



## WRITTEN ZONING CODE INTERPRETATION

*Approved by:*

*Tina Axelrad, Zoning Administrator*

*Date: February 19, 2019*

What constitutes a “demolition of a structure’s exterior walls” in the Denver Zoning Code’s (DZC’s) definition of the term “Voluntary Demolition”? How is “Voluntary Demolition” measured?

### **APPLICABLE CODE SECTIONS:**

Section 13.3 definition: Voluntary Demolition

Section 13.3 definition: Structure, Compliant

Section 13.3 definition: Structure, Nonconforming

Section 12.6.3.3.A: Compliance Required (voluntary demolition and reconstruction compliant structure)

Section 12.8.4.5: Voluntary Demolition (nonconforming structure)

Section 12.4.6.1.A.2: Code Interpretations, Purpose and Applicability

### **INTERPRETATION**

#### *Intent & Purpose*

Generally, zoning policy seeks to bring all nonconforming and compliant structures into full zoning compliance over time. When a nonconforming or compliant structure is partially demolished (voluntarily) to a substantial degree, that is an opportune time to require full zoning compliance.

On the other hand, there is a public policy interest in giving property owners latitude to maintain their nonconforming/compliant structures in a good state of repair, which contributes to the stability of Denver’s neighborhoods. Accordingly, zoning should accommodate reasonable upgrades and improvements over time to nonconforming and compliant structures, including repairs and upgrades that change a structure’s exterior walls, without triggering full zoning compliance for the structure.

This written code interpretation provides clarity to the meaning of the term “Voluntary Demolition” to balance the above public interests, and assist staff in determining what types of changes to a structure’s exterior walls should be considered demolition and therefore count toward the 40% threshold.

#### *Applicability of “Voluntary Demolition” Standard*

The term “Voluntary Demolition” comes into play exclusively with proposed alterations to either a Nonconforming Structure or a Compliant Structure, where the alterations propose to retain elements causing the structure to be nonconforming or compliant.

**For example:** An existing structure with a side interior setback of 5 feet, where the zoning standards now require 7.5 feet, is a “Compliant Structure.” That existing structure is subject to the limits of Voluntary Demolition when exterior alterations will retain all or a part of the structure that is setback less than 7.5 feet.

- See DZC, Section 12.6.3.3.A: “A Compliant Structure that is **voluntarily demolished** shall be reconstructed only in full compliance with all applicable zone district standards, unless eligible for the limited exception in Section 12.6.3.3.B.”
- See DZC, Section 12.8.4.5. “Nothing in this Section 12.8.4 shall be deemed to permit the reconstruction or reestablishment of all or any part of a Nonconforming Structure that has been **voluntarily demolished**.”
- Definition of “Voluntary Demolition or **Voluntarily Demolished**” in DZC, Division 13.3: “In relation to a structure, voluntary demolition or voluntarily demolished shall mean the voluntary demolition of 40% or more of the square footage of a...structure’s exterior walls.”

*Clarification of “Demolition of a Structure’s Exterior Walls” in Definition of “Voluntary Demolition”*

Consistent with the intent and purpose stated above, “Voluntary Demolition” will be interpreted to generally mean any change in a Compliant or Nonconforming Structure’s exterior walls that provides a reasonable opportunity to come into greater compliance during construction with current zoning standards. A structure’s exterior walls are generally the walls on the exterior of a structure (i.e., those that face the outside), in contrast to a structure’s interior walls, which are the walls separating rooms inside the structure.

This interpretation addresses the question: What portion of the exterior wall(s) may be removed or altered for the wall to be considered demolished, consistent with the definition of Voluntary Demolition above? For example, removal of the cladding or exterior finishes alone does not constitute demolition of an exterior wall. Nor does removal of only the interior portion(s) of an exterior wall, such as drywall, constitute demolition of an exterior wall.

