



**Quick Facts**

**Appellant**

Laura Evans

**Property Owner**

Canyon Springs Partners LTD

**Consultant**

Matrix Design Group

**Address / Location**

8015 Siltstone Pt

**TSN(s)**

6303104008

**Zoning and Overlays**

OC/CR (Chapter 7)

Now MX-N (UDC)

**Site Area**

15.42 acres

**Land Use**

Multi-Family Residential

**Applicable Code**

Chapter 7

**Project Summary**

This application is an appeal to an administrative approval of a minor amendment to the previously approved Fox Bridge on Union development plan. The initial approval of the development plan in 2019 allows for multi-family residential use on the subject property. Staff administratively approved a minor amendment to connect two previously approved retaining wall sections on the south of the site, as well as modify the entrance area to the development by moving the location of a call box. The project satisfies the applicable review criteria. An appeal of the administrative approval was submitted on basis that there was no noise mitigation study conducted on the new section of retaining wall.

File Number	Application Type	Decision Type
APPL-23-0003	Appeal of an administrative decision	Quasi-Judicial

**Staff Recommendations**

Deny the appeal thus upholding the administrative approval based on the findings that based upon the findings that the application complies with the review criteria set forth in City Code Section 7.5.502(E) and that the appeal criteria of UDC 7.5.415(A)(2)(a)(2) are not met.



# FOX BRIDGE ON UNION MINOR AMENDMENT - APPEAL

Planning Commission August 9, 2023

Staff Report by Case Planner: Molly O'Brien

## Background

### Prior Land-Use History and Applicable Actions

<i>Action</i>	<i>Name</i>	<i>Date</i>
Zone Change	PIP-1 to OC/CR	2015
Concept Plan	Mountain Vistas at Briargate Concept Plan	2015
Development Plan	Stonebridge Development Plan	2019
Minor Amendment	Site modifications to add a dog park	2021
Minor Modification	Retaining wall modifications	2022
Minor Amendment	Retaining wall modifications – Pending Appeal Decision	2023

### Site History

In 2015, City Council approved a zone change on the site from PIP-1 (Planning Industrial Park) to OC/CR (Office Complex with Conditions of Record). This zone change was supported by an accompanying concept plan which established in the conditions of record that all uses permitted in the OC zone district would be permitted except for several specific uses, including automotive sales, fast food, specialty food sales, sit-down or quick serve restaurants, neighborhood retail, pharmacies, medical marijuana centers, and hotel/motels. Both applications were noticed in accordance with City Code requirements.

In 2019, staff approved the Stonebridge Development Plan, which would later be renamed to Fox Bridge on Union. This allowed for a multi-family residential development, which was permitted both by the approved concept plan and permitted by right in the OC zone district under Chapter 7. The development plan application was noticed per code requirements. Construction of the approved development began within the six-year time limit after approval, which is renewed upon the approval of each amendment or modification to the plan. Since the original development plan was approved, the applicants have requested two other minor amendments and modifications, both of which were administratively approved. The first was AR DP 18-00631-A1MN21, a minor amendment to allow the addition of covered parking and a dog park, as well as landscape modifications. This minor amendment was approved in June 2021. The second was DEPN-22-0187, a minor modification that was approved November 2022, which combined two proposed retaining walls on different grades into one—this resulted in the new combined wall being on the lower grade closer to N Union Blvd. This resulting wall is the one that is being modified in the current application.

### Applicable Code

The subject application was submitted prior to the implementation date (06/05/2023) of the UDC, and as such, the applicant is permitted to elect which Code they prefer their application be reviewed under. The subject application was reviewed under previous Chapter 7. All subsequent references within this report that are made to “the Code” and related sections are references to previous Chapter 7.

**Surrounding Zoning and Land Use**

**Adjacent Property Existing Conditions**

	<i>Zoning</i>	<i>Existing Use</i>	<i>Special Conditions</i>
North	R1-6	Single-family residential	None.
West	PK	Park	None.
South	MX-M	Commercial	None.
East	BP	Manufacturing	None.

**Zoning Map**

**Stakeholder Involvement**





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## Public Notice

Public Notice Occurrences	Poster and Postcards – Internal Review
Postcard Mailing Radius	1000 ft
Number of Postcards Mailed	374
Number of Written Comments Received	5

## Public Engagement

Comments included general questions about the modifications occurring, questions about the land use, and questions about the height of the previously approved buildings that are under construction. There were concerns about safety and drainage associated with the retaining wall changes. Staff also received comments about construction noise associated with the site.

At the appellant's request, staff conducted an inspection of the site to ensure that the building height of the structures are built in compliance with the approved development plan. Staff confirmed that the construction was indeed in compliance as of May 31, 2023, and the approved height per the development plan is not over the permitted height requirement for the OC zone district.

