

Appellant Kurt Johnson Appeal Presentation Materials

To: Fort Collins City Council
From: Kurt Johnson
Cc: Anissa Hollingshead, City Clerk
Date: February 24, 2023
Re: Appeal to City Council of Planning & Zoning Commission approval of memory care facility at 636 Castle Ridge Court (docket FDP220013)

This written statement is in support of an appeal submitted by Kurt Johnson and 11 co-appellants (collectively, “Johnson”) with respect to the Planning and Zoning Commission’s (“P&Z”) 12/15/22 decision approving a 10-resident memory care facility at 636 Castle Ridge Court. The grounds for the appeal are that P&Z failed to properly interpret and apply relevant provisions of the Fort Collins Land Use Code (the “Code”). Specifically, Johnson asserts that P&Z improperly applied Code Section 3.5.1 (J).

Code Section 3.5.1 (J) focuses on **compatibility** as follows:

Operational/Physical Compatibility Standards. Conditions may be imposed upon the approval of development applications to ensure that new development will be compatible with existing neighborhoods and uses. Such conditions may include, but need not be limited to, restrictions on or requirements for:

1. Hours of operation and deliveries
2. location on a site of activities that generate potential adverse impacts on adjacent uses such as noise and glare;
3. placement of trash receptacles;
4. location of loading and delivery zones;
5. light intensity and hours of full illumination;
6. placement and illumination of outdoor vending machines; and
7. location and number of off-street parking spaces.

The Problem

On 3/23/22, P&Z held a public hearing to consider docket PDP210012, which was essentially the same group home application as the one being appealed today (FDP220013), except that it was for 16 residents instead of 10. One of the key points of deliberation in the 3/23/22 hearing occurred when Commissioner Stackhouse focused on the Operational/Physical Compatibility Standards and stated that she didn’t believe that the criteria therein could be satisfied. P&Z unanimously denied the application (5-0 vote).

At the 12/15/22 P&Z hearing, the Operational/Physical Compatibility Standards in Code Section 3.5.1(j) again took center stage. Commissioner

Stackhouse asked, at approximately 6 hours and 31 minutes into the hearing, whether staff had applied these Standards in its review of the application. She never received an answer. At approximately 6 hours and 34 minutes into the hearing, Commissioner Stackhouse re-read the Code and pointed out that the Standards are related to conditions which can be imposed, not criteria which need to be met. It was this realization that appears to have swung her vote from denial to approval.

We believe that Commissioner Stackhouse was correct in asserting that the Operational/Physical Compatibility Standards are not criteria which need to be met, but conditions which may be imposed to ensure that new development will be compatible with the existing neighborhood. This appeal is based on P&Z failing to apply conditions, which conditions they were empowered by Code to apply, and which are necessary to ensure that the memory care facility is compatible with the neighborhood.

While we recognize that group homes are allowed, the subject property's location presents unique challenges that other previously-approved group homes do not. This was recognized by P&Z, as evidenced by their deliberations, which at times veered towards denying the proposed project for simply being incompatible, even as reduced from 16 to 10 residents. For example, see Commissioner Schneider's comments at approximately 6 hours and 21 minutes (parking issues) and 6 hours and 25 minutes into the hearing (traffic safety). In seeking to understand why the P&Z Commission failed to apply conditions which are necessary to ensure the compatibility of the memory care facility with the close-knit community of Castle Ridge Court, it is vital to recognize that P&Z's deliberations took place well after midnight, at the end of a nearly 7-hour long meeting, and that the application was only narrowly approved (3-to-2).

When applying the Code to a particular project, one can classify a location as (a) advantageous, (b) neutral, or (c) challenged. An example of an "advantageous" location is that of Seneca House, which is the only true residential group home in Fort Collins approved for 10 residents. Its location on Seneca Street allows for on-street parking which does not encroach into the driving lanes on the street. There are no neighbors to the west. There is additional parking around the corner on Craig Street to the north, regular City snow plowing, a circular driveway which accommodates 4 cars, and dual egress from both directions. These advantages allow consideration of a 10-resident facility. The other approved group homes in residential neighborhoods, all at the Code-allowed 8 residents, fall into the "neutral" category – perhaps on a standard residential street, with some on the fringes of the neighborhood, having accessible driveways.

