

MINUTES
WINDSOR BOARD OF ADJUSTMENT
January 28, 2010

Chairman Danny Horner called the Windsor Board of Adjustment meeting to order at 7:00 p.m. and called for roll. The following members were present: Richard Conard, Jim Fanning, Mary Ann Baak, and Chris Morgan. Director of Planning Joseph Plummer and Town Attorney Ian McCargar were also present.

See attached attendance sheet.

STATEMENT OF DOCUMENTS TO BE ENTERED INTO THE RECORD

Chairman Horner stated that he enters into the record the Town's Comprehensive Plan, the Town's Zoning Ordinance, the staff report regarding the action items of this hearing, and all of the testimony received at this hearing.

PUBLIC INVITED TO BE HEARD

There was no public comment.

APPROVAL OF THE MINUTES OF DECEMBER 8, 2009

Chairman Horner asked for a motion to approve the December 8, 2009 minutes. Ms. Baak requested that the minutes be amended to reflect the correct spelling of her first name which does not contain an "e" at the end. Mr. Fanning then made a motion to approve the minutes of December 8, 2009 as amended to reflect the correct spelling of Ms. Baak's name. Mr. Morgan seconded the motion. Motion carried unanimously.

CONTINUED FROM DECEMBER 8, 2009 BOARD OF ADJUSTMENT MEETING
VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 BUILDING LOCATION IN THE
SINGLE FAMILY RESIDENTIAL (SF-1) ZONING DISTRICT - 500 OAK STREET -
GUS PANTELOPOULOS, APPLICANT/KEVIN LUECK OF LUECK CONSTRUCTION,
APPLICANT'S REPRESENTATIVE - J. PLUMMER

Mr. Robert Herrera with Hagen and Melusky, attorneys at law, Windsor, Colorado, stated that the discussion today is about 1 foot 6 inches. Mr. Herrera gave a brief background discussion stating that this property was owned by Mel and Barbara Moilien before they decided to split the property and sell one half to the Pantelopoulos'. At the time the lot lines were established for the address 500 Oak Street the 5 foot setback was established for the lot that abuts 5th street. Mr. Herrera continued stating that on October 17, 2008 Mr. Pantelopoulos applied for a variance to exceed the east side setback one foot eleven inches (1'11").

CONTINUED FROM DECEMBER 8, 2009 BOARD OF ADJUSTMENT MEETING
VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 BUILDING LOCATION IN THE
SINGLE FAMILY RESIDENTIAL (SF-1) ZONING DISTRICT - 500 OAK STREET – GUS
PANTELOPOULOS, APPLICANT/KEVIN LUECK OF LUECK CONSTRUCTION,
APPLICANT’S REPRESENTATIVE – J. PLUMMER (CONT’D)

Mr. Herrera stated that most of the departments did not report a problem with this request but the engineering department made a recommendation to deny the request stating that the driveway would not be large enough for some vehicles and to have a vehicle obstruct a public sidewalk creates a public safety hazard. Mr. Herrera stated that the setback certification is usually submitted at the time of underground plumbing, however this home not having a basement did not need this inspection and therefore construction proceeded without the setback certification. Mr. Herrera stated that the time came for final inspections which then required the builder to call King Surveyors for the setback certification.

Mr. Herrera stated that at this time it was noted that the garage was not in compliance with all setbacks and King Surveyors refused to complete a setback certification. Mr. Herrera proceeded with distributing the enclosed exhibits (Exhibits 1–7 to be entered into the record) to the Board. Mr. Herrera explained that Exhibits 1 – 4 showed the property owners vehicle fitting in the driveway. Mr. Herrera stated that Exhibit 5 was a spreadsheet that listed various vehicles and the lengths of each vehicles and stated that the Ford F-150 extended cab was the only car that wouldn’t fit in the driveway as it sits today.

Mr. Herrera stated that Exhibit 6 showed a vehicle in the driveway that had a snowplow on the front of it fitting in the driveway. Mr. Herrera further presented Exhibit 7 which was a letter from the principal of Tozer Elementary School, Ms. Shelly Prenger, which stated that she had no problems with the setback and that there have been no complaints from parents about the sidewalk being obstructed. Mr. Herrera stated that the significant hardship shown is that the cost of removing and replacing the garage to be one foot six inches (1’6”) back to meet the setbacks would be about \$35,000.

