



MEMO – UDC Written Interpretation

To: Planning + Neighborhood Services

From: Michael Tassi, Assistant Planning Director

A handwritten signature in blue ink, appearing to be "MT", is written over the name "Michael Tassi".

Date: February 8, 2024

RE: Adjustment and variance for dimensional standards in UDC Article 7.3

Question

Planning + Neighborhood Services Department staff, as persons with a discernible interest in matters governed by Chapter 7 (the Unified Development Code or “UDC”) of the Code of City of Colorado Springs 2001, as amended (the “City Code”), have requested an administrative interpretation of the application of Administrative Adjustment (AA) (Section 7.5.524), Non-Use Variance (NUV) (Section 7.5.526), and Development Standards Adjustment (DSA) (Section 7.5.525) processes for relief from the dimensional and quantitative standards contained within the Use-Specific Standards of Article 7.3.

UDC Interpretation Rules

Pursuant to City Code Section 7.5.529, the manager of the Planning Department (“Manager”) is responsible for making interpretations of the UDC relating to zoning and subdivisions, including interpretations related to the “applicability or requirements of a development standard.” City Code Subsection 7.5.529.C.1(a)(1)(d). The Manager is to review the request for interpretation, consult with the City Attorney and affected City officials, and render a decision based on the specific approval criteria.

Interpretations are to be consistent with the purposes of the UDC, the purposes of the zone district, common use of words in the English language, and prior interpretations of the UDC. Interpretation of text provisions shall consider: (i) the clear and plain meaning of the provision’s wording, (ii) the intended purpose of the provision, (iii) the general purpose served by the UDC, (iv) consistency with the Colorado Springs Comprehensive Plan and other plans adopted by City Council, and (v) consistency with the measurement standards of the UDC.

Pursuant to City Code Subsection 7.1.109.A, the provisions of the UDC that are substantially the same as previously existing City Code provisions relating to the same subject matter shall be construed as restatements and continuations and not new enactments.

Adjustment and Variance Rules

The UDC prescribes three procedures with which to request relief of dimensional and quantitative standards: Administrative Adjustments, Non-Use Variances, and Development Standards Adjustments - referred to in this memo collectively as Flexibility Options. Each procedure has varying thresholds of review and differing review criteria.

The purpose of the AA procedure is to allow minor deviations of up to fifteen percent (15%) without the need of a public hearing and applies to any dimensional or numerical standard in the UDC, including Sections 7.4.2, 7.4.4, 7.4.10, and 7.4.11. Any deviation over fifteen percent (15%) would require an NUV with a physical hardship, or a DSA with provision of a compensating benefit. Both the NUV and the DSA require final action by Planning Commission (unless appealed). Although AA's may be used for any dimensional standard in the UDC, NUV's are limited to variations of Article 7.4 and DSA's are specific to Sections 7.4.2, 7.4.10, and 7.4.11.

Prior to adoption of the UDC,¹ per then Code Sections 7.5.1103 and 7.5.802, the Manager could allow either Administrative Relief (15% rule) or a Non-Use Variance for relief of all dimensional and quantitative standards, including those identified as "additional standards for specific uses." Further, both the Administrative Relief and Non-Use Variance procedures were acted upon administratively.

The adoption of the UDC purposefully included a higher threshold of review for the NUV, renamed the fifteen percent (15%) administratively available relief to AA, and provided a NUV parallel process, the DSA, to support deviations that provided a compensating benefit instead of a physical hardship. However, the intent was not to preclude the application of these procedures to dimensional and numerical standards within Article 7.3.

Interpretation

It is the Manager's interpretation that the referenced Flexibility Options (Administrative Adjustments, Non-Use Variances, and Development Standards Adjustments) are available for dimensional and numerical standards contained within Article 7.3, which is substantially the same approach as previously existed and will be construed as restatements as noted by City Code Subsection 7.1.109.A. Staff will be bringing forward an update to the UDC to clarify this issue in the applicable sections of all three Flexibility Options as well as addressing this in Article 7.3.

¹ The UDC was adopted with an effective date of June 5, 2023. The previous version of Chapter 7 of the City Code was known as the "Zoning Code of the City of Colorado Springs" and is referred to in this memo as the prior Zoning Code.