For purposes of the definition of “Voluntary Demolition” in DZC, Division 13.3, the phrase “demolition of a structure’s exterior walls” shall mean the following (See Figure 1., Exterior Wall Assembly with Cladding, at the end of this document, for illustration of this definition):

1. Removal from an exterior wall assembly: Any portion of framing and/or structural masonry, which may or may not be combined with any of the items listed in number 2 below;

or,

2. Removal of the entire exterior wall assembly, consisting of all of the following elements, if they exist:
  - a. Any exterior finishes (e.g., wood siding/cladding, brick, stucco, stone veneer); plus
  - b. Protective barriers exterior to the framing, such as water resistant barriers; plus
  - c. Sheathing (protective casing or covering of the exterior wall); plus
  - d. Insulation within the framing; plus
  - e. Protective barriers interior to the framing, such as vapor retarders; plus
  - f. Any interior finishes (gypsum board/drywall, lathe and plaster).

or,

3. Removal or relocation of doors, windows, recesses, openings, or bays, unless these items are replaced in their pre-existing location(s) and openings (i.e., no expansion of previous opening).

Removal of any of the elements of an exterior wall assembly listed below alone or in combination is not considered “demolition of a structure’s exterior walls”:

1. Insulation within the framing; or
2. Protective barriers interior to the framing, such as vapor retarders; or
3. Any interior finishes (gypsum board/drywall, lathe and plaster).

#### *Actions Comprising Voluntary Demolition*

Based on the intent and purpose and clarification above, voluntary demolition of “the square footage of a structure’s exterior walls” shall include the following actions, unless specifically excepted below:

**1. General Rule – Counted as Voluntary Demolition:**

- a. Removal of an entire exterior wall assembly, as defined above, for any horizontal or vertical dimension, including removal of exterior wall assembly components down to the studs/framing only. For example, removal of cladding, water-resistant barrier, sheathing, insulation, as well as interior drywall/gypsum board would count toward 40% “voluntary demolition” threshold, as would removal of all exterior and interior finishes at the same time; or
- b. Reframing or removal of load-bearing/structural masonry or framing; or
- c. Creation of new or enlarged window or door openings (note: the full area of the new or enlarged opening shall be included in calculating the total surface area of demolition).

**2. Exceptions – Not Counted as Voluntary Demolition:**

Generally, the following actions are deemed to be intended to maintain a structure “in a good state of repair” per DZC Divisions 12.6 and 12.8, and not “voluntary demolition” of a structure’s exterior walls:

- a. Removal of any component(s) of the exterior wall assembly where: (1) no removal or alteration of the framing, structural masonry, or foundation is part of the scope of work, and (2) insulation or interior components of the wall are not being removed and/or replaced.
- b. Examples: (i) repair and/or replacement of doors and windows of the same size in their pre-existing openings; or (ii) Repair and/or replacement of all or a portion of exterior finishes only (i.e., cladding, water-resistant barrier, sheathing), but leaving the framing, existing insulation, and interior drywall in place.

- 3. Other Exceptions:** On a case-by-case basis, based on the intent and purpose stated above, the Zoning Administrator may find that proposed exterior work does not constitute “demolition” when the Zoning Administrator finds such action may be considered maintaining the structure “in a good state of repair” per DZC, Sections 12.6.3.2.B.1 and 12.8.3.1.A.

#### *Clarification of the Rule of Measurement for “Voluntary Demolition”*

- If any of the above-listed actions related to alteration of an exterior wall are taken, then – unless excepted – “voluntary demolition” shall be calculated by dividing the total square footage (surface area) of any component of the exterior wall assembly to be removed by the total square footage (surface area) of the subject exterior wall(s).
- The calculation shall be expressed as a percentage, and shall be rounded up to the closest whole number, with one-half of one percent rounded up.

