

Sanctuary Field Neighborhood Network Appeal Hearing

October 15, 2024



**SANCTUARY FIELD
NEIGHBORHOOD NETWORK**
PROTECTING THE CHARACTER OF NORTHWEST FORT COLLINS

Dwellings – LUC 5.1.2

- *Dwelling* shall mean a building used exclusively for residential occupancy and for permitted accessory uses, including single family dwellings, two-family dwellings, multi-family dwellings, and short term primary and non-primary rentals. The term *dwelling* Any dwelling shall be deemed to be a principle building.
- ***Dwelling, multi-family* shall mean a dwelling containing three (3) or more dwelling units....**
- *Dwelling, single-family* shall mean a dwelling containing no more than one (1) dwelling unit.
- ***Dwelling, single-family attached* shall mean a single-family dwelling attached to one (1) or more dwellings or buildings, with each dwelling located on its own separate lot.**
- *Dwelling, single-family detached* shall mean a single-family dwelling which is not attached to any other dwelling or building by any means....
- *Dwelling unit* shall mean one (1) or more rooms and a single kitchen, ..., and at least one (1) bathroom, designed, occupied or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multi-family dwelling or mixed-use building.



LUC 4.5(E)(3) – Non-Multi-Family Dwellings

- *Maximum Residential Building Height*

- The maximum height of one-, two- and three-family dwellings shall be two and one-half (2.5) stories.



4. Article 1 and 2 – Applicable Standards

A. BACKGROUND

Annexations

The property was annexed in two parts. The first annexation occurred in 1982 and included the land west of the New Mercer Ditch. The area east of the New Mercer Ditch was annexed and zoned L-M-N in November of 2018.

Prior Application (PDP190003)

The applicant previously submitted an application for this same site on February 15, 2019. That application was reviewed through six resubmittals and referred to Planning and Zoning Commission for a decision on the June 17, 2021 meeting agenda. During the June 17/18 hearing, the applicant requested to withdraw their application prior to a final decision being made on the application. The applicant then submitted a new plan, which was determined by the Director to include substantial changes in land use, residential density and/or nonresidential intensity in compliance with 2.2.11(E)(9). The new plan removed the multifamily condo units and added single-family rowhomes, among other changes. The removal of the multifamily dwelling units allowed for the project to follow the Type-1 review path instead of the Type-2 path the prior application went through, as the remaining uses are permitted under 4.2.(B)(2).

3-Story Single-Family Dwellings



Proposed Building Architecture (from 2024 Applicant Presentation)



1
11/19/2021
MODERN FARMHOUSE ELEVATION - BUILDING TYPE A



4
11/19/2021
CONTEMPORARY FARMHOUSE ELEVATION - BUILDING TYPE C-2



1
11/19/2021
MID-CENTURY MODERN ELEVATION - BUILDING TYPE B

	1 STORY	10 UNITS
	2 STORY	61 UNITS
	3 STORY	95 UNITS



Image from the 2024 Applicant Presentation

LUC 4.5(E)(4)

– Multi-Family Dwellings

- ***Design Standards for Multi-Family Dwellings Containing More Than Eight (8) Dwelling Units and for Multi-Family Dwellings Containing between Four (4) and Eight (8) Dwelling Units When Three (3) or More Stories in Height.***
 - Each multi-family dwelling containing more than eight (8) dwelling units and each multi-family dwelling containing between four (4) and eight (8) dwelling units, when located in a building of three (3) stories in height, shall feature a variety of massing proportions, wall plane proportions, roof proportions and other characteristics similar in scale to those of single-family detached dwelling units, so that such larger buildings can be aesthetically integrated into the low density neighborhood.

LUC 4.5(E)(4) – Multi-Family Dwellings

- *Building Height*

- The maximum height of a multi-family building shall be three (3) stories.

City Memorandum Re: LUC 4.5 (E)



Planning, Development & Transportation
Community Development & Neighborhood
Services
281 North College Ave.
P.O. Box 580
Fort Collins, CO 80522-0580
970.224.6046
970.224.6050 - fax
fcgov.com

MEMORANDUM

TO: Interested Parties

FROM: Rebecca Everette, Development Review Manager

DATE: July 26, 2018

SUBJECT: Administrative Interpretation #1-18 regarding the applicability of Land Use Code Section 4.5(E) relating to the maximum building height for 4-unit, single-family attached dwellings.

A request was received to clarify which building height standards in Land Use Code Section 4.5(E) would be applicable to a 4-unit or larger, single-family attached building. The specific question is whether the maximum building height standards in Section 4.5(E)(3) or Section 4.5(E)(4) would apply for a building with 4 units or more where all units are located on individual, separate lots.

