

**BOARD OF ADJUSTMENT
CITY AND COUNTY OF DENVER
201 West Colfax Avenue, Department 201
Denver CO, 80202**

PREMISES AFFECTED: 1290 South Santa Fe Drive
LEGAL DESCRIPTION: Lots 41 to 46 Inclusive, Block 7, West Broadway Addition
APPLICANT(S) Warehouse Lofts LLC, by Eric Weins, 5256 Federal Boulevard, Denver, CO 80221 ,
Filed By: Andy Olree, 482 South Broadway, Suite 100, Denver, CO 80209 Najeeba Zoda, 482 South Broadway, Suite 100, Denver, CO 80209

APPEARANCES:

APPLICANT: Andy Olree, 482 South Broadway, Suite 100, Denver, CO 80209
Najeeba Zoda, 482 South Broadway, Suite 100, Denver, CO 80209

FOR THE CITY: Tiffany Holcomb, Zoning Representative
Malgorzata Tomasik, Zoning Representative

SUBJECT:

Request for a Variance for a 5-story Multi-Unit Residential structure under the General Building form exceeding the maximum height in stories by 1 story (4 stories maximum allowed with Height Incentives), in an E-CC-3 UO-1, UO-2 zone district

ACTION OF THE BOARD:

THE VARIANCE IS GRANTED under the Affordable Housing variance criteria, according to the plans submitted to the Board (Exhibit 6) and the testimony at the hearing, with the condition that one additional unit beyond the eight already approved in the Site Development Plan be designated as an Income Restricted Unit. NOTE: A digital copy of the Board-approved plans may be obtained by contacting the Board’s staff. These approved plans MUST be submitted to the Development Services Log-In counter when applying for final construction permits for this project.

BOARD OF ADJUSTMENT
Ignacio Correa-Ortiz, Chair

Austin Keithler

Austin E Keithler, Director

THIS ACTION BY THE BOARD OF ADJUSTMENT IS NOT AN APPROVAL TO PROCEED WITH DEVELOPMENT. PLEASE CONTACT YOUR ASSIGNED REVIEWER WITH CPD TO COMPLETE AND FINALIZE YOUR ZONING PERMIT OR ZONE LOT AMENDMENT APPLICATION. CONSTRUCTION OR ANY OTHER DEVELOPMENT ACTIVITY IS PROHIBITED ON THE SUBJECT REAL PROPERTY UNTIL YOU COMPLETE ALL ZONING AND PERMIT APPROVAL PROCESSES.

NOTE!! VARIANCES AUTHORIZING CONSTRUCTION WILL EXPIRE UNLESS START OF CONSTRUCTION HAS OCCURRED WITHIN 3 YEARS AND IS COMPLETED WITHIN 5 YEARS FROM THE DATE THE VARIANCE WAS GRANTED. (FOR EXTENSIONS, SEE DENVER ZONING CODE, SECTION 12.4.7.7.A.2.)

IN THE BOARD OF ADJUSTMENT FOR ZONING APPEALS OF
THE CITY AND COUNTY OF DENVER
FINDINGS OF FACT AND CONCLUSIONS AS TO LAW

MAY 12, 2026

CASE NO. 13-2026

PREMISES: 1290 SOUTH SANTA FE DRIVE. (Lots 41 to 46 Inclusive, Block 7, West Broadway Addition.)

APPELLANT(S): WAREHOUSE LOFTS LLC, be Eric Weins, 5256 Federal Boulevard, Denver, CO 80221, by Andy Olree, 482 South Broadway, Suite 100, Denver, CO 80209, & Najeeba Zoda, 482 South Broadway, Suite 100, Denver, CO 80209.

SUBJECT: Request for a Variance for a 5-story Multi-Unit Residential structure under the General Building form exceeding the maximum height in stories by 1 story (4 stories maximum allowed with Height Incentives), in an E-CC-3 UO-1, UO-2 zone district

NOTICE OF HEARING: Premises posted. Public notice given in accordance with Section 2-35(2) and 12-96 of the Revised Municipal Code.

