



# STAFF REPORT

## Board of Adjustment

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### CASE #AU-1744-17

<b>BOA Date:</b>	August 8, 2017	<b>Case Planner:</b>	Caitlin Long	<b>Phone:</b>	303.227.8782
<b>Location:</b>	SWC Parkway Dr And East 62nd Ave (Lot 5, Commerce City Plaza Filing No. 2)				
<b>Applicant:</b>	Dillon Companies, Inc., Dba King Soopers	<b>Owner:</b>	KRF Commerce City LLC		
<b>Address:</b>	65 Tejon Street Denver, Co 80223	<b>Address:</b>	1509 York Street Suite 201 Denver, CO 80206		

### Case Summary

<b>Request:</b>	Use-By-Permit for a King Soopers fueling station at Commerce City Plaza.
<b>Project Description:</b>	The applicant proposes to build a 7-dispenser fuel facility for the existing King Soopers in the Commerce City Plaza shopping center. It will include an open canopy and a single-attendant kiosk, and will be open 24 hours a day, 7 days a week. Fueling stations require a Use-by-Permit in the C-2 zone district.
<b>Issues/Concerns:</b>	Impact to adjacent properties Expanding an existing business
<b>Key Approval Criteria:</b>	Compliance with the LDC approval criteria Compliance with the Comprehensive Plan
<b>Staff Recommendation:</b>	Approval
<b>Current Zone District:</b>	C-2 (General Commercial District)
<b>Comp Plan Designation:</b>	Commercial

### Attachments for Review: *Checked if applicable to case.*

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|---|--|
| <input checked="" type="checkbox"/> Applicant's Narrative Summary | <input checked="" type="checkbox"/> Vicinity Map               |
| <input checked="" type="checkbox"/> Site Plan                     | <input checked="" type="checkbox"/> Neighborhood Meeting Notes |

## Background Information

### Site Information

<b>Site Size:</b>	24,520 square feet / 0.6 acres
<b>Current Conditions:</b>	Vacant
<b>Existing Right-of-Way:</b>	Parkway Drive to the east; East 62nd Ave to the north
<b>Neighborhood:</b>	Central
<b>Existing Buildings:</b>	None
<b>Buildings to Remain?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Site in Floodplain?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

### Surrounding Properties

<u>Existing Land Use</u>		<u>Occupant</u>	<u>Zoning</u>
<b>North</b>	Undeveloped	Vacant pad site and detention pond.	C-2
<b>South</b>	Undeveloped	Vacant lot for commercial development.	C-2
<b>East</b>	Residential	Single-family detached homes.	R-1
<b>West</b>	Commercial	King Soopers grocery store and in-line retail.	C-2

### Case History

There are various relevant land use cases associated with the subject property. The land that is now the Commerce City Plaza shopping center was originally zoned I-2, and was rezoned to C-2 along with Parkway Market Center at the time that retail center was ready to develop. The subject property was platted as part of the Commerce City Plaza Subdivision and Commerce City Plaza Filing 2 in 2003, when the King Soopers grocery was developed. Since that time, there has been no activity on this site.

Currently, there are three cases under review: this Use-By-Permit request for fuel sales, a subdivision request to divide this property (Lot 5) into two separate lots, and a development plan for the construction of the proposed gas station. A summary of the case history is shown below:

<u>Case</u>	<u>Date</u>	<u>Request</u>	<u>Action</u>
Z-326-84	December 1984	Zone change from I-2 to C-2	<b>Approval</b>
S-410-03	October 2003	Commerce City Plaza Subdivision	<b>Approval</b>
S-414-03	December 2003	Commerce City Plaza Filing 2 Subdivision	<b>Approval</b>
<b>AU-1744-17</b>	<b>August 2017</b>	<b>Use-by-Permit for Fuel Sales</b>	<b>Pending</b>
S-687-17	TBD	Divide one lot into two lots	<b>Pending</b>
D-342-17	TBD	Development Plan for King Soopers gas station	<b>Pending</b>

