

**MINUTES  
WINDSOR BOARD OF ADJUSTMENT  
APRIL 22, 2010**

Chairman Danny Horner called the meeting of the Windsor Board of Adjustment to order at 7:00 p.m. and called for roll. The following members were present: Richard Conard, Mary Ann Baak, Cathy Broida and Jim Fanning. Director of Planning Joseph Plummer, Chief Planner Scott Ballstadt, Town attorney Ian McCargar and Associate Planner Elizabeth Fields 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 FEBRUARY 25, 2010

**Chairman Horner asked for a motion to approve the March 25, 2010 minutes. Ms. Baak then moved to approve the minutes of March 25, 2010 as presented. Ms. Broida seconded the motion. Motion carried unanimously.**

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE RESIDENTIAL MIXED USE (RMU) ZONING DISTRICT – 45 VERONICA DRIVE - MYERS FAMILY TRUST, PROPERTY OWNERS, LINDA KIRBY MYERS AND PHILLIP MYERS, APPLICANTS

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

Mr. Phil Myers, 45 Veronica, described in detail his desires to build stairs and a landing into the setback on the west side of his property so he may access his side yard from the existing door to his home. Mr. Myers stated that a setback of 1.5 feet from the property line is requested. Mr. Myers stated that the stairs will be constructed with non-combustible materials and that they will meet the proper storm drainage requirements.

Ms. Fields stated that the applicant is requesting a variance for a setback of one and a half (1.5) feet from the western property line. Ms. Fields confirmed that Section 16-12-40 of the Windsor Municipal Code (Code) states that the minimum offset shall be

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE RESIDENTIAL MIXED USE (RMU) ZONING DISTRICT – 45 VERONICA DRIVE - MYERS FAMILY TRUST, PROPERTY OWNERS, LINDA KIRBY MYERS AND PHILLIP MYERS, APPLICANTS (CONT'D)

five feet (5') in the Residential Mixed Use (RMU) zoning district. Ms. Fields stated the variance request is to construct stairs and a landing from an existing door, approximately three feet (3') above grade, on the west side of the house. Ms. Fields stated that both the stairs and landing are proposed to be constructed out of non-combustible materials (i.e., concrete or iron). Ms. Fields stated that SAFEbuilt concerns were that because the home's exterior wall is already at the minimum distance so as not to require fire rated construction (5') any projection that is subject to combustion such as a deck or landing would have to be fire rated, which for these elements is difficult as best. Ms. Fields reiterated that the applicant stated that the materials will be non-combustible.

Ms. Fields continued explaining that the Town's Engineering Department has stated that the proposed landing and stairs may be acceptable as long as they do not interfere with the drainage from the back of the property to the front, given that some of the storm drainage from the back yard flows along the side lot line. Ms. Fields stated that the engineering department recommends that if the variance is to be granted that it include a condition that an engineered design be submitted to the engineering department for review and approval prior to construction.

Ms. Fields confirmed section 16-6-60(b) of the Municipal Code states that "Variances may be considered where, due to special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship" and "Variances will not be granted contrary to the public interest and will only be considered when the spirit of this Chapter can be observed and public safety and welfare secured."

Ms. Fields 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 of fact:

1. The stairs and landing are necessary to provide access from the existing door, three feet (3') above grade to the side yard.
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 allow stairs to be constructed one and a half feet (1.5') from the west property line subject to the following conditions:

1. The stairs and landing shall be constructed out of non-combustible materials.

VARIANCE OF MUNICIPAL CODE SECTION 16-12-40 PERTAINING TO BUILDING LOCATION IN THE RESIDENTIAL MIXED USE (RMU) ZONING DISTRICT – 45 VERONICA DRIVE - MYERS FAMILY TRUST, PROPERTY OWNERS, LINDA KIRBY MYERS AND PHILLIP MYERS, APPLICANTS (CONT'D)

2. An engineered design of the stairs shall be submitted to the engineering department for review and approval prior to construction of the stairs and landing.
3. The applicant shall submit for and receive approval of a building permit.

Ms. Baak asked if this would create any emergency access concern.

Ms. Fields stated that there is currently not a home built on the lot to the west, but due to the five feet (5') required setback, there will be a minimum of six and a half feet (6.5') between that house and the stairs.