APPEARANCES:

Applicant: Andy Olree, 482 South Broadway, Suite 100, Denver, CO 80209
Najeeba Zoda, 482 South Broadway, Suite 100, Denver, CO 80209

For The City: Tiffany Holcomb, Zoning Representative
Malgorzata Tomasik, Zoning Representative

FINDINGS OF FACT:

- I. The application was timely filed March 18, 2026, from a Zoning Relief Pre-Application Meeting Summary dated March 13, 2026. The case was heard on April 21, 2026, at which time a variance with conditions was approved. Final Findings of Fact and Conclusions of Law were adopted by the Board on May 12, 2026.
- II. The Applicants request a variance under Sections 12.4.7.5 and 12.4.7.6 of the Denver Zoning Code (DZC). The Board finds that the Applicants meet the following conditions for a variance under Section 12.4.7.5.D, "Affordable Housing:"
- A. Affordable Housing:
1. The proposed development or design would result in more Income Restricted Units than would be created without the variance.
 - a. The subject property is a new construction project located in the Overland neighborhood. The property is located on the northeast corner of South Santa Fe Drive and West Louisiana Avenue. The property has 155 feet of frontage along South Santa Fe Drive by approximately 110 feet 4 inches of frontage along West Louisiana Avenue. The Applicants are developing the project as a 75-unit, Multi-Unit Residential development. The property is zoned E-CC-3, which generally limits development to three stories in height, but the Applicants are utilizing height incentive Option 1 T-1E for enhanced affordable housing which allows them to develop up to 4 stories. They will be dedicating 10% of the units to serve as affordable housing units, or 8 out of the 75 units in the project. They have incorporated mezzanines for 13 units on the fourth floor which will be

used for loft bedrooms. Mezzanines are allowed by both the zoning and building codes, and they do not count as an additional story. However, the Applicants have found that the building and zoning codes differ on some limitations regarding mezzanines. The building code allows mezzanines to occupy up to 50% of the open space of the floor below. The zoning code on the other hand limits mezzanines to 33% of the open space of the floor below. The Applicants were pressed for time and needed to get the project started as soon as possible, so they have permitted the project with the mezzanines at 33% of the floor below to meet the zoning requirements. In order to accomplish this, they have designed the mezzanine levels with a partition wall which creates a void space between the corridor walls and the usable space of the mezzanine. The Applicants would like to increase the size of the mezzanines of these 13 units by removing the partition wall. This will add a little under 800 square feet of total space to the project, averaging out to approximately 61 additional square feet per unit. It would increase the size of the mezzanines to between 40% to 46% of the space below for each unit. By allowing the increase in mezzanine size, the Applicants will be able to recoup enough costs with their market rate units that they would be able to dedicate an additional unit for affordable housing stock. This would bring their total number of affordable housing units up to 9 total for the project. (Testimony of Andy Olree. See also Exhibit 2 – Board’s Sketch, Exhibit 3 – Board’s Posting Photos, Exhibit 5 – Variance Application, and Exhibit 7 – Applicants’ Statement.)

- b. The Applicants note that the subject matter for the Board references the variance request as asking for a 5-story structure where the code only allows a maximum of 4-stories through height incentives. The Applicants would frame the request differently, stating that they are asking for the mezzanines to be allowed up to 50% of the floor below rather than 33%. This aligns with the building code limitations for mezzanines, which has always been their intent. However, CPD staff have determined that because the mezzanines would exceed the 33% limit in the zoning code, the mezzanines would no longer meet the exception in the Code and would need to be technically considered as an additional story. The Applicants have concerns with the project being characterized as a 5-story structure by zoning. They feel that the wording of the request is misleading, and they are worried that the public may misunderstand the intent of the request. The changes to the building would be 100% internal to the structure and would not be visible from the public realm. There are no exterior differences between the structure as approved and the structure with the variance. The only differences to the project as approved and the structure with the variance would be internal and only to the size of the mezzanine areas. The Applicants feel that this supports their framing of the variance request over CPDs. Further, the requirements in the building code change considerably between a 4-story structure and a 5-story structure. Many design complications could arise if the Building Department considers this a 5-story structure, but one major problem would be that the ‘fifth’ floor mezzanines would need direct access to the corridor. There are no doors leading to the corridor proposed on the mezzanine levels. Further, there is no floor in the corridor built at the mezzanine level. If the building code considers the mezzanines to be a fifth floor, the challenges to the project would rise to a level where utilizing the variance is impractical. The Applicants have received tentative feedback from the Building Department that they would still consider it a 4-story structure regardless of Zoning’s perspective. Provided that is correct, the Applicants are willing to agree to disagree with Zoning staff, but they still feel that the variance should be to the mezzanine size limits rather than the number of stories. (Testimony of Andy Olree. See also Exhibit 5 – Variance Application, and Exhibit 7 – Applicants’ Statement.)
2. The variance to the subject standard cannot be accomplished through any specific incentives available in this Code or in mandates for the provision of Income Restricted Units under other City laws. There are no incentive programs which address increases to the size of mezzanines.

