



BOARD OF ADJUSTMENT/APPEALS REGULAR MEETING

June 26, 2014 – 7:00 P.M.

Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Monday prior to the meeting to make arrangements.

Minutes

1. The meeting was called to order by Chairman Danny Horner at 7:00 p.m.

2. Roll Call

The following members were present:

Chair - Danny Horner
Cindy Scheuerman
Dr. Jose Valdes
Dr. Benjamin George
Jim McIntyre

Also Present: Director of Planning
Associate Planner
Associate Planner

Joe Plummer
Josh Olhava
Paul Hornbeck

3. Review of Agenda by the Board and Addition of items of New Business to the Agenda for Consideration by the Board.

There were no changes to the agenda.

4. Reading of the statement by Chairman Horner of the documents to be entered into the record:

I enter 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.

5. Public Invited to be Heard

There was no public comment.

B. CONSENT CALENDAR

1. Approval of the minutes of February 27, 2014

Dr. Valdes moved to accept the Consent Calendar as presented; Ms. Scheuerman seconded the motion. Motion carried unanimously.

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-12-40 pertaining to setback requirements in the Single-Family Residential (SF-1) zone district at 1021 Pinyon Drive in the Mountain View Subdivision, Second Filing in the Town of Windsor - Eric and Sonja Yauk, applicants – Joe Plummer

Dr Valdes moved to open the Public Hearing; Ms. Scheuerman seconded the motion. Motion carried unanimously.

Mr. Plummer stated that the applicants, Eric and Sonja Yauk, are requesting a variance from Municipal Code Section 16-12-40 (Building Location). Mr. Plummer explained that the applicant applied and paid for a building permit and constructed a 26' x 30' detached workshop on the subject property. The building permit application included a drawing depicting the workshop 19-feet from the eastern property line. Mr. Plummer stated that unfortunately, the eastern property line happens to coincide with the western edge of right-of-way for 7th Street but was not identified as such on the drawing. Therefore, the building permit was reviewed under the misconception that Pinyon Drive was the only street right-of-way from which the minimum setback applied.

Mr. Plummer stated that the minimum setback of 20-feet should have been applied from the eastern property line to provide the required setback from the 7th Street right-of-way. Instead the permit was issued in error, the applicant proceeded to build the workshop and the Town's mistake was only discovered after construction had been completed. Mr. Plummer explained that according to the setback exhibit which the Town had prepared, the encroachment is minimal at approximately 2-feet and, unlike most setbacks which are at the front of the property, this encroachment is in the rear yard where it has no impact on public health, safety or welfare.

Mr. Plummer stated that staff considers that the literal enforcement of the Code would result in an unnecessary hardship or a practical difficulty and therefore is recommending approval of the variance request based upon the following findings of fact:

1. The applicant applied and paid for a building permit in good faith, but the Town issued the permit in error.
2. The detached workshop only encroaches into the setback by approximately two (2) feet, resulting in a setback of approximately eighteen (18) feet from 7th Street.
3. The location of the detached workshop meets the spirit of the zoning code setback regulation and does not impede pedestrian movement.
4. The location of the workshop does not have a negative impact on public health, safety and welfare.

Dr. Valdes moved to close the Public Hearing; Ms. Scheuerman seconded the motion. Motion carried unanimously.

Dr. Valdes moved to approve the request for a Variance of Municipal Code Section 16-12-40 pertaining to setback requirements in the Single-Family Residential (SF-1) zone district; Ms. Scheuerman seconded the motion. Motion carried unanimously.

2. Public Hearing – Variance of Municipal Code Section 16-9-120(1)b.1. pertaining to the height of a freestanding sign located adjacent to an arterial street in the I-25 Corridor in the General Commercial (GC) zoning district located at 4455 Fairgrounds Avenue, Lot 1, Block 1, Eagle Crossing Subdivision, Second Filing in the Town of Windsor - Summit Entertainment Centers of Northern Colorado, applicant; Nick Cashion, applicant’s representative – Josh Olhava

Dr. Valdes moved to open the Public Hearing; Ms. Scheuerman seconded the motion. Motion carried unanimously.