Mr. Plummer added that the stairs do not impede any further than the window wells.

**Seeing that there were not any requests from the public to be heard, Mr. Conard moved to close the public hearing. Ms. Broida seconded the motion. Motion carried unanimously.**

**Mr. Horner asked for a motion and a second. Ms. Baak then made a motion to approve Variance of Municipal Code Section 16-12-40 pertaining to Building Location in the Residential Mixed Use (RMU) zoning district – 45 Veronica Drive. Mr. Fanning seconded the motion. There was no board discussion. The motion carried unanimously.**

Mr. Horner called for a short recess before the appeal. Please see attached.

APPEAL OF AN ORDER, REQUIREMENT, DECISION OR DETERMINATION MADE BY THE ZONING OFFICER IN ACCORDANCE WITH SECTION 16-6-40 OF THE MUNICIPAL CODE – 1292 MAIN STREET, UNIT 1 - LAZARUS PINO, MEDIGROW, LLC, APPELLANT/DAVE GILBERT, PROPERTY OWNER/DANIEL J. TAYLOR, ATTORNEY AT LAW, APPELLANT'S REPRESENTATIVE – I. MCCARGAR

Upon motion duly seconded, the Board convened a public hearing for the purpose of taking evidence in support of the appeal. After all evidence and argument were received, the public hearing was closed upon motion duly seconded.

The Board deliberated the three questions presented by the appeal as required by § 111 of the International Property Maintenance Code, with the advice and counsel of Special Counsel, Greg Bell. The following questions, presented on motion duly seconded, were determined as set forth below:

APPEAL OF AN ORDER, REQUIREMENT, DECISION OR DETERMINATION MADE BY THE ZONING OFFICER IN ACCORDANCE WITH SECTION 16-6-40 OF THE MUNICIPAL CODE – 1292 MAIN STREET, UNIT 1 - LAZARUS PINO, MEDIGROW, LLC, APPELLANT/DAVE GILBERT, PROPERTY OWNER/DANIEL J. TAYLOR, ATTORNEY AT LAW, APPELLANT’S REPRESENTATIVE – I. MCCARGAR (CONT’D)

1. Has the appellant proven by a preponderance of the evidence that true intent of the Code has been incorrectly interpreted by the Director of Planning in this circumstance?

Ayes: none

Nays: Baak, Broida, Conard, Fanning, Horner

2. Has the appellant proven by a preponderance of the evidence that the International Property Maintenance Code is not fully applicable to this circumstance?

Ayes: none

Nays: Baak, Broida, Conard, Fanning, Horner

3. Has the appellant proven by a preponderance of the evidence that the requirements of the International Property Maintenance Code can be otherwise adequately met?

Ayes: Broida

Nays: Baak, Conard, Fanning, Horner

Having so determined the foregoing questions, the Chair announced that the appeal is denied, and the determinations of the Director of Planning are affirmed. Mr. Bell was directed to prepare a written decision for signature by the Chair as provided in the procedural rules adopted on February 25, 2010. Upon signature, that decision will be incorporated herein by this reference as if set forth fully.

The proceedings were recorded verbatim by a certified shorthand reporter. The verbatim record so recorded is incorporated herein by this reference as if set forth fully.

Whereupon, the Chair called a brief recess to allow the chamber to clear, and to allow an orderly return to the next Agenda item.

COMMUNICATIONS FROM THE BOARD OF ADJUSTMENT

There were no communications from the Board.

COMMUNICATIONS FROM THE STAFF

There were no communications from the staff.

ADJOURNMENT

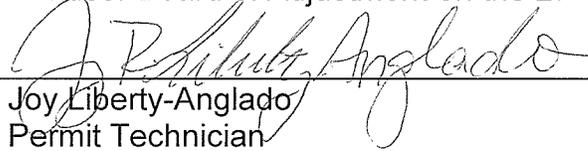
**Mr. Conard moved to adjourn the meeting. Ms. Baak seconded the motion. The motion carried unanimously.**

There being no further business, the meeting was adjourned at 10:35 p.m.

CERTIFICATION

Approved by the Windsor Board of Adjustment on the 27<sup>th</sup> day of May 2010.

Submitted by:

  
Joy Liberty-Anglado  
Permit Technician