

FORMER CHAPTER 59 (FC59) USE DETERMINATIONS:

- 1) VOCATIONAL SCHOOL AS PRIMARY USE IN PUD 118
- 2) UNLISTED ACCESSORY USE DETERMINATION: STUDENT HOUSING ACCESSORY TO VOCATIONAL SCHOOL PRIMARY USE IN PUD 118

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PROPOSAL

At the direction of the Executive Director of Community Planning Development (“CPD”), the Zoning Administrator initiated these use determinations to consider whether to permit a Vocational School primary use with an unlisted accessory use of student housing in areas zoned PUD 118 under [FC59](#). The proposed unlisted use shall be referred to in this document as “Student Housing Accessory to Vocational School.”

This primary use determination will allow a program and facility named The Other Side Academy to operate a primary use of Vocational School within areas zoned PUD 118 under FC59. The unlisted use determination will allow student housing as an accessory use to a primary use of Vocational School in areas zoned PUD 118. PUD 118 is located at 1859, 1861, and 1875 N. York Street. 1875 N. York Street is and will remain a restaurant and is not part of this proposal. The addresses of the proposed uses are 1859 and 1861 N. York Street (the “Property”). 1859 N. York St. is known as the Parkside Mansion.

WHAT ARE THE PROPOSED USES?

Currently permitted uses of the Property are as follows: 1861 N. York Street is a carriage house with a zoning use permit for office; and 1859 N. York Street is banquet facility with a zoning use permit for parties and events, eating and drinking establishment with accessory outdoor serving area, and office.

The proposed primary use of Vocational School and accessory use of Student Housing Accessory to Vocational School are intended to include, but not be limited to, [The Other Side Academy \(“TOSA”\)](#) model of residential vocational and life skills programs, established in Utah and also operating here in Colorado. The [Delancey Street Foundation](#) established a similar program in San Francisco in 1971 and has since established programs in five other locations nationwide. TOSA intends to occupy the property at 1859 N. York Street with a Vocational School which will include student housing as an accessory use. TOSA intends to use the detached carriage house structure at 1861 N. York Street as a single-unit dwelling for a staff person and their spouse. The projected number of students who would reside at the location at any one time is 50-60. Staffing is typically at a ratio of ten students per staff member. Students typically complete the program in two years, although some may remain students for a longer period of time.

Typical characteristics of the proposed Vocational School plus Student Housing Accessory to Vocational School, using TOSA as a real-life example, include:

1. Students must apply and be interviewed by staff before they are accepted into the program. Student enrollment in the vocational school is voluntary and may be approved by the judicial system.
2. Residential accommodations are typically dormitory style (multiple beds in a single bedroom), with common areas used for student dining, classes, meetings, and recreation.
3. Staff live on site and have completed a TOSA or similar program. In general, staff are not professionally accredited or certified counselors, therapists, or social workers.

4. The vocational school uses a work-oriented training model, rather than a therapy-oriented model.¹
5. Students do not leave the premises unaccompanied or without permission.
6. Students observe a 10pm curfew.
7. The vocational school's operating funding is generally self-sustaining after the second year of start-up, with operating funding provided from private sources and not provided by government sources or insurance.
8. The vocational school is not supervised directly or indirectly by the City or other government entity. State licensing is not required.

APPLICABLE ZONING RULES AND REVIEW CRITERIA

ALLOWED PRIMARY USES IN PUD 118

The Property was rezoned from R-4 to PUD 118 on January 24, 1984. As is the case with most properties zoned PUD, the Property was not rezoned to the Denver Zoning Code ("DZC") in 2010.² The Property retains the PUD 118 zoning, governed by Former Chapter 59 ("FC59"). The PUD 118 zoning allowed a combination of restaurant/banquet facility, office, and apartment uses. PUD 118 also retained an allowance for "any R-4 use."

Among primary uses permitted in the R-4 zone, and thus in PUD 118, are vocational school, university or college, rooming and boarding house, and multi-unit dwellings. The R-4 list of permitted primary uses may be found in FC59, §59-132. Definitions of those uses are found in FC59, §59-2. The PUD allows a Vocational School primary use, which is discussed in more detail below.