Nick Cashion with Summit Entertainers, 23474 E Heritage Parkway Aurora 80016, stated that there was some confusion about what they could have for a sign, and that the sign being proposed was designed at 16’ to mirror the architecture of the building. Mr. Cashion also explained how large the building is and that the building may not have been designed this way if they knew the sign wouldn’t be approved.

Mr. Olhava stated that the applicant, Summit Entertainment Centers of Northern Colorado, is proposing to construct a new monument sign on the southwest corner of the subject property located at 4455 Fairgrounds Avenue, at the corner of Fairgrounds Avenue and Stallion Drive, within the Eagle Crossing Subdivision. Mr. Olhava explained that the proposed sign would be sixteen feet (16’) high by eleven feet – two and one half inches (11’ 2½”) wide, with an estimated sign area of approximately one hundred twelve (112) square feet. The sign is proposed to include an LED display and ground lighting, with a monument style base and various architectural features to reflect those used on the Summit building’s entry feature. Mr. Olhava noted that the subject property is zoned General Commercial (GC) and surrounded by commercially zoned properties in Windsor and across Fairgrounds Avenue to the west in Loveland.

Mr. Olhava continued explaining that the Summit site as a whole encompasses one block totaling 206,031 square feet or 4.73 acres, with approximately 400 feet of frontage along Fairgrounds Avenue. The building footprint, as depicted on the approved site plan encompasses 49,818 square feet or 1.14 acres, with a height of 38’6”.

Mr. Olhava stated that the project site, 4455 Fairgrounds Avenue, is located within the Interstate 25 (I-25) Corridor Plan area, and therefore, any proposed signage within the Town of Windsor, and within this corridor area are subject to the signage subarea requirements of Sec. 16-9-120 of the Municipal Code.

Sec. 16-9-120. Subarea requirements

Interstate 25 (I-25) Corridor subarea requirements. In addition to all other sign criteria contained in this Section, the I-25 Corridor, defined as that one-mile area east of I-25 to Larimer County Road 5, shall also be subject to the following subarea requirements:

a. Maximum sign area. The maximum sign area of any freestanding sign that is located adjacent to an arterial street within the I-25 Corridor subarea shall be forty-eight (48) square feet per side if the street frontage along the lot upon which the use is located does not exceed one hundred (100) feet. If the street frontage along the lot upon which the use is located exceeds one hundred (100) feet, the maximum advertising area of any such sign shall be sixty (60) square feet per side.

b. Maximum sign height.1. The maximum height of any freestanding sign that is located adjacent to an arterial street within the I-25 subarea shall be ten (10) feet.

Mr. Olhava continued stating that staff conducted a field visit to the immediate vicinity of the subject site, as well as the I-25/HWY 392 interchange. Mr. Olhava displayed pictures of signs located in the subarea through PowerPoint.

Mr. Olhava explained that Municipal Code Section 16-6-60 (Variances) outlines the regulations and provisions for granting variances. Staff has reviewed the application materials, zoning code, and the site vicinity. Mr. Olhava continued explaining that staff has analyzed whether special site specific conditions exist; the impact on public interest, safety, and welfare; impacts to neighborhood character; and whether an unnecessary hardship exists. Mr. Olhava reminded the board that economic considerations alone shall not constitute an unnecessary hardship if a reasonable use for the property exists under the provisions of the Zoning Code. Variances will not be granted contrary to the public interest and will only be considered when the spirit of the zoning code can be observed and public safety and welfare secured. Municipal code Section 16-1-10 (Declaration of Purpose) provides guidance on the purpose and *spirit* of the zoning code. Section 16-1-10 states the following:

The regulations contained in this Chapter shall be held to be minimum requirements enacted to promote the health, safety and general welfare of the Town. To these ends such regulations have been prepared in accordance with the Comprehensive Development Plan for the Town and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land and undue concentration of population.

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 that, “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.”

