# CITY OF FORT COLLINS TYPE 1 ADMINISTRATIVE HEARING

## FINDINGS AND DECISION

HEARING DATE:	June 17, 2019
PROJECT NAME:	Bueno Drive Condos
CASE NUMBER:	PDP190004
APPLICANT:	Brian W. Shear Shear Engineering Corp. 4836 S. College Ave., Suite 12 Fort Collins, CO 80525
OWNER:	5724 Bueno LLC c/o Barry Van Everen 2425 E. Camelback Rd., Suite 200 Phoenix, AZ 85016
HEARING OFFICER:	Marcus A. McAskin

PROJECT DESCRIPTION: This is a request for a Project Development Plan ("PDP") to develop a 6,000 square foot, single-story commercial condominium building consisting of three (3) attached units on approximately 0.37 acres. The project is located on Lot 13-A, Amended Lots 13-16, South 13 Subdivision in the City of Fort Collins, Colorado ("Subject Property"). The Subject Property is addressed at 5724 Bueno Drive (Parcel #9612231001). Access to the Subject Property is taken from Bueno Drive to the west, and the project proposes a total of six (6) parking spaces, including one (1) handicap parking space. The Applicant is requesting a modification of standard to meet applicable parking lot perimeter landscaping requirements. The commercial retail and industrial uses proposed in the PDP are subject to Administrative (Type 1) Review.

The surrounding zoning and land uses are as follows:

	North	South	East	West
Zoning	Service Commercial (C-S)	Service Commercial (C-S)	Service Commercial (C-S)	Service Commercial (C-S)
Land Use	Commercial	Commercial	Vacant, Commercial	Commercial

### SUMMARY OF DECISION: Approved.

ZONE DISTRICT: Service Commercial District (C-S).

HEARING: The Hearing Officer opened the hearing on Monday, June 17, 2019, in Conference Rooms A-D, 281 North College Avenue, Fort Collins, Colorado, at approximately 5:50 p.m. following the conclusion of the hearing in case no. FDP190007 (630 S. Howes Street – Extra Occupancy Rental).

EVIDENCE: Prior to or at the hearing, the Hearing Officer accepted the following documents as part of the record of this proceeding:

- 1. Letter of Acceptance.
- 2. Vicinity Map.
- 3. Planning Set (site and elevation plans).
- 4. Revised Landscape Plan.
- 5. Revised Irrigation Plan.
- 6. Utility Plans.
- 7. Applicant request for modification of standards.
- 8. Stormwater Variance Application.
- 9. Stormwater Memo.
- 10. Planning Department Staff Report prepared for Bueno Drive Condos (PDP190004). A copy of the Staff Report is attached to this decision as **ATTACHMENT A** and is incorporated herein by reference.
- 11. Confirmation of Publication dated June 6, 2019 evidencing proof of publication of Notice of Hearing in the *Fort Collins Coloradan* on June 6, 2019.
- 12. Notice of Public Hearing dated June 3, 2019.
- 13. The PowerPoint presentation prepared by City Staff for the June 17, 2019 hearing.
- 14. Administrative (Type 1) Hearing: Order of Proceedings.
- 15. Rules of Conduct for Administrative Hearings.
- 16. The City's Comprehensive Plan, Land Use Code ("Code" or "LUC"), and the formally promulgated polices of the City are all considered part of the record considered by the Hearing Officer.

TESTIMONY: The following persons testified at the hearing:

From the City:	Pete Wray, Senior City Planner
From the Applicant:	Brian W. Shear Shear Engineering Corp.
	Barry Van Everen 5724 Bueno LLC

None.

From the Public:

The hearing was closed at approximately 6:17 p.m.

## FINDINGS

- 1. Evidence presented to the Hearing Officer established the fact that notice of the public hearing was properly posted, mailed and published. Evidence presented to the Hearing Officer further established the fact that the submittal of the project was completed on February 20, 2019 and deemed complete by City Staff on February 23, 2019.
- 2. Based on testimony provided at the public hearing and a review of the materials in the record of this case, the Hearing Officer concludes as follows:
  - A. The Application is consistent with the policy direction of the South College Corridor Plan and the stated purpose of the C-S District. Specifically, the C-S zone district is a transitional zone district and allows for the development of land uses that assist with the transition from South College Avenue uses to existing residential neighborhoods located further to the east.
  - B. The Application complies with the applicable procedural and administrative requirements of Article 2 of the LUC.
  - C. The Application complies with the relevant standards of Article 3 General Development Standards, with the exception of Section 3.2.1(E)(4)(b) of the Code.
  - D. The Application complies with relevant standards located in Division 4.22 of Article 4 of the LUC.
- 3. Based on testimony provided at the public hearing and a review of the materials submitted, the requested Modification of Standard to Section 3.2.1(E)(4)(b)of the LUC *Parking Lot Perimeter Landscaping (Screening)* ("Modification") may be granted, as explained in additional detail below.
- 4. The Hearing Officer concludes that the granting of the Modification will not be detrimental to the public good and that by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to the Subject Property, including, but not

limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions . . . the strict application of [Section 3.2.1(E)(4)(b) of the Code] would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the Owner, provided that such difficulties or hardship are not caused by the act or omission of the Applicant. Specifically, the Hearing Officer finds that providing full landscape screening along a portion of the south property line is a challenge given the existing grade differential and that the existing condition was not caused by any act or omission of the Applicant. Requiring the Applicant to provide perimeter landscape screening in strict compliance with the requirements of Section 3.2.1(E)(4)(b) of the Code would result in an unusual practical difficulty given the sudden change of grade at the south boundary of the Subject Property. In addition, any screening in the specific location where the Modification is sought would result in the screening an existing parking lot to the south, which sits at a higher elevation thereby reducing the visual impact of such landscape screening. The Hearing Officer agrees with Staff's conclusion that the need to fully screen the parking proposed on the Subject Property is less essential given the existence of the immediately adjacent parking area to the south and the existing grade change.

5. The Application's satisfaction of the applicable Article 2, 3 and 4 requirements of the LUC is sufficiently detailed in the Staff Report, a copy of which is attached as **ATTACHMENT A** and is incorporated herein by reference.

## DECISION

Based on the findings set forth above, the Hearing Officer hereby enters the following decision:

- A. The request for Modification of Standard to Section 3.2.1 (E)(4)(b) is granted pursuant to the applicable standards set forth in 2.8.2(H)(3) of the Code, as summarized above.
- B. The Bueno Drive Condos Project Development Plan (PDP #190004) is approved for the Subject Property as submitted.

DATED this 24<sup>th</sup> day of June, 2019.

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Marcus A. McAskin Hearing Officer

# ATTACHMENT A

Staff Report Bueno Drive Condos (PDP #190004)

# Administrative Hearing: June 17, 2019

#### Bueno Drive Condos – PDP190004

#### **Summary of Request**

This is a request for a Project Development Plan to develop a 6,000 square foot, single-story commercial condo building with three attached units on .37 acres. The project is located on Lot 13A at 5724 Bueno Drive (Parcel #9612231001). Access to the site is taken from Bueno Drive to the west, with six parking spaces provided. The request will require a modification of standards to meet minimum landscape requirements. The commercial retail and industrial uses included on site plan are subject to Administrative (Type I) Review.

#### **Zoning Map**



#### **Next Steps**

Upon approval from the Administrative Hearing Officer and after appeal period, the applicant will be eligible to submit Final Development Plan application with the Development Review Center. Once the FDP is approved and mylars are recorded, the permit application will be released to all reviewing departments.

#### Site Location

5724 Bueno Drive.

#### Zoning

The proposed project is located in the Service Commercial District (C-S).

#### **Property Owner**

5724 Bueno LLC c/o Barry Van Everen 2425 Camelback Rd., Suite 200 Phoenix, Arizona 85016

#### Applicant/Representative

Brian W. Shear Shear Engineering Corp. 4836 S. College Ave, Suite 12 Fort Collins, CO 80525 (970) 226-5334

#### bshear@shearengineering.com

#### Staff

Pete Wray, AICP, Senior City Planner 970-221-6754

#### pwray@fcgov.com

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#### Staff Recommendation

Approval



# 1. Project Introduction

## A. SUMMARY OF PROJECT

- 6,000 sq. ft., single-story commercial condo building with 3 attached units
- .37-acre site located on Lot 13A at 5724 Bueno Drive (Parcel #9612231001)
- Access to the site is taken from Bueno Dr. to the west
- 6 parking spaces provided.
- Request will require a modification of standards to meet minimum landscape requirements. The commercial retail and industrial uses included on site plan are subject to Administrative (Type I) Review.
- If the PDP is approved by the decision maker, the next step in the process in for Final Development Plan (FDP) review, followed by building permit review.
- The site is included in the South 13 Subdivision, amended lots 13-16, annexed as part of the Southwest Enclave Annexation in 2006.

# **B. SITE CHARACTERISTICS**

## 1. Current Conditions

The site is currently vacant.

