



## Legislation Details (With Text)

**File #:** CPC NV 22-00061    **Version:** 2    **Name:** 2525 Concord Street

**Type:** Planning Case    **Status:** Passed

**File created:** 7/29/2022    **In control:** City Council

**On agenda:** 9/13/2022    **Final action:** 9/13/2022

**Title:** An appeal of the City Planning Commission’s denial of a nonuse variance to reduce the minimum front yard setback from the required 20 feet to 10 feet along North Cascade Avenue, West Harrison Street, and Concord Street for a multi-family residential project located at 2525 Concord Street.

(Quasi-Judicial)

Related File: CPC CU 22-00059

**Presenter:**

Tamara Baxter, Senior Planner, Planning & Community Development Department  
Peter Wysocki, Director, Planning and Community Development Department

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 7.3.104(A), 2. 7.5.802.B Nonuse Variance Criteria, 3. 7.5.802.E GuidelinesforReview\_NonuseVariance, 4. 7.5.906 (B) Appeal of Commission-Board

Date	Ver.	Action By	Action	Result
9/13/2022	2	City Council	approved	Pass
8/10/2022	1	Planning Commission	denied	Fail

An appeal of the City Planning Commission’s denial of a nonuse variance to reduce the minimum front yard setback from the required 20 feet to 10 feet along North Cascade Avenue, West Harrison Street, and Concord Street for a multi-family residential project located at 2525 Concord Street.

(Quasi-Judicial)

Related File: CPC CU 22-00059

**Presenter:**

Tamara Baxter, Senior Planner, Planning & Community Development Department  
Peter Wysocki, Director, Planning and Community Development Department

**Summary:**

Owner: Front Row Properties, LLC  
Developer: DHN Development, LLC  
Location: 2525 Concord Street

City Planning Commission approved a conditional use development plan on August 11, 2022, for the

2525 Concord Street conditional use development plan to allow a multi-family residential development of 21-units in four buildings with ancillary site improvements in the OR (Office Residential) zone district, and that the project meet the minimum required front yard setback of 20 feet along North Cascade Avenue, West Harrison, and Concord Street. The City Planning Commission did not support the nonuse variance request to reduce the front yard setback to 10 feet where the minimum of 20 feet is required per City Code. On August 16, 2022, the Appellant, DHN Development LLC, who is the developer of the property, filed an appeal of the City Planning Commission's decision to approve the above referenced project within the 10-day appeal window. The Appellant's stated reasoning for the appeal of the City Planning Commission's decision is against the intention of the existing zoning ordinance and is unreasonable considering the precedence of existing homes and structures in the area that have front setbacks that are 10 feet or less; and the sight visibility requirements at West Harrison Street and North Cascade Avenue were met and found by City Engineering staff to be in conformance with city standards.

### **Background:**

The Applicant's proposal was for a Conditional Use Development Plan which envisions the development of 21-unit multi-family development in four buildings with ancillary site improvements in accordance with City Section 7.3.203 which requires a conditional use for multi-family residential development in the OR (Office Residential) zone district (**see "Conditional Use Development Plan" attachment**). In accordance with City Code Section 7.3.205(Q)(1), residential dwelling units in the OR (Office Residential) zone district shall comply with the R-5 (Multi-Family Residential) zone district development standards, including front yard setbacks as set forth in City Code Section 7.3.104.A. A minimum front yard setback of 20 feet is applicable from Concord Street, West Harrison Street and North Cascade Avenue. The Applicant submitted a concurrent nonuse variance request to reduce the front yard setback to 10 feet to pull the proposed buildings towards the streets to allow for site amenities such as on-site parking, bike rack, garbage, and outdoor amenities to be located behind the buildings.

The property is 0.8-acres in size. The property consists of a single-family residential home with a detached garage. The property is encompassed on three sides with public rights-of-way (Concord Street, West Harrison Street, and North Cascade Avenue) and the Van Buren Channel/Rock Island Trail future alignment along the south. The slopes from east to west, ranging from one percent (1%) to greater than twenty-five (25%). The surrounding neighborhood is a broad mix of commercial, multi-family residential and single-family residential uses (**see "Context Map" attachment**). This residential, infill project is directly adjacent to the North Nevada Avenue Overlay, specifically the south sector, and redevelopment opportunities are anticipated to spill-over into surrounding areas. The development is located in close proximity to places of employment, schools, parks/trails, services, and entertainment. All are characteristics that make it a good fit for residential development as proposed. These are similar reasons as to why the Roswell neighborhood is desirable place to live within the city. This site is a good fit for an infill, multi-family residential development.