Mr. Olhava stated that staff considers that the literal enforcement of the Code will not result in an unnecessary hardship or a practical difficulty, and therefore is recommending that the variance request for the proposed sign size as presented in the application not be approved based upon the following findings of fact:

1. The granting of this variance would not be consistent with the requirements for other signs that are existing or may be proposed within the I-25 subarea;
2. Denial of the sign height variance request will not place an unnecessary hardship on the applicant, as defined in the municipal code; and
3. The granting of this variance has the potential to alter the essential character of the surrounding neighborhood for existing and future properties.

Mr. Olhava explained that all motions are to be made in the affirmative; staff recommends that the following motion, second and action on the petition be made as follows:

- 1 A motion to approve the request for a variance from Section 16-9-120(1)b.1. of the Municipal Code to allow the construction of the monument sign to be sixteen feet (16') high as depicted in the variance application;
- 2 A second; and
- 3 The Chair calling for the vote as follows: All members in favor of the variance vote "yes"; all opposed to the variance request vote "no", with a minimum of four "yes" votes required to approve the variance request.

Mr. Olhava Stated that based on staff's analysis of existing signs along the corridor and Section 16-9-110(b) of the Municipal Code, staff would support an alternative sign size that is comparable to those existing within the corridor and compliant with Commercial zoned – Large-scale Tenants within the community and as written in the Municipal Code, based upon the following findings of fact:

1. The current structure, as site planned, most closely fits the requirements of a Large-scale tenant, which is defined in the code as: *"any commercial or industrial use that exceeds fifty thousand (50,000) square feet of gross leasable area (GLA)";*
2. If the structure was built in another location within the community, without specific corridor requirements, it would be evaluated as a Large-scale tenant;
3. Section 16-9-110(b) of the Municipal Code, under Large-scale tenants, allows for signs up to fourteen feet (14') in height and a sign area up to eighty-four (84) square feet, per side, when adjacent to arterial streets with over one hundred feet (100') of street frontage;
4. The granting of this alternative variance request would not alter the essential character of the surrounding neighborhood; and
5. The granting of this alternative variance request would most closely align the specific site characteristics of this property with language and requirements from the municipal code.

Mr. Olhava stated that staff would recommend conditional approval of an alternative variance request for the sign size as follows: the sign shall comply with Section 16-9-110(b)(1)a. for Maximum sign area and Section 16-9-110(b)(2)a. for Maximum sign height.

Sec. 16-9-110. Freestanding signs

(b) Large-scale tenants. Large-scale tenants shall be eligible for one (1) freestanding sign per street frontage adjacent to the lot upon which the use is located, up to a maximum number of two (2) freestanding signs for any single commercial or industrial use.

(1) Maximum sign area.

a. The maximum sign area of any freestanding sign that is located adjacent to an arterial street shall be seventy-two (72) square feet per side of sign if the street frontage along the lot upon which the use is located does not exceed one hundred (100) feet. If the street frontage along the lot upon which the use is located exceeds one hundred (100) feet, the maximum advertising area of any such sign shall be eighty-four (84) square feet per side of sign.

(2) Maximum sign height.

a. The maximum height of any freestanding sign that is located adjacent to an arterial street shall be fourteen (14) feet.

Staff and the board discussed the size of the building and the corridor requirements.

The board asked if this sign had already been constructed.

Mr. Cashion stated that the sign has not been constructed.

Dr. Valdes moved to close the Public Hearing; Ms. Scheuerman seconded the motion. Motion carried unanimously.

Ms. Shuerman moved to approve the request for a variance from Section 16-9-120(1)b.1. of the Municipal Code to allow the construction of the monument sign to be sixteen feet (16') high as depicted in the variance application; Dr. Valdes seconded the motion.

Yeas – Ms. Scheuerman

Nayes – Mr. Horner, Dr. Valdes, Dr. George, Mr. McIntyre. Motion Denied.

