



AGENDA ITEM SUMMARY

City Council

STAFF

Paul Sizemore, Director, Community Development & Neighborhood Services
Jenny Axmacher, Senior City Planner
Aaron Guin, Legal

SUBJECT

Sanctuary on the Green Project Development Plan Appeal.

EXECUTIVE SUMMARY

The purpose of this quasi-judicial item is to consider an appeal of the Administrative Hearing Officer's Decision on May 2, 2022, approving the Sanctuary on the Green Project Development Plan (#PDP210018) located near the northwest corner of N. Taft Hill Road and Laporte Avenue. A Notice of Appeal was filed on May 31, 2022, alleging that the Administrative Hearing Officer considered evidence relevant to their findings which was substantially false or grossly misleading including misrepresentations and mischaracterizations of several items from the Applicant and City staff. The Notice of Appeal further alleges that the Administrative Hearing Officer was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Decision Maker's independence because the application was allowed to go through a Type 1 hearing. The appellant also believes the public hearing structure, which does not allow rebuttal from the public to final statements made by the Applicant or staff, is unfair.

Lastly, the Notice of Appeal alleges the Administrative Hearing Officer failed to properly interpret and apply relevant provisions of six sections of the Land Use Code including Section 1.2.2 (Purpose), Section 3.5.1 (Building and Project Compatibility), Section 4.5.D.1 (Low Density Mixed-Use Neighborhood District Density Standard), Section 3.4.7 (Historic and Cultural Resources), Section 3.5.2(D)(1) (Orientation to a Connecting Walkway) and 4.5 (D)(2)(a) (Mix of Housing).

BACKGROUND / DISCUSSION

Sanctuary on the Green PDP210018 Project Overview:

- The PDP includes developing 41.34 acres for residential uses with a total of 212 dwelling units and an overall maximum density of 5.13 dwelling units per gross acre.
- Three housing types are proposed, including alley-loaded single family, two-family, and single-family attached with a total of 453 off-street parking spaces.
- Outdoor amenity areas, open space, natural habitat buffering, a neighborhood center and small neighborhood park are provided. Bicycle and pedestrian connections are provided throughout the project to connect to existing neighborhood streets and the Soldier Creek Trail.

- Two Modifications of Standards Requests to address walkway requirements and number of housing types.
- The property is zoned L-M-N, Low Density Mixed-Use Neighborhood, and is located within the Northwest Subarea Plan area.

Project Timeline

The Applicant submitted its first PDP application (PDP190003) for the subject site on February 15, 2019. At that time, the application proposed a different mix of residential development than the PDP that is the subject of this appeal. The first PDP application submitted in 2019 required a Type 2 Review before the Planning and Zoning Commission. The PDP190003 application was reviewed and eventually was brought to hearing before the Planning and Zoning Commission on June 17, 2021. The Commission voted to continue the item to a future hearing date to allow the applicant an opportunity to address some of their concerns. The Applicant subsequently withdrew their application on July 28, 2021, with the Commission not rendering a final decision.

The Applicant submitted a substantially different application on November 5, 2021 (PDP210018), which is the subject of this appeal. This new application no longer contained multifamily dwelling units, which required a change of the applicable review process to an Administrative (Type 1) Review under section 4.5(B)(2)(a) of the Land Use Code.

On May 2, 2022, an Administrative Hearing was held to consider the application for the Sanctuary on the Green Project Development Plan #PDP210018. The Hearing Officer issued a Decision on May 16, 2022 to approve the PDP application with two modifications of standards, alternative compliance for LUC Section 3.6.3(D) – (F), and two conditions. The Decision also urges the Applicant/Owner to voluntarily continue to engage with surrounding property owners and City staff during final development plan review to explore how the PDP/FDP may be modified to further reduce overall residential density and lower the height of the some of the proposed three-story single-family attached buildings to two-stories.