Parking on-site is by a surface parking lot that is located behind the proposed buildings. The proposed buildings and site landscaping will provide screening of the parking lot. The parking spaces provided for the conditional use development plan are following City Code Section 7.4.203 (Parking Space Requirements). Parking for multi-family residential development is based on bedroom count. This project requires 38 parking spaces. City Code Section 7.4.204(B) (Alternative Parking Options) allows for consideration of on-street parking. This project has requested seventeen (17) spaces immediately adjacent to the site: six (6) parking spaces along Concord Street, eight (8) parking spaces along West Harrison Street and three (3) along Cascade Street. In addition, the

project qualifies for parking reductions by providing motorcycle spaces (two motorcycle spaces is equivalent to one standard parking space) and the property is located within four hundred feet (400'), by direct pedestrian access, of a public transit stop along North Cascade Avenue allowing a 5 percent parking reduction per City Code. Parking for this project has been provided per City Code standards.

Landscaping for this project is designed to not only meet the standards, but to adequately screen parking, trash enclosure and similar project elements and soften the impact of the new building to the streetscape. Alternative compliance to the landscape standards has been requested which would allow a reduction of area of landscaping along the public rights-of-ways and provide a 50 percent increase of planting material for this project.

The only site lighting that is proposed is outdoor safety lighting on the buildings. Typical details were provided. Light fixtures are full cut off to direct all light downward and on to the site. This also helps to make the better fit into the surrounding area.

A concurrent request for a nonuse variance proposes to reduce the front yard building setbacks along North Cascade Avenue, West Harrison Street and Concord Street to 10 feet where the minimum is 20 feet. The request to reduce the front yard setback allows the buildings to shift closer to the streets and allow for useable space behind the buildings for site amenities and on-site parking. The design of the project is conscientious to fitting the project both to the topography and surrounding properties and neighborhood creating a more compatible project with the surrounding area and consistent with PlanCOS. Staff found that the strict application of the regulation in question is unreasonable given the development proposal or the measures proposed by the applicant or that the property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district and such conditions will not allow a reasonable use of the property in its current zone in the absence of relief.

City planning staff found the project in question and its associated applications to be substantially in conformance with PlanCOS and its guidance. The 2525 Concord Street project is consistent with three (3) PlanCOS vision themes, as follows:

- Vibrant Neighborhood - Housing for All

**GOAL VN-2:** Strive for a diversity of housing types, styles, and price points distributed throughout our city through a combination of supportive development standards, community partnerships, and appropriate zoning and density that is adaptable to market demands and housing needs.

*Policy VN-2.A:* Promote neighborhoods that incorporate common desire neighborhood elements.

*Strategy VN-2.A-3:* Support land use decision and projects that provide a variety of housing types and sizes, service a range of demographic sectors, and meeting the needs of residents and families through various life stages and income levels.

**GOAL VN-3:** Through neighborhood plans, associations, and partnerships, empower neighborhoods to reinvest in order to create community, vibrancy, and to address their specific vision and needs.

- Unique Places - Embrace Creative Infill, Adaptation, and Land Use Change

**GOAL UP-2:** Embrace thoughtful, targeted, and forward-thinking changes in land use, infill, reinvestment, and redevelopment to respond to shifts in demographics, technology, and the market.

*Policy UP-2.A:* Support infill and land use investment throughout mature and developed areas of the city.

*Strategy UP-2.A-3:* Continue to implement infill supportive Code changes including provisions tailored for older developed areas.

- **Strong Connections - Connect Multimodal Transportation**

**GOAL SC-1:** Multimodally connect people and land uses throughout the city and region.

*Policy SC-1.D:* Establish and maintain convenient multimodal connections between neighborhoods, local destinations, employment and activity centers, and Downtown.

*Strategy SC-1.D-1:* Encourage well-connected systems of streets, sidewalks, bike facilities, and off-system trails in areas defined by Recent Suburban (Typology 3) and by Future Streets (Typology 4) typologies for new developments and redevelopment areas.

The City Planning Commission ultimately found the request for the multi-family residential project to be consistent with all applicable review criteria and findings for granting a conditional use development plan. The City Planning Commission did not support the nonuse variance request to reduce the minimum front yard setback to 10 feet where the minimum is 20 feet, thus requiring that the minimum setback along Concord Street, West Harrison Street and North Cascade Avenue be 20 feet instead of the requested 10 feet. Through additional dialogue with the Applicant during the meeting, the Applicant indicated that the project could possibly fit on the site with standard zone district setbacks with less project, but would be more costly due to required firewalls. The Planning Commission did not support the nonuse variance request because Development Plan review criteria #3, that the project meeting development standards, was not met (City Code Section 7.5.502.E.3), and conflict with sight visibility at West Harrison Street and North Cascade Avenue.

