

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

HEARING DATE: June 27, 2017

PROJECT NAME: Living Oaks

CASE NUMBER: PDP170009

APPLICANT: Laurie Davis
Davis + Davis Architects
141 S College Avenue, Suite 102
Fort Collins, CO 80524

OWNER: Robert/Laurie Davis
722 W Mountain Ave.
Fort Collins, CO 80521

HEARING OFFICER: Kendra L. Carberry

PROJECT DESCRIPTION: This is a request to build a 3-story, 4-unit residential building at 221 East Oak Street. One shared vehicle is proposed on-site with additional parking accommodated at the Remington Street parking garage. The PDP includes seven requests for Modification of Standard.

SUMMARY OF DECISION: Approved with Conditions

ZONE DISTRICT: Neighborhood Conservation Buffer (NCB)

HEARING: The Hearing Officer opened the hearing at approximately 5:00 p.m. on June 27, 2017, in the 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; and (3) a copy of the public notice. 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: Laurie Davis, Bob Davis, Stu MacMillan

From the Public: Seth Jansen

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 PDP was reviewed by the Landmark Preservation Commission ("LPC") on April 19, 2017. The LPC voted 5-3 to recommend that the Hearing Officer approve the PDP, finding that the PDP complies with Section 3.47 of the Code.
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, Landscaping and Tree Protection, because: the PDP includes street trees planted in accordance with Section 3.2.1(D)(2); the removal of one existing tree to provide a curb cut onto Mathews Street is mitigated in accordance with Section 3.2.1(F); and the plantings are low water use and contribute to visual quality and continuity with other developments on Oak Street and Mathews Street.
 - b. The PDP complies with Section 3.2.2(C)(4)(b), Bicycle Parking Space Requirements, because the PDP includes 8 bicycle parking spaces, with 5 in an enclosed space, and each unit has a 3-space bike rack in the garage.
 - c. The PDP complies with Section 3.2.3, Solar Access, Orientation, Shading, because the building is designed and located to minimize the casting of shadows on adjacent properties.
 - d. The PDP complies with Section 3.2.4, Site Lighting, because the lighting plan is consistent with the Code in regards to the lighting levels and design standards.
 - e. The PDP complies with Section 3.4.7, Historic and Cultural Resources, because the LPC recommended approval of the PDP.
 - f. The PDP complies with Section 3.5.1, Building and Project Compatibility, because the PDP, including building size, height, bulk, mass, scale and mechanical equipment screening, is compatible with the surrounding neighborhood.
 - g. The PDP complies with Section 3.5.2(D), Relationships of Dwellings to Streets and Parking, because every front façade with a primary entrance to a dwelling unit faces Oak Street and connects to the sidewalk, to the extent reasonably feasible.
 - h. The PDP does not need to comply with Section 3.5.2(E), Residential Setbacks, Lot Width and Size, because the standards contained in Section 4.9 for NCB are more specific, and prevail over Section 3.5.2(E) pursuant to Section 3.1.2.
 - i. The PDP complies with Section 3.6.6, Emergency Access, because the PDP provides adequate access for emergency vehicles and emergency service providers as required by Chapter 9.

