

RESOLUTION 2015-072
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING THREE APPEALS OF THE ZONING BOARD OF APPEALS DECISION
REGARDING THE “CHANGE OF USE-BUILDING PERMIT” FOR FRATERNITY USE, 201
EAST ELIZABETH STREET

WHEREAS, on April 15, 2015 the Community Development and Neighborhood Services (“CDNS”) Director issued a “Change of Use-Building Permit” #B1502349 (“Director’s Decision”) authorizing a change of use permit approving the reestablishment of a previously abandoned fraternity house use on the property located at 201 East Elizabeth Street, Fort Collins, Colorado (the “Property”) owned by applicant Paul Milewski (“Applicant”), subject to certain conditions; and

WHEREAS, the Director’s Decision stated that review of the application was in accordance with Land Use Code Section 3.8.25, and that the application request meets the standards of Article 3 and Article 4 of the Land Use Code “to the extent reasonably feasible” provided that the following conditions addressing Land Use Code Section 3.5.1(J) “operational compatibility” are met: (1) the building occupants shall be limited to 18 occupants; (2) no fraternity meetings shall exceed 18 attendees; and (3) 8 off-street parking spaces are provided as shown on the site plan dated March 26, 2015; and

WHEREAS, the Director’s Decision was subsequently appealed to the Zoning Board of Appeals (the “Board”) pursuant to Division 2.11 of Land Use Code pertaining to appeals from administrative decisions and at the conclusion of a duly noticed public hearing on May 14, 2015 (Agenda Item BPA 15001) the Board upheld the Director’s Decision (the “Board Decision”); and

WHEREAS, three Notices of Appeal of the Board Decision (referred to collectively as the “Appeals”) were filed with the City Clerk, including a Notice of Appeal of the Board Decision filed by Tom and Cindy Laupa (the “Laupa Appeal”) and a Notice of Appeal of the Board Decision filed by John Snyder (the “Snyder Appeal”), each of which was filed on May 27, 2015, as well as a Notice of Appeal filed by Aaron and Ashley McGrew, Joseph Piesman, Ray Frush, Lisa Moravan and Mark Havens (the “McGrew Appeal”) on May 28, 2015 (the parties filing the Appeals are referred to individually as “Appellant” or collectively as “Appellants”); and

WHEREAS, the Appeals alleged that the Board failed to conduct a fair hearing in that (1) the Board exceeded its authority or jurisdiction as contained in the City Code or Charter (Snyder Appeal and Laupa Appeal); and (2) the Board considered evidence relevant to its findings, which was substantially false or grossly misleading (Snyder Appeal, Laupa Appeal, and McGrew Appeal); and

WHEREAS, the Appeals further alleged that the Board failed to properly interpret and apply various relevant provisions of the Land Use Code (Snyder Appeal, Laupa Appeal, and McGrew Appeal); and

WHEREAS, on July 21, 2015 the City Council, after notice given in accordance with Chapter 2, Article II, Division 3, of the City Code, considered the Appeals, reviewed the record on appeal, and heard presentations from the Appellants and other parties-in-interest (the "Council Hearing"); and,

WHEREAS, at the Council Hearing, the Mayor consolidated the Appeals for consideration by Council and established procedures for the conduct of the hearing of all three Appeals in the interest of expediting the hearing in accordance with City Code Section 2-54(e); and

WHEREAS, after discussion, the City Council found and concluded based on the evidence in the record and presented at the hearing that: (1) the Board conducted a fair hearing and did not exceed its authority or jurisdiction or consider relevant evidence that was substantially false or grossly misleading; (2) the Board Decision upholding the Director's Decision was modified by the addition of one condition requiring the Applicant to install an NFPA 13D fire sprinkler system with 24 months; and (3) except as to the addition of one condition as stated, the Snyder Appeal, the Laupa Appeal, and the McGrew Appeal are without merit and are denied; and

WHEREAS, City Code Section 2-55(g) provides that no later than the date of its regular meeting after the hearing of an appeal, City Council shall adopt, by resolution, findings of fact in support of its decision on the Appeal.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that, pursuant to Section 2-55(g) of the City Code, the City Council hereby makes and adopts the following findings of fact and conclusions:

1. That the grounds for appeal as stated in the Appellants' Notices of Appeal conform to the requirements of Section 2-48 of the City Code.
2. That based on the evidence in the record and presented to at the Council Hearing, the recitals set forth above are adopted as findings of fact.
3. That based on the evidence in the record and presented at the Council Hearing, the Board did not fail to conduct a fair hearing by exceeding its authority or jurisdiction or by considering evidence relevant to its findings that was substantially false or grossly misleading.
4. That based on the evidence in the record and presented at the Council Hearing:
 - a. the Certificate of Occupancy for the Property dated May 2, 1978 is valid and authorizes use of the Property as fraternity; and
 - b. the Director's Decision allowing resumption of the permitted use as a fraternity under Section 3.8.25 of the Land Use Code, subject to the conditions set forth therein, and the Board Decision upholding the Director's Decision are hereby approved; and

- c. the Director's Decision and Board Decision are hereby modified by addition the following condition: Applicant shall install within the building located on the Property an NFPA 13D fire sprinkler system with 24 months after the date on which this Resolution is adopted by City Council; and
- d. the relevant sections of the City Code and Land Use Code were properly interpreted and applied in the Director's Decision and the Board Decision, including but not limited to:
 - 1) Land Use Code Section 1.7.2 – Conflict with Other Laws
 - 2) Land Use Code Section 2.2.10(A) – Step 10: Amendments (of Common Development Review Procedures)
 - 3) Land Use Code Division 2.11 – Appeal from Administrative Decisions
 - 4) Land Use Code Section 3.8.25 – Permitted Uses: Abandonment Period/Reconstruction of Permitted Uses
 - 5) Land Use Code Section 4.9(B)(3) – Neighborhood Conservation, Buffer District (N-C-B) (uses permitted subject to Planning and Zoning Board Review)
 - 6) Land Use Code Section 5.1.2 – Definitions
 - 7) Eastside Neighborhood Plan
 - 8) International Building Code, as adopted by the City
 - 9) City Code Chapter 2, Article II, Division 3 – Appeals Procedures
 - 10) Other sections as set forth in the Appeals or considered at the Council Hearing; and
- e. except as stated in this Resolution, the Appeals are found to be without merit and are denied.

5. That adoption of the Resolution shall constitute the final action of the City Council in accordance with city Code Section 2-55(g).

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 28th day of July, A.D. 2015.



 Mayor

ATTEST:



 Chief Deputy City Clerk