A Notice of Appeal (the “Notice”) was filed on May 31, 2022, by the Sanctuary Field Neighborhood Network, alleging that the Administrative Hearing Officer failed to conduct a fair hearing because he considered evidence relevant to its findings that was substantially false or grossly misleading. The Notice also alleges that the Hearing Officer failed to conduct a fair hearing because the Hearing Officer was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Hearing Officer’s independence of judgement. Lastly, the Notice of Appeal alleges that the Hearing Officer failed to properly interpret and apply six sections of the Land Use Code.

Relevant materials and files on record for the appeal from the May 2, 2022, Administrative Hearing and for the City Council Appeal hearing are attached with this staff report and highlighted below:

May 2 Administrative Hearing

- Video of hearing and Verbatim transcript
- Staff report and list of attachments such as site plan, landscaping plan, building elevations
- Staff presentation
- Applicant presentation

August 16 City Council Appeal Hearing:

- Notice of Appeal
- Public Hearing Notice
- Staff report
- Staff presentation

The issues for Council to consider in the appeal are:

1. Did the Hearing Officer fail to conduct a fair hearing by considering relevant evidence, presented by the Applicant and City staff, which was substantially false or grossly misleading?
2. Did the Hearing Officer fail to conduct a fair hearing because he was biased against the Appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Hearing Officer's independence of judgement?
3. Did the Hearing Officer fail to properly interpret and apply Land Use Code Section 1.2.2 (Purpose), and specifically subsections (A), (E), (I), (M), and (N) by approving the PDP and associated modifications and alternative compliance?
4. Did the Hearing Officer fail to properly interpret and apply Land Use Code Section 3.5.1 (Building and Project Compatibility) in allowing the Applicant to reference two specific comparable properties: Bellwether Farms and Ramblewood Apartments?
5. Did the Hearing Officer fail to properly interpret and apply Land Use Code Section 4.5.D.1 (Low Density Mixed-Use Neighborhood District Density Standard) by finding that the project meets the maximum density allowed by Code?
6. Did the Hearing Officer fail to properly interpret and apply Land Use Code Section 3.4.7 (Historic and Cultural Resources); specifically that the VonLong/Slagle House (5LR.14498) was not properly considered in the area of adjacency because it is located across an arterial roadway, N. Taft Hill.
7. Did the Hearing Officer fail to properly interpret and apply Land Use Code Section 3.5.2(D)(1) (Orientation to a Connecting Walkway) and Section 4.5 (D)(2)(a)3 (Mix of Housing) in granting the two Modifications of Standards for the PDP?

First Issue on Appeal:

Did the Hearing Officer fail to conduct a fair hearing by considering evidence presented by the Applicant and City staff, that was substantially false or grossly misleading?

The appeal asserts misrepresentations and mischaracterizations by the Applicant on a number of topics including:

- Collaboration with the Neighbors
- Efforts to create open space and buffers
- Historic sites and historic natural resources
- Prior density reductions
- Stepping down of buildings and comparisons to local structures
- Need for housing in Fort Collins

The appeal also alleges misleading or false information from City staff including:

- Access to documents and notifications in a timely manner
- Residential unit number discrepancy in the Hearing Officer's Decision

On page seven of the Decision, the Hearing Officer found that the hearing was properly noticed.

Staff does note that there is a typo in the Hearing Officer's Decision as mentioned by Appellant in the Notice on page one (that the development proposes 242 dwelling units); however, the typo does not impact the validity of the decision. Throughout the remainder of the Decision, and in both staff and Applicant's submittals, the correct number of dwelling units – 212 – is properly stated.

Staff acknowledges there are challenges with the electronic document management system and the development review website (staff is working with IT to remedy these challenges).