### *Clarification Regarding Submittal Requirements for Projects with Voluntary Demolition*

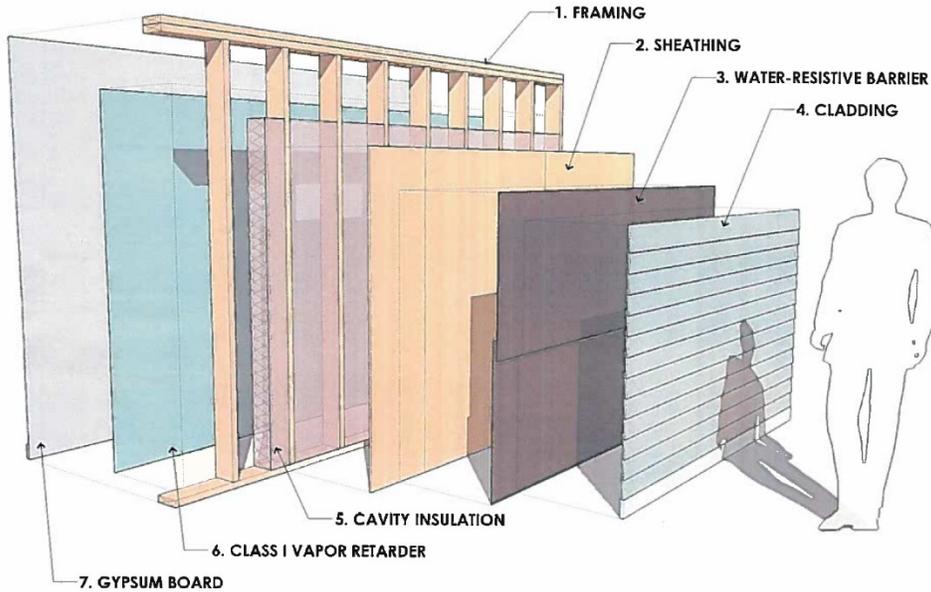
When an existing structure proposed for alteration meets the definition of a Compliant Structure or Nonconforming Structure, and the compliant or nonconforming element of the structure is proposed to be retained, submitted plans shall include ample detail to identify and quantify the compliant or nonconforming portion of the building to be retained, and clearly demonstrate whether the proposed removal of existing exterior walls of the structure constitutes “Voluntary demolition of 40% or more of the square footage of a structures exterior walls.” *In addition to site plans and elevations, zoning review staff may require additional documentation when necessary to make a clear determination, including pre-demolition and post-demolition wall section drawings to document code compliance.*

### *Removal of Greater Exterior Wall Area than Approved – Modified Plan Submittal Required*

Removal of greater exterior wall area than shown on approved plans, for example during actual construction or demolition activity, may be considered “Voluntary Demolition” and shall cause the applicant to submit modified plans to CPD for zoning compliance review. If modified plans show Voluntary Demolition of more than 40% or more of the square footage of a structure’s exterior walls, then existing nonconforming or compliant building elements may NOT be kept, and construction/design plans must be modified to show full compliance with current zoning standards.

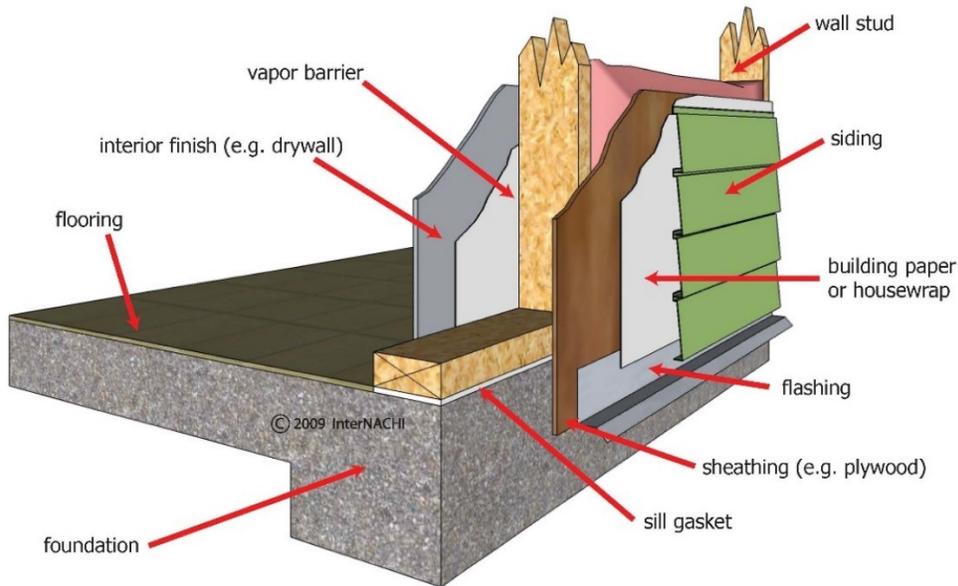
**Examples – Illustrations – Exterior Wall Assembly – Different Types of Exterior Finishes**

In Figure 1, below, removal of items 2, 3, and 4 only would not count toward the 40% threshold for voluntary demolition. However, removal of these items along with items 5, 6, and 7 (leaving only item 1 – the framing) would count toward the 40% voluntary demolition threshold.



