

## NOTICE OF APPEAL

**Action Being Appealed:** Approval of Fort Collins Rescue Mission FDP# 230022

<b>FOR CITY CLERK'S USE ONLY:</b> DATE FILED: 9/6/24 INITIALS: <i>llw</i>
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**Date of Action:** 08/28/2024      **Decision Maker:** Planning & Zoning Commission

**Appellant/Appellant Representative (if more than one appellant):**

**Name:** Troy W. Jones, Land Planner, Architect      **Phone #:** (970) 416-7431

**Address:** 108 Rutgers Avenue, Fort Collins      **Email:** troy@architex.com

**INSTRUCTIONS**

For each allegation marked below, attach a separate summary of the facts contained in the record which support the allegation of no more than two pages, Times New Roman 12-point font. Please restate allegation at top of first page of each summary.

**GROUND'S FOR APPEAL**

The Decision Maker committed one (1) or more of the following errors (check all that apply):

Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. **List relevant Code and/or Charter provision(s) here, by specific Section and subsection/subparagraph:**

LUC 1.2.4 "Applicability" in conjunction with LUC 3.5.1 "Building and Project Compatibility" subsection (A) "Purpose" in conjunction with LUC 3.5.1(J) "Operational/Physical Compatibility Standards" together with the definition of "compatibility" from 5.1.2 of the Land Use Code. (see attached appeal description)

Failure to conduct a fair hearing in that:

- (a) The Board, Commission, or other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter. *[New evidence not allowed]*
- (b) The Board, Commission or other Decision Maker substantially ignored its previously established rules of procedure. *[New evidence not allowed]*
- (c) The Board, Commission or other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. *[New evidence allowed]*
- (d) The Board, Commission or other Decision Maker improperly failed to receive all relevant evidence offered by the appellant. *[New evidence allowed]*
- (e) The Board, Commission or other Decision Maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence of judgment. *[New evidence allowed]*

**NEW EVIDENCE**

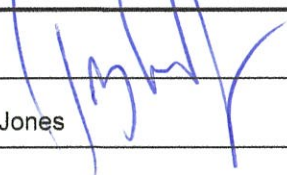
All new evidence the appellant wishes Council to consider at the hearing on the appeal must be submitted to the City Clerk within seven (7) calendar days after the deadline for filing a Notice of Appeal and must be clearly marked as new evidence. No new evidence will be received at the hearing in support of these allegations unless it is submitted to the City Clerk by the deadline (7 days after the deadline to file appeal) or offered in response to questions posed by Councilmembers at the hearing.

## APPELLANTS

*Parties-in-interest* have the right to file an appeal.

A party-in-interest is a person who, or organization which, has standing to appeal the final decision of a board, commission or other decision maker. Such standing to appeal is limited to the following:

- The applicant.
- Anyone who owns or occupies the property which was the subject of the decision made by the board, commission or other decision maker.
- Anyone who received the mailed notice of, or spoke at, the hearing of the board, commission or other decision maker.
- Anyone who provided written comments to the appropriate City staff for delivery to the board, commission or other decision maker prior to or at the hearing on the matter that is being appealed.
- A City Councilmember.

<b>Signature:</b> 	<b>Date:</b> 09/06/2024
<b>Name:</b> Troy W. Jones	<b>Email:</b> troy@architex.com
<b>Address:</b> 108 Rutgers Avenue	<b>Phone #:</b> (970) 416-7431
<b>Describe how you qualify as a party-in-interest:</b> I provided both written comments to city staff for delivery to the board, and I provided testimony at the hearing via zoom.	