RULES & REVIEW CRITERIA FOR DETERMINING AN UNLISTED ACCESSORY USE IN FC59

FC59 provides general authority to the Zoning Administrator to determine unlisted accessory uses. This determination is made per FC59, §59-38(a)(10)(a), which provides administrative authority to:

Determine and impose limitations on accessory uses and structures not covered in sections 59-87 and 59-88. In fulfilling this responsibility the zoning administrator shall determine what uses are common and customary to a specific use by right and if the use is incidental to the specific use by right; and impose limitations which shall be uniform throughout the zoning district on specific

¹ Students at TOSA have full time jobs with TOSA enterprises, such as The Other Side Movers Inc. TOSA also provides life skills classes in the evening, such as financial literacy, computer skills, GED classes, parenting, and relationships. TOSA students are not prescribed psychotropic medications.

In contrast, a 'therapy-oriented model' of treatment often includes substantial time investment in therapy, including group therapy, and classes. Residents in a 'therapy-oriented model' may work off-site for a third-party but are generally not involved in oversight of the work. Residents may be prescribed psychotropic medications.

² In 2010 the City adopted the Denver Zoning Code and rezoned the majority of Denver to DZC zone districts. However, significant portions of the City, including zone districts with waivers and conditions and PUDs, were not rezoned into DZC zone districts. These portions of the City, including the subject Property, retain FC59 zoning and remain subject to the procedures of that code.

accessory uses taking into consideration the intensity of the accessory use, numbers, the space required by the accessory use and the effect on adjacent property.

PUD 118, the zoning district for the subject property, states that accessory uses will be permitted and regulated by FC59, §59-207 (3) (R-4 zone). As FC59 was reorganized and sections renumbered in 2003, the applicable section of FC59 that currently applies to accessory uses in the PUD is FC59, §59-87.

COMPARISON OF PROPOSED PRIMARY USE TO OTHER USES DEFINED IN FC59

IS THE PROPOSED PRIMARY USE A COMMUNITY CORRECTIONS FACILITY?

FC59 defines Community Corrections Facility as:

A structure which provides a residence for three (3) or more persons who have been placed in a community corrections program of correctional supervision, including a program to facilitate transition to a less-structured or independent residential arrangement. Such program shall be supervised directly or indirectly by an agency of the city, the state or the federal government; and residents of such facilities shall be those persons placed in the community corrections program by the judicial or correctional departments of the city, the state or the federal government. A community corrections facility shall be considered a large residential care use. FC59, §59-2(76).

Inherent in the FC59 definition of Community Corrections Facility is that “[s]uch program shall be supervised directly or indirectly by an agency of the city, the state or the federal government.” If the use being evaluated is not supervised, directly or indirectly, by the city, state, or federal government, it is, by definition, not a Community Corrections Facility. Under FC59, supervision by a government entity is inherent to what makes a use a Community Corrections Facility.

In contrast, other uses, for example Vocational School, may have use limitations under FC59 in certain zone districts which are not part of the definition. For example, a Vocational School located in the R-4 district is subject to limitations regarding hours of operation, machinery allowed for instructional use, and commercial activity.

As the proposed use is not by definition a Community Corrections Facility, the Zoning Administrator must consider if the proposal corresponds to other allowed primary uses in FC59, as well as unlisted uses if necessary. This analysis is discussed below.

IS THE PROPOSED PRIMARY USE A UNIVERSITY OR COLLEGE?

TOSA does not meet the definition of university or college as it is not authorized to confer degrees. The definition of “University or College” specifies in part that the educational institution “...is authorized to confer various degrees such as the bachelor’s degree...” FC59, §59-2(304).

IS THE PROPOSED PRIMARY USE A HOME OCCUPATION?

The education and training aspects of TOSA's program do not meet the parameters of a home occupation under FC59. The term "home occupation" is not specifically defined in FC59; however, FC59, §59-89 lists allowed home occupations which may be operated "in a single unit dwelling or in each dwelling unit in a multiple unit dwelling." Types of home occupations allowed include home child care, hair salons, offices, and rooming and boarding. For all intents and purposes, FC59 treats a "home occupation" as a specific type of accessory use allowed as incidental to a primary dwelling unit use.