Ms. Shuerman moved to approve approve the alternative request for a variance from Section 16-9-120(1)b.1. of the Municipal Code to allow the construction of the monument sign to be fourteen feet (14') with a maximum sign area of eighty-four (84) square feet, per side to comply with Sections 16-9-110(b)(1)a. and 16-9-110(b)(2)a. of the Municipal code; Dr. Valdes seconded the motion. Motion carried unanimously.

- 3 Public Hearing – Variance of Municipal Code Sections 16-18-20(1)o and 16-12-40 pertaining to Building Location for residential dwellings in the Central Business (CB) zone district located at 721 Main Street in the Bowman's Addition in the Town of Windsor - Blayne St. James, applicant – Josh Olhava

Dr. Valdes moved to open the Public Hearing; Ms. Scheuerman seconded the motion. Motion carried unanimously.

Cliff Diamond, 1564 Basildon Ct, stated that he is representing the applicant who is asking for a 5 ½' setback from the Main Street property line at 721 Main St for an ADA compatible ramp to access the business.

Mr Olhava stated that the applicant, Mr. Blayne St. James, is requesting a variance from Municipal Code Section 16-18-20(1)o. (Use regulations) and Municipal Code Section 16-12-40 (Building location) for his property located at 721 Main Street within the Central Business (CB) zoning district. Mr. Olhava explained that properties that were once historically residential homes within the CB zoning district are subject to certain regulations set forth in the Single Family (SF-1) zoning district in Article XII of the Municipal Code.

Municipal Code Section 16-18-20(1)o. states that:

One-family residential dwellings subject to the regulations set forth in Sections 16-11-70, 16-12-20(2), 16-12-30, 16-12-40, 16-12-50 and 16-12-60 of this Chapter.

Municipal Code Section 16-12-40 states that:

Minimum setback shall be twenty (20) feet. Minimum offset shall be five (5) feet.

Mr. Olhava stated that the applicant is proposing to construct an ADA accessible ramp off the northern stair stoop into the building, adjacent to Main Street (SH 392). Mr. Olhava further explained that the existing stair stoop will remain and the ramp will be built around the stoop; first extending to the west, turning to the north and descending to the east to meet the existing driveway.

Mr. Olhava stated that as presented in the variance application, the northern edge of the proposed accessibility ramp will be fourteen and a half feet (14.5') from the north property line, and approximately twenty feet (20') to the south edge of the sidewalk. The subject property is zoned CB and surrounded by both commercial and residential uses.

Mr. Olhava continued explaining that 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 that, "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."

Mr. Olhava stated that staff considers that the literal enforcement of the Code will result in an unnecessary hardship or a practical difficulty, and therefore is recommending approval of the variance request based upon the following findings of fact:

1. The distance between the northern property line and edge of curb of Main Street (SH392) is approximately ten feet (10');
2. Locating the northern most edge of the ramp structure as close as fourteen feet (14') from the northern property line would be consistent with existing structures along the corridor;
3. Granting of this variance does not appear to be contrary to the public interest and does not appear to adversely impact public safety and welfare;
4. Granting of this variance does provide for accessibility entrance into the building to meet ADA and building code requirements; and
5. The granting of this variance will not alter the essential characteristic of the surrounding neighborhood or the existing structure.

Mr. Olhava stated that therefore, based upon the aforementioned findings of fact, staff recommends conditional approval of the variance request for the ADA accessibility ramp setback location as follows: the northern most edge of the ramp structure shall maintain a minimum setback of fourteen feet (14') from the property line.

Please further note that since all motions are to be made in the affirmative, staff also recommends that the following motion, second and action on the petition be made as follows:

1. A motion to approve the request for the variance from Sections 16-18-20(1)o. and 16-12-40 of the Municipal Code to allow the construction of the ramp structures northern most edge to be fourteen feet (14') from the northern property line;
2. A second; and
3. The Chair calling for the vote as follows: All members in favor of the variance vote "yes"; all opposed to the variance request vote "no", with a minimum of four "yes" votes required to approve the variance request.

Mr. Valdes asked what the purpose of the ramp is.

Mr. Diamond stated that the ramp is for future business and needing to meet the ADA requirements.

