

I feel the correct interpretation is:

- A) The project exceeds the LDC limitations placed on duplexes outlined on 25-2-555 D. It has 10 bedrooms, and with 4494 sq. ft. it exceeds the 4000 square foot limit.
- B) The attic space does not meet the exempt attic requirements outlined on 25-2, Subchapter F, Article 3, 3.3.3. The habitable space adds mass and is not fully contained within the roof structure.
- C) The project does not meet the duplex requirements outlined on 25-2-773 (D). It does not have a common roof, only share a section of a roof, and the common wall length does not meet the 50% criteria as measured from front to back.
- D) The project is not compatible with SF-3 use. It is clearly designed for group residential use as defined in the LDC 25-2-3 (5)
- E) The project exceeds .4 Floor to Area Ratio. All enclosed space over 5' in height shall be counted toward Gross Floor Area, in accordance with LDC 25-2 Subchapter F. 3.3.4. There is no provision in the LDC that provides for the exemption of storage space, or unfinished space.
- F) With 10 bedrooms, the project required 8 parking spaces per 25-6-655 Appendix A. With 4 parking spaces, the project does not meet the requirements.
- G) With the 10 bedrooms, the project needs to comply with the landscaping requirements outlined in 25-2-981. It does not.

NOTE: The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:

A) The project has 10 bedrooms, thus exceeds the number of bedrooms allowed under LDC 25-2-555 D

(D) This subsection applies to a duplex residential use.

(1) On a lot with a lot area of less than 10,000 square feet, a duplex structure may not exceed 4,000 square feet of gross floor area or contain more than six bedrooms.

The limit was placed in 2003 as a remedy for the “super duplex”, and its devastating effects on neighborhoods. It was passed by Council with these words:

The Council finds that the regulations in this ordinance are necessary to ensure that a duplex residential use is not established unless it is compatible with other nearby land uses. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety

Although some of the bedrooms are not accurately labeled, this structure has a total of 10 bedrooms, plus 1292 sq. ft. of potentially habitable “storage space”. This “storage space” will be created at great expense, through the extensive use of dormers, and two full sets of stairs.

The ten bedrooms will be served by 6 full bathrooms, with a total of 12 lavatory sinks.

The vast majority of projects are unaffected by bedroom counts. There are some instances, however, when the number of bedrooms needs to be calculated. This is the case with 25-2-555. If the City is going to regulate based on bedrooms counts, it is unreasonable for reviewers to refuse the authority to make that determination. At this point, reviewers simply read what is written on a plan. The process is based on the “honor system”. Real Estate professionals, appraisers, habitually determine what is a bedroom and what is not a bedroom. Any of them would report that this project exceeds six bedrooms.

For the purposes of interpreting 25-5-555D, and not allowing this project to re-start the “super duplex” practice, a bedroom could reasonably be defined as any room that:

- meets the definition for habitable space under IRC 2006 Section R202 (space to be used for living, eating, cooking, and sleeping) AND
- meets the minimum area requirements per IRC 2006 section 304 (70 square feet, minimum 7” dimension) AND
- is a private space or can be made private by the addition of a door AND
- has outside door and or window which meets the minimum requirements for emergency escape

To reiterate, the vast majority of projects would be unaffected by a bedroom definition. For those projects where the number of bedrooms trigger a regulation, common sense design variations would ensure reasonable use, while preventing bad actors from exploiting the land Development Code and the neighborhoods that have to live with their projects.

For example, on this project the game rooms are fully enclosed private spaces. A game room, truly intended to be a game room, would likely meet all the above mentioned criteria except that of privacy. Offices could have windows that deviate from the egress requirements.

At this time, due to the inclusion of the potentially habitable attic as square footage, the project exceeds the 4,000 sq ft maximum square footage for a duplex on a lot less than 10,000sq. ft.

B) The attic space does not meet the exempt attic requirements outlined on 25-2, Subchapter F, Article 3, 3.3.3

The permit at this time states that “each unit has space at the highest floor which is exemptible under 25.2 subchapter F.” We reserve the right to appeal this if not addressed by the time of the hearing. More information will be provided, if the exemption remains on the permit.

C) The project does not meet the duplex requirements outlined on 25-2-773 (D)

(D) The two dwelling units are subject to the following requirements:

(1) The two units must have a common floor and ceiling or a common wall, which may be a common garage wall, that:

(a) extends for at least 50 percent of the maximum depth of the building, as measured from the front to the rear of the lot; and

(b) maintains a straight line for a minimum of four foot intervals or segments.

(2) The two units must have a common roof.

The common wall in this project does not extend for 50 % of the maximum depth, **as measured from the front to the rear of the lot.**

The two units share not a roof, but a **portion of a roof.**

D) The project is not compatible with SF-3 use. It is clearly designed for group residential use as defined in the LDC 25-2-3 (5)

Group Residential use is the use of a site for occupancy by a group of more than six persons who are not a family, on a weekly or longer basis. This use includes fraternity and sorority houses, dormitories, residence halls, and boarding houses.

It is apparent in the plans that the intended use for this structure is group residential. It is unfathomable that there be 12 lavatory sinks for 6 residents, or almost 1300 sq. ft. of habitable storage space. This space will store humans, and many more than six.

It is not reasonable to approve a permit that will establish a structure intended for an illegal use.

This property owner has run an illegal four-plex on the site since he purchased the property in 2006. Although it has had an open Code Compliance Case since the purchase, it has continued to be rented and inhabited.

E) At 4,494 square feet of gross floor area, the project significantly exceeds the .4 FAR maximum of 3,200 square feet.

 § 3.3. GROSS FLOOR AREA.

In this Subchapter, GROSS FLOOR AREA has the meaning assigned by Section [25-1-21](#) (GROSS FLOOR AREA means the total enclosed area of all floors in a building with a clear height of more than six feet, measured to the outside surface of the exterior walls. The term includes loading docks and excludes atria airspace, parking facilities, driveways, and enclosed loading berths and off-street maneuvering areas), with the following modifications:

3.3.1. In this Subchapter, GROSS FLOOR AREA means all enclosed space, regardless of its dimensions, that is not exempted under subsections 3.3.2, 3.3.3, or 3.3.4.

The “storage space” is enclosed and is not exempted under subsections 3.3.2, 3.3.3, or 3.3.4. Hence, it should be counted as Gross Floor Area in the Floor to Area Ratio calculation.

F) With 10 bedrooms, the project required 8 parking spaces per 25-6-655 Appendix A. With 4 parking spaces, the project does not meet the requirements.

Appendix A states that a duplex with more than 6 bedrooms must provide one parking space per bedroom. As this project is in the urban core, it would be reduced by 20% to 8 parking spaces. Although it is apparent that the parking plan for this project includes the decomposed parking area surrounding the legal parking spaces, they would not be legal parking spaces as they would significantly increase impervious cover beyond the allowable 45%.

G) With the 10 bedrooms, the project needs to comply with the landscaping requirements outlined in 25-2-981. It does not.

2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:

In order for this lot to be developed in the manner in which this permit seeks to develop it, it would require MF-4 zoning. If that is the intention, the property owner should seek a zoning change. Otherwise, this property should be developed with the same regulations as SF-3 properties , with a structure intended to house a MAXIMUM of 6 unrelated persons.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: _____

Granting this permit will result in a special privilege to this property owner by permitting a structure to be built which does not meet the requirements of the Land Development Code. This interpretation seeks to ensure that this property is developed consistently with other SF-3 properties.
