

**CITY OF FORT COLLINS  
TYPE 1 ADMINISTRATIVE HEARING  
FINDINGS AND DECISION**

HEARING DATE: September 28, 2017

PROJECT NAME: Elizabeth Subdivision

CASE NUMBER: PDP160046

APPLICANT: Shelley LaMastra  
Russell + Mills Studios  
506 S College Ave.  
Unit A  
Fort Collins, CO 80524

OWNER: Barry Schram  
2620 Brush Creek Dr.  
Fort Collins, CO 80528

HEARING OFFICER: Kendra L. Carberry

**PROJECT DESCRIPTION:** This is a request for a Project Development Plan (PDP) to replat two lots, improve a parking lot, and build a single-family detached home with a carriage house. The PDP includes 9 separate requests for Modification of Standard.

**SUMMARY OF DECISION:** Approved with Conditions

**ZONE DISTRICT:** Neighborhood Conservation – Low Density District (NCL)

**HEARING:** The Hearing Officer opened the hearing at approximately 5:30 p.m. on September 28, 2017, in Conference Room A at 218 North College Avenue, Fort Collins, Colorado.

**EVIDENCE:** During the hearing, the Hearing Officer accepted the following evidence: (1) Planning Department Staff Report; (2) the application, plans, maps and other supporting documents submitted by the applicant; (3) a copy of the public notice; (4) written comments received from Bill Van Eron; (5) written comments received from Catalina and Robert Russell; (6) written comments received from Kevin Oh; and (7) written comments received from Jesse Burkhardt and Adrienne Cohen. The Land Use Code (the "Code") and the formally promulgated policies 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: Clay Frickey

From the Applicant: Shelley LaMastra, Greg Fisher, Chris Messersmith, Kevin Krause

From the Public: Joseph Pawelski, Reed Mitchell, Sanford Kern, Margaret Mitchell, Eric Norrie

### FINDINGS

1. Evidence presented to the Hearing Officer established the fact that the hearing was properly posted, legal notices mailed and notice published.
2. The Hearing Officer first finds that the description of the buildings in the PDP as submitted is inaccurate, in that the larger new building on the residential lot is not a carriage house. Pursuant to Section 5.1.2 of the Code, the term "carriage house" means "a single-family detached dwelling, typically without street frontage, that is located behind a separate, principal dwelling on the same lot, which fronts on the street." Because of the flagpole shape of the residential lot, no building on the residential lot fronts any street. The building closest to the street is the detached garage. The next closest building is the smaller of the two residential dwellings. The smaller residential dwelling cannot be characterized as a principal dwelling. As such, the larger residential dwelling cannot be a carriage house under the Code. Instead, the Hearing Officer finds that both buildings are single-family dwellings.
3. The PDP complies with the applicable General Development Standards contained in Article 3 of the Code:
  - a. The PDP complies with Section 3.2.1(D)(2), Tree Planting Standards – Street Trees, because existing trees are being protected and removed trees will be replaced.
  - b. The PDP complies with Section 3.2.1(D)(3), Minimum Species Diversity, because none of the species of trees make up more than 50% of the total number of trees.
  - c. The PDP complies with Section 3.2.1(D)(4), Tree Species and Minimum Sizes, because all of the landscaping meets or exceeds the required minimum sizes.
  - d. The PDP complies with Section 3.2.1(E)(1), Buffering Between Incompatible Uses and Activities, because the PDP includes a series of evergreen trees and evergreen and deciduous shrubs, to buffer the new buildings, and the PDP retains the existing lilac hedge on the west property line as a buffer from the adjacent single-family home to the west.
  - e. The PDP complies with Section 3.2.1(E)(3)(b), Hydrozone Table, because the landscaping uses low water use plants and has an overall annual water budget of 6.5 gallons/square foot.
  - f. The PDP (commercial lot) complies with Section 3.2.1(E)(4), Parking Lot Perimeter Landscaping, because the proposed landscape plan shows both a fence and a series of shrubs to screen the new parking area from adjacent properties, including both evergreen and deciduous varieties to provide visual interest, with year-round screening by the evergreen shrubs.

