

**CITY OF FORT COLLINS  
ADMINISTRATIVE HEARING OFFICER  
TYPE I ADMINISTRATIVE HEARING  
FINDINGS, CONCLUSIONS AND DECISION**

**ADMINISTRATIVE HEARING DATE:** September 8, 2005

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**PROJECT NAME:** Cherry Street Station

**CASE NUMBER:** PDP #9-05

**APPLICANT:** Mikal Torgerson  
M. Torgerson Architects, P.C.  
223 N. College Avenue  
Fort Collins, CO 80524

**OWNER:** North College Lofts, LLC and  
Cherry Street Station, LLC  
223 N. College Avenue  
Fort Collins, CO 80524

**HEARING OFFICER:** Claire B. Levy  
Claire B. Levy, LLC  
3172 Redstone Road  
Boulder, CO 80305

**PROJECT DESCRIPTION:**

A request to develop a vacant .349 acres site located on the north side of Cherry Street just west of College Avenue with a 15 unit multi-family project with 200 square feet of office use.

**SUMMARY OF HEARING OFFICER DECISION:** Denied.

**ZONING DISTRICT:** C-C-R – Community Commercial – Poudre River District

**STAFF RECOMMENDATION:** Approval with Conditions

**NOTICE OF PUBLIC HEARING:** Evidence presented to the Hearing Officer established no controversy or facts to refute that the hearing was properly posted, legal notices mailed and notice published.

### **PUBLIC HEARING**

The Hearing Officer, presiding pursuant to the Fort Collins Land Use Code, opened the hearing at approximately 6:35 p.m. on September 8, 2005 in the City Council Chambers at 300 La Porte Avenue, Fort Collins, Colorado.

### **HEARING TESTIMONY, WRITTEN COMMENTS AND OTHER EVIDENCE:**

The Hearing Officer accepted during the hearing the following evidence: (1) Planning Department Staff Report; (2) application, plans, maps and other supporting documents submitted by the applicant and the applicant's representatives to the City of Fort Collins; and (3) public testimony provided during the hearing. The LUC, the City's Comprehensive Plan (City Plan), and the formally promulgated policies of the City are all considered part of the evidence considered by the Hearing Officer.

### **FACTS AND FINDINGS**

1. **Surrounding Uses:** The following zoning and land uses surround the proposed development:

- N: POL – Public Open Lands – Railroad right-of-way with CCR beyond
- NW: POL – Public Open Lands - Vacant
- S: D – Downtown District (Civic Center Subdistrict) – Existing commercial; existing municipal government offices
- E: CCR – Community Commercial – Poudre River District – vacant land west of College with existing commercial east of College
- W: POL – Public Open Lands – Vacant land with Lee Martinez Park and LMN – Low Density Mixed-Use Neighborhood District beyond

2. **Compliance with Article 4 and the C-C-R Community Commercial – Poudre River District Standards**

The C-C-R Community Commercial – Poudre River District (hereinafter referred to as "the C-C-R District") is for downtown fringe areas in the Cache La Poudre River corridor. The C-C-R District is intended to provide locations for

moderate intensity development that support the downtown and that are compatible with the scenic, cultural, natural and historical context of the river and downtown.

**A. Allowed Uses.**

Multi-family and mixed use dwelling units are permitted in the C-C-R District subject to administrative review. Therefore, the proposed multi-family development with a minimal amount of office use is an allowed use.

**B. Building Standards**

1. Massing and placement.

Section 4.16(D)(3) allows a maximum building height of three (3) stories. Section 3.8.17(A)(2)(a) states that a balcony or mezzanine is counted as a full story when its floor area is in excess of one-third of the total area of the nearest full floor directly below it.

The Hearing Officer received testimony and evidence concerning whether the proposed building complied with this height limit. The building contains three stories with ceiling heights of up to eighteen feet. The first and second stories include mezzanine areas that protrude into approximately 27% of the floor area of each story. The remainder of the floor area is open for eighteen feet from floor to ceiling. The area above the third story, while labeled "mezzanine" on the floor plan, consists of a room that opens onto a private roof top patio. The floor of the patio forms the ceiling over the floor below. Only a small portion of the third story is open to the full height of the "mezzanine" area above. The Applicant's February 8, 2005 letter to Cameron Gloss concerning compliance with building height standards acknowledged that the upper level of the third floor is not technically a mezzanine because it would allow users to walk out to the flat roof of the floor below.