On August 16, 2022, an appeal of City Planning Commissions approval of the above referenced project was filed, within the 10-day appeal window. The Appellant cited in the appeal statement that they are appealing the following:

- The decision by City Planning Commission which required the conditional use development plan to meet the standard 20-foot minimum front yard setback. The Appellant noted that this decision threatens the feasibility of the development by reducing the number of overall units. This decision will result in the increase of the rental rates for the proposed units. The intent of the project is to provide an attainable, infill residential development that offers housing that is at market rate or below. When considering the review criteria for a conditional use development plan, the criteria does not address the financial feasibility of a project. The City Planning Commission decision was based on the Development Plan review criteria set forth in City Code Section 7.5.502 that the project does not comply with the dimensional standards of the OR (Office Residential) zone district which requires a minimum of 20 feet front yard setback along Concord Street, West Harrison Street and North Cascade Avenue.
- The decision by the City Planning Commission to deny the request to reduce the minimum front yard setback to 10 feet where 20 feet is required. The Appellant noted that the requested 10-foot front yard setback along Concord Street, West Harrison Street and North Cascade Avenue is not an unreasonable request as many homes in the Roswell neighborhood have a 10 foot or less front yard setback. With respect to the

concern voiced by Commissioners regarding site visibility at the intersection of West Harrison Street and North Cascade Avenue. Site visibility triangles were identified on the development plan and the proposed buildings are not located within the site visibility triangle of West Harrison Street and North Cascade Avenue and City Traffic Engineering and City Engineering found compliance with City Code. City Planning Commission decision to deny the requested nonuse variance also included the traffic along West Cascade Avenue and the safety of the sight line visibility at West Harrison Street and North Cascade Avenue if the buildings are located within the minimum 20-foot front yard setback.

**Previous Council Action:**

Previous Council has taken previous action to this property on August 9, 1983, for a zone change (Ordinance No. 83-191).

**Financial Implications:**

NA

**City Council Appointed Board/Commission/Committee Recommendation:**

At the City Planning Commission on August 11, 2022, the project application was heard under the New Business Calendar portion of the hearing. Formal presentations of the project were provided by City Planning staff, the applicant, and public comments against the project were taken from members of the public in-person and virtually.

The initial vote of the request by the City Planning Commission was a 5-2-2 (Rickett and Briggs voted against; Commissioners Foos and McMurray were excused) of the conditional use development plan. The vote for the nonuse variance to reduce the front yard setbacks by the City Planning Commission was a vote by 3-4-2 (Rickett, Almy, Hensler and Briggs voted against; Commissioners Foos and McMurray were excused). Mr. Wysocki indicated to the Commissioners that the vote to deny the nonuse variance request for a setback reduction conflicts with the approval of the conditional use development plan since the plan illustrates the project with the reduced setbacks. Since the nonuse variance was denied, a reconsideration of both votes needed to be made per the City Attorney. The vote to approve the Conditional Use Development plan was retracted and the ultimate motion made by Commissioner Slattery, and approval by City Planning Commission, was to approve the conditional use development plan based on the findings that the request meets the review criteria for granting a Conditional Use as set forth in City Code Section 7.5.704 and the review criteria for granting a development plan, as set forth in City Code Section 7.5.502(E ) and a technical modification that the project meet current code required setbacks. This motion denied the request for the nonuse variance to reduce the minimum front yard setback to 10 feet when 20 feet is the standard front yard setback. The City Planning Commission approval of the project application by a vote of 6-1-2 (Hente voted against; Commissioners Foos and McMurray were excused).

**Stakeholder Process:**

During the internal review stage and prior to the Planning Commissions hearing, postcards were mailed to 241 property owners within 1,000-foot buffer of the site. The site was also posted during these two occasions. City Planning staff received one (1) written comments in favor of this project and received eight (8) written comments in opposition of the project. Three letters of opposition where received the day the public hearing and distributed to the Commissioners prior to the meeting. (see “**Public Comment - August 11<sup>th</sup>**”). A letter of approval was received after Planning Commission meeting and prior to the City Council meeting (see “**Public Comment - August 26<sup>th</sup>**”).

All comments received in opposition were generally opposed to the project citing concerns with traffic, on-street parking, and neighborhood compatibility (see “**Public Comment**” attachment). The Applicant provided a response letter to address the public comment (see “**Public Comment Response**” attachment).

Commenting agencies included Colorado Springs Bike Program, Colorado Springs Park, Recreation and Cultural Services, Colorado Springs Fire Department, City Engineering, Stormwater Enterprise, and City Traffic Engineering. City Planning staff notes that the following review agencies provided project specific comments:

- City Bike Program - It was requested that the proposed parking spaces along North Cascade Avenue be consistent with the developed striping plan for North Cascade Avenue between Jackson and Fillmore (to be implemented when North Cascade Avenue is resurfaced). The parking spaces have been identified on the development plan.
- SWENT -Stormwater Enterprise (SWENT) had no major review comments for this project. The Drainage Letter was approved by SWENT on June 28, 2022.
- City Traffic - The City’s Traffic Engineering Division comments on the development plan were addressed. Traffic Engineering noted that a Traffic Impact Analysis was not required based on the size and number of units of this development.

**Alternatives:**

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Reverse the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration.

**Proposed Motion:**

Grant the appeal and approve the non-use variance based upon the finding that the appeal meets the requirements of City Code Section 7.5.906.B and that the application meets the criteria for a non-use variance as set forth in City Code Section 7.5.802.B.

Or

Deny the appeal and deny the non-use variance based upon the finding that the appeal does not meet the requirements of City Code Section 7.5.906.B and that the application does not meet the criteria for a non-use variance as set forth in City Code Section 7.5.802.B.

NA