## Agency Review

### Landscaping

City Landscape Architect Staff asked the applicant to include the landscape sheet and show that they were including plantings to soften the new section of retaining wall. The applicant complied and demonstrated the proposed field modifications that they planned to make to the landscaping to provide more aesthetic appeal and blending of the wall with the natural environment, as well as providing a transition to help buffer adjacent uses. Landscaping staff determined the applicant's response satisfied code requirements and subsequently recommended approval.

### Engineering Development Review

No comments received. Recommended approval.

### SWENT

No comments received. Recommended approval.

### Colorado Springs Utilities

No comments received. Recommended approval.

### Colorado Springs Fire

No comments received. Recommended approval.

### Traffic

No comments received. Recommended approval.

**Minor Development Plan Amendment**

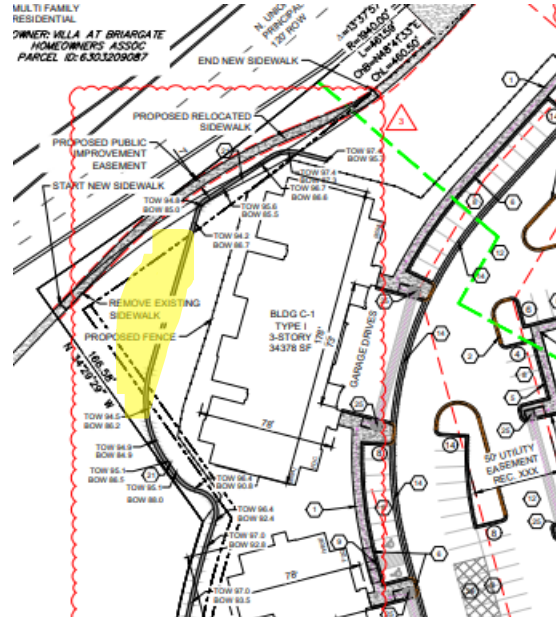
**Summary of Application**

This application is a minor amendment to a previously approved multi-family residential development plan. The site is currently under construction, with the applicant seeking to improve site conditions through minor modifications to the original plan, including modifying the site entrance and connecting two sections of previously approved retaining wall. The applicant also provided elevations for the previously approved pool equipment storage enclosures. The retaining wall is a maximum of eight feet above grade at the highest point, and the new section will be about 90-feet long.



**As Previously Approved**

The above image shows the approved minor modification in DEPN-22-0187, approved November 2022. The two bubbled sections of retaining wall were altered from the previous configuration of having multiple walls in those locations on different grades.



**As Amended**

The above image shows DEPN-23-0109, the current minor amendment being appealed, illustrating the new section of retaining wall connecting the two previously approved sections of wall. The proposed reconfiguration of the retaining wall will permit a maximum of eight feet above grade in the new section and create an additional section wall on the west side of the property adjacent to Ford Frick Park.

**Compliance with Relevant Code Sections and Review Criteria**

**City Code 7.5.502E – Review Criteria:**

Staff reviewed the minor amendment application per City Code Section 7.5.502E, Development Plan Review Criteria. The minor amendment complies with the Mountain Vistas at Briargate Concept Plan approved by City Council in December 2015, as well as the 2019 Stonebridge (Fox Bridge) development plan. It also complies with applicable design manuals. Changes to the site entrance were reviewed by City Fire for public safety needs related to ingress and egress. The reviewer had no comments and recommended approval. There were no other impacts to roadways or



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access. City Traffic Engineering had no comments. Engineering Development and SWENT reviewed the location of the new retaining wall and recommended approval. Staff determined that the proposed changes will not generate any additional light, odor, or noise beyond time of construction. Any impacts to the surrounding area generated by this minor amendment are appropriately mitigated.

### Compliance with Relevant Guiding Plans and Overlays

The proposal is consistent with the Mountain Vistas at Briargate Concept Plan, approved by City Council in 2015 via public meeting after a public notice was sent out to neighborhood residents, in addition to the previously approved Stonebridge (now Fox Bridge on Union) Development Plan.

## Appeal of an Administrative Decision – Minor Amendment

### Summary of Application

City Staff informed neighborhood stakeholders that the minor amendment application had been approved on June 30, 2023. The appellant filed an appeal of the application on July 3, 2023, within the ten-day appeal window permitted by code. The appeal of the project approval was processed under the UDC. The appeal occurred after the June 5, 2023, effective date of the UDC. The reason for appeal is that staff did not require a noise mitigation study be conducted for the new section of retaining wall.

### Standing

The appellant qualifies as an “affected party” and thus has the right to appeal due to her property ownership and residence within 1000-feet of the site. She also submitted written comment to staff during the public comment period. The appellant submitted a complete application, including an appeal form and an appeal statement, and paid the appeal fee in full.