Pertinent evidence addressing Appellant’s argument may be found at the following locations in the record:

Document	Page Numbers					
	Collaboration with Neighbors	Building Height	Grading	Outreach	Step Downs	Need for Housing
Staff Report	13,14	7, 13, 14, 22, 33, 35, 36, 47, 48	4-6, 13	13-14	23, 35, 37	n/a
Verbatim Transcript	6 (34-44), 7(1-5), 12 (21-24), 23 - 24, 27 (30-41), 31 (24-41), 37 (17-24), 60, 61	7 (1-5), 8 (10-14), 11 (17-31), 18, 21, 22 (31-41), 23 (16-22), 24, 26 (3-8), 28, 31 (2-42), 32 (28-33), 33 (28-40) 35 (4-13), 37 (25-34), 41 (22-29), 50, 51, 52, 53, 61 (1-15)	17, 22, 50 (1-9)	17 (10-17)	24 (17-28), 37 (25-34)	36, 61
Staff Presentation	n/a	50	n/a	21	n/a	n/a
Staff Report Attachment	27, 30, 37	2, 6, 26	18	27, 30, 37	6	n/a
Other	n/a	n/a	n/a	n/a	n/a	n/a

Second Issue on Appeal

Did the Hearing Officer fail to conduct a fair hearing because he was biased against the Appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the Hearing Officer’s independence of judgment?

The Appellant asserts that the Hearing Officer was biased against the Appellant because this application was allowed to go through a Type 1 Hearing instead of being brought back to the Planning and Zoning Commission for a decision as was required with the prior PDP application (PDP210018).

The decision on what type of review is required is not made by the Hearing Officer; that determination is made at the time the application is submitted to staff, based on the requirements of the Land Use Code. The Land Use Code outlines the permitted uses and required review type for the LMN zone district in section 4.5 (B) (2) (a).

- 2) The following uses are permitted in the L-M-N District, subject to administrative review:

- (a) Residential Uses:
 1. Single-family detached dwellings.
 2. Two-family dwellings.
 3. Single-family attached dwellings.
 4. Two-family attached dwellings.
 5. Any residential use consisting in whole or in part of multi-family dwellings (limited to eight [8] or less dwelling units per building) that contain fifty (50) dwelling units or less, and seventy-five (75) bedrooms or less.
 6. Group homes for up to eight (8) developmentally disabled or elderly persons.
 7. Mixed-use dwellings.
 8. Extra occupancy with four (4) or more tenants.

(3) The following uses are permitted in the L-M-N District, subject to Planning and Zoning Board review:

- (a) Residential Uses:
 1. Manufactured housing communities.
 2. Group homes, other than allowed in subparagraph (2)(a)5 above.
 3. Any residential use consisting in whole or in part of multi-family dwellings that contain more than eight (8) units per building, or more than fifty (50) dwelling units, or more than seventy-five (75) bedrooms.

(4) The following uses are permitted in the L-M-N District, subject to an administrative hearing officer, or Type 1 review:

- (a) Residential uses:
 1. Single-family detached dwellings,
 2. Two-family dwellings,
 3. Single-family attached dwellings; and
 4. Neighborhood centers.

The prior PDP application that was withdrawn following the P&Z meeting on June 17, 2021, was determined by staff to be substantially different than the current application (in compliance with 2.2.11 (E) (9)), as it contained multi-family dwellings with more than eight (8) units per building, or more than fifty (50) dwelling units, or more than seventy-five (75) bedrooms. Under those circumstances, a Type 2 Review before P&Z would be required under Section 4.5(B)(2)(a). As revised and resubmitted however, the current PDP application was subject to administrative (Type 1) review under Section 4.5(B)(2)(a).

The appellant also alleges that there was bias against them because they were not allowed to refute information presented by the applicant or staff. The Order of Proceedings at Public Hearing is established by LUC Section 2.2.7(C) and sets the times during the administrative hearing when the public is offered an opportunity to provide testimony (Step 5).

Pertinent evidence addressing Appellant’s argument may be found at the following locations in the record:

Document	Page Numbers
Staff Report	14, 15
Verbatim Transcript	4,6, 21, 22, 24, 37
Staff Presentation	n/a
Staff Report Attachments	29
Other	Link to P& Z minutes

Third Issue on Appeal

Did the Hearing Officer fail to properly interpret and apply Land Use Code Section 1.2.2 (Purpose), and specifically subsections (A), (E), (I), (M), and (N) by approving the PDP and associated modifications and alternative compliance?