Mr. Fanning made a motion to open the public hearing. Mr. Morgan seconded the motion. Motion carried unanimously.

There was no public comment

Mr. Plummer stated that Mr. Herrera had described the history of the home correctly, that in October of 2005 during the property split the Board granted the five foot (5’) setback on the east side of the property. Mr. Plummer stated that then in 2008 the Board denied a variance request to reduce the setback from the approved five feet (5’) to three feet one inch (3’1”). Mr. Plummer stated that it was denied for the safety reasons that were cited in the engineering department’s report. Mr. Plummer stated that a building permit was issued for this property late last year and the plot plan shows a five foot (5’) setback on the east side of the property abutting 5th Street.

CONTINUED FROM DECEMBER 8, 2009 BOARD OF ADJUSTMENT MEETING
VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 BUILDING LOCATION IN THE
SINGLE FAMILY RESIDENTIAL (SF-1) ZONING DISTRICT - 500 OAK STREET – GUS
PANTELOPOULOS, APPLICANT/KEVIN LUECK OF LUECK CONSTRUCTION,
APPLICANT'S REPRESENTATIVE – J. PLUMMER (CONT'D)

Mr. Plummer stated that it is true that a setback certification is usually performed at the time of underground plumbing and that this was not the case for 500 Oak because it is built on a crawl space, but that it is always the home owner's and contractor's responsibility to build the home to meet approved and required setbacks. Mr. Plummer stated that the Town's contract inspection agency, Safebuilt Colorado, requires a setback certification before a final inspection can be approved.

Mr. Plummer stated that King Surveyors made a field visit to the site and that the applicant's representative, Mr. Kevin Lueck of Lueck Construction, 335 North Shores Circle, presented an improvement location certificate that was prepared by King Surveyors to the town that showed a 3ft setback which does not meet the setback requirement of 5ft.

Mr. Plummer stated that staff does not consider the literal enforcement of the Code to result in an unnecessary hardship or a practical difficulty based upon the following findings of fact:

Mr. Plummer stated a setback of 3'5" would (a) not allow the driveway length to be at least twenty (20) feet in length and (b) would create a situation where parking standard vehicles on the driveway could significantly obstruct the public sidewalk

Mr. Plummer stated therefore, based on the aforementioned findings of fact, staff recommends that the Board of Adjustment deny this variance request.

Mr. Morgan asked what the total length inside the garage is on the RV side.

Mr. Pantelopoulos stated that it is about forty feet (40') and the RV is thirty six (36'). Mr. Pantelopoulos stated that there is 1 or 2 ft inside when the RV is in the garage.

Mr. Morgan stated that knowing the setbacks are so tight, whoever poured the foundation should have taken the setbacks into consideration. Mr. Morgan asked Mr. Pantelopoulos if he could provide more details concerning the reduced setback, and Mr. Pantelopoulos stated that he had no explanation as to how this situation occurred.

Mr. Lueck then stated that he did what he always does and pulls the strings from the grade stakes to find the setbacks. Mr. Lueck stated that he had come down to the town hall to discuss with Peggy the setbacks and the plot plan that he had. Mr. Lueck stated that Peggy was not in and that he had spoken with Joy about the setbacks and the plot plan. Mr. Lueck stated that he had one plan that said they were twenty feet six inches (20'6") from the asphalt then on another plan it showed twenty feet six inches (20'6") from the back of the curb. Mr. Lueck stated that Joy changed the permit to eighteen feet six inches (18'6") from the back of the curb to property line. Mr. Lueck

CONTINUED FROM DECEMBER 8, 2009 BOARD OF ADJUSTMENT MEETING
VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 BUILDING LOCATION IN THE
SINGLE FAMILY RESIDENTIAL (SF-1) ZONING DISTRICT - 500 OAK STREET -
GUS PANTELOPOULOS, APPLICANT/KEVIN LUECK OF LUECK CONSTRUCTION,
APPLICANT'S REPRESENTATIVE - J. PLUMMER (CONT'D)

continued by stating that the foundation drawing showed forty two feet (42') and he changed it to forty one feet seven inches (41'7") to meet the 5ft setback.

