

## FORMER CHAPTER 59 (FC59) USE DETERMINATION: IN PUD 531, A DOG GROOMING BUSINESS CAN BE CLASSIFIED AS A PERMITTED PROFESSIONAL OR PERSONAL SERVICE USE

**Date of Use Determination:** January 7, 2025

**Applicability:** All property with the PUD 531 Zone District Designation

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## REQUEST FOR A USE DETERMINATION

On December 18, 2024, Scenthound (Applicant), requested a primary use determination for a 1,237 square-foot suite that is fully contained in the Zone District Boundaries of PUD 531 ("PUD 531"). The request is to determine if a proposed business called Scenthound, a dog grooming business, is a permitted primary use under PUD 531. Scenthound would provide professional grooming services to household pets, described in their request as: "bathing, brushing, nail trimming, ear cleaning, teeth brushing, and functional haircuts... Unlike traditional grooming or pet boarding facilities, Scenthound is designed to provide efficient, same-day services, ensuring that dogs are picked up within two hours of their drop-off. Importantly, Scenthound does not offer overnight or long-term boarding, keeping our focus solely on wellness services that are completed promptly."

A dog grooming use is not listed specifically as a permitted primary use in the PUD; therefore, the Applicant requests a determination whether PUD 531 will allow such a use. A decision by the Zoning Administrator is required to determine which, if any, specifically permitted use in the PUD includes a veterinary use as described above.

## APPLICABLE ZONING RULES AND REVIEW CRITERIA

### APPLICABLE ZONING RULES

The subject property is zoned PUD 531 – a copy of the permitted uses for SubArea 1 of the PUD is attached as Exhibit A to this determination. The proposed location of the business is in SubArea 1B of the PUD, at the corner of 16<sup>th</sup> Street where it meets the right-of-way for the Consolidated Main Line railroad tracks and the Millennium footbridge. PUD 442 was initially adopted in 1997, which was subsequently replaced by PUD 531 in 2002 under Ordinance 2002-263. The property has not been rezoned to the Denver Zoning Code. Therefore, the property is governed by Former Chapter 59 (FC59).

PUD 531 sets forth several "uses by right" in each SubArea and specifies that the terms and uses defined in Section 59-2 of FC59 shall be used for purposes of administering PUD 531. PUD 531 does not include or define specifically "animal sales, services, and care" or "dog or pet grooming" land uses, nor did FC59 define "animal sales, service, and care, household pets only" at the time the original PUD was approved in 1997. When the PUD 442 was adopted, the most likely use classification for a grooming business would have been "professional or personal services." The "animal sales, service, and care, household pets only" use classification was added to FC59 in 1998, after PUD 442 was adopted and it would have been the classification applied to a grooming business in 2002 at the time PUD 531 was adopted. However, the permitted uses in the PUD did not change between adoption of PUD 442 and rezoning to PUD 531. This tells us that the 2002 rezoning likely did not reevaluate the permitted uses in the latter rezoning.

Under general rules of zoning code interpretation, where PUD 531 states a specific use or definition, that use/definition will be enforced. Where the PUD is silent, the definitions of Former Chapter 59 will provide the applicable zoning guidance and rules. Lastly, where the PUD and Former Chapter 59 are either silent or vague, the decision of the Zoning Administrator is guided by the general authority for code interpretations stated in Former Chapter 59, Section 38(a), Administration.

## ANALYSIS

### PUD 531 USE CATEGORIES & DEFINITIONS

PUD 531 provides a list of “Permitted Uses” (Exhibit A, pp. 1-2), which denotes certain uses require a special review with a note “SR”:

- Automobile Rental Facility (SR)
- Bank, Savings and Loan, and Similar Institutions
- Brew Pub
- Child Care Center
- Church
- Club/Lodge
- Dwelling, Single Unit and/or Multiple Unit
- Eating Place/Restaurant, need not be enclosed
- Entertainment, Indoor
- Entertainment, Outdoor
- Gallery/Museum
- Hotel
- Nursing Home
- Office
- Parking of Vehicles (SR)
- Professional and Personal Services
- Professional Studio
- Public Facility (SR)
- Repair, Rental, and Servicing
- Research, Development and Technological Services
- Retail Limited (less than 50,000 square feet)
- Retail Major (more than 50,000 square feet)
- School

PUD 531 provides several ‘notes’ as supplemental requirements for certain permitted uses in the PUD, which are focused on specific configurations of hotels and limitations on parking of vehicles as a use. However, these notes are not relevant to the three closest uses that could match the requested dog grooming service use. The only permitted uses listed as permitted in PUD 531 that could arguably include a grooming use like Scenthound are:

1. Retail Limited (less than 50,000 square feet), or
2. Professional and Personal Services

### FORMER CHAPTER 59 USE DEFINITIONS

As described above, the two permitted uses in PUD 531 that might arguably allow the proposed Scenthound grooming service are all defined in FC59, as described, and analyzed below.

## 1. Retail Limited (less than 50,000 square feet)

Retail Limited is not a defined term in FC59. At the time of both rezonings, retail was defined in FC59 as, "Sale to the ultimate consumer for direct consumption and not for resale." The threshold of 50,000 square feet listed in the PUD is not matched by a retail use in the 1994 or 2000 versions of FC59, which indicates that the threshold was specifically set for the PUD. Due to Scenthound's small proposed size at less than 1,300 square feet, this analysis focuses on the "Limited" flavor of retail, rather than "Retail Major," which is intended for retail over 50,000 square feet. There are, however, two types of the "retail" use classification that could have encompassed retail businesses that would have met the less than 50,000 square-foot threshold of Retail Limited in both 1997 and in 2002.