Dr. Valdes moved to close the Public Hearing; Ms. Scheurman seconded the motion. Motion carried unanimously.

Ms. Shuerman moved to approve the variance from Sections 16-18-20(1)o. and 16-12-40 of the Municipal Code to allow the construction of the ramp structures northern most edge to be fourteen feet (14') from the northern property line; Dr. Valdes seconded the motion. Motion carried unanimously.

4. Public Hearing – Variance of Municipal Code Sections 16-24-40(1) pertaining to Residential Density, Setback and Offset Requirements and Section 16-4-45 pertaining to Non-obstruction of Easements in the Residential Mixed Use (RMU) zone district located at 8234 South Loudon Crossing Court in the Shutts Subdivision Second Filing the Town of Windsor - Rebecca A. Mergner, applicant – Paul Hornbeck

Dr. Valdes moved to open the Public Hearing; Ms. Scheuerman seconded the motion. Motion carried unanimously.

Rebecca Mergner 8234 South Loudon Crossing Ct 80550 stated that she was unaware that a shed of this size would need a permit. Ms. Mergner stated that the shed is 6' by 10' and is a moveable structure. Ms. Mergner stated that although her property is large in size she would be required to pull out some of her landscaping to be able to put this shed in any other location. Ms. Mergner continued explaining that if she were to move the shed forward so that it was no longer on an easement that the shed would then be sitting in the middle of the yard. Ms. Mergner asked the board to consider letting her keep the shed where it is and she could move it if at any time someone needed to get into the easement it sits on.

Mr. Leroy Hurd, 8256 Loudon Cir, 80550, stated that he did send a letter into staff which explained why he does not feel that the shed should stay where it's currently located. Mr. Hurd explained that throughout the years many people have requested sheds and since the Town required the 5' setback the HOA upheld this and only approved sheds that were located at least 5' from the property line. Mr. Hurd requested that the board not approve this variance.

Steve Nash 8209 Loudon Circle stated that he is currently the president of the HOA for Country Farm and on the architecture review committee. Mr. Nash stated that his statements tonight do not represent the board or the committee. Mr. Nash explained that the architecture review committee has started to dissolve since the subdivision has been built out for years and that except for an occasional shed there is not a purpose for the architecture review committee. Mr. Nash continued stating that because of the size of the shed it is moveable and it does not obstruct anyone's view of the mountains. Mr. Nash stated that he thinks the shed should be able to stay in its current location.

Mr. Hornbeck stated that the applicant, Rebecca A. Mergner, is requesting a variance from Municipal Code Section 16-12-40 (Building Location) and Section 16-4-45 (Nonobstruction of Easements). Mr. Hornbeck noted that the applicant is requesting the variance to allow an existing storage shed to remain within an offset of 18" from the side/rear property line and to remain located within a drainage and utility easement.

Mr. Hornbeck explained that the applicant recently purchased the storage shed and placed it on the property unaware of the offset and easement requirements. Mr. Hornbeck continued stating that the dimensions of the shed are 6' by 10' with an interior roof height of 9'. The shed is not located on a permanent foundation. The single family home is zoned Residential Mixed Use (RMU) and is therefore subject to the setback and offset

requirements of the Single Family Residential (SF-1) zone district per Municipal Code Section 16-24-40(1) which states:

All residential uses shall meet all of the density, setback and offset requirements set forth in this Code for each respective type of dwelling unit. For example, all single-family dwelling units in an RMU zoning district shall have a minimum lot size of six thousand (6,000) square feet, a minimum setback requirement of twenty (20) feet and a minimum offset requirement of five (5) feet.

Municipal Code Section 16-12-40 deals with offsets, stating:

*Minimum setback shall be twenty (20) feet. **Minimum offset shall be five (5) feet** (emphasis added).*

Mr. Hornbeck stated that accessory structures that do not exceed 120 square feet in area or 8' in height are exempt from the location requirements of the zone district. However, in this case the shed is over 8' in height and therefore must meet the 5' offset requirement, per Municipal Code Section 16-8-30

Mr. Hornbeck stated that staff considers that the literal enforcement of Municipal Code Section 16-12-40 will not result in an unnecessary hardship and therefore is recommending denial of the variance request based upon the following findings of fact:

1. The subject parcel is not dissimilar in size or shape to other corner lots within the Town of Windsor.
2. A review of the enclosed plot plan indicates that there are other locations in the rear yard which could accommodate a storage shed.