<b>Signature:</b>	<b>Date:</b>
<b>Name:</b>	<b>Email:</b>
<b>Address:</b>	<b>Phone #:</b>
<b>Describe how you qualify as a party-in-interest:</b>	

<b>Signature:</b>	<b>Date:</b>
<b>Name:</b>	<b>Email:</b>
<b>Address:</b>	<b>Phone #:</b>
<b>Describe how you qualify as a party-in-interest:</b>	

**ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY**



**Attached description for  
Appeal to P&Z Commission Approval of Fort Collins Rescue Mission (file# FDP 230022)  
9/6/2024**

Code not properly interpreted/applied:

LUC 1.2.4 “Applicability” in conjunction with LUC 3.5.1 “Building and Project Compatibility” subsection (A) “Purpose” in conjunction with LUC 3.5.1(J) “Operational/Physical Compatibility Standards” together with the definition of “compatibility” from 5.1.2 of the Land Use Code.

Background for Appeal:

- Per 1.2.4 of the LUC, “The provisions of this Code shall apply to any and all development of land within the municipal boundaries of the City, unless expressly and specifically exempted or provided otherwise in this Code.”
- Per the plain text within LUC 3.5.1(A) as well as the plain text within 3.5.1(J), the concept of “compatibility” is required to be “ensured” in the application of the code. An excerpt of the plain text within the LUC in 3.5.1(A) states, “ensure that the physical and operational characteristics of proposed buildings and uses are compatible with considered within the context of the surrounding area.” The plain text in 3.5.1(J) includes, “to ensure that the new development be compatible with existing neighborhoods and uses,” and thus this code language requires the decision maker to “ensure” this “compatibility.” The allowance of “conditions” within 3.5.1(J) is simply the tool provided to the decision maker by the code to accomplish the requirement of ensuring compatibility. Note that the P&Z Commission chose not to use this tool afforded to them by this code section.
- An excerpt of the plain text in the definition of “compatibility” in 5.1.2 states, “the characteristics of different uses or activities or design which allow them to be located near or adjacent to each other in harmony.”
- Read together, 3.5.1(A), 3.5.1(J), and the definition of compatibility in 5.1.2 require that compatibility (as defined) be ensured. The P&Z Commission failed to ensure compatibility, and thus failed to properly interpret and apply the relevant provisions of the Land Use Code in their approval.

Description of Logic for the Appeal:

The plain text of the code is clear where the P&Z commission did not apply certain applicable provisions of the code when determining that the proposed FDP was “compatible” within its context. It is clear that all provisions of the code apply to land use decisions, even purpose statements. The P&Z commission chose to ignore the code language that requires that the decision maker must ensure that that a proposed development, including the operational characteristics of said proposed development, be compatible, in accordance with the code’s own definition of compatibility, which includes the need that the characteristics of different uses must be in “harmony” with one another.

The Land Use Code doesn't define "harmony," but Webster's dictionary defines "harmony" as:

- *a : pleasing arrangement of parts : [congruence](#)*
- *b : [agreement](#), [accord](#)*
- *c : internal calm : [tranquility](#)*

In other words, if compatibility is required (which it is), then the proposed project must be able to exist in harmony with existing adjacent neighborhoods (which it doesn't as proposed). If it can't achieve harmony, it can't achieve compatibility, and if it can't achieve compatibility, it doesn't satisfy the code. And if it doesn't satisfy the code, the decision maker's charge is to not approve it. **This proposal is not compatible with the neighborhood!!! The code is clear about that!!!**

**This section of code requires that "operational characteristics of proposed uses" (not just buildings, not just the "built environment") must be "compatible."** The proposed homeless shelter simply does not meet the code requirements of compatibility because the operational characteristics of the proposed facility are way too intense to be in harmony with its surroundings. Although the use of "homeless shelter" is allowed per zoning, the code is clear that its operational characteristics must also be "compatible." **This development application simply does not qualify as "compatible," per the specifics in the Land Use Code on what constitutes compatibility.**

Let's dig into this a little bit. On the one hand, the operational characteristics of providing nightly accommodations for say 5 individual homeless males can probably be made to be compatible in most locations that allow for homeless shelters. The impacts can most likely be mitigated when there's only 5, and in that quantity, "harmony" within the context of most neighborhoods could probably be achieved. That's the low extreme. Let's consider however the high extreme. The operational characteristics of providing nightly accommodations for say, 1000 individual homeless males in a single location, can most certainly not be made to be compatible, quite possibly anywhere; especially not in Fort Collins; especially not according to the way the Fort Collins Land Use code codifies "compatibility." The impacts would be simply unmanageable to achieve harmony between these adjacent activities (as codified in the language of the code). This appeal contends that the intensity proposed in this application is simply too much for this location, within the context of the neighborhood.