Mr. Lueck stated that this is his 38th house and has never had a problem with the setbacks.

Mr. Morgan asked if Mr. Lueck thought it was a staking problem.

Mr. Lueck stated he believed it was and that Northern Engineering conducted the initial measurement. Mr. Lueck stated that a forty two foot (42') foundation was approved and he poured a forty one foot seven inch (41'7") foundation to meet what he thought was the 5ft setback.

Mr. Plummer stated that in the packets on the plot plan it shows the foundation will be forty feet (40') in length and the 5ft setback from the property line. Mr. Plummer stated that this is what was approved for the building permit application.

Mr. McCargar asked Mr. Lueck if the garage (foundation) was built to the forty one seven inch (41'7") distance.

Mr. Lueck answered yes.

Mr. McCargar asked if Mr. Lueck admitted to the plans showing 40ft.

Mr. Lueck stated that the plans that he had did not show 40ft and that they were different from what the town is showing.

Mr. McCargar asked Mr. Pantelopoulos if he did apply for a building permit and if he admits to the plot plan showing a 40ft deep garage.

Mr. Pantelopoulos stated that he did apply for a building permit and that the garage did show as 40ft on the plot plan.

Mr. McCargar asked Mr. Lueck if he was working for Mr. Pantelopoulos as his agent.

Mr. Lueck stated yes.

Mr. McCargar asked Mr. Lueck if he told Mr. Pantelopoulos that he was building the garage at 41'7".

Mr. Lueck stated no, that he was just going off the 5 foot setback.

CONTINUED FROM DECEMBER 8, 2009 BOARD OF ADJUSTMENT MEETING
VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 BUILDING LOCATION IN THE
SINGLE FAMILY RESIDENTIAL (SF-1) ZONING DISTRICT - 500 OAK STREET – GUS
PANTELOPOULOS, APPLICANT/KEVIN LUECK OF LUECK CONSTRUCTION,
APPLICANT'S REPRESENTATIVE – J. PLUMMER (CONT'D)

Mr. McCargar asked Mr. Lueck if he felt like once he had the setback did he feel like he could build the garage larger than what was approved.

Mr. Lueck stated that on the plans that he has for the house it actually shows forty two feet (42'). Mr. Lueck stated that the house plans are different than the setback plan.

Mr. McCargar asked whether the house plans that Mr. Lueck was working from were different than what the applicant submitted to obtain the building permit, and Mr. Lueck stated that his plans showed 42'.

The Board discussed how they could be back discussing a variance that was previously denied but built within the setback that was previously denied. The Board also discussed how the builder could have had different plans than what was approved for the building permit. The new process of requiring setback certifications with or without a basement at underground plumbing inspections was also discussed by the Board members and staff.

Mr. McCargar stated that there needs to be a scintilla of competent evidence to support the decision of the Board. Mr. McCargar explained that competent evidence is evidence that is reliable. Mr. McCargar continued stating that an attorney making statements without a witness is not competent evidence but testimonies by witnesses or a reliable source is competent evidence. Mr. McCargar stated that although Mr. Pantelopoulos testified he did not give evidence for what his lawyer presented. Mr. McCargar asked the Board to only consider what Mr. Pantelopoulos stated while he was testifying. Mr. McCargar stated that Mr. Lueck did testify to what someone else told him which is hearsay and not competent evidence. Mr. McCargar continued stating that staff has verified that the plans that were approved show a forty foot (40') deep garage and that a forty one foot seven inch (41'7") garage was built. Mr. McCargar stated that Mr. Lueck admitted that he was Mr. Pantelopoulos' agent while building the garage so in effect Mr. Pantelopoulos built the garage larger than what he presented to the town. Mr. McCargar stated that Mr. Pantelopoulos was aware of the previous variance that was denied. Mr. McCargar concluded stating that the code states the hardship cannot be created by the owner.