The location at Castle Ridge Court, however, is a "challenged" one. The subject property is uniquely challenged as follows:

- It is on a private street not constructed to City standards.

- The street is narrow – as part of the approval of the original subdivision, a variance was given to allow the substandard street width because of a supposition regarding low traffic levels (see screenshot below from traffic engineer's July 6, 1993 letter) and a requirement that each house have a 3-car garage (see variance, attached).

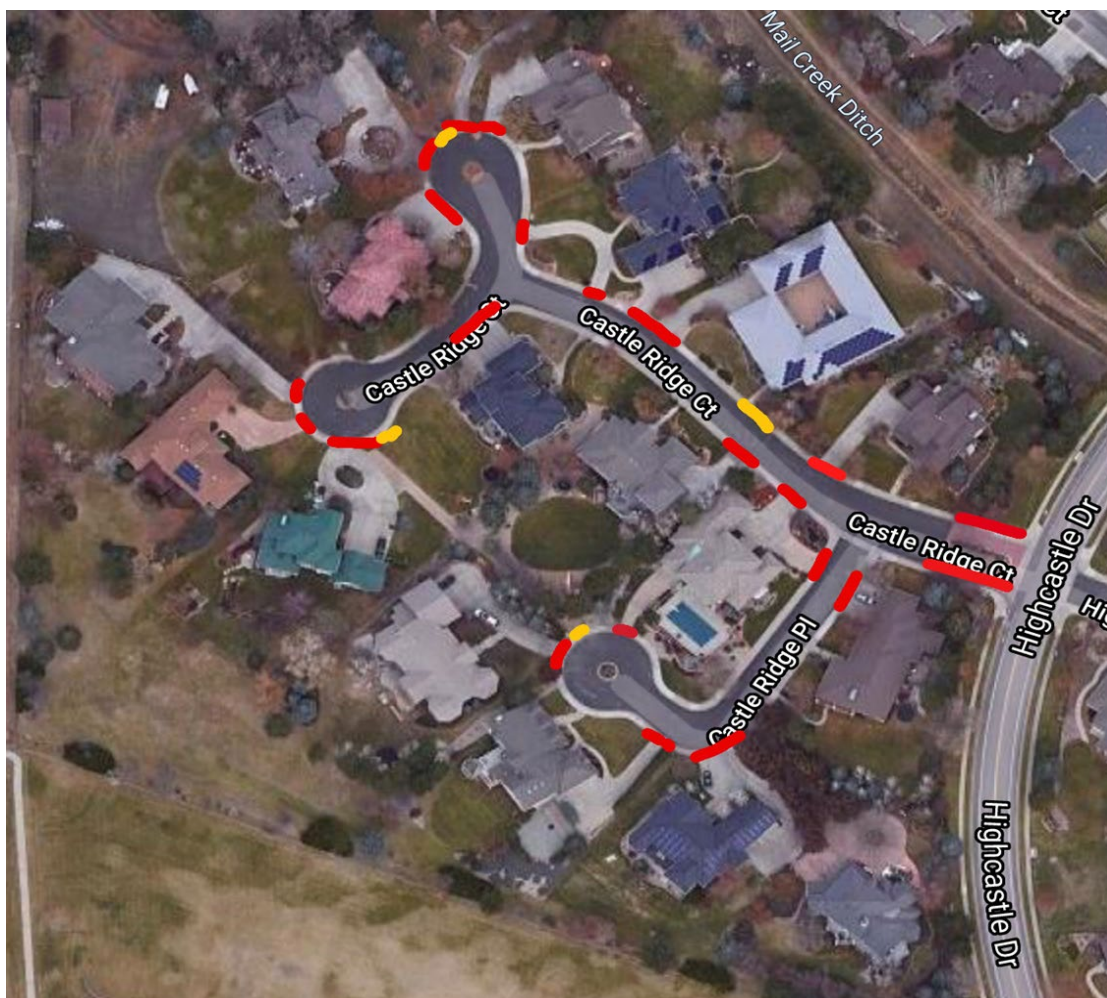
The reasons for requesting/granting this variance are listed below:

- The streets will have less than 750 ADT on them. The development itself will have 18 dwelling units, which will generate 180 vehicle trips on an average weekday. There is not likely to be any external traffic passing through this development. Therefore, the highest traffic volume at a given worst case location will be 180 ADT.
 - The streets that are proposed to be 26 feet are all cul-de-sacs.
 - The cul-de-sacs do not access an arterial street.
- When cars are parked on both sides of Castle Ridge Court, the parking encroaches into the driving lanes, making a one-lane condition occur. This is unsafe, as is shown in the photo below:



- There is no City maintenance or snow plowing of Castle Ridge Court (the City rejected a proposal to take a dedication of the street some years ago).

- P&Z's approval involves the conversion of garage space to living space to support the additional residents proposed by the applicant. This violates the condition precedent to the variance which allowed the substandard street width.
- The subject property has a long, narrow driveway which the applicant claims would allow the off-street parking of 5 cars. In all practicality, the driveway, at best, could perhaps support 3 parked vehicles without a "musical cars" situation.
- Castle Ridge Court is a dead-end cul-de-sac street with a single egress. If cars are parked on both sides, it creates a one-way chokepoint, especially for those "downstream" of the subject property.
- The subject property is located mid-block (not at the end, such as Seneca House is). As such, it has impact on the entire neighborhood.
- Between the layout of the driveways (shown in red), the location of fire hydrants (shown in yellow), and sidewalks blending into driveways, there is very little remaining on-street parking on Castle Ridge Court, as shown in the photo below:



The proposed solution falls into two parts:

Solution 1: Conditions

Regardless of the number of residents (even if the number of residents was within Code), this project is insufficiently conditioned under Code Section 3.5.1 (J) due to its location falling in the “challenged” category. At the P&Z hearing, the Commission failed to add conditions necessary to ensure neighborhood compatibility, even though the applicant offered to accept additional conditions as part of their presentation. Perhaps this was due to the late hour (approx. 1:00am) and P&Z members being too exhausted to draft, debate, and apply additional conditions.

As such, we propose the following conditions, each of which is directly supported in Code Section 3.5.1 (J):

1. **Limit deliveries, including nurse visits and visits from other professionals, to the hours of 9:00am to 2:00pm, Tuesday through Thursday.**
 - a. This is supported by 3.5.1(J)(1) *hours of operation and deliveries*, and the applicant specifically offered to accept this condition in their presentation during the hearing.
2. **Require that all deliveries which can be scheduled are made in the driveway or the garage, and all nurses and other professionals who visit will park their vehicles in the driveway or the garage.**
3. **Limit on-street parking to the spaces which are adjacent to the property on the same side of the street.**
 - a. The above two conditions are supported by 3.5.1(J)(2) *location on a site of activities that generate potential adverse impacts on adjacent uses such as noise and glare*;
4. **Limit applicant to three (3) residential-size trash receptacles which will be placed on the street in front of the group home property for trash day like any other residence in the neighborhood.**
 - a. This is supported by 3.5.1(J)(3) *Placement of trash receptacles*, and the applicant specifically offered to accept this condition in their presentation during the hearing.
5. **Require that all loading takes place in the driveway or the garage.**
 - a. This is supported by 3.5.1(J)(4) *location of loading and delivery zones*.
6. **Require 5 off-street parking spaces where each space can accommodate a car or full-size SUV, which vehicles can park and depart without necessitating any other parked car to move.**
7. **No van/bus permanent parking on-site or on-street.**
 - a. The above two conditions are supported by 3.5.1(J)(7) *location and number of off-street parking spaces*, and the applicant offered to accept the van/bus restriction at the neighborhood meeting and discussed it in front of P&Z.

