (GROSS) (A)	MIN LOT AREA (B)	MIN FRONT/ STREET YARD (C)	MIN SIDE YARD (D)	MIN REAR YARD (E)	MAX STRUCTURE HEIGHT (F)	MIN/MAX LOT COVERAGE (G)
Downtown Mixed Use (DMU) – Core (as designated in the Fruita Community Plan - south of Pabor Avenue and west of Elm Street)	N/A	2,500 sq ft	0 feet, or as required per building code	0 feet, or as required per building code	0 feet, or as required per building code	Primary Structures: 4 stories; At least 2 upper stories must be residential; Ground story floor-to-ceiling heights shall not exceed 15 feet. All stories above the ground story shall not exceed a floor-to-ceiling height of 11 feet. Accessory Structures: 25 feet	50% minimum 90% maximum

CONDITIONAL USE PERMIT APPROVAL CRITERIA

A conditional use is defined as a use which, because of its unique or varying characteristics, cannot be properly classified as an allowed use in a particular zone district.

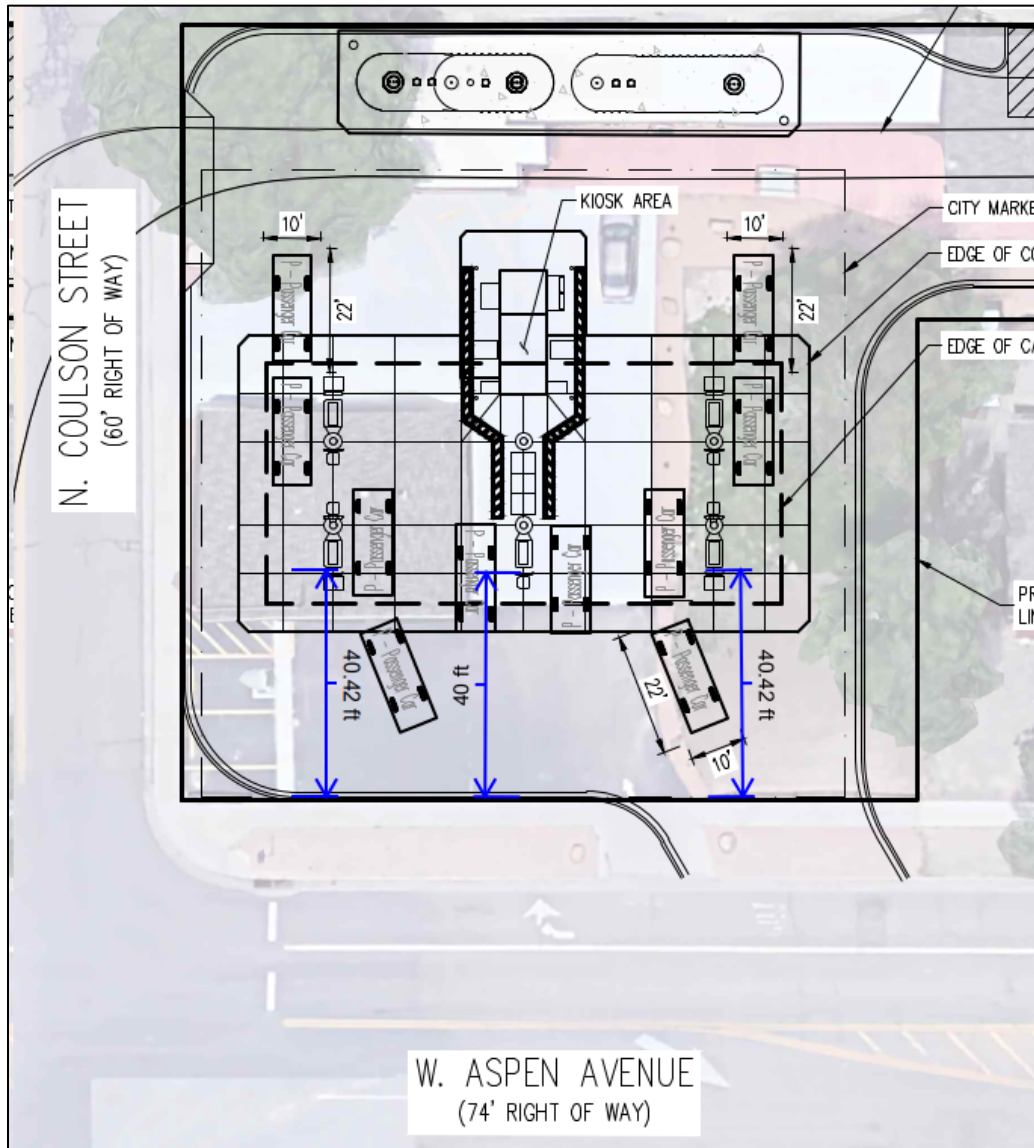
Section 17.09.030, Conditional Uses, of the Land Development Code requires that a conditional use be approved after considering the following:

- The proposed use is consistent with the provisions and purposes of this Title, with the purposes of the zone in which it is located, and with the city's Master Plan;**

Based on this review, the proposed conditional use as it relates to the proposed fueling station can be consistent with the provisions and purposes of this Title (the Land Use Code), which is to promote the health, safety and welfare of the present and future inhabitants of the community.

The Land Use Code identifies the subject property as being in the Downtown Mixed-Use

Core area. Section 17.13.050 (A)(2)(c) of the Land Use Code states that new drive-up/drive-through facilities (e.g., windows, ATM's, Etc.) are not permitted in the Downtown Core within forty (40) feet of Aspen Avenue. The plans submitted show a setback of approximately 40 feet. This portion of the code has been met.



