

NOTICE OF APPEAL

FOR CITY CLERK'S
USE ONLY:

DATE FILED: 3/25/21
INITIALS: *llw*

Action Being Appealed: Decision Approving Guardian Self-Storage Project and Application
(Case No. PDP 190020)

Date of Action: 03/11/2021 Decision Maker: Planning and Zoning Board

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

Name: President of OSF Investments, LLC d/b/a Carpet Exchange Phone #: (303) 744-3300

Address: 5000 S. College Avenue
Fort Collins, Colorado 80525

Email: bodette@carpetexchange.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:

- (1) South College Corridor Plan, Policy LU 1.4
- (2) Section 3.10.2 (A) of the Land Use Code

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: 03/24/2021
Name: Jon Bradley, Attorney for OSF Investments, LLC	Email: jon@goldenlawyers.com
Address: 2201 Ford Street, Golden, CO 80401	Phone #: (303) 384-9228
Describe how you qualify as a party-in-interest: OSF Investments owns the shopping center abutting the proposed Project. Baseline, on behalf of Carpet Exchange, submitted a letter to the Planning and Zoning Board Members for March Hearing and which was included in the Supplemental Documents to the Hearing.	

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

GROUNDNS FOR APPEAL: Failure to properly and apply relevant provisions of the City Code, Land Use Code, and Charter.

1. The Proposed Mini Storage Does Not Conform to the South College Corridor Plan.

Page 38 of the South College Corridor Plan, Policy LU 1.4 states,

Minimize Low Activity Uses. Uses that detract from the overall vitality of the Corridor, including used car lots, outdoor storage, and storage unit uses, are to be located away from the College frontage.

The proposes Mini Storage directly fronts College Avenue and thereby directly violating Policy LU 1.4. Additionally, the proposed Mini Storage is located on the corner of a major signalized intersection and within the TOD Overlay where active uses should be prioritized. Failing to prioritize active uses and approving a storage facility is in violation of the South College Corridor Plan.

2. The Proposed Mini Storage is a Prohibited Used in the Fort Collins Land Use Code.

Section 3.10 of the Land Use Code addresses Development Standards for the Transit-Oriented Development (“TOD”) Overlay Zone. Under the heading of subsection 3.10.2(A) for Permitted Uses, the Code states,

Ground-floor enclosed mini-storage shall be prohibited. Enclosed mini-storage shall be allowed either below grade or on upper levels of a building.

Moreover, subsection 3.10.1(B) states,

[I]n the event of a conflict between the provisions contained in this Division and the provisions contained in Article 4, this Division shall control.

Article 4 contains the table of permitted uses for each zoning district. There is no ambiguity that the prohibition of ground-floor enclosed min-storage in 3.10 is a land use prohibition that is meant to modify and clarify the land use tables in Article 4 wherever mini-storage appears within the TOD Overlay Zone. The only way to be able to obtain relief from a prohibited land use would be to amend the Land Use Code. There has been no indication during the Board’s work session of an intent to propose a code amendment at some time in the future. Despite the fact that the Mini Storage is a prohibited use, the staff inappropriately recommended approval of the Mini Storage.

GROUNDS FOR APPEAL: The Board, Commission or other Decision maker substantially ignored its previously established rules of procedure.

Staff's presentation at the hearing was in support of approval of the Project and likely had a substantial impact on the overall outcome of the vote to approve the Project. According to the analysis of the staff report, the staff no longer supports some of the policies in the South College Avenue Plan. If the plans and policies are to be revisited, then the proper way to address those matters is by amending the plans and/or policies rather just simply doing away with them or ignoring them. It is inappropriate to approve development that directly contradicts the plans and policies.