1. Exterior Wall Assembly with Cladding

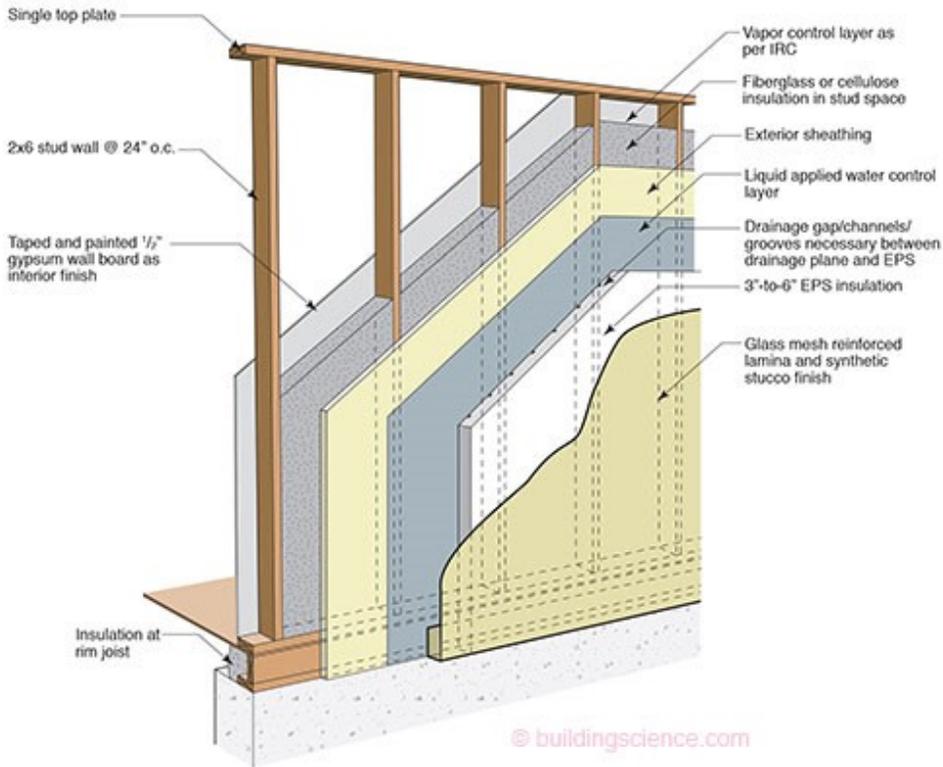
**Wall Assemblies**



2. Exterior Wall Assembly with Siding

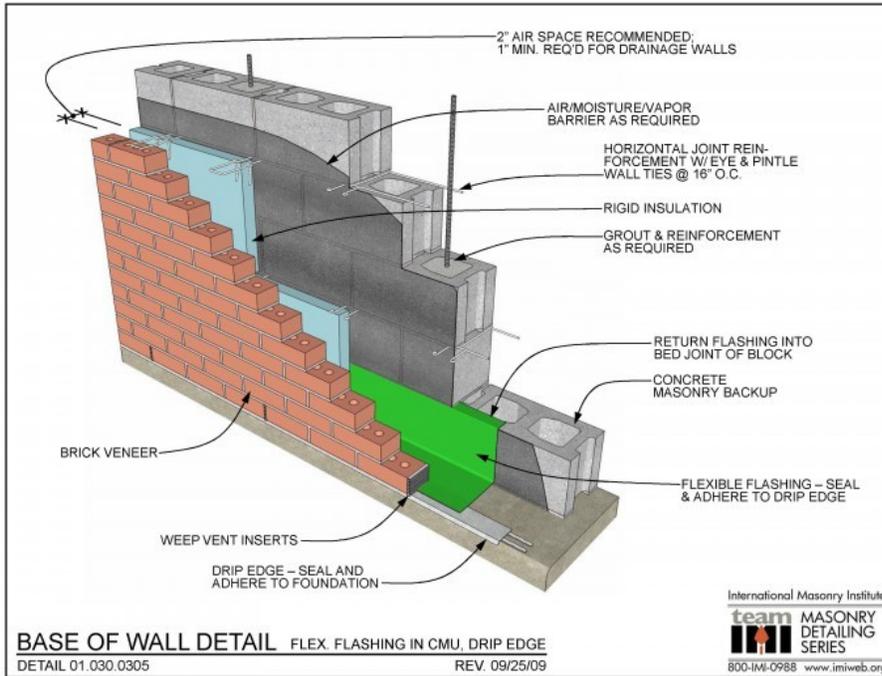
In Figure 2, above, removal of the siding, housewrap, and sheathing only would not count toward the 40% threshold for voluntary demolition. However, removal of the above items along with the vapor barrier and interior finish(es) would count toward this threshold.