## 2. Surrounding Zoning and Land Use

	North	South	East	West
Zoning	Service Commercial (C-S)	Service Commercial (C-S)	Service Commercial (C-S)	Service Commercial (C-S)
Land Use	Commercial	Commercial	Vacant, Commercial	Commercial



# C. OVERVIEW OF MAIN ISSUES

Modification Requested	Standard Requirement	Proposed Plan
Parking Lot Perimeter Landscaping - Screening	5' landscape setback along lot line	Along sough property boundary, 1.5' of planting adjacent to parking stall #6

The first issue requiring a finding of support includes a request for modification required:

Early in the review process, staff found that a unique set of circumstances warrants support of this modification. Circumstances include:

- The size of the lot and site area designated for parking and landscape treatments is limited.
- The location of existing parking lot to the south is a similar use and need to fully screen this area is not as essential as screening a different use.
- The slope along the south property boundary makes it difficult to accommodate full landscape planting within a 5' strip.

Other key issues that have been explored and addressed include street facing building façade architectural design, streetscape entry planting, and number of parking spaces for proposed commercial uses.

Staff has evaluated the request under the applicable sections of the Land Use Code and staff finds that all issues have been addressed in compliance with the code, including the one modification of standards.

### 2. Public Outreach

### A. NEIGHBORHOOD MEETING

A neighborhood meeting is not required for Administrative (Type 1) projects, therefore, a neighborhood meeting was not held for this project.

### **B. PUBLIC COMMENTS:**

No public comment has been received at this time. Any communication received between the public notice period and hearing will be forwarded to the Hearing Office to be considered when making a decision on the project.

# 3. Compatibility with Comprehensive Plan

### A. SOUTH COLLEGE CORRIDOR PLAN

The Corridor will provide a broad, flexible mix of uses that accommodates highway users, neighborhood and community needs and supports the Mason Corridor. The Corridor's commercial areas should retain the eclectic business mix while supporting new uses to strengthen the South College market. Many of the existing service commercial and retail uses fill a niche that is becoming rarer in the city and region markets.

LU 1.3 - Service Commercial. Zoning will allow for new service commercial uses in the South 13 subdivision while buffering adjacent residential uses.

The proposed project is consistent with the vision, goals and policy direction of the South College Corridor Plan. The Service Commercial land use and zoning provides opportunities for small business start-ups and combination of commercial and light industrial uses acting as a transition from South College strip uses and existing neighborhoods further east.



# 4. Article 2 – Applicable Standards

## A. BACKGROUND

This section is to only provide a summary of procedural action as required by this section. This includes background on conceptual reviews, previous approvals, neighborhood meetings, and any other significant procedural events here.

## **B. PROJECT DEVELOPMENT PLAN PROCEDURAL OVERVIEW**

### 1. Conceptual Review (January 10, 2019)

A conceptual review meeting was held on January 10, 2019. Any other pertinent information could go here?

### 2. Neighborhood Meeting (NA)

A neighborhood meeting was not held for this proposed project, subject to a Type I review, satisfying the applicable requirement of 2.4.2 – Project Development Plan Review Procedures

### 3. Submittal (February 20, 2018)

The submittal of the project was completed on February 20, 2018 and deemed complete on February 23, 2018. The project was subsequently routed to all reviewing departments.

### 4. Notice (Posted, Written and Published)

Posted notice: March 4, 2019, Sign # 489

Written notice: June 3, 2019, 800-foot notification boundary, 79 letters sent

Published Notice: June 6, 2019, Coloradoan confirmation #0003612822



# 5. Article 3 - Applicable Standards

Article 3 of the Land Use Code contains standards for all development citywide to be used in conjunction with zoning district standards. Staff finds that the project complies with all applicable General Development Standards, with one Modification. Staff evaluation below follows the order of Article 3.