- g. The PDP (commercial lot) complies with Section 3.2.1(E)(5), Parking Lot Interior Landscaping, because the parking lot includes bulb outs with canopy shade trees and shrubs.
- h. The PDP complies with Section 3.2.1(F), Tree Protection and Replacement, because the PDP includes 10 mitigation trees.
- i. The PDP complies with Section 3.2.2(C)(4)(b), Bicycle Parking Space Requirements, because the commercial lot includes 3 spaces in fixed racks and 1 space inside the office.
- j. The PDP complies with Section 3.2.2(C)(5), Walkways, because, the commercial lot includes a sidewalk connection leading directly from the entrance of the office to the sidewalk along Elizabeth Street, and on the residential lot, the driveway functions as the connection to the sidewalk along Elizabeth Street.
- k. The PDP complies with Section 3.2.2(C)(6), Direct On-Site Access to Pedestrian and Bicycle Destinations, because both the commercial lot and the residential lot provide walkway connections to the sidewalk along Elizabeth Street and also provide access to Elizabeth Street for bicyclists.
- l. The PDP (commercial lot) complies with Section 3.2.2(D), Access and Parking Lot Requirements, because the parking area on the commercial lot provides unobstructed access to vehicles, separating modes and providing parking in an appropriate location.
- m. The PDP (commercial lot) complies with Section 3.2.2(E), Parking Lot Layout, because the layout of the parking lot on the commercial lot provides adequate circulation routes and orientation, and avoids points of conflict.
- n. The PDP complies with Section 3.2.2(K), Off-Street Parking Requirements, because both the commercial lot and the residential lot comply with the applicable off-street parking requirements.
- o. The PDP (commercial lot) complies with Section 3.2.2(K)(5), Handicap Parking, because the commercial lot includes one handicap parking space, in close proximity to the main entrance to the office, and with an 8' access aisle to make the space van accessible.
- p. The PDP (commercial lot) complies with Section 3.2.2(L), Parking Stall Dimensions, because all of the parking stalls on the commercial lot are 17' deep with wheel stops and a landscape area of more than 6' deep.
- q. The PDP (residential lot) complies with Section 3.2.3, Solar Access, Orientation, Shading, because the new buildings are designed and located to minimize the casting of shadows on adjacent properties and could accommodate future active and passive solar installations.
- r. The PDP complies with Section 3.2.4, Site Lighting, because the lighting plan contains appropriate lighting levels and design standards.

- s. The PDP (commercial lot) complies with Section 3.2.5, Trash and Recycling Enclosures, because the trash and recycling enclosure allows walk-in access, is screened from public view, and is built on a concrete pad.
  - t. The PDP complies with Section 3.3.1(B), Lots, because both lots meet the applicable minimum lot size requirements, and the driveway access to the residential lot from Elizabeth Street will be made through an easement over the commercial lot.
  - u. The PDP complies with Section 3.6.6, Emergency Access, because the PDP provides adequate access for emergency vehicles and emergency service providers to access both lots.
4. The PDP complies with the applicable requirements of the Neighborhood Conservation Low Density (NCL) District contained in Article 4 of the Code.
- a. The PDP complies with Section 4.7(B), Permitted Uses, because two single-family dwellings are permitted on the residential lot subject to administrative review pursuant to Section 4.7(B)(2)(a)1, and the office use on the commercial lot is an existing legal nonconforming use that is not impacted by the subdivision proposed by the PDP.
  - b. The PDP (residential lot) complies with Section 4.7(D)(1), Required Lot Area, because the lot is 21,710 square feet.
  - c. The PDP (residential lot) complies with Section 4.7(D)(2)(a)(3), Allowable Floor Area on Residential Lots, because the residential lot includes 6,102 square feet of floor area.
  - d. The PDP (commercial lot) complies with Section 4.7(D)(2)(a)(4), Allowable Floor Area on Non-residential Lots, because the commercial lot is 7,840 square feet, which means the maximum floor area is 3,136 square feet, and the office contains 1,231 square feet of floor area.
  - e. The PDP (commercial lot) with Section 4.7(D)(3), Allowable Floor Area on Rear Half of Lots, because the commercial lot contains 784 square feet of floor area in the rear half of the lot.
  - f. The PDP (residential lot) complies with Section 4.7(F)(1), Building Design, because both single-family dwellings have exterior walls at right angles and a roof pitch between 2:12 and 12:12. The larger single-family dwelling has the primary entrance on the front wall, a front porch that is not more than one story in height, and a front porch that meets the requirements for front façade character. Because there is no clearly defined front wall on the smaller single-family dwelling, and the entrance actually faces the street, the smaller single-family dwelling does not violate Section 4.7(F)(1)(b).
  - g. The PDP complies with Section 4.7(F)(2), Bulk and Massing, because the new buildings do not exceed two stories.