Two allowable sources for definitions of terms that are not defined in the Land Use Code are Webster's 3<sup>rd</sup> New International Dictionary and the New Illustrated Book of Development Definitions. These sources define mezzanines as, in essence, an intermediate level between two main stories of a building. A mezzanine projects in the form of a balcony over the ground story. Section 3.8.17(A)(2)(a) groups balconies and mezzanines together for purposes of regulation. That section requires a balcony or mezzanine to be counted as a full story when its floor area exceeds one-third of the total area of the floor below it. In other words, no less than two-thirds of the main floor must be open to the full height of the ceiling above it. The balcony or mezzanine may project into no more than one-third of the otherwise open floor to ceiling height.

The area designated as "mezzanine" above the third story of this PDP is not a balcony or mezzanine consistent with Section 3.8.17(A)(2). It does not project over the main floor and is not in the nature of an intermediate level between the floor and ceiling of the floor below it. Although it contains less than one-third of the floor area of the floor below, two-thirds of the main floor area is not open to the ceiling above the mezzanine. In both appearance and function what is labeled as a mezzanine is a separate almost fully enclosed floor of the condominiums on the third story of the project.

The Director of Neighborhood and Building Services determined that the area above the third floor meets the requirements for a mezzanine in the Uniform Building Code ("UBC") as adopted by the city. The Staff Memorandum #2 dated September 8, 2005 from Anne Aspen does not identify the criteria in the UBC used to determine that this area qualifies as a mezzanine. The Hearing Officer finds that, while the UBC is a permissible source for undefined terms, it is not binding authority for defining terms in the Land Use Code. The purpose of the UBC, insuring structural integrity, adherence to life-safety codes, and creating minimum functionality standards, is fundamentally different from the purpose of the Land Use Code. The Land Use Code uses stories to establish a maximum height in the C-C-R District as a means to regulate appropriate massing and scale. The guidance in Section 3.8.17(A) together with Webster's 3<sup>rd</sup> New International Dictionary and the New Illustrated Book of Development Definitions, better support the purpose of massing standards than does the UBC. **Therefore, the Hearing Officer finds that the applicant has proposed a four-story building that does not comply with Section 4.16(D)(a)(1) of the Land Use Code. Accordingly, the PDP cannot be approved without a modification of height pursuant to Section 3.5.1(G)(1)(c), or a modification of standards pursuant to Section 2.8.**

## 2. Character and Image.

Section 4.16(D)(3)(b) requires buildings to form outdoor spaces such as balconies or courtyards, and to integrate development with the landscape to the extent reasonably feasible. This section seeks windows that establish and define the building stories and establish human scale and proportions. Pitched roofs are preferred with cornice treatments on flat roofs.

The Hearing Officer finds that the design of the proposed building complies with these requirements. Although the windows are very large, they are clearly defined with frames, sills and lintels, and visually establish separate stories. The style of the building evokes late 19<sup>th</sup> and early 20<sup>th</sup> century train stations, public school buildings and other public buildings. The design detail included in the building facades establish a human scale notwithstanding the size of the window openings.

The Hearing Officer also finds that the proposal complies with the remaining standards in the C-C-R District.

### **3. Compliance with Article 3 of the Land Use Code – General Development Standards**

The applicant has presented two alternative designs. The original proposal was for a structure that was fifty-five (55) feet to the top of the cornice with an additional pitched roof to a height of seventy (70) feet. The Hearing Officer has determined that this structure is a four-story building based on the configuration of the floor plan. Alternatively, the applicant has proposed a three-story structure whose mezzanines comply with Section 3.8.17. This structure would have an overall height of seventy (70) feet to the top of the cornice and a flat roof. Both structures require special height review. The original design with four stories also requires a modification of the height standard either under Section 3.5.1(G) or Section 2.8.

#### **A. Site Planning and Design Standards – Division 3.2**

The project would comply with the standards in Division 3.2 with the changes identified in the Staff Report to achieve compliance with the parking dimension requirements in Section 3.2.2(L) and the lighting standards in Section 3.2.4(D)(3).