RELEVANT CODE STANDARDS:

Division 4.5 - Low Density Mixed-Use Neighborhood District (L-M-N)

City's Improper LUC Interpretation

INTERPRETATION:

What is the maximum building height for a 4-unit or larger single-family attached dwelling in the L-M-N zone district?

Section 4.5(E)(3) specifically references only one-, two- and three family dwellings and is not applicable to buildings that contain 4 or more dwelling units.

Per Section 5.1.2, a 4-unit building with each unit on a separate lot could potentially meet the definition of either multi-family or single-family attached. Further, a 4-unit or larger single-family attached building would look and function much like a multi-family building, with a comparable relationship to adjacent buildings or land uses.

CONCLUSION:

Section 4.5(E)(4) would be applicable to buildings containing 4 or more single-family attached units. The maximum building height, per Section 4.5(E)(4)(d) is three stories.

District Court Analysis

The Colorado Supreme Court in *City of Colorado Springs v. Securcare Self Storage, Inc.*, 10 P.3d 1244, 1248–49 (Colo. 2000) explains that “Courts interpret the ordinances of local governments, including zoning ordinances, as they would any other form of legislation. As such, zoning ordinances are subject to the general canons of statutory interpretation.” More specifically, the Court explained:

Except as is provided in Section 3.1.2,⁹ if the provisions of this Land Use Code are internally conflicting or if they conflict with any other statute, code, local ordinance, resolution, regulation or other applicable Federal, State or local law, the more specific standard, limitation or requirement shall govern or prevail to the extent of the conflict. If neither standard is more specific, then the more stringent standard, limitation or requirement shall govern or prevail to the extent of the conflict. (Emphasis added.)

Per Hearing Officer and Staff Report

Staff report

- *Sanctuary on the Green proposes some 3-story buildings on the north end of the property near Bellwether Farm Open Space. Otherwise, the 3-story buildings are concentrated in the interior of the site.*

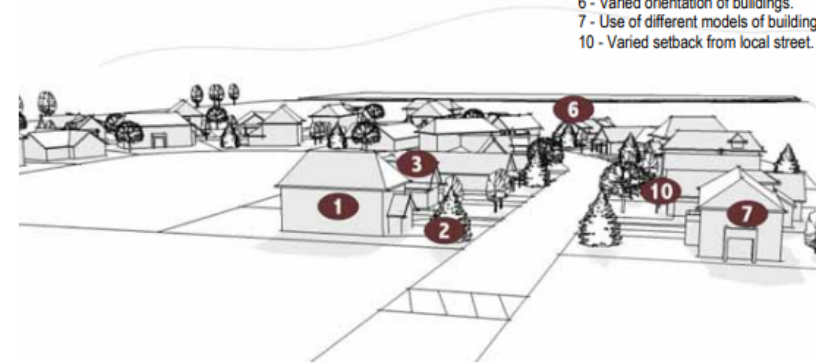
Hearing Officer Decision

- *The PDP proposes some 3-story buildings on the north end of the property near Bellwether Farm Open Space. Otherwise, the 3-story buildings are concentrated in the interior of the site. For these reasons, the Project is sensitive to the character of existing neighborhoods*

Northwest Subarea Plan

4. Design and Placement of Buildings

(All Areas)



For more information, see detailed guidelines below.

This image shows:

- 1 - Home "footprint" not more than 25% of lot.
- 2 - Varied lot sizes.
- 3 - Varied roof planes.
- 6 - Varied orientation of buildings.
- 7 - Use of different models of buildings.
- 10 - Varied setback from local street.

GUIDELINES

1. House Footprint Relative to Lot Size - House sizes should relate to lot sizes— so building does not dominate. For RF: Building footprint will be no larger than 20% of lot size, ideally. For UE: no larger than 25% for exterior lots and 40% for interior lots.
2. House Size Relative to Adjacent Homes and Public Areas - Include a variety of sizes within a subdivision (as noted in site plan section) Relate size of buildings to lot sizes and adjacent properties (e.g., 2 stories maximum, with 1 story preferred near edge of property or no more than 20% difference in height.) Locate taller and larger structures on interior portions of a site, screened from adjacent developments or public rights-of-way.
3. Building Massing and Roof Planes - Vary building massing and roof planes, with lower profile buildings near adjacent properties.
4. Durable Materials - Construct buildings of durable materials (e.g., stone, masonry, and treated wood).
5. Colors - Use predominately muted colors with brighter colors for accent only. Use a variety of colors in a subdivision (with at least three different colors within a subdivision).
6. Building Orientation to Street - Vary orientation of buildings to local street.