### Background

Staff corresponded several times with the appellant during the public comment period for the minor amendment application, receiving official written comment and answering any questions or concerns. The appellant was primarily concerned about the multi-family residential use and the building height, both of which were approved in previous decisions. Previous approvals are not eligible for appeal, as the appeal windows for those approvals have passed. The appellant did not raise any concerns to staff about the potential noise that a retaining wall could contribute until after the project was approved. No written comments about potential noise relating to the new section of retaining wall were received. Public comments were also passed along to the applicant, Matrix Design Group, and they issued a statement addressing the concerns and clarifying any incorrect assumptions about the project. That response was conveyed to the appellant and other neighborhood stakeholders with no acknowledgement.

### Justification

Per 7.5.415 of the UDC, one of the following must be shown for an administrative decision to be overturned:

- (a) The decision is contrary to the express language of this UDC;
- (b) The decision is erroneous; or
- (c) The decision is clearly contrary to law.

As part of the appeal statement, the appellant must reference a section of the applicable code that they believe to be violated and explain why. To satisfy this requirement, the appellant references section 7.1.103 of Chapter 7, which lays out the purpose of the Comprehensive Plan: “The purposes of preparing the Comprehensive Plan are as follows: A. To initiate comprehensive studies of factors relevant to land development,” as well as 7.1.103 E: “To determine the probable



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environmental, economic, and social consequences of the desired land development and the proposed program.” The appellant also references 7.1.111, Use of Comprehensive Plan, which states, “ 7.1.111: Use of Comprehensive Plan: The City Council, all City boards and commissions, the various City groups, departments, divisions, enterprises and officials shall be responsible for knowing the contents of the Comprehensive Plan and shall consider the relevant policies set forth in the Comprehensive Plan prior to making decisions. Nothing set forth in the Comprehensive Plan shall prohibit the City Council, City boards or commissions, various City groups, departments, divisions, enterprises, and officials, after considering the plan, from deviating from the policies set forth in the Comprehensive Plan where circumstances warrant in making decisions affecting specific property. (Ord. 91-30; Ord. 01-42).” Finally, the appellant also references City Ordinance 91-30, Noise Related Provisions, which describes maximum noise limits for various land uses.

The appellant states that a noise mitigation study was not conducted prior to approval of the new retaining wall section, and that this is contrary to City Code. The appellant affirms that “the social effects of noise on nearby residents, such as stress, as a result of changing the location and increasing the length and overall size of the new retaining wall was not determined through relevant methods, such as an assessment of noise levels produced by deflection of traffic noise directed at the Windjammer neighborhood, such noise levels have been mitigated prior to the development by a sloped surface covered by live turf grass.”

