

NOTICE OF APPEAL

Action Being Appealed: Approval for 738 Campfire Drive Extra Occupancy Project Development
Plan/ Final Plan #FDP200018

**FOR CITY CLERK'S
USE ONLY:**

DATE FILED:

INITIALS:

Date of Action: 12/18/2020 **Decision Maker:** Marcus A. McAskin

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

Name: Joseph Brown

Phone #: [REDACTED]

Address: [REDACTED]

Email: josephtrailhead@gmail.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 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:

Land Use Article 3.2.2.(C)(4)

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.

Signature: 	Date: 12/28/2020
Name: Joseph Brown	Email: josephtrailhead@gmail.com
Address: 	Phone #: 
Describe how you qualify as a party-in-interest: I received the mailed notice of, and spoke at, the hearing held for the project proposal on Thursday, December 10th, 2020.	

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

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

ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY

Summary of Facts

Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter.

- Land Use Article 3.2.2(C)(4): This plan is required to provide 1 bicycle parking space per bed.

The appellant argues that the Hearing Officer failed to properly interpret and apply the relevant provisions of the Land Use Code governing the site planning and design standards in 3.2.2(C)(4) regarding the appropriation of the required number of bicycle parking spaces. The Land Use Code Standards require one (1) bicycle parking space per bed. However, the proposal submitted to the city (and supported by the City Planner) only required three (3) parking spaces. The stated purpose of the Extra Occupancy Proposal submitted by Mr. Huynh was to increase the occupancy from three (3) to four (4) tenants. It appears that the City Planner (in setting and then determining whether this dwelling met the criteria) and the Hearing Officer considered information that should be irrelevant and outside of the purview of their decision: namely that the renter shared that she and her partner share a bed in the dwelling. By considering this information, the Hearing Officer failed to properly interpret and apply the relevant provision governing this Land Use Code Standard. After all, the provision states “beds” and not “bedrooms” specifically to address dwellings in which multiple occupants share a single bedroom but cannot share a single bicycle. The Hearing Officer’s consideration of this interpretation of “beds” based on the information provided by the renter (sleeping arrangements and cohabitation preferences) is outside of the purview of the Hearing Officer and is bad practice for the application for Land Use Code Standard enforcement in a situation in which the permitted use is permanent and ongoing. The appellant wonders what the City Planner and the Hearing Officer may have approved if the renter had stated that all occupants shared the same bed. Clearly that information would not factor into a decision, and the renter’s cohabitation preferences presented in this proposal should not have been considered either.

In addition, in the Final Comment Letter from Fort Collins Community Development and Neighborhood Services (dated on August 14th, 2020), the owner was required to construct the bicycle rack in the following manner:

Fixed bicycle parking shall mean parking that allows the bicycle frame and both wheels to be securely locked to the parking structure. The structure shall be of permanent construction such as heavy gauge tubular steel with angle bars permanently attached to the pavement foundation. Fixed bicycle parking facilities

shall be at least two feet in width and five and one half feet in length, with additional back out or maneuvering space of at least five feet.

The language was very clear that these requirements were expected. However, the applicant was allowed to satisfy in a manner not consistent with these clear expectations. No explanation for the change was provided at the time of the hearing.

Because the proposal fails to comply with the Land Use Code Standard, the standard described in the Final Review Letter (Aug 2020), and because the improper interpretation was applied by the Hearing Officer, the appellant requests that the proposal approval be overturned, a new review process (with all applicable fees required of the owner) initiated, the Land Use Code Standards applied and interpreted appropriately, and the owner required to install a bicycle parking rack that meets the original required specifications.