1.2.2 Purpose

The purpose of this Code is to improve and protect the public health, safety and welfare by:

- (A) ensuring that all growth and development which occurs is consistent with this Code, City Plan and its adopted components, including, but not limited to, the Structure Plan, Principles and Policies and associated sub-area plans.
- (B) encouraging innovations in land development and renewal.
- (C) fostering the safe, efficient and economic use of the land, the city's transportation infrastructure, and other public facilities and services.
- (D) facilitating and ensuring the provision of adequate public facilities and services such as transportation (streets, bicycle routes, sidewalks and mass transit), water, wastewater, storm drainage, fire and emergency services, police, electricity, open space, recreation, and public parks.
- (E) avoiding the inappropriate development of lands and providing for adequate drainage and reduction of flood damage.
- (F) encouraging patterns of land use which decrease trip length of automobile travel and encourage trip consolidation.
- (G) increasing public access to mass transit, sidewalks, trails, bicycle routes and other alternative modes of transportation.
- (H) reducing energy consumption and demand.
- (I) minimizing the adverse environmental impacts of development.
- (J) improving the design, quality and character of new development.
- (K) fostering a more rational pattern of relationship among residential, business and industrial uses for the mutual benefit of all.
- (L) encouraging the development of vacant properties within established areas.
- (M) ensuring that development proposals are sensitive to the character of existing neighborhoods.
- (N) ensuring that development proposals are sensitive to natural areas and features.
- (O) encouraging a wide variety of housing opportunities at various densities that are well-served by public transportation for people of all ages and abilities.

It is important here to understand that the statement of purpose under Section 1.2.2 is not reviewed as a specific regulation; rather, it lays out what the Code is trying to achieve throughout the document in subsequent sections that establish standards. For example, the standards outlined in Articles 3 and 4 of the LUC, are reviewed specifically for compliance and are outlined in the Staff Report prior to the administrative hearing.

It also is worth noting that floodplain regulations are not contained within the Land Use Code; instead they are part of the Municipal Code and not within the purview of the Hearing Officer's Decision. As noted in the record at [REDACTED], Utilities staff found in their review that the PDP complies with the applicable floodplain regulations.

Pertinent evidence addressing Appellant's argument may be found at the following locations in the record:

Document	Page Numbers				
	Plan Compliance	Floodplain	Impact of Development	Sensitivity to Existing Neighborhoods	Natural Features
Staff Report	6-14	2, 4-6, 14, 40-41	24, 28-33	3,6-13, 34-36, 50	2, 4, 8-9,12,14,19,24,28-33,39-42, 50
Verbatim Transcript	4, 5 (20-21), 8(24-25), 10 (6-19), 11(10-31), 14(35-45), 15, 16 (3-22), 17 (18-34), 21, 22(42-44), 23 (1-15), 24 (14-16), 25 (1-10, 40-45), 26 (3-8), 27 (18-41), 28 (23-42), 32 (5-7), 37 (25-34, 39-41), 38 (1-2), 39(5-10), 41 (11-21), 44 (25-35), 59 (28-35) 61 (29-43), 62	8 (39-43), 9 (1-2), 17 (35-44), 22 (31-41), 23 (1-15), 24 (29-45), 26 (22-30), 30 (16-22), 34 (3-29), 46 (23-38), 47 (1-2, 31-39), 48 (8-22), 54 (17-35)	7-9, 10 (39-2), 15 (24-29), 16 (36-44), 18 (12-15), 19 (1-13), 21, 22, 25, 26, 29, 30 (10-15), 49, 54, 55, 61	4, 11, 21 (19-34), 24 (17-28), 26 (3-8), 51 (14-20), 12, 21, 40 (27-36)	7-9, 10 (39-2), 15 (24-29), 16 (36-44), 18 (12-15), 19 (1-13), 21, 22, 25, 26, 29, 30 (10-15), 49, 54, 55, 61
Staff Presentation	22-28	29-35	n/a	n/a	n/a
Staff Report Attachments	34	15-17	7, 9-14	2, 33, 34,37	7, 9-14
Other	n/a	Link 3 (Drainage Report)	n/a	n/a	n/a

Fourth Issue on Appeal

1. Did the Hearing Officer fail to properly interpret and apply Land Use Code Section 3.5.1 (Building and Project Compatibility) in allowing the Applicant to reference two specific properties as comparable: Bellwether Farms and Ramblewood Apartments?