### A. Retail, small, defined as:

"The retail sales of goods, provided the aggregate of retail uses within a building does not exceed thirty thousand (30,000) square feet."

### B. Retail, large, defined as:

"A place for the retail sale of goods, where individual buildings and uses exceed thirty thousand (30,000) square feet; adult bookstore, adult theater and/or adult photo studio are not permitted."

However, the description of the Scenthound grooming use does not focus on the sale of goods to an ultimate consumer; rather, the use is focused on providing a service and will not necessarily involve the exchange of goods. The sale of goods may be an ancillary aspect of dog grooming, but Scenthound is focused on services rather than sale of goods. Therefore, retail is not the appropriate classification for the proposed use.

## 2. Professional or personal services

"A service establishment including, but not limited to, *barber shop, beauty shop, medical clinic, cleaner, bank, copy center, health club and other similar services.*" FC59 §59-2 (214) (emphasis added).

As shown in the definition of "retail, large," when necessary, FC59 can exclude a certain subset of land uses, such as adult bookstores, from a specific use type that encompasses similar uses. However, in the case of Professional or Personal Services, FC59 and PUD 531 did not exclude certain types of personal services such as the animal care subset of personal services. Emphasis is added above to note that a dog grooming business is quite similar to a barber shop, beauty shop, or medical clinic and could fall under the "other similar uses" portion of the definition. Scenthound describes their business as not offering veterinary or boarding care and the business is proposed to be completely enclosed, without outdoor runs, medical care for dogs, or other features unique to a veterinary or boarding use.

FC59 recognizes "Professional and Personal Services Use" as yet another specific type of use distinct from the "Retail Limited" use in that the definition cited above both expressly includes "beauty shop," "barber shop," and does not expressly exclude animal services or dog grooming. In this case, barber shops and beauty shops are allowed with no express exclusion of animal services, and a grooming use is

substantially similar in character and impact to a barber shop or beauty shop in terms of external effects and operational characteristics, such as the type of services provided (haircuts, cleaning), services provided on an appointment basis, and a low customer-to-staff ratio. Because of these similarities to other explicitly allowed uses, a dog grooming service business is properly included as “other similar service” in the above definition. Accordingly, a dog grooming business like Scenthound is allowed in PUD 531 as a permitted Professional and Personal Services primary use.

This interpretation is not weakened by the fact that FC59 defined a use called “Animal sales, service, or care, household pets only,” at the time PUD 531 was adopted and that such use is not included in PUD 531. Many specific uses can be categorized under multiple defined uses in FC59 §59-2. For example:

- A “medical clinic” is included within the definition of the following FC59 uses: “Professional or personal services” and “Clinic, office, laboratory, dental or medical”
- A bank is included within the definitions of “Banking and financial services,” and “Professional or personal services.”
- A beauty and/or barbershop is included within the definitions of “Professional and personal services,” “Consumer service, large scale,” “Consumer service, medium scale,” “Consumer service, small scale,” and “Retail, service, repair, consumer, small scale.”

It would be contrary to FC59 to prohibit a barber shop in PUD 531 despite the allowance of “Professional or personal services” simply because “Consumer service, small scale” was not included in PUD 531. Similarly, it would be contrary to FC59 to prohibit Scenthound or other grooming services despite the allowance of “Professional and personal services” simply because “Animal sales, service, or care, household pets only” is not included in PUD 531, even though it was added to FC59 before the adoption of the PUD in 2002. Therefore, dog grooming services may be properly interpreted within the “Professional or personal services” use permitted in PUD 531.

## CONCLUSION

Is Scenthound, a dog grooming business, a permitted use within the PUD 531 zone district? PUD 531 provides a list of proposed permitted uses, allotted area limitations on categories of permitted uses, and an intent to provide supportive commercial uses for the primarily residential mixed-use neighborhood. Of all the uses permitted in PUD 531, two include activities that most closely capture the services proposed by Scenthound:

- (1) Retail Limited (less than 50,000 square feet); and
- (2) Professional or Personal Services.

The first of these permitted uses, “Retail Limited,” is focused on the sale of goods, which does not capture the primary purpose of Scenthound. The definition of the “Professional or personal service” use does not exclude animal services and expressly allows a “barber shop” and “beauty shop,” which accurately describe the type of services provided to pets by Scenthound. The definition also includes a catch-all allowance for “other similar services.” The range of typical services provided by Scenthound is substantially like the range of services offered by a permitted “barber shop” and “beauty shop” with the only difference being the species of customers (human vs. animal).

Allowing a veterinary/animal services use is also consistent with the express intent of PUD 531 to provide supporting commercial sales and services convenient to the residents living in the mixed-use neighborhood.

## FINAL USE DETERMINATION AND DECISION

Based on the above analysis, I determine that the provision of animal care services the same or substantially like the services provided by the proposed dog grooming business constitutes a "Professional or Personal Service" primary use as defined in FC59, §59-2(214). Accordingly, an animal care/grooming business is a permitted use in the PUD 531 zone district. This primary use determination applies only to properties with the PUD 531 zoning designation.

## APPEAL

This final use determination may be appealed to the Denver Zoning Board of Adjustments within 15 days from the date of this written decision, according to FC59, §59-39 Appeals from the Department.

Approved by:

Alek Miller, AICP, Senior City Planner  
On behalf of Tina Axelrad, Zoning Administrator

Date: January 7, 2025