In Figure 3, below, removal of the stucco finish, EPS insulation, water control layer, and exterior sheathing only would not count toward the 40% threshold for voluntary demolition. However, removal of the above items along with the gypsum board and the insulation within the studs would count toward this threshold.

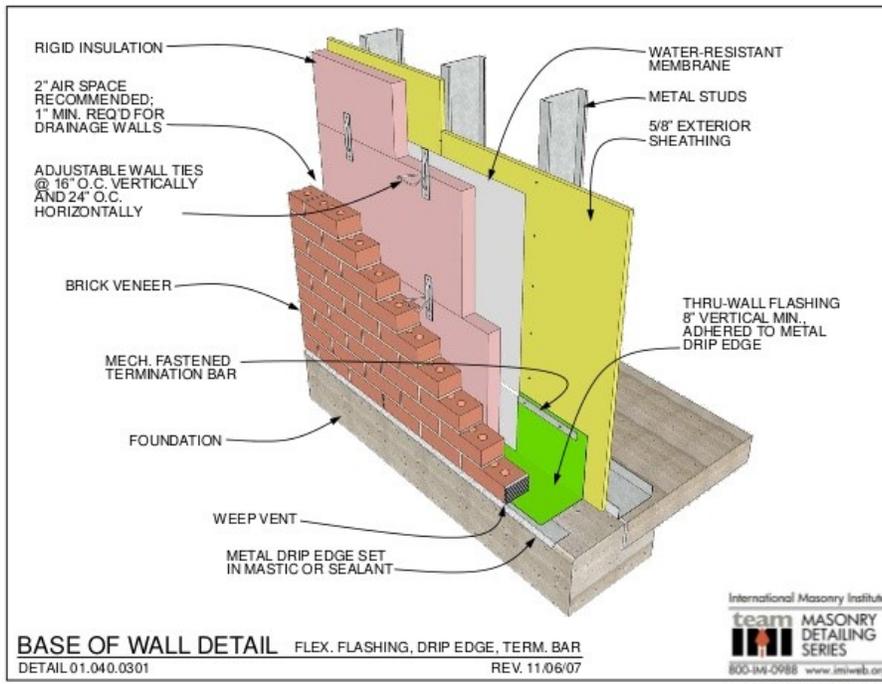


3. Exterior wall assembly with EIFS

In Figure 4, below, removal of the brick veneer, rigid insulation, and barrier only would not count toward the 40% threshold for voluntary demolition. However, removal of these items along with removal of concrete masonry backup would count toward this threshold.



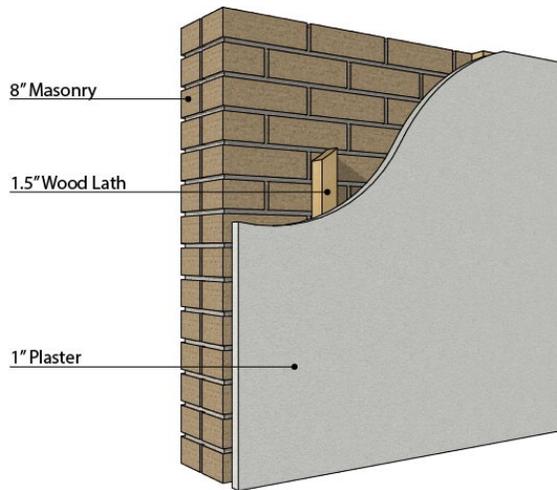
4. Exterior wall assembly with brick veneer, CMU