The Appellant asserts that Bellwether Farms, located immediately north of the project, and Ramblewood Apartments, across Laporte Avenue to the south of the project, should not have been given consideration under building and project compatibility.

The PDP for Bellwether Farms was approved in 2005, with a majority of the homes being constructed between 2007 and 2009. Appellant contends that the row of one- and two-story homes with walk-out basements on the south side of W. Tarragon Lane are not representative of the overall development.

The three story Ramblewood Apartments complex was built in 1970 according to the Larimer County Assessor's data and was remodeled in 1998. Appellant points out that this complex was constructed before the 2006 adoption of the Northwest Subarea Plan.

As stated on page 35 of the Staff Report, “[c]ompatibility shall be achieved through techniques such as the repetition of roof lines, the use of similar proportions in building mass and outdoor spaces, similar relationships to the street, similar window and door patterns and/or the use of building materials that have color shades and textures similar to those existing in the immediate area of the proposed infill development.” Because Bellwether Farms and Ramblewood Apartments are both located in the immediate vicinity of the PDP, it is appropriate to consider compatibility with these developments. The Staff Report and hearing presentations addressed the issue of compatibility, and the issue is summarized in the Staff Report as follows:

The proposed Sanctuary on the Green architecture includes both two and three-story buildings. Primary techniques to achieve compatibility and reduce the overall apparent mass/bulk of the buildings include:

- Utilizing masonry on the ground level to define the base of the larger buildings;
- Ground level entrances on all three-story buildings include a shed or hip roof component, which further emphasizes the ground level;
- Providing secondary massing elements at the second level, including projecting covered balconies and bay window treatments;
- Large windows are provided within the majority of the building modules to further break down the scale of the buildings.

Pertinent evidence addressing Appellant’s argument may be found at the following locations in the record:

Document	Page Numbers		
	Three-Story Buildings	Bellwether Farms	Ramblewood Apartments
Staff Report	2, 13, 14, 35, 36, 47, 48	3, 35	3
Verbatim Transcript	7 (1-5), 8 (10-14), 11 (17-31), 18, 21, 22 (31-41), 23 (16-22), 24, 26 (3-8), 28, 31 (2-42), 32 (28-33), 33 (28-40) 35 (4-13), 37 (25-34), 41 (22-29), 50, 51, 52, 53, 61 (1-15)	4 (24-27), 9 (13-14), 27 (1-14), 50, 51	n/a
Staff Presentation	13, 40-43	7	n/a
Staff Report Attachments	n/a	n/a	n/a
Other	n/a	n/a	n/a

Fifth Issue on Appeal

Did the Hearing Officer fail to properly interpret and apply Land Use Code Section 4.5.D.1 (Low Density Mixed-Use Neighborhood District Density Standard) by finding that the project meets the maximum density allowed by the Code?

Division 4.5 – Low Density Mixed-Use Neighborhood District (L-M-N)

(D) Land Use Standards.

(1) Density.

- (a) Residential developments in the Low Density Mixed-Use Neighborhood District shall have an overall minimum average density of four (4) dwelling units per net acre of residential land, except that residential developments (whether overall development plans or project

development plans) containing twenty (20) acres or less shall have an overall minimum average density of three (3) dwelling units per net acre of residential land.