Mr. Conard made a motion to close the public hearing. Ms. Baak seconded the motion. Motion carried unanimously.

CONTINUED FROM DECEMBER 8, 2009 BOARD OF ADJUSTMENT
MEETING VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 BUILDING
LOCATION IN THE SINGLE FAMILY RESIDENTIAL (SF-1) ZONING DISTRICT
- 500 OAK STREET – GUS PANTELOPOULOS, APPLICANT/KEVIN LUECK
OF LUECK CONSTRUCTION, APPLICANT'S REPRESENTATIVE – J.
PLUMMER (CONT'D)

Based upon staff recommendation of making motions in the affirmative, Mr. Fanning made a motion to approve the variance request from Section 16-12-40 for building location in the single family residential (SF-1) zoning district subject to conditions stated in the staff memo. Second by Mr. Conard.

Aye: Mr. Conard

Nays: Mr. Horner, Mr. Fanning, Mr. Morgan, and Ms. Baak

The Variance of Section 16-12-40 was denied based upon the following findings of fact:

- (1) A setback of three feet, five inches (3'5") would (a) not allow the driveway length to be at least twenty (20) feet in length and (b) would create a situation where parking standard vehicles on the driveway could significantly obstruct the public sidewalk;**

and

- (2) In contravention of Windsor Municipal Code Section 16-6-60 (c), the applicant and his representative created the circumstances affecting the property and, therefore, unnecessary hardship has not been demonstrated.**

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING
LOCATION IN THE SINGLE FAMILY RESIDENTIAL (SF-1) ZONING DISTRICT – 222
ELM STREET – MICHAEL DESHAZO, APPLICANT – J.PLUMMER

Mr. Conard made a motion to open the public hearing. Ms. Baak seconded the motion. Motion carried unanimously.

Michael DeShazo, 4407 30th Street Greeley, stated that he and his wife have been remodeling 222 Elm Street. Mr. DeShazo stated that he would like to add a porch on both the front and back of this house. Mr. DeShazo continued stating that because of when and where this house was built the setbacks on either side of the home are approximately four feet (4') from the property line. Mr. DeShazo stated that the porch he proposes to build will be parallel with the existing home which will make it approximately four feet (4') from the property line on both sides. Mr. DeShazo stated that it will not encroach into the setback more than the existing house. Mr. DeShazo

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE SINGLE FAMILY RESIDENTIAL (SF-1) ZONING DISTRICT – 222 ELM STREET – MICHAEL DESHAZO, APPLICANT – J.PLUMMER

stated that the finished project should look more like the neighbors' homes which were built years before 222 Elm.

Mr. Plummer stated that Mr. DeShazo is requesting to add two porches to the subject property, one to the front and one to the rear of the home. These porches will encroach in to the offsets no more than one and a half feet (1.5') and the same distance as the primary structure. The rear porch will be approximately 4.17' from the property line and the front porch will be approximately 3.98' from the property line. Mr. Plummer stated that the planning department has not received any complaints or concerns about this variance request.

Mr. Plummer stated that there are no concerns from Safebuilt, the fire district or the other departments. Mr. Plummer stated that staff considers the literal enforcement of the Code to result in an unnecessary hardship or a practical difficulty based upon the following findings and facts:

1. The porches will not encroach any further than the existing structure; and
2. Granting of the variance does not appear to pose any public safety or welfare concerns.

Therefore, based upon the aforementioned findings of fact, staff recommends that the Board of Adjustment make a motion to approve the variance request to section 16-12-40 to allow the porches to be built 4.17' and 3.98' from the east and west property lines, respectively, subject to the following conditions:

1. The applicant shall submit for and receive approval of a building permit; and
2. The applicant shall comply with all the requirements of Safebuilt Colorado.