The TOSA use is distinguishable from an accessory home occupation operating in a single-unit dwelling use or in a dwelling unit in a multiple-unit dwelling use, which are defined as residential structures containing one or more dwelling units occupied by a "single nonprofit housekeeping unit" comprised of either (1) an unlimited number of related persons, or (2) no more than 2 or 4 unrelated adults plus persons related to them. In contrast, the TOSA educational and training program is proposed to be the primary land use and activity on the Property and operates in a commercial or residential structure that contains dormitory-style congregate housing, where adult students are unrelated to each other and can number up to 60. Therefore, the TOSA land use is not an accessory home occupation incidental to a primary residential dwelling unit use. Instead, the TOSA educational and training program is the primary use and activity on the Property and must fit into a primary use type defined in FC59.

IS THE PROPOSED PRIMARY USE A VOCATIONAL SCHOOL?

FC59 provides the following definition for "School, vocational, professional or other" (§59-2(254)):

Education or training in business, commerce, language, or other similar activity or occupational pursuit, or in the use of specialized, technical, or technological equipment or office machines, and not otherwise defined as home occupation, college or university, or elementary or secondary school.

The daily operations of the TOSA educational and training program most closely align with the FC59 definition of Vocational School cited above. TOSA provides a work-oriented training program for adult students. Students are trained in business, commerce, or other similar activity or occupational pursuit through the work they do for TOSA-related social enterprises³, such as [The Other Side Movers, Inc.](#) and/or retail operations such as the thrift store TOSA operates in Salt Lake City. These social enterprises are not proposed to physically operate from the Property (i.e., moving vans will not be stored there, nor will retail sales occur there). Instead, while at the Property, students would take classes and obtain the support and hands-on training they need to be first employed by and then ultimately operate and manage these related social enterprises. Within the TOSA building at 1859 N. York Street, students would oversee these social enterprises from an office located within the school, in a hands-on, work-based training approach. Such office use may be permitted in the PUD 118 zone district as either (1) an element of the permitted Vocational School; (2) a separate, second primary use,

³ A "social enterprise" may be defined as: "Organizations that address a basic unmet need or solve a social or environmental problem through a market-driven approach." <https://socialenterprise.us/about/social-enterprise/>

or (3) as an accessory use associated with the Vocational School provided it meets the general conditions for all accessory uses in FC59, §59-87(a)-(b).

CONCLUSION

As stated previously, TOSA and TOSA-like programs are, by definition, not Community Corrections Facilities as defined in FC59, as they are not supervised directly or indirectly by the city or state government. As explained above, the primary use definition in FC59 that most closely aligns to TOSA is Vocational School. Based on the analysis outlined above, the Zoning Administrator determines that the primary use definition in FC59 applicable to TOSA and similar programs is "School, vocational, professional or other."

COMPARISON OF PROPOSED ACCESSORY USE TO OTHER USES DEFINED IN FC59 AND EVALUATION

DESCRIPTION OF PROPOSED ACCESSORY STUDENT HOUSING

As described above, an integral part of the TOSA program and Vocational School use is providing on-site residential accommodation for its adult students, i.e., student housing. FC59 does not define "student housing" as a distinct zoning land use. However, the definition of the primary use of "University or College" states that the use "...may include a variety of uses such as classroom buildings, administrative offices, sports facilities, *residential dormitories*..." While a University or College, which is an allowed use in PUD 118, specifically allows residential dormitories as an accessory use, the definition of a Vocational School, also allowed in PUD 118, does not state a similar allowance.

Although not defined in FC59, it is helpful to refer to the DZC, which allows "Student Housing" as a specific type of primary group living use, and defines it as:

A structure used for long-term group residential accommodations for students of a college, university or seminary, and where such structure is related to the college, university or seminary. Common cooking facilities and common gathering rooms for social purposes may also be included. May include a building used for group living quarters for members of a fraternity or sorority that has been officially recognized by the college, university or seminary. (DZC §11.12.2.2.A.8)

As the proposed student housing use is accessory to a Vocational School, and not to a primary college, university, or seminary use, this unlisted use determination under FC59 can be more narrowly tailored to consider only student housing accessory to a primary Vocational School use. Accordingly, this determination proposes to define the proposed FC59 unlisted accessory use of "Student Housing Accessory to a Vocational School" as follows:

"A structure or portion of a structure used for long-term group residential accommodations for students of a vocational school, and where such structure is related to the vocational school. Common cooking facilities and common gathering rooms for social purposes may also be included."