- (b) The maximum density of any development plan taken as a whole shall be nine (9) dwelling units per gross acre of residential land, except that affordable housing projects (whether approved pursuant to overall development plans or project development plans) containing ten (10) acres or less may attain a maximum density, taken as a whole, of twelve (12) dwelling units per gross acre of residential land.

Additionally, affordable housing projects containing more than ten (10) acres but no more than twenty (20) acres may attain a maximum density, taken as a whole, of twelve (12) dwelling units per gross acre of residential land so long as the term of lease or sale of all of the dwelling units associated with the acreage exceeding ten (10) acres, but no more than twenty (20) acres, are available on terms that would be affordable to households earning sixty (60) percent or less, on average, of the area median income for the applicable household size in the Fort Collins-Loveland metropolitan statistical area, as published by the Department of Housing and Urban Development. The dwelling units associated with the acreage exceeding ten (10) acres, but no more than twenty (20) acres, shall not be counted as contributing to the required percentage of affordable housing units necessary to qualify as an affordable housing project. The number of dwelling units that must be available to those earning sixty (60) percent or less, on average, of the area median income shall be calculated as follows:

Number of Dwelling Units That Must Be Made Available to Households Earning Sixty (60) Percent or less of the Area Median Income, Rounded to the Nearest Whole Number = (Number of Total Dwelling Units Constructed ÷ Number of Total Gross Acres of Residential Land) X Number of Acres Over Ten (10) Acres, Up To A Limit of Twenty (20) Acres.

- (c) The maximum density of any phase in a multiple-phase development plan shall be twelve (12) dwelling units per gross acre of residential land, and the maximum density of any portion of a phase containing a grouping of two (2) or more multi-family structures shall be twelve (12) dwelling units per gross acre of residential land.

Appellant asserts that the density of the project should be 13 dwelling units per acre because so much of the project area is made up of “unbuildable land” such as floodplain. Section 4.5(D) of the Land Use Code sets maximum density in the L-M-N District at 9 dwelling units **per gross acre**. Also, the NSP recommends that the density for L-M-N zoned properties within the subarea should not exceed “8 units **per acre overall**.” In calculating **gross density** required under the LUC, the 20 unbuilt acres of the PDP is not to be subtracted.

Pertinent evidence addressing Appellant’s argument may be found at the following locations in the record:

Document	Page Numbers
Staff Report	2, 11, 44
Verbatim Transcript	4, 6, 7, 10, 14, 15, 16, 17, 19 (14-18), 21, 26 (3-8, 32-41), 27 (1-14), 31 (38-42), 32 (9-17, 28-33) 35 (25-42), 38 (25-37), 43, 44, 49 (19-25), 59, 60 (1-11, 30-38), 61, 62, 63
Staff Presentation	48
Staff Report Attachments	n/a
Other	n/a

Sixth Issue on Appeal

Did the Hearing Officer fail to properly interpret and apply Land Use Code Section 3.4.7 (Historic and [City Council Agenda Item Summary – City of Fort Collins Page 9 of 12](#)

Cultural Resources); specifically, that the VonLong/Slagle House (5LR.14498) was not properly considered in the area of adjacency because it is located across an arterial roadway, N. Taft Hill?

Section 3.4.7 of the Land Use Code language specifies that all six compatibility requirements are applicable only when historic resources are directly abutting (property lines touching) are located across a side alley (which covers a few scenarios in Old Town where abutting properties are very close but separated only by a narrow alley space), or are located on the development site itself. Otherwise, the design of new construction must reflect a minimum of two of the six standards if there are historic resources nearby that don't fall under the above scenarios but still are within the "area of adjacency" (200 feet from the perimeter of the development site). This allows for some referential design elements to occur, but does not anticipate that the historic resources will play a significant role in influencing the design of the new construction.

Section 3.4.7(E) provides:

[p]roposed development may represent the architecture and construction standards of its own time but must also convey a standard of quality and durability appropriate for infill in a historic context and protect and complement the historic character of historic resources both on the development site and within the area of adjacency.