Mr. DeShazo also requested clarification from the Board, staff and the Town's building representative Mr. Russ Weber of Safebuilt Colorado as to whether extending the overhang of the roof of the existing principal structure along the same plane over each of the porches would be acceptable to the Town since the existing roof overhangs are extremely wide and would extend to within approximately one foot (1') of each respective property line. The BOA deferred this question to the Director of Planning Mr. Joseph P. Plummer, and upon receiving confirmation from Mr. Weber that this extension would not violate the building code, Mr. Plummer advised the BOA that the roof extensions could be allowed as part of the current variance application and therefore if approved would not create any issues relative to the review of Mr. DeShazo's building permit application.

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE SINGLE FAMILY RESIDENTIAL (SF-1) ZONING DISTRICT – 222 ELM STREET – MICHAEL DESHAZO, APPLICANT – J.PLUMMER (CONT'D)

Ms. Baak made a motion to close the public hearing. Ms. Fanning seconded the motion. Motion carried unanimously.

Based upon staff recommendation, Mr. Conard made a motion to approve the variance request from Section 16-12-40 to allow the offset to be 3.98' from the east property line and 4.17' from the west property line based upon both findings of fact stated in staff's recommendation for building location in the single family residential (SF-1) zoning district. Additionally, and as a result of the discussion of extending the overhangs of both rooflines of the existing principal structure along the same plane over each of the porches which would result in the leading edges of the roofs of both new porches extending within approximately one foot (1') of each respective property line, the Board approved an additional variance to permit the leading edges of the roofs of both new porches to extend within approximately one foot (1') of each respective property line, subject to both of the following conditions continuing to be met.

- 1. The applicant shall submit for and receive approval of a building permit; and**
- 2. The applicant shall comply with all requirements of Safebuilt Colorado.**

Mr. Fanning seconded the motion. Motion carried unanimously.

ELECTION OF OFFICERS (CHAIRMAN, VICE-CHAIRMAN AND SECRETARY) FOR THE 2010 CALENDAR YEAR – J. PLUMMER

Mr. Plummer stated that the current officers are; Chairman Mr. Horner, Vice-Chairman Mr. Conard and Secretary Mr. Fanning.

Mr. Fanning made a motion to retain the current officers for 2010. Mr. Morgan seconded the motion. Motion carried unanimously.

COMMUNICATIONS FROM THE BOARD OF ADJUSTMENT

There were no communications from the Board.

COMMUNICATIONS FROM THE STAFF

Mr. McCargar stated that on March 25, 2010 there will be an appeal of a decision that was made by the Director of Planning. Mr. McCargar explained the process of an appeal to the Board and also discussed what will be appealed on March 25, 2010. Mr. McCargar continued stating the importance of the appeal process to the board and the decision that Mr. Plummer made in early January. Mr. McCargar stated that the Board will need to adopt procedural rules concerning how appeal hearings are handled. Mr. McCargar stated that the procedural rules will be presented in a meeting prior to March 25th to be considered and adopted which is required under the International Property Maintenance Code.

Mr. Plummer stated that Mr. McCargar will be contacting the members not present at tonight's meeting concerning the upcoming meetings and their attendance.

Mr. Plummer stated that the setback certification has been required for about 2 to 3 years. Mr. Plummer stated that at this time setback certification is required prior to framing. Mr. Plummer continued stating that there is a builder that has inquired about the new process of requiring setback certifications prior to framing as the builder feels as if this policy is slowing down the building process. Mr. Plummer asked the Board if they feel as if this is an important policy to keep in place, and the Board re-affirmed that it continues to support the policy and would like it to remain in place to help avoid situations such as the previous variance request for 500 Oak Street from occurring in the future.

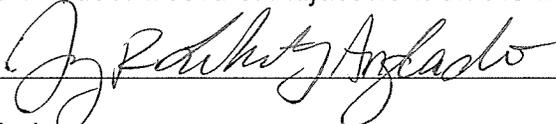
ADJOURNMENT

Mr. Conard made a motion to adjourn the meeting. Ms. Baak seconded the motion. Motion carried unanimously.

There being no further business, the meeting was adjourned at 8:07 p.m.

CERTIFICATION

Approved by the Windsor Board of Adjustment on the 25th day of February 2010.

Submitted By: 

Joy Liberty-Anglado
Recording Secretary