

CITY OF COLORADO SPRINGS

INTEROFFICE MEMORANDUM

DATE: September 28, 2020

TO: Peter Wysocki, Director of Planning

FROM: Sarah Johnson, City Clerk

SUBJECT: Notice of Appeal

ITEM NO. 6.A. CPC CU 20-00060

An appeal has been filed by William Palmer in regards to the Planning Commission meeting that took place on September 17, 2020.

I am scheduling the public hearing on this appeal for the City Council meeting of October 27, 2020

CC: Lonna Thelen
Elena Lobato

William Palmer
690 Pine Oaks Road
Colorado Springs, CO 80926

Sundance at Rock Creek, LLC
90 South Cascade, Suite 1500
Colorado Springs, CO 80903



THE PLANNING & DEVELOPMENT DEPARTMENT

APPEAL TO CITY COUNCIL

Complete this form if you are appealing City Planning Commission's, Downtown Review Board's or the Historic Preservation Board's Decision to City Council.

2020 SEP 28 A 11: 00

APPELLANT CONTACT INFORMATION:

Appellants Name: William Palmer Telephone: 719-576 5990
Address: 690 Pine Oaks Road City Colorado Springs
State: CO Zip Code: 80926 E-mail: shotwithluck1@earthlink.net

PROJECT INFORMATION:

Project Name: Sundance at Rock Creek
Site Address: South West Corner of HWY 115 and Pine Oaks Road
Type of Application being appealed: Proposed conditional use development plan
Include all file numbers associated with application: CPC CU 20-00060
Project Planner's Name: Kelly Nelson, The Equity Group
Hearing Date: September 17, 2020 Item Number on Agenda: 2nd Public Hearing following the consent items

YOUR APPEAL SUBMITTAL SHOULD INCLUDE:

1. Completed Application
2. \$176 check payable to the City of Colorado Springs
3. Appeal Statement
 - See page 2 for appeal statement requirements. Your appeal statement should include the criteria listed under "Option 1" or "Option 2".

Submit **all** 3 items above to the **City Clerk's office (30 S Nevada, Suite 101, Colorado Springs, CO 80903)**. Appeals are accepted for 10 days after a decision has been made. Submittals must be received no later than 5pm on the due date of the appeal. Incomplete submittals, submittals received after 5pm or outside of the 10 day window will not be accepted. If the due date for the submittal falls on a weekend or federal holiday, the deadline is extended to the following business day.

If you would like additional assistance with this application, please contact the Land Use Review offices at 385-5905.

APPELLANT AUTHORIZATION:

The signature(s) below certifies that I (we) is(are) the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I(we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval.

William A. Palmer Signature of Appellant September 28, 2020 Date

THE APPEAL STATEMENT SHOULD INCLUDE THE FOLLOWING

- **OPTION 1:** If you are appealing a decision made by City Planning Commission, Downtown Review Board, or the Historic Preservation Board that was **originally** an administrative decision the following should be included in your appeal statement:
 1. Verbiage that includes justification of City Code 7.5.906.A.4
 - i. Identify the explicit ordinance provisions which are in dispute.
 - ii. Show that the administrative decision is incorrect because of one or more of the following:
 1. It was against the express language of this zoning ordinance, or
 2. It was against the express intent of this zoning ordinance, or
 3. It is unreasonable, or
 4. It is erroneous, or
 5. It is clearly contrary to law.
 - iii. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

- ☒ **OPTION 2:** If the appeal is an appeal of a City Planning Commission, Form Based Zoning Downtown Review Board, or Historic Preservation Board decision that was **not made administratively initially**, the appeal statement must identify the explicit ordinance provision(s) which are in dispute and provide justification to indicate how these sections were not met, see City Code 7.5.906.B. For example if this is an appeal of a development plan, the development plan review criteria must be reviewed.

CITY AUTHORIZATION:

Payment: \$ _____

Date Application Accepted: _____

Receipt No: _____

Appeal Statement: _____

Intake Staff: _____

Completed Form: _____

Assigned to: _____

STATEMENT OF APPEAL FROM THE PLANNING COMMISSION APPROVAL OF THE CONDITIONAL USE DEVELOPMENT PLAN FOR A 240 UNIT MULTI-FAMILY APARTMENT COMPLEX CALLED SUNDANCE AT ROCK CREEK, CPC CU 20-00060.