7. Style and Types of Buildings - Use at least 3 model types in all developments. (Note: current standard requires at least 3 types with 10 homes or more.)
8. Garage Placement - Design a variety of garage placement. (Note: not comprising more than 30% of ground floor street-facing facade. Recessed, detached, or side or rear-facing garages preferred.)
9. Building Setbacks from Arterials - For RF: Setbacks should be larger than RL standards and more consistent with arterial-street setbacks of existing developments (i.e., at least 100 feet). For UE: Setbacks should be larger than current UE standards and more consistent with setbacks of existing developments (i.e., At least 50 feet)
10. Building Setbacks from Local Street - For RF: Vary setbacks (i.e., 40 feet preferred instead of 25 feet). At least 20% of buildings should be setback 50 feet or more. For UE: Vary setbacks. At least 20% of buildings should be setback 40 feet or more.

Current Standards Require

The City standards for the LMN District require a variety of styles, orientation, and building types. Generally, these standards apply only if a development has at least 10 units, or more stringent standards apply for 100 units or more.

	1 STORY	10 UNITS
	2 STORY	61 UNITS
	3 STORY	95 UNITS



Image from the 2024 Applicant Presentation

Application Timeline

2.2.11 - Step 11: Lapse

- (A) ***Application Submittals.*** An application submitted to the City for the review and approval of a development plan must be diligently pursued and processed by the applicant. Accordingly, the applicant, within one hundred eighty (180) days of receipt of written comments and notice to respond from the City on any submittal (or subsequent revision to a submittal) of an application for approval of a development plan, shall file such additional or revised submittal documents as are necessary to address such comments from the City. If the additional submittal information or revised submittal is not filed within said period of time, the development application shall automatically lapse and become null and void. The Director may grant one (1) extension of the foregoing one-

City's Contemporaneous Understanding

On Wed, Nov 29, 2023 at 2:01 PM Clay Frickey <cfrickey@fcgov.com> wrote:
Miranda,

I just received this e-mail from the Sanctuary on the Green team. They are requesting that we postpone the hearing. They have not requested a specific date for a new hearing. I wanted to let you know that we are going to postpone the hearing. Since we don't have a date that we are postponing to, we will not open up the hearing tomorrow.

I apologize for the confusion and for re-scheduling again.

Thanks,
Clay

Clay Frickey <cfrickey@fcgov.com> Mon, Dec 4, 2023, 10:27 AM
to me, Em, Andrew

Hey Miranda,

The applicant submitted two new documents to us on October 19. 180 days from October 19 would be April 16, 2024.

Thanks,
Clay

.....
Clay Frickey
Pronouns: he/him
Planning Manager
City of Fort Collins
281 N College Ave.
970-416-2517 office
cfrickey@fcgov.com

City Confirming Lapse of Application

On Wed, Apr 17, 2024 at 11:54 AM Clay Frickey <cfrickey@fcgov.com> wrote:
Hey Miranda,

I've not received an extension request and the Development Review Coordinator has not either.

Thanks,
Clay

.....
Clay Frickey
Pronouns: he/him
Planning Manager
City of Fort Collins

From: Clay Frickey
Sent: Wednesday, April 17, 2024 5:20 PM
To: Sanctuary Neighbor <sanctuaryfieldnetwork@gmail.com>
Cc: Andrew B. Pipes <andrew@frascona.com>; Em Myler <emyler@fcgov.com>
Subject: RE: [EXTERNAL] Re: Re: Re: Re: Re: Re: Re: Re: Re: Checking in

Hi Miranda,

I sent an e-mail earlier this afternoon letting the applicant know that according to our records, it has been more than 180 days and we have not received an updated submittal or request for an extension. Due to that, I informed the applicant team that the project is lapsed. I mentioned that if they think this is in error that they can reach out to discuss with me.

Since I sent that e-mail out, the applicant sent me an e-mail dated November 1, 2023 that had their presentation for the previously scheduled hearing attached. The applicant is arguing that the presentation for the hearing demonstrates they were actively working towards seeking approval for their project and that the 180 lapse date should be calculated from November 1, 2023.

I need to discuss this all with our attorney. I will respond with a determination as soon as I am able.

Thanks,
Clay

.....
Clay Frickey

Post-Lapse Revival of Application

Clay Frickey <cfrickey@fcgov.com> Thu, Apr 18, 5:25 PM
to me, Andrew, Em

Miranda,

I had a chance to connect with our attorney today to discuss Sanctuary on the Green. The applicant also sent us another e-mail dated November 29, 2023 that thought should count towards fulfilling the requirements of the lapse provision to keep their project active. Our attorney's opinion is that the correspondence from November is evidence the applicant was diligently pursuing approval of their development application. Due to that, we are calculating the 180 lapse window from November 29, 2023. This means the lapse date is May 27, 2024.

I will let you know if I hear anything else from the applicant.