# A. DIVISION 3.2 - SITE PLANNING AND DESIGN

Applicable Code Standard	Summary of Code Requirem	ent and Analysis		Staff Findings
3.2.1 Landscaping	This Code Section requires a fully developed landscape plan that addresses relationships of landscaping to the circulation system and parking, the building, abutting properties, and users of the site in a manner appropriate to the neighborhood context.			
	The plan provides the followin	g key attributes:		
	<ul> <li>landscaping.</li> <li>Behind the sidewalk, provided primarily in</li> <li>Along the south bour</li> </ul>	between the walk and the form of shrub beds dary, a minimum 5-fo e proposed 6 <sup>th</sup> parking	along Bueno Dr within the parkway I the building, additional landscaping is and foundation plantings. ot landscape screening is provided, g space. A request for modification of	
3.2.2 Access Circulation and Parking	This Code Section requires secure, convenient, efficient parking and circulation improvements that add to the attractiveness of the development. The plan provides on-site walkways, curb-cuts, sidewalk ramps, and a clearly delineated parking lot layout in compliance with standards. Additional salient points in staff's evaluation under Section 3.2.2 follow.			
3.2.2(C)(4)	Bicycle Parking	Required	Proposed	Complies
Bicycle Facilities	Total Spaces	Minimum of 4	4 Total	
	Enclosed	NA	NA	
	Fixed Racks	NA	NA	
	The proposed 4 covered bicyc condo units on site.	le racks are located a	t front façade of building to serve all	
3.2.2 (C) (5) Walkways	There is a direct connecting w along Bueno Drive.	alkway that links the b	uilding entrances to the public sidewal	k Complies



3.2.2(K) Parking	building. The project proposes a 6,000 low intensity retail, repair sen street paqrking space require proposed project includes 5	) SF commercial building. Bas vice, workshop and custom sr		f
	Parking Type	Required	Proposed	
	Low intensity retail, repair service, workshop and custom small industry	Min. 1/1000 SF (6 spaces), and 2/1000 SF (12 spaces) max	5 spaces	
	Handicap parking	1 space	1 space	
	Total	6	6	
3.2.4 Site Lighting	ensure that the functional and adversely affect adjacent pro	d security needs of a project a	nal with sharp cutoff fixtures to ire met in a way that does not in complies. Lighting fixtures in is contained within the site.	Complies
3.2.5 Trash and Recycling Enclosure Standards	accessible as appropriate for		adequate, convenient, and d recycling enclosure is located ot for pickup services. Staff finds	Complies

# **B. DIVISION 3.3 - ENGINEERING**

The proposed project provides all required easements for utility infrastructure improvements, setbacks and right-of-way for public street standards. This parcel is included in the 1999 amended plat for Lots 13-16.

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
3.3.1	Bueno Drive ROW and easements, and utility easements are included in plan set.	Complies
3.3.1	The plat for this property was amended in 1999 for Lots 13-16.	Complies
3.6.2	Bueno Drive is classified as a Commercial local street. The Plans incorporate the required street frontage improvements for ultimate cross-section of this street classification per LCUASS.	Complies



# C. DIVISION 3.5 - BUILDING

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
3.5.1(B) General	This subsection requires developments to be compatible with the established architectural character of the area by using a design that is complementary.	Complies
Standards	Staff finds that the proposed commercial/industrial condo building design is compatible with existing commercial buildings in the area along South College Avenue. The building design includes vertical metal siding, earth-tone colors and masonry base treatments, with pitched roof.	
3.5.1(C) Building Size, Height, Bulk,	This subsection requires that buildings shall either be similar in size and height, or, if larger, be articulated and subdivided into massing that is proportional to the mass and scale of other structures adjacent to the property.	Complies
Mass, Scale	Staff finds that the proposed single-story building is similar to adjacent commercial buildings in size, height, bulk, mass and scale. This building is smaller than several existing buildings in area.	
3.5.2(D) Relationship of	This subsection requires that dwellings be placed in direct relation to street sidewalks without intervening parking lots or drives.	Complies
Dwellings to Street and Parking	The building and its entrances are deliberately designed for relationship to the street sidewalks without intervening vehicle use areas.	

# D. DIVISION 3.6 - TRANSPORTATION & CIRCULATION

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
3.6.4 Transportation Level of Service	A Traffic Impact Analysis was waived by Traffic Operations staff die to low anticipated new trips generated by the proposed project.	N/A
3.6.6 Emergency Access	This Section requires that emergency vehicles can gain access to, and maneuver within, the project so that emergency personnel can provide fire protection and emergency services. This proposed building is approximately 60ft out of compliance with the required access as measured from Bueno Drive. However, the applicant has stated that the building will be designed with an approved fire sprinkler system. Therefore, this building will be considered in compliance and no fire lane will be required. No further action is required on access.	Complies



# 6. Article 4 – Applicable Standards:

# A. SUMMARY

Article 4 of the Land Use Code contains standards for the various zoning districts throughout the City. The subject property is zoned Service Commercial (C-S), Division 4.22 of the Land Use Code. Staff evaluation of applicable zoning standards below follows the order of the C-S zone in Article 4.