The applicant is voluntarily causing this impact to exceed compatibility. According to City staff, there's already 89 beds for single adult males at the Rescue Mission's current location, and another 70 overflow beds available for this population on cold winter nights at an off-site overflow location. It's our understanding that the Rescue Mission's intent is to close-down those two other locations and not only consolidate them into one single location, but to also expand the capacity substantially, but at this new location. **The problem is that the new proposed location is within a third of a mile of at least 510 households (Hickory Village and 1601 North College communities), and over 100 small businesses (up and down Hickory Street and College Avenue), and a school and daycare (La Familia located a few hundred feet from this site).**

City staff may suggest that the compatibility requirements apply to just buildings, but that's not true! The code is also clear on this point. The compatibility requirements in the code [3.5.1 of the LUC] clearly state that they apply to both building compatibility and "**project compatibility.**" While the proposed building itself (the architecture) is compatible in this case, the complete



proposed project itself (the intensity of this use in this location) certainly is not compatible. The “compatibility” provisions of code CERTAINLY DO INDEED AND CLEARLY apply to potential social and behavioral impacts that will be imposed upon the surrounding neighborhood (i.e. the project’s context) as a result of a development proposal. Why else would the title of this section include the phrase “project compatibility?”

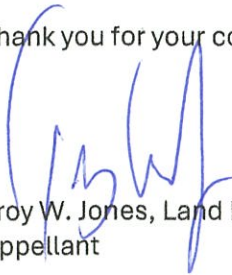
Even though the land use of “homeless shelter” is an allowed use in this zone district, clearly being an allowed use doesn’t ensure compatibility (i.e. characteristics of different uses that allow them to be located near each other in harmony) by default. When we asked city staff about what happens when a single adult homeless man attempts to check in to a bed in this facility, but is turned away because he is drunk or high, and then goes to wander the neighborhood, the answer was that the police will deal with that. That doesn’t sound like different uses located near each other in harmony. It’s clear that not every one of the population served by this facility will cause social and behavioral impacts to the neighborhood, but it’s certain that at least a small percentage will. The more beds available for this population at this location, the more times that small percentage will turn into an incident, and this a risk that will continue every day, every evening, every night into the future. If “calling the police” is the answer, how is that “compatible?” That doesn’t sound like ensuring “harmony!” **It’s simply common sense (backed by code requirements) that 250 nightly beds for homeless single men SHOULD NOT be congregated into one location, NOT with all the associated impacts, is clearly NOT compatible when considered in the context of the surrounding area!**

**This appeal is not discounting there is a need for this population to be served, and that we as a community should serve this population. This appeal does not have an answer to this problem, but the answer certainly isn’t to push this burden entirely onto this one neighborhood!** The code simply doesn’t allow that.

Perhaps there are conditions that the decision maker is obligated to impose to ensure compatibility in conjunction with 3.5.1(J) of the LUC, such as:

- Limiting the quantity of overnight beds at this facility to a much lower number, perhaps 41;
- Requiring funding of ongoing security patrols (whether funding extra police services or extra private security) throughout the neighborhood to ensure safety of the nearby residents and business owner;
- Other conditions that nearby residential neighbors and nearby business owners may suggest at the appeal hearing.

Thank you for your consideration in this matter.



Troy W. Jones, Land Planner, Architect  
Appellant