Mr. Hornbeck stated that therefore, based upon the aforementioned findings of fact, staff recommends denial of the variance request for a storage shed with a reduced offset of 18".

Please further note that since all motions are to be made in the affirmative, staff also recommends that the following motion, second and action on the petition be made as follows:

1. A motion to approve the request for a variance from Section 16-12-40 of the Municipal Code to allow a reduced offset of 18" for the storage shed;
2. A second; and
3. The Chair calling for the vote as follows: All members in favor of the variance vote "yes"; all opposed to the variance request vote "no", with a minimum of four "yes" votes required to approve the variance request.

Non obstruction of Easements Variance Request

Mr. Hornbeck stated that staff considers that the literal enforcement of Municipal Code Section 16-4-45 will not result in an unnecessary hardship and therefore is recommending denial of the variance request based upon the following findings of fact:

1. The subject parcel is not dissimilar in size or shape to other corner lots within the Town of Windsor.
2. A review of the enclosed plot plan indicates that there are other locations in the rear yard which could accommodate a storage shed.
3. The 10' drainage and utility easement is typical of most new developments.

Mr. Hornbeck stated that therefore, based upon the aforementioned findings of fact, staff recommends denial of the variance request for a storage shed located in an easement.

Please further note that since all motions are to be made in the affirmative, staff also recommends that the following motion, second and action on the petition be made as follows:

1. A motion to approve the request for a variance from Section 16-4-45 of the Municipal Code to allow a storage shed to be located in an easement;
2. A second; and
3. The Chair calling for the vote as follows: All members in favor of the variance vote "yes"; all opposed to the variance request vote "no", with a minimum of four "yes" votes required to approve the variance request.

The board discussed the issues of keeping the shed in current location and moving the shed to another location.

Dr. Valdes moved to close the Public Hearing; Ms. Scheuerman seconded the motion. Motion carried unanimously.

The board continued to discuss the issues of moving the shed. Staff explained that a building permit is required for any shed 120sf and/or over 8ft tall and that this shed should have had a building permit before it was constructed and placed on the property.

Ms. Shuerman moved to approve the request for a variance from Section 16-12-40 of the Municipal Code to allow a reduced offset of 18" for the storage shed; Dr. Valdes seconded the motion. Motion carried unanimously.

Ms. Shuerman moved to approve the request for a variance from Section 16-4-45 of the Municipal Code to allow a storage shed to be located in an easement; Dr. Valdes seconded the motion. Motion carried unanimously.

D. COMMUNICATIONS

1. Communications from the Board Members

Mr. Valdes asked how someone might know if they need a permit.

Mr. Plummer stated that they could call the planning office, look at the handouts online or come in for the handouts. Mr. Plummer continued stating that the property owners have the responsibility to obtain the information that is required.

Mr. McIntyre added that if a homeowner hires a quality builder the first thing they will do is ask if the homeowner has gone to the Town and inquired about building permits.

Mr. Horner asked if staffed had received any variance for July.

Mr. Plummer stated that at this time staff had not received any, but the due date had not passed.

Dr. Benjamin George asked if he could get a paper copy of the packet from here on out instead of the electronic copy.

Mr. Olhava took a vote on who wanted a paper copy of the packet and the entire board stated that they would like to receive their packets in paper form.

2. Communications from staff

Mr. Plummer introduced Paul Hornbeck as the new Associate Planner for the Town of Windsor.

E. ADJOURN

Upon a motion duly made and seconded, the meeting was adjourned at 9:00 p.m.

CERTIFICATION

Approved by the Board of Adjustment/Appeals this 31st day of July 2014.



Submitted By:
Joy Liberty-Anglado
Secretary