ORDINANCES OF THE CITY CODE in dispute:

7.5.101 Purpose: The purpose of this part are (is) to provide efficient and timely public review of development proposals; to ensure fairness and due process in public hearings

7.5.202E Review: Each application will be reviewed by staff members of the City, County, State, Federal departments and or utility agencies as necessary. They shall submit written reports or comments prior to approval or denial of such application.

DEVELOPMENT PLAN REVIEW CRITERIA in dispute: Paragraph 2. Will the proposed land uses be compatible with the surrounding neighborhood ? Will the proposed development overburden the capacities of existing streets, utilities, parks, schools and other public facilities? Paragraph 5. Will vehicular access from the project to the streets outside the project be combined, limited, located, designed and controlled to channel traffic to and from such areas conveniently and safely and in such a manner which minimizes traffic friction, noise, and pollution and promotes free traffic flow without excessive interruption?

CONDITIONAL USE REVIEW CRITERIA in dispute:
Paragraph B. Intent of the Zoning Code: That the conditional use is consistent with the intent and purpose of this Zoning Code to promote public health, safety and general welfare.

JUSTIFICATION INDICATING HOW THESE SECTIONS WERE NOT MET.

SECTION 7.5.202E requires written reports or comments to be submitted prior to approval or denial of such application. Despite numerous requests in staff review letters for a report and/or comments from CDOT, no comments or reports had been submitted by the time of the public hearing on September 17, 2020. As a result, staff moved to have the hearing postponed in order to comply with section 7.5.202E. CDOT'S input was critical to determine issues of an access point not connecting with Pine Oaks; the access permit to highway 115, and ownership of land at the proposed access point. Rather than postponing the hearing as staff had requested, the Planning Commission violated the provisions of section 7.5.202E and conducted the public hearing and approved the application without any written comments or report from CDOT.

Section 7.5.101 Purpose says that the purpose of this part of the Code is to ensure fairness and due process in public hearings. After staff's report, Bill Palmer, hereinafter referred to as I or me, was specifically instructed that I had 3 minutes to speak. I intentionally spoke less than two minutes so that I

could respond to questions. There was a good question from a commissioner about whether Pine Oaks Road was covered or included in the traffic study, Staff explained that there was a July 12, 2019 traffic count done on traffic flow from Pine Oaks during that typical Weds morning and evening so that Pine Oaks Road was “covered”. No one said anything about closing the public input session of the hearing, but when I asked to speak for 30 seconds of my last minute of allowed speaking time, I was told no you can not speak. What I wanted to offer was my agreement with staff’s response, and the additional comment that the traffic study did not address the scenario of an emergency evacuation for fire when 100% of the cars along Pine Oaks and the development would all converge at the end of Pine Oaks and the interchange with highway 115. If the true purpose is to ensure fairness and due process, one should surely decide to let me speak the last 30 seconds of the three minutes I was specifically told I could speak.

There were numerous email comments in the file from residents opposed to the development. Several of those people have explained that they dialed the correct number and gave the correct ID, but were unable to speak at the hearing. As a result of some technical glitch, some members of the public were prevented from speaking.

Paragraphs 2 and 5 of the development review criteria as well as paragraph B of the conditional use review criteria concern questions of whether or not the proposed development will over burden the

capacities of existing street; will the traffic flow be controlled to flow conveniently and safely; and generally that the purpose of the Zoning Code is to promote public health, safety and general welfare. The applicant's traffic study says that Pine Oaks Road is 24 feet wide. Pine Oaks dead ends so there is no other way out than going down Pine Oaks past the State Park archery range parking lot and the development's only access which intersects with Pine Oaks very near the intersection with 115. There are 402 designated parking spaces in the current proposed development. It is clear that the traffic study does not address the issue of traffic flows and overburdening of Pine Oaks in the event of an emergency fire evacuation. It is public record that we residents of Pine Oaks have been evacuated twice for fires in the last several years. It is critical to the determination of the questions of overburdening Pine Oaks; and safe traffic flow; and the promotion of public safety that studies be done under the circumstances of an emergency 100% evacuation. We have an opportunity to possibly save lives here. I am confident the safety issues can be resolved, but the present application of the proposed Sundance at Rock Creek does not address, much less resolve, these safety concerns as required by the Code.

Respectfully Submitted,
William (Bill) Palmer