Section 17.37.070 (B) states that, “For service uses (such as gas stations, quick lube and car washes), two stacking spaces shall be provided for each bay on the entrance side and one such space on the exit side. Stacking spaces shall not interfere with other required parking areas. Stacking spaces must measure at least twenty-two (22) feet long by ten (10) feet wide.” The Site Plan provided shows two (2) stacking spaces per fueling station/bay will work and they meet the measurement requirements. It’s unclear from the submittal that the additional stacking space for the exit side will work. It is Staff’s interpretation that the Code requires 3 stacking spaces per bay. If the applicant can show

the additional exit side space or a total of 3 stacking spaces per bay, then this part of the Land Use Code can be met.

As for vehicular circulation, the proposed plan shows access from Willow Street, Aspen Avenue, and Coulson Street. The access from Aspen Avenue will need to be reviewed and approved by CDOT and as its proposed right now, the Aspen Avenue access is only a right in turn, similar to the Coloramo access from Aspen Avenue.

The purpose of the Downtown Mixed-Use zone is to maintain and enhance downtown as a vibrant, pedestrian-oriented commercial and residential area. The Master Plan supports development and redevelopment in the downtown area with an emphasis toward promoting businesses that support existing and future associations that advocate for the downtown area. The Fruita City Market has been a key focal point in the City's downtown area for many years. Additionally, the Master Plan supports and encourages revitalization of existing areas in the Downtown with a focus on areas where the community can see the benefits of redevelopment. The Land Use Code is one of the main documents used to implement the goals and policies of the City's Master Plan. This criteria has been met.

2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.05.080 (C); and

Section 17.05.080 (C) requires that a proposed development be compatible with adjacent properties, considering both existing and potential land uses on adjacent properties. For all land uses, "compatibility" is provided when a proposed land use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s). The city decision-making body may consider other uses existing and approved, and may consider all potential impacts relative to what customarily occurs in the applicable zone and those which are foreseeable, given the range of land uses allowed in the zone. The review authority may require conditions of approval to promote compatibility between a proposed use and existing uses in the vicinity to ensure compatibility.

It appears that this proposed drive-through facility will be compatible with surrounding land uses. This area is considered the Core area, which supports a number of allowed land uses that can be considered as compatible with a drive-through fueling station like the one proposed. It is important to consider that the property directly to the west has been approved for an 88-unit multi-family complex which consists of 3 apartment buildings and 16 townhome style residential units. The 1st of the 3 apartment buildings is currently under construction. In addition to multi-family, land uses supported in the Core area are restaurants, personal services, retail, hotels/motels, medical and dental clinics, and childcare.

There are many other businesses along Aspen Avenue in this area that have a drive-through component to them. The most recent is the Coloramo Federal Credit Union, and

others are the Walgreens pharmacy, the City Market pharmacy, the Sinclair gas station, and the Burger King.

This criterion can be met.

3. The proposed use will not materially endanger the public health or safety; and

If the drive-through facility is placed in a manner to provide for adequate vehicle stacking on the subject property, then the proposed use doesn't appear that it will endanger the public health or safety. The project, if approved, will need to address concerns from CDOT. Some uses in the Downtown Mixed-Use zone generate more traffic than other uses. If the principle use were to change, a traffic study may be required in order to justify whether the use, in conjunction with a drive-through, can be safe. This criterion can be met.

4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use.

Public services and facilities have been available to this property and will continue to be available to this property. The drive-through facility is expected to put more pressure on the adjacent transportation system, most likely Willow Street and Coulson Street, however these roadways are designed and constructed to handle a large amount of daily traffic. Other public services and facilities are not expected to have a substantial increase. This criterion has been met.

Legal Notice:

Legal Notice (minimum of 15 days prior to Planning Commission)	
November 22, 2023	Post Cards
November 22, 2023	Sign Posting
November 22, 2023	Legal Ad

Review Comments:

CDOT has provided written comments that require a Traffic Study and an access permit for the connection to Aspen Avenue, this comment will need to be addressed with the Site Plan application if the CUP is approved.

Public Comments:

**Written public comments were received on Monday December 11, 2023, and emailed to the applicant's representative Nate Abbott with Galloway and the comments were also sent to the

Planning Commission and entered into the record at the public hearing. No verbal public comments were provided at the hearing.

Surrounding Land Uses and Zoning:

Land Uses surrounding the subject property consist of a mix of residential and commercial. The Fruita Recreation Center and Family Health West Hospital are to the north along with residential land uses. The Walgreens, Balanced Rock Motel, and City Market are to the south and southeast. The Burger King and Coloramo Federal Credit Union are located to the east. Zoning surrounding the subject property consists of Downtown Mixed-Use (DMU) and the Comprehensive Plan identifies this area as the City's Core.

Zoning Map



2022 Location Map



OPTIONS AVAILABLE TO THE CITY COUNCIL:

1. Affirm the Planning Commission’s decision to deny.
 - a. This would keep the denial in place.
 - b. Must state findings of fact to affirm the denial based upon applicant’s failure to meet all of the Conditional Use Permit criteria.

2. Reverse the Planning Commission’s decision to deny.
 - a. This would approve the Conditional Use Permit application.
 - b. Must state findings of fact to support reversing the Planning Commission’s decision based upon applicant’s compliance with all of the Conditional Use Permit Criteria.
 - c. May attach conditions of approval to ensure the health, safety, and welfare of the City.