

Applicant Appeal Presentation Materials

PINKOWSKI | LAW

& Policy Group LLC

March 1, 2023

VIA EMAIL (cityclerk@fcgov.com)
Anissa Hollingshead
City Clerk
City of Fort Collins
300 LaPorte Avenue
Fort Collins, Colorado 80522

RE: Appeal of the Planning & Zoning Commission Decision
regarding the Castle Ridge Group Home
Docket FDP220013

Dear Ms. Hollingshead:

I understand that appellants Kurt Johnson, et al have submitted a new written statement dated February 24, 2023 in support of their appeal. Please find attached our **Objection and Response** to this statement.

Sincerely,

PINKOWSKI LAW & POLICY GROUP, LLC



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Objection & Response to Written Statement of Kurt Johnson

Eric Shenk and Xioma Diaz, through counsel, Pinkowski Law & Policy Group, LLC, submit this Objection and Response to a written statement filed by Kurt Johnson on behalf of himself and others in support of their December 28, 2022 Notice of Appeal (“Johnson Appeal”). This new statement is dated February 24, 2023 and was provided to us on February 28, 2023 (“New Statement”).

Objection

Objection is made to the New Statement and any contents that go beyond the scope of the Johnson Notice of Appeal, present new evidence, and/or are not allowed by the City’s Appeals Procedures (Fort Collins Municipal Code (“Code”), Sections 2-46 to 2-56). The New Statement should be excluded from the public record and disregarded by City Council for the following reasons:

1. The Johnson Appeal is based exclusively on Code Sec. 2-48(b) and argues that the Planning and Zoning Commission (“P&Z”) failed to properly apply Land Use Code (“LUC”) Section 3.5.1(J).
2. The City’s Appeals Procedures make no provision for submitting advance written statements such as the one filed by Mr. Johnson on February 24, 2023. Mr. Johnson had a right to, and did, file a notice of appeal within 14 days of the P&Z decision. Code. Sec. 2-49(a). This notice of appeal included a narrative statement. The New Statement was filed long after the appeal filing deadline and is untimely.
3. The City’s Appeals Procedures provide a mechanism for Mr. Johnson, et al to make their arguments in the appeals hearing. Code Sec. 2-54(a). The Appeals Procedures also provide a mechanism for parties in opposition to object to the propriety of statements made and evidence presented in the hearing. Code Sec. 2-55(e). Allowing the submission of the New Statement, however, circumvents this process and deprives the appellants of due process.
4. The New Statement does not fall within the scope of the record the City Council is to consider, which makes sense in light of the above-noted due process concern. Code Sec. 2-55(a)(“ The City Council shall consider an appeal based upon the record on appeal, including any new evidence admitted for or at the appeal hearing [when new evidence is allowed], the relevant provisions of the Code and Charter and any other applicable legal authorities, the grounds for appeal cited in the notice of appeal, *the arguments made by parties-in-interest at the hearing on the appeal*, and the City staff report and presentation prepared for the appeal...”)(emphasis added).

For these reasons, we ask that the New Statement submitted by Johnson, et al be disallowed.

Response

To the extent that the New Statement is not disallowed, we ask that this responsive statement be accepted for submittal.

P&Z Commission Correctly Found that this Small Group Home is Allowed

Mr. Johnson asserts that the application considered by the Planning and Zoning Commission on December 15, 2022 was “essentially the same” as the one it previously considered on March 23, 2022. This is not the case. Significant changes were made specifically to address neighbors’ concerns and requests.

The neighbors have been active in their comments. We listened to what they said. In response, the development proposal was changed in the following ways:

- The requested occupancy was reduced by almost 40%, from 16 to 10.
- The number of staff on site at any given time was reduced by 33%, from 3 to 2.
- Off-street parking was increased by 20%, from 3 to 5 spaces.
- The number of windows on the north, objected to by the neighbor on that side, was reduced by 66%, from 3 to 1.

In the March 23, 2022 P&Z Hearing, neighbors testified that they would not object to the proposed group home “if only it was smaller.” Now, the approved development *is* smaller. The P&Z Commission noted this and also correctly pointed out that “small group homes” are allowed uses in this zoning district.

Mr. Johnson now argues that the home should be approved for 8 people rather than 10. The P&Z Commission correctly observed that there is little difference between 8 and 10 from the perspective of the impact on the neighborhood.

The evidence presented supports this conclusion:

- All residents will have disabilities that make it impossible for them to drive. Thus, no resident will drive or own a car. Whether there are 8 or 10 residents, the number of resident cars is still zero.¹
- The number of staff members will be the same. Whether there are 8 or 10 residents, there will be 2 staff members on site at a time during the day and 1 at night. Thus, the number of staff cars is the same.²
- Deliveries for groceries, pharmacy, etc. will be the same.³
- If third-party providers come – such as for haircuts, therapy, etc. - they serve multiple residents at a time, so there is no difference between 8 and 10.⁴

¹ Source: Proponents’ presentations at P&Z December 15, 2022 (slide 4).

² Source: Proponents’ presentations at P&Z December 15, 2022 (slide 5).

³ Source: Proponents’ presentations at P&Z December 15, 2022 (slide 6).