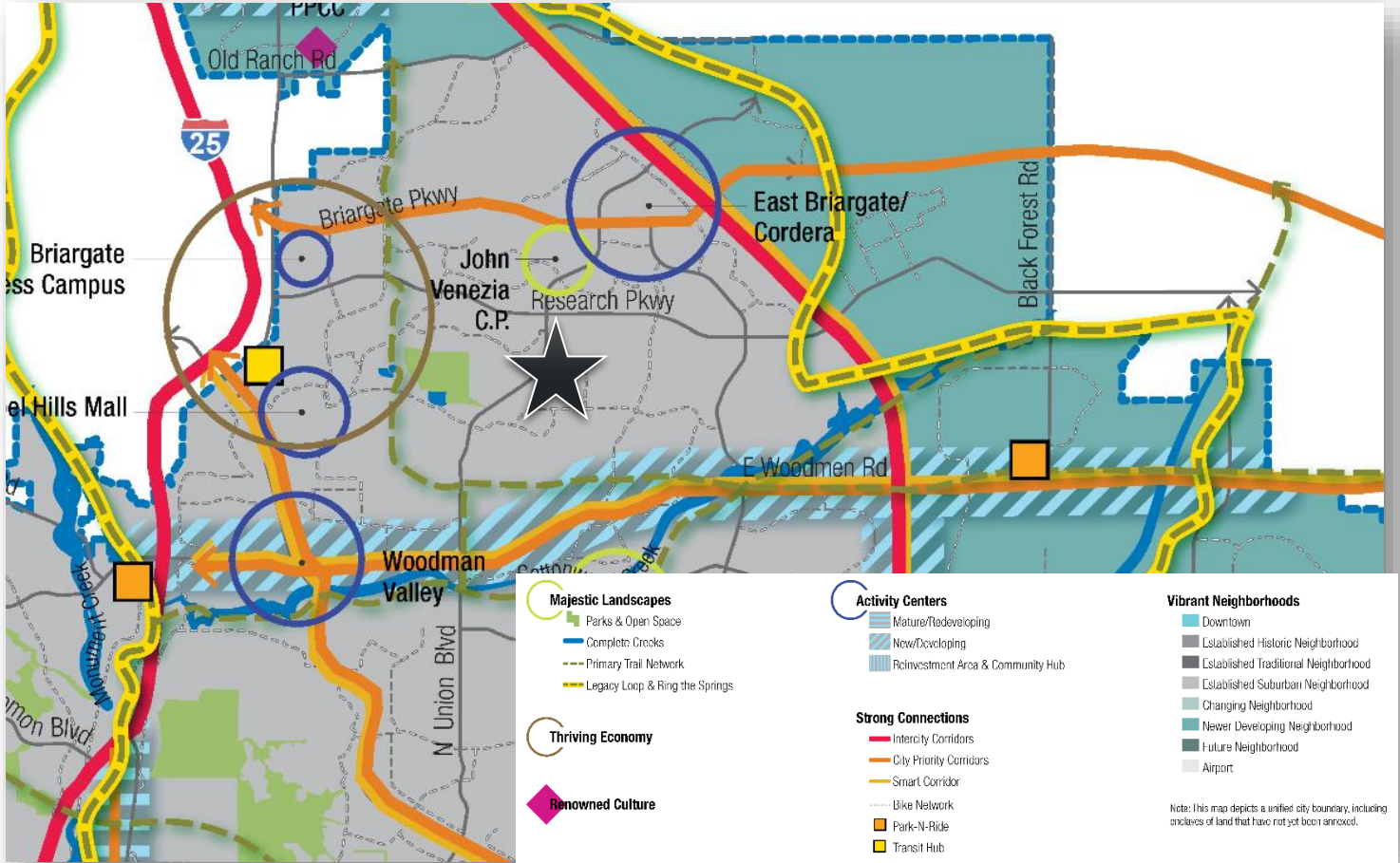
The City Code does not require noise mitigation analysis to be completed for construction of retaining walls nor is there a precedent for requiring this type of analysis for the construction of a retaining wall. The new section of retaining wall is directly adjacent to the southwest neighboring property, Ford Frick Park, while the adjacent Windjammer neighborhood to the northwest lies across six lanes of traffic on the other side of North Union Boulevard. Staff determined that the proposed landscaping along the section of new retaining wall that would help to alleviate any potential negative impacts by softening the face of the retaining wall which may provide sound dampening effects.

Finally, the applicant alleges that the noise created by existing retaining walls on the site exceeds maximum allowed noise levels per Ordinance 91-30. The appellant has not provided any evidence to substantiate this claim. Violations of the City noise ordinance may be enforced by the Code Enforcement Division if a complaint is filed. Code Enforcement does not have any complaints for violations of the noise ordinance for the subject property.

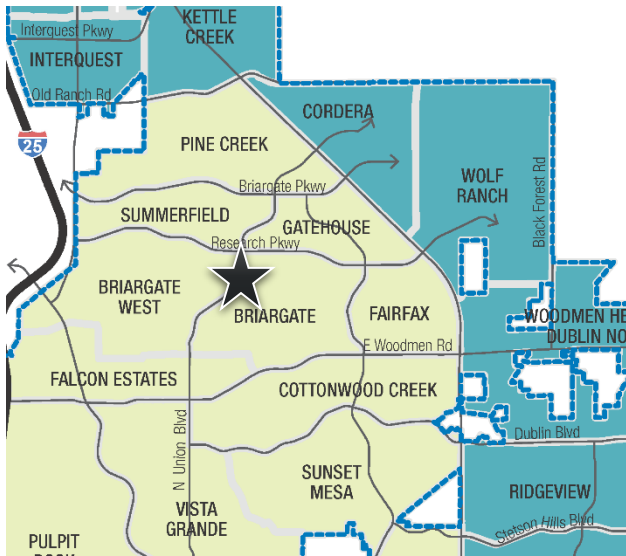
Planning Staff finds that the appeal statement does not demonstrate that the conditions for granting an appeal are met.

## Compliance with PlanCOS

### PlanCOS Vision







### Vibrant Neighborhoods

The proposal is compatible with the Vibrant Neighborhoods section of PlanCOS. Vibrant Neighborhoods prioritizes a diversity of housing types while also promoting safe, aesthetically pleasing infrastructure that improves neighborhood character overall. The proposal is consistent with this goal using landscaping to serve as a transition that will buffer the site from surrounding uses.

## Recommendation

Deny the appeal thus upholding the administrative approval based on the findings that based upon the findings that the application complies with the review criteria set forth in City Code Section 7.5.502(E) and that the appeal criteria of UDC 7.5.415(A)(2)(a)(2) are not met.