5. The First Modification of Standard (Section 3.2.2(J), Setbacks for Vehicular Use Area) (commercial lot), meets the applicable requirements of Section 2.8.2(H)(3) of the Code:

a. The setback set forth in the PDP allows room for landscaping and buffering from the vehicle use area, and the office building is 67 feet away from the eastern property line.

b. It is not possible to fit all of the proposed uses into the space on the existing commercial lot. Therefore, the Modification is justified due to a physical hardship caused by the existing shape and dimensions of the lot.

c. The Modification will not be detrimental to the public good.

6. Regarding the Second Modification of Standard (Section 4.7(D)(3), Allowable Floor Area on Rear Half of Lots) (residential lot), the Hearing Officer finds insufficient information in the PDP application to determine if this Modification is necessary. Because the Hearing Officer has found that there is no carriage house in the PDP, the calculation for carriage house floor area does not apply. As such, the floor area of the larger single-family dwelling should be measured without using a calculation for a carriage house, but such measurements were not provided in the application. To avoid the need for submittal of an amended application, the Hearing Officer will address the Second Modification of Standard as if it does apply. The Second Modification meets the applicable requirements of Section 2.8.2(H)(3) of the Code:

a. The Modification is justified due to a physical hardship caused by the shape and dimensions of the lot that will exist after the subdivision. The applicant's desire to retain existing buildings on both the commercial lot and the residential lot causes unique circumstances and practical difficulties not caused by the applicant.

b. The Modification will not be detrimental to the public good.

7. The Third Modification of Standard (Section 4.7(D)(4), Residential) is unnecessary, because the Hearing Officer has determined that there is no carriage house in the PDP.

8. The Fourth Modification of Standard (Section 4.7(E)(1), Minimum Lot Width) (commercial lot) meets the applicable requirements of Section 2.8.2(H)(3) of the Code:

a. To include the required parking improvements, the commercial lot needs at least 80' of width, but that width is still not enough to accommodate the setback required by Section 3.2.2(J), which would leave the flagpole of the residential lot with only 20' of width. As noted above, the applicant's desire to retain the existing office building on the commercial lot causes unique circumstances and practical difficulties not caused by the applicant.

b. The Modification will not be detrimental to the public good.

9. The Fifth Modification of Standard (Section 4.7(E)(5) and 4.7(F)(2)(a)(1), Building Height) is unnecessary, because the Hearing Officer has determined that there is no carriage house in the PDP.

10. The Sixth Modification of Standard (Section 4.7(F)(1)(c), Building Design – Garage) is unnecessary, because there is no principal building on the residential lot and the "front portion", as used in Section 4.7(F)(1)(c) is ambiguous. Each of the two buildings is a separate single-family dwelling. In addition, because the residential lot has no street frontage other than flagpole, there is no clearly defined front yard on the residential lot. If the flagpole portion of the residential lot is included, the front yard setback applicable to the accessory building (the detached garage) is satisfied.

