

April 22, 2015

Modification Request for Reduced Building Setbacks 910 Hill Pond Road - Project Development Plan (PDP)

Modification Description:

This is a Modification Request to *Section 3.5.2(E)(2) and (3)* which address residential building setbacks. Although the site plan layout has not changed from the previous round of City review, the project is now proposing platted lots for the individual dwellings, which require reduced building setbacks. The project also proposes a modification to *3.8.19 Setback Regulations*, to allow certain plan elements to encroach into the setbacks.

A. The project requests reduced setbacks as follows:

<u>Setback:</u>	<u>Proposed (varies):</u>	<u>Required per 3.5.2(E):</u>
Front:	7'-0" (min)	15 feet
Rear:	4'-3" (min)	8 feet
Side:	4'-0" (min)	5 feet

(The above proposed setbacks represent the smallest setback measurements that now occur in the approved plan as a result of the proposed individual lot lines. Front, rear and side setbacks vary at different locations on the site (see Architectural Site Plan). "Zero lot lines" also occur between dwelling units in the duplex buildings.)

B. To address restrictions on features allowed within setbacks, the project proposes that the following plan elements be permitted to encroach into the setbacks:

- **The trellis entrance structures between the buildings**

Land Use Code Standards Proposed to be Modified:

LUC 3.5.2(E)(2) and 3.5.2(E)(3):

3.5.2(E)(2) Setback from Non-arterial Streets. The minimum setback of every residential building and of every detached accessory building that is incidental to the residential building shall be fifteen (15) feet from any public street right-of-way other than an arterial street right-of-way, except for those buildings regulated by Section 3.8.30 of this Code, which buildings must comply with the setback regulations set forth in Section 3.8.30. Setbacks from garage doors to the nearest portion of any public sidewalk that intersects with the driveway shall be at least twenty (20) feet.

3.5.2(E)(3) Side and Rear Yard Setbacks. The minimum side yard setback for all residential buildings and for all detached accessory buildings that are incidental to the residential building shall be five (5) feet from the property line, except for alley-accessed garages, for which the minimum setback shall be eight (8) feet. If a zero-lot-line development plan is proposed, a single six-foot minimum side yard is required. Rear yard setbacks in residential areas shall be a minimum of eight (8) feet from the rear property line, except for garages and storage sheds not exceeding eight (8) feet in height, where the minimum setback shall be zero (0) feet.

LUC 3.8.19 Setback Regulations

(A) Features Allowed Within Setbacks. *The following structures and features may be located within required setbacks:*

- (1) trees, shrubbery or other features of natural growth;*
- (2) fences or walls, subject to permit approval, that do not exceed the standards established in Section 3.8.11;*
- (3) driveways and sidewalks;*
- (4) signs, if permitted by the sign regulations of this Land Use Code;*
- (5) bay windows and similar sized cantilevered floor areas, and architectural design embellishments of dwellings that do not project more than two (2) feet into the required setback, provided they do not encroach on public easements;*
- (6) eaves that do not project more than two and one-half (2½) feet into the required setback;*
- (7) open outside stairways, entrance hoods, terraces, canopies and balconies that do not project more than five (5) feet into a required front or rear setback and/or not more than two (2) feet into a required side setback, provided they do not encroach on public easements;*
- (8) chimneys, flues and residential ventilating ducts that do not project more than two (2) feet into a required setback and when placed so as not to obstruct light and ventilation, provided they do not encroach on public easements;*
- (9) utility lines, wires and associated structures, such as power poles.*
- (10) decks which are not more than thirty (30) inches above ground.*

Other Land Use Code Standards and Definitions:

Lot shall mean a designated parcel, tract or area of land established by plat, subdivision or otherwise permitted by law to be used, occupied or designed to be occupied by one (1) or more buildings, structures or uses, and which abuts a dedicated right-of-way, private street or private drive, any of which is at least twenty (20) feet wide at all points.