#### **B. Building Standards – Division 3.5**

The purpose of the Building and Project Compatibility section is “to ensure that the physical and operational characteristics of proposed buildings and uses are compatible when considered within the context of the surrounding area.”

##### **1. Architectural Character.**

The applicant has proposed a building whose architecture draws from the design of buildings at the turn of the 20<sup>th</sup> century. The architecture is generally appropriate for this area adjacent to downtown with nearby buildings that are predominantly composed of brick. The architecture echoes the old freight train depot and the power plant to the north.

##### **2. Building size, height, bulk, mass, scale.**

This standard requires buildings to be similar in size and height to the mass and scale of other structures on the same block, or if no buildings exist thereon, then on adjoining blocks.

The land on two sides of the site is zoned P-O-L. The site is at the

southern-most end of the C-C-R District as it extends north to the river. Mason Court is to the west. There is additional P-O-L zoned land east of College Avenue and the Downtown District to the south. The site must be developed to relate to and integrate with the P-O-L lands and development in the rest of the C-C-R district in which it is located. Other C-C-R development will be a maximum of three stories in height and will not exceed forty feet in height without special height review.

The applicant presented slides of buildings that exceed forty feet as context for the proposed building. These buildings were all located in the Downtown District. The tallest building in the immediate vicinity was the city office building at LaPorte and Mason, which is fifty-four (54) feet tall. The Mason Street North project will have heights up to thirty-nine (39) feet; the Northern Hotel is forty-nine (49) feet tall to the parapet and the city parking structure is fifty-two (52) feet tall. The county building, Key Bank building and Cortina Lofts are all taller, but are too far away to be relevant comparisons.

A building that complies with the three-story height standard with a façade that extends seventy (70) feet to the top of the parapet would not comply Section 3.5.1(C). The applicant argues this height is appropriate based on the maximum allowable height of 115 feet immediately south in the downtown area. The Hearing Officer finds that downtown is not the appropriate reference point for this site. The downtown area is a distinct compact area whose zoning is intended to provide a concentration of retail, civic, office and cultural uses. The subject property is not zoned Downtown. It was zoned C-C-R to provide a more moderate intensity of use. The C-C-R District is intended to be a bridge between the river and downtown, not a continuation of the downtown. Accordingly, the appropriate height must be considered in relation to other C-C-R District developments, the river and the adjacent P-O-L lands, as well as potential development downtown.

**The Hearing Officer finds that the applicant's alternative proposal of a three-story building with a seventy (70) foot tall façade does not comply with Section 3.5.1(C).**

### 3. Land Use Transition.

Section 3.5.1(H) requires that when land uses are proposed with significantly different visual character from those to which it is adjacent, the development shall, to the maximum extent feasible, achieve compatibility through compliance with the building standards regarding scale, form, materials and colors.

Because this proposal is adjacent to lands zoned Public Open Lands and a Low Density Mixed Use Neighborhood, Section 3.5.1(H) requires particular

attention to the scale of the building when evaluating the request for height modification.

4. Building Height.

All buildings in excess of forty feet in height must meet special review criteria pursuant to Section 3.5.1(G).

a. Review Standards. Buildings over forty feet in height are evaluated based on their impact on views, their impact on the distribution of light and shadows, their potential to infringe on privacy, and their compatibility with the scale of the neighborhood in which they are situated.

The applicant submitted an analysis of the impact of the originally proposed structure on these criteria. That analysis examined the design with a fifty-five (55) foot elevation to the top of the cornice with any additional height set back sufficiently that is it not perceptible from adjacent sidewalks. The Hearing Officer agrees with the applicant's analysis and **finds that a building with a height of fifty-five (55) feet to the top of the cornice complies with the special review criteria in Section 3.5.1(G)(1)(a).**

**For the reasons set forth above in paragraph 3.B.2, the Hearing Officer finds that a building with a façade of seventy feet to the top of the cornice does not comply with the special review criteria in Section 3.5.1(G)(1)(a).**

b. Modification of Height Limits.

The three-story height limit in the C-C-R District may be modified for the purposes listed in Section 3.5.1(G)(1)(c). A modification is necessary to allow the applicant to construct the four-story building originally proposed.