EVALUATION OF PROPOSED UNLISTED ACCESSORY USE UNDER REVIEW CRITERIA IN FC59

IS THE PROPOSED ACCESSORY USE COMMON AND CUSTOMARY TO A USE BY RIGHT?

One of the review criteria in FC59, §59-38(a)(10)(a) is to evaluate if a proposed unlisted accessory use is common and customary to a specific use by right. Student housing is accessory to a primary use of Vocational School in facilities and programs like TOSA where the students live in dormitory-like accommodations on site where instruction is also taking place. Examples of such uses include the Delancey Street program which operates in San Francisco and five other nationwide locations, which is the model for Denver's TOSA program, as well as TOSA in Salt Lake City. California considers the Delancey Street program a post-secondary school. In Salt Lake City, the TOSA program is defined and regulated as a "Residential Vocational and Life Skills Program" by the State of Utah. Salt Lake City permits this use as a large group home and requires a conditional use permit under its zoning rules. In Denver, the [Starkey International Institute](#) has a history of providing vocational training for household and estate management, together with residential accommodations for its students, at the vocational school's location at 1350 Logan Street. In these examples of similar programs, vocational training and residential accommodation for students are combined at the same physical location.

Post-secondary schools often have associated student housing, including many of the universities, colleges, and seminaries located in Denver. These include but are not limited to the University of Denver, Regis University, and Johnson and Wales University. TOSA is also a post-secondary school, although it does not confer degrees. By analogy, then, student housing is a common accessory use associated with post-secondary schools, which include many vocational schools as well as degree-conferring universities and colleges.

These examples demonstrate that it is common and customary to have residential accommodation for students in conjunction with a post-secondary Vocational School primary use. Therefore, I determine that the unlisted use of student housing is common and customary to the primary listed use of Vocational School.

IS THE PROPOSED ACCESSORY USE INCIDENTAL TO A USE BY RIGHT?

A second review criteria in FC59, §59-38(a)(10)(a) is to evaluate if a proposed accessory use is incidental to a specific use by right. In this case, the primary use by right is Vocational School, and the proposed unlisted accessory use is student housing. In the case of the Delancey Street program, TOSA, the Starkey Institute, and similar educational or work-based programs, the primary purpose of these programs and facilities is to provide education, vocational, and technical training. Although residential accommodation is also available, providing housing is not the primary purpose of such programs (while the housing would not exist without the school, the school could exist without the housing). Student housing is secondary to the primary use of Vocational School. Similarly, for a University or College use, the primary purpose is education. The provision of residential dormitories for housing students at a University or College is secondary and incidental to the primary educational purpose and use. Therefore, I determine that student housing is incidental to the primary listed use of Vocational School.

WILL THE ACCESSORY USE BE OPERATED & MAINTAINED UNDER THE SAME OWNERSHIP & ON THE SAME ZONE LOT AS THE USE BY RIGHT?

All accessory uses allowed to operate in residential and business zone districts under FC59 must be operated and maintained under the same ownership and on the same zone lot as the use by right per FC59, §59-87(b)(1)b. PUD 118 is a residential and business zone district under FC59. It allows limited business uses, namely restaurant/banquet hall, in addition to R-4 uses allowed by right. The R-4 zone is defined as a Residential Zone District under FC-59, §59-2(235).

In this case, the accessory student housing use would be operated and maintained by TOSA, the same owner and operator as the primary Vocational School use by right. The accessory student housing use would be located on the same zone lot as the primary Vocational School use by right, namely 1859 N. York Street, which is zoned PUD 118. Therefore, the proposed accessory use will comply with this requirement in FC59, §59-87(b)(1)b.

DOES THE ACCESSORY USE INCLUDE STRUCTURES INCONSISTENT WITH THE USE BY RIGHT?