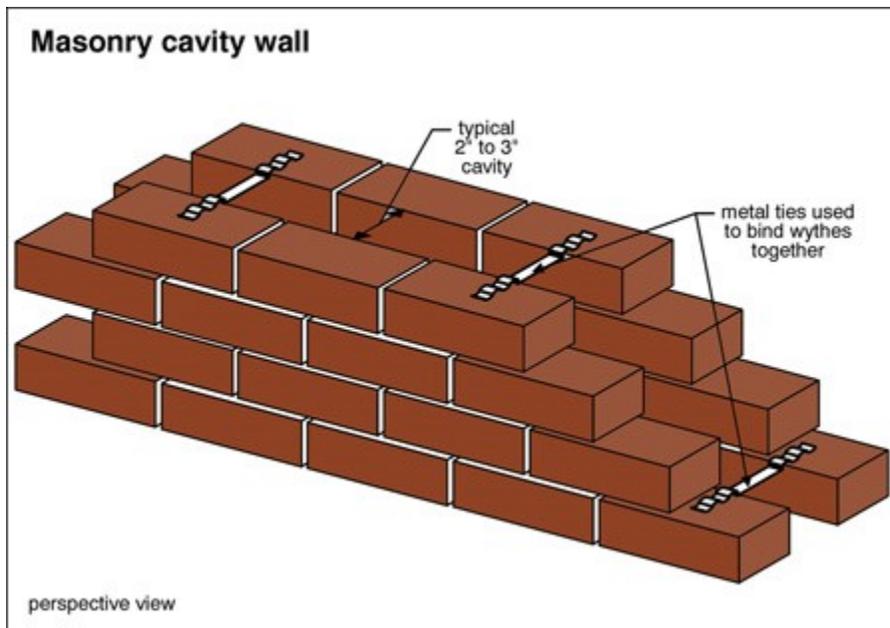
5. Exterior wall assembly with brick veneer, metal framing

In Figure 5, above, removal of the brick veneer, rigid insulation, membrane, and sheathing only would not count toward the 40% threshold for voluntary demolition. However, removal of these items along with insulation within the studs and interior finishes would count toward this threshold.

In Figure 6, below, removal of one layer of masonry, removal of the lath and plaster only, or removal of one layer of masonry with the lath and plaster would not count toward the 40% threshold for voluntary demolition. However, removal of both layers of masonry together with removal of the lath and plaster would count toward this threshold.



6. Masonry Wall Assembly (Traditional) with lath and plaster



7. Masonry Cavity Wall Assembly

In Figure 7, above, removal of one layer (wythe) of masonry would not count toward the 40% threshold for voluntary demolition. However, removal of both layers (wythes) of masonry would count toward this threshold.

**Examples – All Illustrations Below – Removal of Entire Exterior Wall Assembly or Key Components is “Voluntary Demolition”:**



**COMPLIANCE WITH DZC, SECTION 12.4.6.4 REVIEW CRITERIA FOR CODE DETERMINATIONS:**

DZC, Section 12.4.6.4 requires the Zoning Administrator to make Code Interpretations and Determinations of Unlisted Uses only upon finding that the interpretation or determination is:

1. Consistent with the intent of this Code; and
2. Consistent with the intent of the subject Neighborhood Context and Zone District(s) and with the intent of any specific Code provision(s) at issue.

**Zoning Administrator Findings**

Per DZC, Section 12.6.4.A.1, the Zoning Administrator finds this interpretation is consistent with the intent of this code to guide Denver’s prosperous and sustainable future by providing clear regulations and processes that result in predictable, efficient, and coordinated review processes. Moreover, this interpretation is consistent with the specific intent of Divisions 12.6 and 12.8 to encourage the ultimate redevelopment of properties with nonconforming or compliant structures in full compliance with the zone district’s building form standards.

To implement the above intent, the DZC strictly limits the right of nonconforming or compliant structures to be physically altered, expanded, enlarged or rebuilt. This interpretation of the definition of “Voluntary Demolition” clarifies what portion of a nonconforming or compliant structure’s existing exterior wall assembly may be altered before triggering full compliance with zoning regulations. Specifically, when proposed alterations shown on a plan include retention of compliant or nonconforming elements of a building, demolition of existing exterior walls is controlled to the extent expressed in the interpretation above, and demolition of more than 40% of the area of existing exterior walls require submittal of project plans showing full compliance with the Denver Zoning Code.

Per DZC, Section 12.6.4.A.2, the Zoning Administrator finds this interpretation is consistent with the intent of Suburban, Urban Edge, Urban and General Neighborhood contexts to promote and protect residential neighborhoods and to provide certainty to owners, developers and neighborhood interests about the limits of what is allowed in a residentially-zoned area. This interpretation is consistent with the intent of the Urban Center Neighborhood context to ensure new development contributes positively

to established neighborhoods and character; and is consistent with the intent of the Master Planned Context to provide clarity and predictable outcomes as development proceeds.

This code interpretation is a final decision of the Zoning Administrator and may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this interpretation according to Denver Zoning Code, Section 12.4.8, Appeal of Administrative Decision.