The fact that multiple of the above conditions were offered up by the applicant, and yet P&Z did not add these conditions to the approval, is evidence that that the Commission failed to properly apply relevant provisions of the Code which were necessary to ensure the compatibility of the project with the neighborhood.

Solution 2: Number of Residents – Risk Management

At the P&Z hearing, one Commissioner argued that 10 residents would not have much greater impact than the 8 which normally would be allowed under the Code without a Reasonable Accommodation. This, in fact, is not the case. Each additional resident has potentially their own family, friends, clergy, physicians/PAs, physical therapists, hospice, or other personal contractors. The difference between 10 residents and 8 residents is a 25% increase in impact.

Due to the challenged nature of the subject property's location, there is significant risk of these conditions being violated even if the number of residents were within Code. Along with applying the conditions above in Solution 1, a practical risk management approach would be for the group home to operate at a lower level initially, allowing for impact data to be collected at a baseline within code. These data can then be analyzed at a subsequent Type 2 review to assess the feasibility of adding two residents and increasing the total intensity to 10. Therefore, Johnson requests that City Council:

1. Limit the number of residents to 8, which is what the Code allows without a Reasonable Accommodation.
2. Apply the conditions described in Solution 1 above.
3. Allow the memory care facility to operate within code for two years while the applicant, staff, and the neighbors collect data on the impact of the use.
4. Invite a second Type 2 review to analyze data and determine if a group home with additional residents could meet the conditions after the expiration of the two-year study period.

Summary

At question is how a group home with 10 residents can be compatible at such a challenged location. The above two-pronged approach would ensure neighborhood compatibility through the proper application of Code Section 3.5.1 (J) via the appropriate application of additional, necessary conditions, as well as managing impact risk via a staged and data-driven approach to number of residents, ultimately resulting in an optimal result for all concerned parties.

Letting the current approval stand as-is threatens our neighborhood with health and safety problems. It may also create an unintended precedent whereby subsequent proposals for residential group homes use this basically unconditioned approval to force similar approvals that also go beyond what the Code generally allows.

Considering the foregoing, Johnson asks that Council modify the approval of the Planning and Zoning Commission as requested in the Solutions proposed above.

Regards,

Castle Ridge Parties of Interest

Kurt/Laurie Johnson 612 Castle Ridge Ct	Steve/Kathy Chacho 631 Castle Ridge Ct	Tracey Stefanon/Ken Patrick 642 Castle Ridge Ct
Barbara Schwerin 601 Castle Ridge Ct	Jesus Martin/Angie Lee 637 Castle Ridge Ct	Lawrencr Mauch/Karen Kotechi 625 Castle Ridge Ct
Troy/Carrie Tafoya 5213 Castle Ridge Pl	Tom/Debbie Graff 621 Castle Ridge Ct	Steve/Beth Williams 5301 Highcastle Ct
Dan Clawson 5219 Castle Ridge Pl	Gregg Lesartre 619 Castle Ridge Ct	Katie/Douglas Salter 613 Castle Ridge Ct
Michael/Stacey Leuzze 5225 Castle Ridge Pl	Anthony/Sarah Doing 5206 Castle Ridge Pl	Brad Sisson 600 Castle Ridge Ct

File

HPDesk Local Print for Mike HERZIG

Start of Item 2.

Message.

Dated: 07/19/93 at 0903.

Subject: 28' Street Width Variance for Castle Ridge at Miramont

Sender: Warren JONES / CFC52/01

Contents: 2.

TO: Mike HERZIG / CFC52/01

Part 1.

FROM: Warren JONES / CFC52/01

TO: Mike HERZIG / CFC52/01

Part 2.

RE: 28' Street Width Variance for Castle Ridge at
Miramont

Our research indicates that the on-street parking demands in large lot, high end single family housing projects is very low. The strongest correlating factor we have observed is the use of three car garages. If this project fits this scenario, including the three car garages, I have no opposition to a 28' street width.

End of Item 2.