Although zoning will consider this to be a 5-story structure, it will still be a 4-story structure per the building code. (Testimony of Andy Olree. Testimony of Tiffany Holcomb. See also Exhibit 7 – Applicants’ Packet.)

3. The purpose of the adjusted standard will still be achieved or substantially advanced if the variance is approved. The Applicants note that the exterior of the structure will be unchanged whether or not the variance is approved. The difference between compliance with the Code and the relief requested will be fully internal to the structure. The variance will only allow for slightly larger mezzanines, which will increase the residents’ quality of life. Anyone viewing the project from the public realm would have no way of knowing that the project required the variance. (Testimony of Andy Olree. See also Exhibit 5 – Variance Application, and Exhibit 7 – Applicants’ Packet.)
- B. If granted, the variance would meet the following requirements for all variance approvals under 12.4.7.6. DZC:
1. It would not relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure. Any property owner would experience the same challenges developing the affordable housing project. The change will not impact the number of persons who can occupy the building, it will simply allow for slightly larger spaces in the 13 units with mezzanines and for the creation of one additional affordable housing unit. (Testimony of Andy Olree. See also Exhibit 7 – Applicants’ Packet.)
 2. Except as allowed in Section 12.4.7.5, it would not be justified solely on grounds of loss of a financial advantage, hardship that is solely financial, or a more profitable use of the property might be had if a variance is granted. The variance is intended to allow for the development of a higher number of income restricted units.
 3. It would not substantially impair the intent and purpose of this Code. The variance is minor and technical under the circumstances. The changes authorized by the variance will have little to no impact of the utilization of the structure. The changes will only be for slightly increased mezzanine areas. The technical increase to a fifth story will not be visible from the public realm. (Testimony of Aldy Olree.)
 4. It would not substantially impair the intent and purpose of the applicable zone district. The variance is minor and technical under the circumstances. See also Findings II.A. and II.B.
 5. It would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent property. The variance will not affect light, air, or emergency egress to any adjacent properties. The variance will not impact the exterior form of the building in any way. (Testimony of Aldy Olree.) Although the Applicants did not provide letters of support from any neighboring property owners, no one appeared in opposition to the request after fourteen days of posting.
 6. It would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code. See above at Findings II.A. and II.B.
 7. It would adequately address any concerns raised by the Zoning Administrator or other City agencies in their review of the application. CPD stated that they were in support of the variance. CPD found that the request satisfied the Affordable Housing variance criteria, and agreed with the Applicants that the variance would allow for the creation of an additional income restricted unit. CPD staff noted the Applicants’ concern over the framing of the variance but nonetheless believed that the subject matter was correct as written. The Code allows for mezzanines to not be considered as an additional story provided they meet the limitations in Section 13.1.3.3.B.4. If the conditions are met, the mezzanine does not qualify as a story. If the conditions are not met, the mezzanine does qualify as a story. When an exception to a standard does not apply, a variance to the building form standard is necessary. CPD does not have applicants seek variances to exceptions to building form standards, they just have Applicants seek variances to the building form standards. From a zoning perspective, considering this as a 5-story structure is therefore technically correct. CPD staff

also note that they have been in touch with the Building Department, and they do not believe that the proposal will be a 5-story structure per the Building Code. The Zoning Code and Building Code would view the same condition in different ways; the two Codes are not inherently tied together, so there is no conflict created by the different consideration for the number of stories. CPD staff note that the Applicants should be able to include on the drawings that the structure is 5-stories per Zoning and 4-stories per Building, which will comply with both sets of standards provided the variance is approved. (Testimony of Tiffany Holcomb. Testimony Malgorzata Tomasik. See also Exhibit 9 – CPD Presentation.) The Board concurs and finds this condition to be met.

CONCLUSION: The Board concludes that the conditions set forth in Sections 12.4.7.5 and 12.4.7.6 of the Zoning Code do exist, and a variance is in order.

MOTION: The motion by Mr. Bergeron to grant the variance as requested was seconded by Mr. Rice and was adopted.

VOTE: FOR: 5 AGAINST: 0

ACTION OF THE BOARD: THE VARIANCE IS GRANTED under the Affordable Housing variance criteria, according to the plans submitted to the Board (Exhibit 6) and the testimony at the hearing, with the condition that one additional unit beyond the eight already approved in the Site Development Plan be designated as an Income Restricted Unit. NOTE: A digital copy of the Board-approved plans may be obtained by contacting the Board’s staff. These approved plans MUST be submitted to the Development Services Log-In counter when applying for final construction permits for this project.