Thanks,
Clay

.....
Clay Frickey
Pronouns: he/him
Planning Manager
City of Fort Collins
281 N College Ave.
970-416-2625 office
cfrickey@fcgov.com

On Tue, Apr 23, 2024 at 12:10 PM Clay Frickey <cfrickey@fcgov.com> wrote:
Miranda,

Yesterday we received a formal extension request from the applicant for Sanctuary on the Green. I will let you know what our decision is for this extension request. If approved, this would extend the project's lapse date from May 27 to September 24.

Thanks,
Clay

.....
Clay Frickey
Pronouns: he/him
Planning Manager
City of Fort Collins
281 N College Ave.
970-416-2625 office
cfrickey@fcgov.com

Diligent Pursuit of PDP

From: Sam Coutts <sam.coutts@ripleydesigninc.com>
Sent: Wednesday, November 29, 2023 1:30 PM
To: Clay Frickey <cfrickey@fcgov.com>
Cc: Todd Sullivan <TSullivan@fcgov.com>; 'David Pretzler' <David@cacompanies.com>;
David Foster <david@fostergraham.com>; Kristin A. Decker <kdecker@fostergraham.com>
Subject: [EXTERNAL] Sanctuary Hearing Continuance

Clay,

Given the amount of interest surrounding the project, the applicant needs more time to ensure that every aspect of the application meets the standards of the City and that all concerns raised are addressed to the maximum extent feasible. The applicant requests that the hearing scheduled for November 30, 2023 be continued without a date certain, knowing that the future hearing will need to be fully re-noticed.

Please pass this information along to the hearing officer, neighborhood group and any others who were planning on attending the hearing tomorrow.

Thanks,

What Did Mr.
Coutts
Change After
Nov. 29?

Nothing

Instead, the Applicant submitted its October 19, 2023 letter in the PDP, which the Hearing Officer then copied and pasted into his decision.



T 303-333-9810
F 303-333-9786
360 South Garfield Street
Sixth Floor
Denver, Colorado 80209

CITY OF FORT COLLINS
TYPE 1 ADMINISTRATIVE HEARING
FINDINGS AND DECISION

HEARING DATE: Monday, July 15, 2024 (remand hearing)
PROJECT NAME: Sanctuary on the Green
CASE NUMBER: PDP # 210018

October 19, 2023

Marcus McAskin
City of Fort Collins
281 North College
Fort Collins, CO 80524

RE: November 2, 2023 Type I Hearing, City of Fort Collins (the “City”) – Sanctuary on the Green Project Development Plan Application - Remand

Dear Mr. McAskin:

Additional analysis related to the PDP’s consistency with the goals and policies set forth in the NSP is attached to this Decision as ATTACHMENT B (“**Additional Findings and Analysis – NSP**”) and is specifically incorporated herein by reference. The Additional Findings and Analysis – NSP includes findings wholly consistent with Ms. Decker’s written analysis dated October 19, 2023.

Failure to Include All Evidence

- 342 pages of written public comment were not provided to the Hearing Officer in advance of him rendering a decision
- This procedural failure was identified by a neighbor and brought to the City's attention

On Thu, Jul 25, 2024 at 3:14 PM Sanctuary Neighbor <sanctuaryfieldnetwork@gmail.com> wrote:

Hi Clay and Em,

I don't see the many pages of written public comments submitted mentioned in the decision. All I see is the three comments received during the hearing. Can you confirm that these were successfully provided to and considered by the Hearing Officer?

Miranda

City's Response

“a community member notices there were several pieces of correspondence did not make it to you”

From: Clay Frickey

Sent: Thursday, July 25, 2024 17:16

To: Marcus McAskin <MMcAskin@mgmfirm.com>

Subject: Comments for Sanctuary on the Green

Hi Marcus,

A community member noticed there were several pieces of correspondence that were supposed to be a part of the record for you to consider for Sanctuary on the Green that did not make it to you. Attached is the correspondence. Are you able to consider these comments that we received prior to the July 15 hearing and re-issue your decision by Monday's deadline? I apologize for this error.

Thanks,

Clay

Failure to Include All Evidence

- Hearing Officer received public comments for the record
- Hearing Officer issued a supplemental decision “*after reviewing the evidence in its entirety, that his “decision is confirmed in all respects.”*”
- City then (unsuccessfully) attempted to redact much of this appeal, including emails about the lapse and emails about the public comments as “new evidence”.

In Summary

There have been a multitude of errors by the City that demonstrate the approval of Sanctuary on the Green should be reversed.

- Applying multi-family dwelling standards to single family attached dwelling units.
- Keeping a lapsed PDP alive, in contravention to the LUC.
- Failure to include all evidence to the Hearing Officer, combined with his subsequent dismissal of the same.



**SANCTUARY FIELD
NEIGHBORHOOD NETWORK**
PROTECTING THE CHARACTER OF NORTHWEST FORT COLLINS