⁴ Source: Xioma Diaz testimony, P&Z March 23, 2022.

Commissioner Stackhouse noted in her comments⁵ before a vote in favor that the project as proposed remains a small group home.⁶

What is especially important to consider, however, is that the decision of whether the home should house 8 people with disabilities or 10 people with disabilities ***was not up for decision by the P&Z Commission and is not on appeal here.***

The City has a well-defined mechanism to determine whether it is appropriate to increase the occupancy level from 8 to 10. This process is found in the Reasonable Accommodation provision of LUC Sec. 2-19. The City was specific about why it established this procedure:

It is the policy of Fort Collins to provide reasonable accommodation for exemptions in the application of its zoning laws to rules, policies, and practices for the siting, development, and use of housing, as well as other related residential services and facilities, to persons with disabilities seeking fair access to housing. The purpose of this section is to provide a process for making a request for reasonable accommodation to individual persons with disabilities.

LUC, Sec. 2-19(A).

Reasonable accommodation was an oft-discussed issue during both P&Z hearings. The letter granting reasonable accommodation is in the record, as are a number of other communications regarding same.

⁵ Source: P&Z December 15, 2022 at 6:14.

⁶ “Small group home” refers to the residential scale group home recognized in the LUC, which are distinguished from large facilities:

Group home shall mean either of the following:

(1) Residential group home shall mean a residence operated as a single dwelling, licensed by or operated by a governmental agency, or by an organization that is as equally qualified as a government agency and having a demonstrated capacity for oversight as determined by the Director, for the purpose of providing special care or rehabilitation due to homelessness, physical condition or illness, mental condition or illness, elderly age or social, behavioral or disciplinary problems, provided that authorized supervisory personnel are present on the premises.

(2) *Large group care facility* shall mean a residential facility that is planned, organized, operated and maintained to offer facilities and services to a specified population and is licensed by or operated by a governmental agency, or by an organization that is as equally qualified as a government agency and having a demonstrated capacity for oversight as determined by the Director, for the purpose of providing special care or rehabilitation due to homelessness, physical condition or illness, mental condition or illness, elderly age or social, behavioral or disciplinary problems, provided that authorized supervisory personnel are present on the premises.

LUC, Sec. 5.1.2.

The decision whether to grant reasonable accommodation rests with city staff, who are well informed about the technical needs of the project, the City Code, and – importantly –the City’s responsibilities for inclusion set forth in state and federal civil rights laws, including the Fair Housing Act.

Reasonable accommodation decisions are made by the Director of Community Development and Neighborhood Services (LUC Sec. 2-19(D)) after consideration of specific factors (LUC Sec. 2-19(E)). This decision may *only* be appealed by the applicant and to the City Manager.

Appeal of Determination. The applicant may appeal a determination granting or denying a request for reasonable accommodation to the City Manager in accordance with Chapter 2, Article VI of the Code of the City of Fort Collins. No other review of a reasonable accommodation determination shall be allowed except as expressly provided within this Section.

LUC, Sec. 2-19(F).

Here, the applicants (Eric Shenk and Xioma Diaz) and the City precisely followed the procedures set out by the LUC. Reasonable accommodation to increase the number of residents from 8 to 10 has already been granted. This was not something the P&Z Commission could have considered and it would be improper for the City Council to overturn its decision on appeal.

P&Z Properly Applied LUC Sec. 3.5.1(J)

At the hearing, we will provide a full presentation of how this use is compatible with the surrounding neighborhood and we reserve all right to do so. Without waiving this right, a few key points are provided here.

1. The Planning and Zoning Commission may apply conditions, but it’s not required to do so. LUC Sec. 3.5.1(J) (“Conditions *may* be imposed upon the approval of development applications.”)
2. Group homes are allowed in this neighborhood. LUC, Sec. 4.4.
3. This home provides 150% more off-street parking than the Land Use Code’s required minimum. The LUC requires 2 spaces; we are providing 5.

“Group homes require two parking spaces for every three (3) employees, and in addition, one (1) parking space for each four (4) adult residents, unless residents are prohibited from owning or operating personal automobiles.” LUC, Sec. 3.2.2(K)(1)(f).

In short, the City, through adoption of the Land Use Code, has already assessed whether group homes are compatible with residential neighborhoods and it concluded that they are. Like every other “regular” home in a residential neighborhood, every group home will have people who

live there and who will visit. Its residents will need to eat and have other supplies and provisions brought into the home. And invariably, every group home, like every family, will generate garbage that it puts out for collection each week.

The City already considered these facts. There is nothing in the LUC that makes these predeterminations less true for *this* group home in *this* neighborhood. The LUC does not condition a group home's existence on what kind of road it's on. There is no actual evidence that this group home will make any greater impact on this neighborhood than any other group home in any other neighborhood. In fact, the evidence indicates that this home will have minimal traffic and parking impacts.

Residential group homes are needed in the City; they are allowed by the City; and they are consistent with the City's housing goals. This home is well suited for the use and will provide a valuable community asset. The P&Z Commission's approval was proper.

On behalf of Eric Shenk and Xioma Diaz:

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