Accessory uses allowed under FC59 to operate in a residential or business zone district cannot include structures or structural features inconsistent with the primary use per FC59, §59-87(b)(1)c.

In this case, the proposed accessory student housing use would be in the same structure(s) as the primary Vocational School use at 1859 N. York Street. Therefore, the proposed accessory use does not include structures or structural features inconsistent with the use by right.

DOES THE ACCESSORY USE INCLUDE RESIDENTIAL OCCUPANCY IN A DETACHED STRUCTURE?

All accessory uses allowed under FC59 to operate in a residential or business zone district cannot, with limited exceptions not applicable here, include residential occupancy in a detached structure per FC59, §59-87(b)(1)d.

TOSA intends to use the detached carriage house structure at 1861 N. York Street as a single-unit dwelling for a staff person and their spouse, and not for student housing. In this case, the proposed accessory use of student housing will not include residential occupancy in a detached structure and thus will comply with this requirement in FC59, §59-87(b)(1)d. The Zoning Administrator proposes a limitation that reiterates that the proposed unlisted accessory use of student housing cannot operate in the detached accessory structure at 1861 N. York Street:

- 1) Student Housing Accessory to a Vocational School is not permitted in a detached accessory structure.

WHAT LIMITATIONS SHOULD APPLY TO THE PROPOSED UNLISTED ACCESSORY USE?

AUTHORITY TO IMPOSE LIMITATIONS

FC59, §59-38(a)(10)(a) gives the Zoning Administrator authority to impose limitations uniform throughout the zoning district on specific accessory uses, taking into consideration the intensity of the accessory use, numbers, the space required by the accessory use, and the effect on adjacent property.

LIMITATIONS ON ACCESSORY USES TAKING INTO CONSIDERATION THE INTENSITY OF THE PROPOSED ACCESSORY USE & EFFECT ON ADJACENT PROPERTY

The proposed primary Vocational School plus Student Housing Accessory to Vocational School use will include instruction, training, and housing for approximately 50-60 students, plus staff, at a proposed ratio of ten students per staff member. The Vocational School primary use in the R-4 zone district imposes no zoning limits on the number of students allowed at the facility. The accessory Student Housing use will provide residences for students at approximately a 10:1 student-to-staff ratio. Maximum occupancy limits for the York Street structure will be regulated by the Denver Building and Fire Codes.

The Property allows a number of R-4 residential uses by right, including multiple unit dwelling, rooming and boarding house, and monastery or convent, without limitation on the total number of residents. The proposed accessory use of student housing would not necessarily have any greater number of residents than what could otherwise be allowed by these multi-family and group living residential uses.

Adjacent property is zoned as follows and contains the following land uses:

- 1871 N. York St. is zoned PUD 118 and contains a restaurant and accessory surface parking.
- 1839 N. York St. is zoned G-RO-3 and is a commercial office building.
- 1830 N. Gaylord Street is zoned G-RO-3 and is an apartment building with 42 units.
- 1848 N. Gaylord Street is zoned G-RO-3 and is a single unit dwelling.
- 1854/1860 N. Gaylord Street is zoned G-RO-3 and contains two dwelling units.
- 1868 N. Gaylord Street is zoned G-RO-3 and contains three dwelling units.
- 1880 N. Gaylord Street is zoned G-RO-3 and is a museum.
- City Park is directly to the east and is zoned OS-A.

The adjacent properties contain a mix of commercial, office, civic, open space, and single and multi-unit residential uses. The adjacent G-RO-3 district is a multi-unit and office zone district allowing a variety of residential building forms with a maximum height of three stories. The adjacent OS-A district is intended to protect and preserve public parks. Existing and permitted uses in PUD 118 include restaurant, office, banquet facility with accessory outdoor serving area, and surface parking. The proposed accessory use of Student Housing Accessory to a Vocational School will likely have similar effects on adjacent property as the uses already allowed by PUD 118 and as the uses already existing in the neighboring mix of commercial, office, civic, and multi-unit and single-unit residences.