# B. DIVISION 4.22 - SERVICE COMMERCIAL DISTRICT (C-S)

Applicable Code Standard	Summary of Code Requirement and Analysis	Staff Findings
4.22(A) Purpose	Staff finds that the proposed project is consistent with the stated purpose of the zone district: "Purpose. The Service Commercial District is intended for high traffic commercial corridors where a range of uses is encouraged to create a transition from commercial operations on a highway, arterial street or rail spur, to less intensive use areas or residential neighborhoods. This designation is only for areas that have been designated under an adopted subarea plan as being appropriate for the C-S District." The project adds additional commercial and light industrial space consistent with existing commercial park in area and is designed with characteristics that are in harmony with the commercial corridor area.	Complies
4.5(B) Permitted Uses	The proposed 'commercial, retail and industrial uses are permitted, subject to an administrative (Type I) review.	Complies
4.22(C) Building Height	The maximum building height is three stories. The one-story building complies.	Complies





# 7. Modification of Standards

## A. MODIFICATION DESCRIPTION:

# 1. Compliance with Section 3.2.1 (E) (4) (b) of the Land Use Code

The applicant requests a modification to Section 3.2.1 (E) (4) (b) to reduce the minimum parking lot perimeter landscaping area from 5 feet to less than 2' adjacent to the proposed parking space #6 along the south lot edge.

### 2. Summary of Applicant's Justification

The Applicant requests that the Modification be approved and provides the following justification based upon Criterion 1 and 3 (that the proposed reduction in landscape area along south boundary is equal to or better than a plan that meets criteria, and due to exceptional difficulties or hardship of site ability to fully screen parking is challenging.

### 3. Applicant's Justification for Criterion 1 and 3:

(Criteria 1): In our opinion, the proposed plan for which the modification is requested will provide a product that is equal or better than a plan which complies with the standard. The landscape plan does propose a tree and large shrub at the West end of parking space #6 in the limited space available.

(Criteria 3): The adjacent lot to the South of the subject property has an existing parking lot at its North boundary. From the adjacent parking lot, there is a steep slope running North down to the South boundary of lot 13 and the proposed parallel parking space #6. The required screening is not possible with the sudden change of grade at the South boundary. In addition, any screening in this location would be screening the proposed parking lot from the adjacent parking lot which is at a higher elevation.



### Land Use Code Modification Criteria

"The decision maker may grant a modification of standards only if it finds that the granting of the modification would not be detrimental to the public good, and that:

(1) the plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested; or

(2) the granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Land Use Code, substantially alleviate an existing, defined and described problem of citywide concern or would result in a substantial benefit to the city by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the city's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the project practically infeasible; or

(3) by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the owner of such property, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

(4) the plan as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be modified except in a nominal, inconsequential way when considered from the perspective of the entire development plan and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

Any finding made under subparagraph (1), (2), (3) or (4) above shall be supported by specific findings showing how the plan, as submitted, meets the requirements and criteria of said subparagraph (1), (2), (3) or (4)".

### 4. Staff Finding:

Staff finds that the request for the Modification of Standard to Section 3.2.1 (E) (4) (b) is justified by the applicable standards in 2.8.2(H)(3):

Staff acknowledges that the existing grade differential between lots is noticeable and ability to provide full landscape screening along the portion of the south site boundary is a challenge. The extent of reduction in planting space is approximately 20 feet in length. Beyond this section full landscaping is provided. The need to fully screen the proposed parking with existing parking lot to the south on adjacent lot is less essential with similar uses.



# 8. Findings of Fact

In evaluating the request for the Bueno Drive Condos Project Development Plan, PDP190004, staff makes the following findings of fact:

- The P.D.P. is consistent with the policy direction of the South College Corridor Plan, an element of City Plan.
- The P.D.P. complies with process located in Division 2.2 Common Development Review Procedures for Development Applications of Article 2 Administration.
- The P.D.P. complies with relevant standards located in Article 3 General Development Standards, with the exception of Section 3.2.1 (E) (4) (b).
- The P.D.P. complies with relevant standards located in Division 4.22, C-S Service Commercial District of Article 4

   Districts.

## 9. Recommendation

Staff recommends approval of the Bueno Drive Condos Project Development Plan, PDP190004.

# **10.** Attachments

- 1. Letter of Acceptance
- 2. Vicinity Map
- 3. Planning Set (site, and elevation plans)
- 4. Revised Landscape Plan
- 5. Revised Irrigation Plan
- 6. Utility Plans
- 7. Applicant request for modification of standards
- 8. Stormwater Variance Application
- 9. Stormwater Memo