## Applicant's Request

The applicant states: *"A use-by-permit is being sought to change the parcel use from a vacant parcel to Fuel Sales. This property will be utilized as a 7-dispenser fuel facility with an open canopy and a small, single-attendant kiosk building. This lot was parceled out when the King Soopers was built as a future retail/commercial pad, with the thought that King Soopers would want to add a fueling station adjacent to the store. The fuel station will have 7 dispensers (14 fueling positions), along with adequate room for cars to queue without impacting existing traffic patterns."*

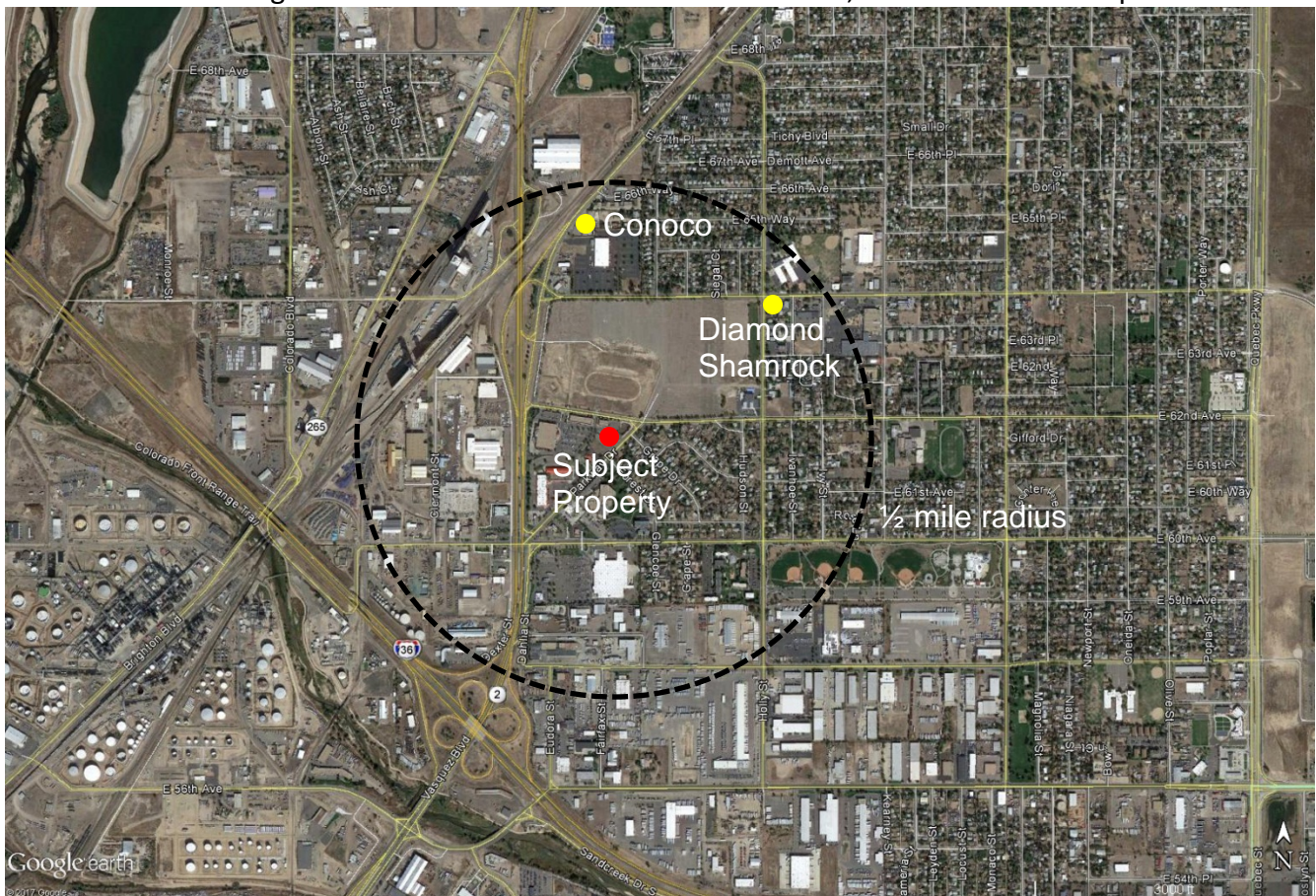
## Development Review Team Analysis

Fuel sales are allowed in the C-2 zone district upon approval of a Use-by-Permit by the Board of Adjustments. The addition of a gas station at Commerce City Plaza has been contemplated since the area was originally developed with the existing King Soopers grocery store, and they are ready to move forward with the construction of a gas station at this time. Therefore, this Use-by-Permit is being requested in order to allow the proposed fuel sales.

The proposed facility will include 7 pump dispensers under a canopy as well as a 180 square foot kiosk with outdoor food and beverage vending machines. It is proposed to be open 24 hours a day, 7 days a week, with an attendant on site during regular store business hours. The kiosk has enhanced architecture on the side facing Parkway Drive to give it a greater street presence, and the sidewalk and landscaping along the right-of-way will be upgraded in accordance with the Land Development Code to create a more walkable streetscape and improve the appearance to residences across the street. This project would also provide an additional right-in-right-out access onto Parkway Drive, to be shared with the vacant lot to the south, which the applicant feels will improve traffic circulation in the shopping center as a whole. Truck traffic would be from East 62<sup>nd</sup> Avenue through the shopping center, not to or from Parkway Drive.

In the applicant's experience, King Soopers locations that also offer fuel sales perform better than those stores that do not offer fuel sales. The proposed fueling station at this location is in response to a desire to expand the services available on-site in order to meet customer demand, and anticipates the increased future demand of the redevelopment at the former Mile High Greyhound Park.

There are two other gas stations within a half mile of this location, as shown on the map below:



Both of the existing gas stations are more embedded in residential areas with lower visibility and less access from high-traffic roadways. The proposed fueling station at King Soopers is in a developed commercial center with high traffic volume and a variety of shops and services that attract more people. It provides an opportunity for one-stop shopping in the core of Commerce City. The zoning for the Mile High Greyhound Park redevelopment does not allow for fueling stations, so this location would likely attract many of the new residents and shoppers while also serving the existing population in this part of the city.

Due to the proximity to single-family residential uses on the east side of Parkway Drive and the proposed 24/7 hours of operation, a neighborhood meeting was held on June 28 to obtain feedback on the proposed gas station from nearby property owners and residents. There were no attendees from the public. However, the applicant will use a softer color lighting to help mitigate nighttime impacts to the adjacent residents, as well as evergreen shrubs along Parkway Drive to help block vehicle headlights. There will not be a price sign on the Parkway Drive side of the canopy, and the monument sign is oriented perpendicular to the nearby homes to minimize their view of it.

The following analysis of the Comprehensive Plan illustrates the DRT's findings:

Comprehensive Planning Documents		
The DRT recommendation for this case is supported by the following Comprehensive Planning Goals:		
Section	Goal	Description
Land Use	LU 1a	Future Land Use Plan as Guide: Use the Future Land Use Plan (FLUP) to guide development patterns and amendments to the Land Development Code (LDC).
<b>Analysis:</b>	The proposed fuel sales use is geared toward customers who already use the shopping center and existing King Soopers grocery store. The gas station is a commercial use that provides an additional service for the existing customers and may attract new customers as well with a one-stop shopping experience.	
Section	Goal	Description
Economic Development	ED 4.1	Support Retail Development: Protect and support the retail sector of the economy, which adds to overall economic diversity and provides identified goods and services to city residents, such as grocery stores, sit-down restaurants, and the like.
<b>Analysis:</b>	The proposed addition of a gas station to the existing Commerce City Plaza shopping center will provide additional diversity in the goods and services available in the area, and will directly support the existing King Soopers grocery store. The applicant's research demonstrates that grocery stores with fuel sales perform better than those without, increasing sales tax revenue for the city and attracting new customers to the area.	