PUD 118 specifies that parking is provided on site for a total of 55 automobiles and one loading berth. As the PUD specifies the number of required parking spaces, no additional parking is required for the

proposed change of use at the Property to a primary use of Vocational School. In addition, accessory uses in FC59 do not require parking, and in any case PUD 118 specifies the number of required parking spaces for all allowed uses. The proposed accessory use of student housing does not require additional parking not already stipulated by PUD 118. In addition, although staff may have cars, students at TOSA will typically not have cars, so parking generation should be equal to or less than parking generated by the currently permitted banquet facility and associated uses.

Please note that FC59 does not grant authority to the Zoning Administrator to impose additional limitations on by-right (primary) uses, other than those already stated in the zoning code, (see FC59, §59-38(a)(4)). In the R-4 and R-4-X districts, as well as in PUD 118, the Vocational School use is allowed subject to limitations. The following limitations, which would apply to the Vocational School primary use at the Property, are listed as L154 in FC59, §59-133:

- Use of machinery not permitted, other than office machines and mechanical or machinery parts of household appliances used for instruction of or practice by the student.
- Repair as a service or the sale of repaired appliances prohibited.
- Classes or other school activities not permitted after 11:00 p.m.

Under the authority granted by FC59, §59-38(a)(10)(a), and taking into consideration the intensity of the accessory use, numbers, the space required by the accessory use and the effect on adjacent property, the Zoning Administrator proposes to impose the following limitations which shall be uniform within the PUD 118 zone district on the specific accessory use of Student Housing Accessory to Vocational School:

1. The subject unlisted accessory use shall be called "Student Housing Accessory to Vocational School" and is allowed, subject to these limitations, only in the PUD 118 Zone District as accessory to a permitted primary Vocational School use.
2. A zoning permit shall be required to establish or expand a "Student Housing Accessory to Vocational School" use.
3. Student Housing Accessory to Vocational School is not permitted in a detached accessory structure.
4. Student Housing Accessory to Vocational School permitted in compliance with FC59, per this use determination, is subject to compliance with all other applicable City laws and regulations, including without limitation, the Denver Building and Fire Codes.

FINAL USE DETERMINATION AND DECISION

- A. Based on the above analysis, I determine that the proposed use of The Other Side Academy (TOSA) at 1859-61 N. York St. constitutes a Vocational School primary use as defined in FC59, §59-2(254).
- B. Based on the above analysis and according to the review criteria for unlisted accessory use determinations in FC59, §59-38(a)(10)(a), I find that the unlisted accessory student housing proposed at 1859 N. York Street, zoned PUD 118:
 1. Is common and customary to the specific use by right of Vocational School;
 2. Is incidental to the specific use by right of Vocational School; and

3. May be allowed at the subject property as an accessory use that is incidental, common and customary to the primary Vocational School use.

The unlisted accessory use of Student Housing Accessory to Vocational School is defined as:

"A structure or portion of a structure used for long-term group residential accommodations for students of a vocational school, and where such structure is related to the vocational school. Common cooking facilities and common gathering rooms for social purposes may also be included."

As authorized by FC59, §59-38(a)(10)(a), the Zoning Administrator may attach reasonable limitations to the allowance of an unlisted accessory use, which must be uniform throughout the subject zone district to any other instances of this unlisted accessory use. Accordingly, the following limitations shall apply to the allowance for the proposed Student Housing Accessory to Vocational School use in PUD 118:

1. The subject unlisted accessory use shall be called "Student Housing Accessory to Vocational School" and is allowed, subject to these limitations, only in the PUD 118 Zone District as accessory to a permitted primary Vocational School use.
2. A zoning permit shall be required to establish or expand a "Student Housing Accessory to Vocational School" use.
3. Student Housing Accessory to Vocational School is not permitted in a detached accessory structure.
4. Student Housing Accessory to Vocational School permitted in compliance with FC59, per this use determination, is subject to compliance with all other applicable City laws and regulations, including without limitation, the Denver Building and Fire Codes.

APPEAL

This final use determination may be appealed to the Denver Zoning Board of Adjustments within 15 days from the date of this written decision, according to FC59, §59-39 Appeals from the Department.

Approved by:



Tina Axelrad, Zoning Administrator

Date: September 19, 2019