Setback shall mean the required unoccupied open space between the nearest projection of a structure and the property line of the lot on which the structure is located, except as modified by the standards of this Land Use Code. Required setbacks shall be unobstructed from the ground to the sky except as specified in Section 3.8.19.

Lot line, front shall mean the property line dividing a lot from a street. On a corner lot only one (1) street line shall be considered as a front line, and the street to which the primary entrance of the principal building faces or to which the building is addressed, shall be considered the front line.

Lot line, rear shall mean the line opposite the front lot line.

Lot line, side shall mean any lot lines other than front lot line or rear lot line.

Street shall mean a public way (whether publicly or privately owned) used or intended to be used for carrying vehicular, bicycle and pedestrian traffic and shall include the entire area within the public right-of-way and/or public access easement; provided, however, that with respect to the application of Section 3.8.7 (Signs), the term street shall only mean a dedicated public right-of-way (other than an alley) used or intended to be used for carrying motorized vehicular traffic.

Private drive shall mean a parcel of land not dedicated as a public street, over which a private easement for road purposes has been granted to the owners of property adjacent thereto, which intersects or connects with a public or private street, and where the instrument creating such easement has been recorded in the Office of the Clerk and Recorder of Larimer County. A street-like private drive is a type of private drive that may be used instead of a street under the provisions of Section 3.6.2(L)(c).

Land Use Code Modification Criteria:

“The decision maker may grant a modification of standards only if it finds that the granting of the modification would not be detrimental to the public good, and that:

(1) 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; or

(2) the granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Land Use Code, substantially alleviate an existing, defined and described problem of city-wide concern or would result in a substantial benefit to the city by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the city's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the project practically infeasible; or

(3) by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the owner of such property, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

(4) the plan as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be modified except in a nominal, inconsequential way when considered from the perspective of the entire development plan, and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

Any finding made under subparagraph (1), (2), (3) or (4) above shall be supported by specific findings showing how the plan, as submitted, meets the requirements and criteria of said subparagraph (1), (2), (3) or (4).

Modification Criteria, Justification Narrative:

This request of approval for this modification complies with the standards per Review Criteria 2.8.2(H)(4) in the following ways:

Criteria(4): The plan as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be modified except in a nominal, inconsequential way when considered from the perspective of the entire development plan, and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

Justification Narrative:

- The building footprints, building locations, enhanced shared drive layout and all other site features remain unchanged from the previously approved Site Plan. All the setback criteria of LUC Sections 3.5.2(E)(2) and 3.5.2(E)(3) were adhered to in the previously approved Site Plan. The proposed re-plat, and subsequent new property lines defining the individual lots, reduces the building setbacks in many locations to distances that are less than those allowed in LUC Sections 3.5.2(E)(2) and 3.5.2(E)(3). These reduced distances are, in every instance, now measured from a building facade to the property line of a new, interior tract proposed in the re-plat. The distances from all structures to the original, overall property lines, and to the public non-arterial street, remain unchanged and within LUC standards.
- The approved Site Plan includes trellis structures facing the enhanced shared drive which demarcate the main entries of the individual dwelling units. The addition of the new property lines leaves these free standing structures closer to the property lines than is currently allowed in LUC Sections 3.5.2(E)(2) and 3.5.2(E)(3). Again, the position of these trellis structures remains unchanged with regard to the original property lines and the adjacent public streets. LUC standards do allow for “entrance hoods and canopies” to extend into setbacks (LUC 3.8.19(A)(7)). It could be argued that the trellis structures are functionally and aesthetically very similar to these elements that are currently allowed. The trellises constitute an important feature of the approved plan and an integral part of the unique streetscape. They could not be made to comply with current setback regulations without considerable redesign of the buildings and/or site layout. If not allowed to encroach in the setbacks they would need to be eliminated, to the detriment of the approved design.
- We believe that the modifications requested diverge from the standards only in a nominal and inconsequential way, given that the site layout and design features are all unchanged from a previously accepted plan. We ask that these new reduced setbacks and setback encroachments be allowed so as to preserve all the unique and favorable elements of the proposed design that have already been approved and endorsed by the PDP process.