A four-story building does not further the first purpose in Section 3.5.1(G)(1)(c), preserving the character of existing residential neighborhoods. First, this section is not applicable as the structure is not proposed for an existing residential neighborhood. Second, exceeding the presumptive height limit for the C-C-R District does not serve to preserve the character of the area. The building would establish a new character for this largely undeveloped area.

Section 3.5.1(G)(1)(c)2 allows a modification to allow architectural embellishments. This section is inapplicable as the fourth story is not proposed as a means of allowing architectural embellishments. It is proposed to allow additional living space and larger units.

Another allowable purpose of a height modification is to define and

reinforce the downtown area. An additional story on the proposed building does not further define and reinforce the downtown area as the major focal point in the community. Instead it would have the effect of extending the intensity of development in the downtown area across Cherry Street into the C-C-R District, which was intended to transition toward the river.

The remaining four purposes identified in Section 3.5.1(G)(1)(c) are not applicable. **Therefore, the Hearing Officer does not find any basis on which to modify the three-story height limit in the C-C-R district.**

#### **4. Modification of Standards Pursuant to Section 2.8.**

The applicant requested by letter dated September 8, 2005 a modification of standards to allow a four-story building using the original design.

Section 2.8.2(H) allows the Hearing Officer to grant a modification of standards if it finds that granting the modification would not be detrimental to the public good and satisfies one of four criteria. Since a modification of height limit pursuant to Section 3.5.1(G) is specifically tailored to the standard for which modification is requested, the Hearing Officer concludes the process in Section 2.8 is not available to modify a height limit. Notwithstanding that conclusion, the Hearing Officer will make findings on compliance with the criteria for a modification of standards pursuant to Section 2.8 as an alternative basis for the decision.

The only applicable criterion is the first: "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." This criterion is intended to allow flexibility and variation from the strict application of the standard when a different approach would achieve the same or better result.

The standard for which the modification is requested is the height limit of three stories. The purpose of the height limit is to establish the appropriate scale of development in the C-C-R District in order to achieve the purpose of the district. The applicant has not demonstrated how four stories promotes the purpose of the three-story height limit in the C-C-R District. Instead, the applicant has presented the four story building as a better design solution than a hypothetical three-story building with a total height of seventy feet. This analysis is flawed in that it assumes a seventy-foot tall building is an available alternative. For the reasons set forth above, a building with a façade of seventy feet does not meet the criteria for special height review or the building standards in Section 3.5. A four-story building where a three story building is allowed must be examined on its own merits and not in comparison to an unattainable alternative.



3.5. A four-story building where a three story building is allowed must be examined on its own merits and not in comparison to an unattainable alternative.

The relevant question is whether modifying the height limit to allow an additional story promotes the *purpose of the height limit* as well or better than the three-story limit. The Hearing Officer finds that it does not. A thirty-three percent increase in the allowed number of stories does not promote the purpose of the height limit. Allowing an additional story simply allows the project to include bi-level residential units on each of the three floors of the building, which is not within the purpose of the height standard in the C-C-R District.

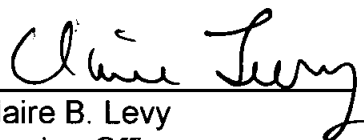
### SUMMARY OF CONCLUSIONS

- A. The area designated as the third story mezzanine constitutes a fourth story and does not comply with the height standard in the C-C-R district.
- B. A three-story building with a maximum height of seventy (70) feet does not comply with Section 3.5.1(C) and does not meet the criteria in Section 3.5.1(G).
- C. The proposal with four stories does not serve any of the purposes of a modification of height limit in Section 3.5.1(G)(1)(c).
- D. A modification of standards is not available to modify height limits. Even if the procedure were available, modifying the building height standard to allow a building with four stories in a district in which the standard allows only three stories does not meet any of the criteria in Section 2.8.2(H).

### DECISION

The Hearing Officer **DENIES** PDP#9-05 as submitted because it exceeds the standards for the C-C-R District.

Dated this 16<sup>th</sup> day of September, 2005.

  
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Claire B. Levy  
Hearing Officer

**ADMINISTRATIVE HEARING****PROJECT** Cherry St. Station PDP**DATE** 9/8/05

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