This provision allows for design flexibility for new construction that does not constrict new buildings to a specific historic style, as long as the new development is found to be compatible with the existing resource. Even when historic resources are abutting rather than some distance away or across a right-of-way, there are many examples of new construction that meets all six design compatibility requirements in 3.4.7(E) Table 1 but represent those elements in a different architectural style. In other words, the Code standard was not written to require duplication of nearby architectural style—that choice is at the discretion of the applicant and/or subject to other Land Use Code requirements - but is not driven by Section 3.4.7. While some applicants choose similar or even the same style of architecture (in a modern expression, such as neo-farmhouse), others may be able to meet the requirements while using the compatible design elements in a different architectural style.

Pertinent evidence addressing Appellant's argument may be found at the following locations in the record:

Document	Page Numbers
Staff Report	8, 33-34,
Verbatim Transcript	18, 21, 22, 25, 28 (23-30), 34 (3-29), 37
Staff Presentation	38-39
Staff Report Attachments	n/a
Other	n/a

Seventh Issue on Appeal

Did the Hearing Officer fail to properly interpret and apply Land Use Code Section 3.5.2(D)(1) (Orientation to a Connecting Walkway) and Section 4.5(D)(2)(a)3 (Mix of Housing) in the granting of the two Modifications of Standards for the PDP?

Appellant alleges that the Hearing Officer improperly interpreted and applied the two sections of the LUC in granting the Applicant's request for two modifications of standards: Section 3.5.2(D)(1) (Orientation to a Connecting Walkway), and Section 4.5(D)(2)(a)3 (Mix of Housing).

The first modification requested by the Applicant was for building entrances to dwellings be oriented to a walkway that is longer than 350 feet, and within walkway open space that is narrower than 35 feet.

The second modification requested sought approval of the PDP with only three housing types (Alley Loaded SFD, Two Family, and SFA), instead of four.

Section 2.8.1 of the LUC addresses “Purpose and Applicability” of Modification of Standards:

“The decision maker is empowered to grant modifications to the General Development Standards contained in Article 3 and the Land Use Standards and Development Standards contained in Article 4...either for: (1) overall development plans, project development plans, and/or applications subject to basic development review that are pending approval at the time that the request for proposed modification is filed...”

The Land Use Code was adopted with the recognition that there will be instances where a project would support the implementation of City Plan, but due to unique and unforeseen circumstances would not meet a specific standard of the Land Use Code as stated. The modification of standards process and criteria in Land Use Code Division 2.8.2(H) provide for evaluation of these instances on a case-by-case basis, as follows:

... [T]he 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 city-wide 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).

The Hearing Officer found that granting both modifications of standards requested by the Applicant for Orientation to a Connecting Walkway and Mix of Housing would not be detrimental to the public good and the justifications (1) and (4) were used to support both modifications, while justification (3) also found by the Hearing Officer to support the first modification to Section 3.5.2(D)(1) (Orientation to a Connecting

Walkway).

Pertinent evidence addressing Appellant’s argument may be found at the following locations in the record:

Document	Page Numbers
Staff Report	17 - 24, 38, 44, 50
Verbatim Transcript	5 (3-9), 7 (28-31), 11 (36-38), 13 (21-38), 14, 19,
Staff Presentation	19, 20, 51-60
Staff Report Attachments	22, 23
Hearing Officer Decision	8, 9, 10, 11

PUBLIC OUTREACH

A neighborhood meeting was held for the Sanctuary on the Green proposal on September 13, 2021. More detailed information on the public process and neighborhood concerns is included in the Staff Report.

ATTACHMENTS

1. Clerk Public Hearing Notice, Site Visit Notice, Mailing List
2. Notice of Appeal
3. Staff Report to Administrative Hearing Officer (with attachments)
4. Appellant Presentation to Administrative Hearing Officer
5. Correspondence Provided to Administrative Hearing Officer
6. Link to Video of Administrative Hearing
7. Verbatim Transcript – Administrative Hearing
8. Administrative Hearing Officer Decision
9. Staff Presentation to Council