Finally, the following analysis of the approval criteria for a Use-By-Permit demonstrates that the proposed fuel sales use at this location is appropriate:

Criteria Met?	Sec. 21-3221. Uses-by-Permit	Rationale
<input checked="" type="checkbox"/>	The use at the proposed location will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they may exist in the future as a result of the implementation of provisions and policies of the comprehensive plan, this land development code, or any other plan, program, or ordinance adopted by the city. Such compatibility may be expressed in appearance, architectural	The proposed fuel sales use will not negatively impact the surrounding area. The site is part of an existing developed commercial shopping center which already experiences high traffic, and would capitalize on serving customers already in the area. Since the MHGP does not allow for gas stations, this site will not compete with potential nearby development and will serve those new residents and customers. The



Criteria Met?	Sec. 21-3221. Uses-by-Permit	Rationale
	scale and features, site design, and the control of any adverse impacts, including noise, dust, odor, lighting, traffic, safety, and impact on property values of the surrounding area;	lighting, landscaping, and architecture have been designed to mitigate impacts to nearby homes and to upgrade the appearance of the streetscape along Parkway Drive.
<input checked="" type="checkbox"/>	The characteristics of the site are suitable for the use considering size, shape, location, topography, existence of improvements and natural features; and	The characteristics of the site are suitable for the proposed gas station. It is currently flat and undeveloped, with existing improvements around the perimeter of the site. The layout will accommodate the necessary traffic circulation.
<input checked="" type="checkbox"/>	The use at the proposed location will be adequately served by and will not impose an undue burden on any of the improvements, facilities, and services of the city special districts, or its residents. Where any such improvements, facilities, utilities or services are not available or adequate to service the use in the proposed location, the applicant shall, as a part of the application and as a condition of approval of the use-by-permit, be responsible for establishing an ability, a willingness, and a binding commitment to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use.	The surrounding area is largely developed with adequate access to roads, utilities, and other city services, and the proposed use will not impose an undue burden on any such improvements or facilities.
<input checked="" type="checkbox"/>	<p><b>One</b> of the following criteria is met:  The use is in harmony with the general purposes, goals, objectives, and standards of the comprehensive plan or any other plan or program adopted by the city; or</p> <p>There is a proven community need for the use at the proposed location, given existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and the immediate area of the proposed use.</p>	<p>The proposed fuel sales use is in harmony with the Comprehensive Plan. This area is identified as a future regional commercial center, and uses such as a gas station serve a large market area.</p> <p>Further, the applicant has demonstrated a community need for the proposed use at this location. There are a limited number of gas stations in the immediate vicinity, and with large residential and commercial growth expected at the MHGP in the future, there will be greater demand for fuel sales. This location, being at the existing King Soopers grocery store, provide the opportunity for one-stop shopping for basic necessities.</p>

## Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the application meets the criteria for a Use-by-Permit set forth in the Land Development Code and recommends that the Board of Adjustment approve/deny the request.

## **\*Recommended Motion\***

### ***To recommend approval:***

I move that the Board of Adjustment find that the requested Use-by-Permit for the property located at **Lot 5, Commerce City Plaza Filing 2** contained in case **AU-1744-17** meets the criteria of the Land Development Code and, based upon such finding, approve the Use-by-Permit.

## **Alternative Motions**

### ***To recommend approval subject to condition(s):***

I move that the Board of Adjustment find that upon satisfying the following conditions:

*Insert Condition(s)*

the requested Use-by-Permit for the property located at **Lot 5, Commerce City Plaza Filing 2** contained in case **AU-1744-17** meets the criteria of the Land Development Code and, based upon such finding, approve the Use-by-Permit.

### ***To recommend denial:***

I move that the Board of Adjustment deny the requested Use-by-Permit for the property located at **Lot 5, Commerce City Plaza Filing 2** contained in case **AU-1744-17** because it fails to meet the following criteria of the Land Development Code:

*List the criteria not met*