4. The PDP complies with the applicable requirements of the Neighborhood Conservation Buffer (NCB) District contained in Article 4 of the Code.
 - a. The PDP complies with Section 4.9(B)(2)(a), Permitted Uses, because multi-family dwellings up to 4 units per building constructed on a lot that contained a structure on October 25, 1991 in a street-fronting principal building is a permitted use subject to administrative review.
 - b. The PDP complies with Section 4.9(E)(1), Building Design, because with the exception of Section 4.9(E)(1)(g), the building is consistent with the pertinent elements of this Section, including walls being constructed parallel to side lot lines, building entries located along front walls and overhangs.
 - c. The PDP complies with Section 4.9(E)(2)(a)(1), Building Height, because the building is three stories.
5. The First Modification of Standard (Section 3.2.2(K)(1)(a), Attached Dwellings), meets the applicable requirements of Section 2.8.2(H) of the Code:
 - a. The PDP is located in a transit friendly area, despite not being within the TOD boundaries, and when compared to other approved projects within the TOD, this site is as close or closer to high frequency transit and amenities.
 - b. The Modification will not be detrimental to the public good and with the on-site car share, transit passes and parking in nearby public garages, the Modification is equal to or better than a PDP that would comply with Section 3.2.2(K)(1)(a).
6. The Second Modification of Standard (Section 4.9(D)(1), Density), meets the applicable requirements of Section 2.8.2(H) of the Code:
 - a. Library Park buffers this block from the surrounding neighborhood and minimizes the impact of the density of the PDP on these neighborhoods. The PDP fits into the context of the block while providing an appropriate transition to the adjacent neighborhood.
 - b. The Modification will not be detrimental to the public good.
7. The Third Modification of Standard (Section 4.9(D)(5), Allowable Floor Area on Rear Half of Lots) meets the applicable requirements of Section 2.8.2(H) of the Code:
 - a. The PDP fits the established character of the block.
 - b. The Modification will not be detrimental to the public good.
8. The Fourth Modification of Standard (Section 4.9(D)(6)(b), Dimensional Standards, Minimum front yard setback) meets the applicable requirements of Section 2.8.2(H) of the Code:

- a. The PDP meets the intent of Section 4.9(D)(6)(b) equal to or better than a compliant plan.
 - b. The Modification will not be detrimental to the public good.
9. The Fifth Modification of Standard (Section 4.9(D)(6)(c), Dimensional Standards, Minimum front yard setback) meets the applicable requirements of Section 2.8.2(H) of the Code:
 - a. The PDP meets the intent of Section 4.9(D)(6)(c) equal to or better than a compliant plan.
 - b. The Modification will not be detrimental to the public good.
10. The Sixth Modification of Standard (Section 4.9(D)(6)(d), Dimensional Standards, Minimum front yard setback) meets the applicable requirements of Section 2.8.2(H) of the Code:
 - a. The PDP meets the intent of Section 4.9(D)(6)(d) equal to or better than a compliant plan.
 - b. The Modification will not be detrimental to the public good.
11. The Seventh Modification of Standard (Section 4.9(E)(1)(g), Minimum Pitch) meets the applicable requirements of Section 2.8.2(H) of the Code:
 - a. While the proposed building has a shallow roof pitch, the photovoltaic panels provide a pitched element that tie into other buildings with pitched roofs nearby.
 - b. The Modification will not be detrimental to the public good.

ANALYSIS

During the hearing, Mr. Jansen raised a concern regarding the location of the trash enclosure, and the Applicant agreed to work with the adjacent property owner to resolve the issue.

The Hearing Officer is concerned about any PDP that needs seven separate Modifications of Standard. However, the City demonstrated that the PDP met the applicable criteria for each Modification of Standard, and as such, the Hearing Officer must approve each of the seven requested Modifications. However, the Hearing Officer would encourage the City to review the applicable regulations in the NCB District to determine whether they should be modified.

The Hearing Officer also notes that this decision includes several conditions which require provisions in the development agreement which will eventually apply to this PDP. While the Hearing Officer should not be involved in the drafting of such an agreement, without these conditions, it would be impossible for the Hearing Officer to approve such substantial deviations from the Code's requirements. As such, in this case, the Hearing Officer has no choice but to require that certain provisions be included in the development agreement to be negotiated later between the City and the Applicant. The Hearing Officer leaves the drafting of these provisions to the parties, but hopes that the intent of the conditions will be honored.

DECISION

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

1. The PDP and seven Modifications of Standard are approved, with the following conditions:
 - a. The development agreement associated with this PDP must include provisions to ensure that the parking garage spaces proposed in the PDP are provided and maintained;
 - b. The development agreement associated with this PDP must include provisions to ensure that the on-site car share proposed in the PDP is implemented and maintained; and
 - c. The development agreement associated with this PDP must include provisions to ensure that the 4 transit passes proposed in the PDP are provided and maintained.

DATED this 11th day of July, 2017.



Kendra L. Carberry
Hearing Officer