11. The Seventh Modification of Standard (Section 4.7(F)(1)(d), Overhang) (residential lot), meets the applicable requirements of Section 2.8.2(H)(1) of the Code:

a. The smaller dwelling sits over the carport. A solid wall supports a portion of the second floor and wood slats support the remainder. It is unclear to the Hearing Officer whether this even constitutes an overhang in violation of Section 4.7(F)(1)(d), because the wood slats appear to be flush with the second story wall. Regardless, the Hearing Officer finds the use of wood slats instead of a wall to be inconsequential.

b. The PDP as submitted will not diverge from Section 4.7(F)(1)(d) except in a nominal, inconsequential way and will continue to advance the purposes of the Code.

c. The Modification will not be detrimental to the public good.

12. The Eighth Modification of Standard (Section 4.7(F)(2)(b), Maximum Eave Height) (residential lot), meets the applicable requirements of Section 2.8.2(H)(1) of the Code:

a. The existing landscaping and orientation of windows and outdoor spaces minimizes the impact of the larger dwelling on the neighboring properties, and the larger dwelling has pitched roofs similar to many of the other houses nearby. In addition, if the flagpole were not included in the lot area, the halfway dividing line of the residential lot would move further to the rear, and the larger dwelling would then fully comply with Section 4.7(F)(2)(b).

b. The PDP as submitted will not diverge from Section 4.7(F)(2)(b) except in a nominal, inconsequential way and will continue to advance the purposes of the Code.

c. The Modification will not be detrimental to the public good.

13. The Ninth Modification of Standard (Section 4.7(F)(3)(a)(2)) is unnecessary, because the Hearing Officer has determined that there is no carriage house in the PDP.

### ANALYSIS

As an initial matter, the Hearing Officer is concerned about any PDP that would need 9 separate Modifications of Standard, and the Hearing Officer would encourage the City to review the applicable regulations in the NCL District to determine whether the regulations should be modified to either accommodate or prohibit this situation. In addition, the application of the Code to this PDP resulted in a forced interpretation of the Code that did not make sense.

Concerns raised by the public at the hearing largely focused on the commercial use of the front lot. However, the commercial use is a legal nonconforming use that is not impacted by this PDP. The approval of the PDP will not expand the commercial use or increase its intensity or its impact on the surrounding neighborhood. In fact, the modifications to the commercial lot proposed in the PDP will enhance the aesthetics and safety of the commercial lot.

Another concern raised by the public was the same concern discussed above (that there are too many Modifications of Standard, and that approval of so many Modifications could defeat the purpose of the NCL District). Because the Hearing Officer has determined that there is no carriage house in the PDP, the Hearing Officer was able to eliminate 4 of the requested Modifications. While 5 Modifications is still a high number, it is unclear to the Hearing Officer whether 2 of the remaining Modifications apply in the first instance, and if they do apply, the requested deviations are nominal at best. As such, the PDP as a whole will not defeat the purpose of the NCL District, and this approval should not set any type of negative precedent in the NCL District.

Much of the public comment submitted in writing before the hearing and verbally at the hearing was supportive of the design of the buildings, the use of existing buildings and the improvement of the rear of the lot, which today is vacant and unused. The Hearing Officer agrees that the applicant has made significant efforts to effectively use existing buildings while reducing the overall impact of the new buildings.

Based on the foregoing, while the Hearing Officer disagrees with the characterization of the smaller single-family dwelling as a carriage house, the applicant and the City demonstrated that the PDP as a whole meets the applicable requirements of the Code. More specifically, the applicant and the City demonstrated that Modifications 1, 2, 4, 7 and 8 comply with the standards set forth in Section 2.8.2, and as such, the Hearing Officer must approve each of those.

#### DECISION

Based on the foregoing findings and analysis, the Hearing Officer hereby enters the following rulings:

1. The PDP and Modifications of Standard 1, 2, 4, 7 and 8 are approved, with the following condition:
  - a. To ensure permanent access to the residential lot, a permanent access easement shall be recorded across the commercial lot, as shown on the PDP.

DATED this 12<sup>th</sup> day of October, 2017.



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Kendra L. Carberry  
Hearing Officer