



BOARD OF ADJUSTMENT/APPEALS REGULAR MEETING

August 28, 2014 – 7:00 P.M.

Third Floor Council Chambers, 301 Walnut Street, Windsor, CO 80550

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

A. CALL TO ORDER

The meeting was called to order by Chairman Horner at 7:03 p.m.

1. Roll Call

The following members were present:

Chairman Danny Horner
Cindy Scheuerman
Mary Ann Baak
Jim McIntyre
Ken Gerlach
Jose Valdez

Absent:

Also present:

Associate Planner Paul Hornbeck
Associate Planner Josh Olhava
Town Clerk Patti Garcia

2. 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.

3. Reading of the statement 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.

B. CONSENT CALENDAR

1. Approval of the minutes of July 31, 2014

Ms. Scheuerman motioned to accept the Consent Calendar as presented; Mr. McIntyre seconded the motion. All members voted Aye. Motion carried.

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-10-30 pertaining to Off-street parking requirements in the Central Business (CB) zone district located at 201-205 4th Street, Town of Windsor Subdivision, Lots 26-32, Block 11 in the Town of Windsor – Eric Peratt, Applicant – Josh Olhava, Associate Planner
Mr. McIntyre motioned to open the Public Hearing; Mr. Gerlach seconded the motion. All members voted Aye. Motion carried.

Mr. Eric Peratt, 201-205 4th Street, noted the building related to the parking variance being requested and stated that there is no room for onsite parking. Available space is being used for an elevator for ADA purposes and a deck. Mr. Peratt stated that there are a fair number of parking spots available for on-street parking during the day and many more at night. The proposed tenant is a restaurant which would be using on-street parking in the evening.

The meeting was opened for public comment to which there was none.

Associate Planner Olhava reported that the applicant, Mr. Eric Peratt, is requesting a variance from Municipal Code Section 16-10-30 (off-street parking requirements) for his current project located at 201-205 4th Street. The subject lot is located on the corner of 4th Street and Main Street/Hwy 392 in downtown Windsor. The zoning at the site is Central Business (CB). The applicant is currently completing the Town's Administrative Site Plan process for the proposed changes to the site.

Mr. Olhava stated that this variance request is from the Municipal Code Section 16-10-30 which states the following:

Off-street parking space shall be provided for buildings and uses as hereinafter specified.

Mr. Olhava went on to say the applicant is requesting a Variance from Section 16-10-30 to be exempt from being required to provide off-street parking on site. As with many properties in downtown Windsor, there is not adequate space on site to provide off-street parking as outlined in the code. The CB zoning district is unique in that there are no building setback or offset requirements and in many instances buildings occupy the entire property. The Town is working on a Parking Study that should provide policies that can be adopted for the downtown area, due to its' unique nature.

Mr. Olhava continued explaining that Section 16-6-60(b) of the Municipal Code stating 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 applicant is unable to provide adequate parking on site and off-street to meet the requirements of the Municipal Code, due to the unique nature of the downtown area and this specific lot.

2. The granting of this variance will not adversely impact the public interest, safety, and welfare; or cause unnecessary impacts to the existing neighborhood characteristics.
3. The 2012 Downtown Parking Study identified that *“The current parking supply is about 40% underutilized on non-event days during the peak hour...”*.

Therefore, based upon the aforementioned findings of fact, staff recommends approval of the variance request for the proposed density of the two proposed lots, as shown on the site plan survey, subject to the following condition of approval.

1. The applicant shall complete the Town’s Administrative Site Plan process by executing all drawings and documents.

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 16-10-30 of the Municipal Code, subject to staff’s conditions of approval;
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.

Chairman Horner opened the meeting for discussion and questions.

Mr. McIntyre inquired if the parking issue had come up before. Mr. Olhava noted that the site plan process prompts the Code requirements to be met.

Ms. Scheuerman motioned to close the Public Hearing; Board Member McIntyre seconded the motion. All members voted Aye. Motioned carried.

2. Public Hearing – Variance of Municipal Code Section 16-12-30 pertaining to the density of single family dwellings, Section 16-12-40 pertaining to Building Location and Section 16-12-50 pertaining to the minimum Open Space requirements in the Single Family (SF-1) Zoning District located at 300 Oak Street, Kern’s Subdivision, Lot 1, Block 4 in the Town of Windsor – Tim Lind, Applicant – Josh Olhava, Associate Planner

Ms. Scheuerman motioned to open the Public Hearing; Mr. McIntyre seconded the motion. All members voted Aye. Motion carried.

Tim Lind, 300 Oak Street, stated that he is proposing to subdivide the lot into two lots; both lots would be less than 6,000 square feet. The amount open space would be constricted by that amount (6,000 square feet)

Associate Planner Olhava stated that the applicant, Mr. Tim Lind, is requesting a variance from Municipal Code Section 16-12-30 (Density), Section 16-12-40 (Building Location) and Section 16-12-50 (Open Space) to facilitate a minor subdivision to create two buildable lots at 300 Oak Street, located on the northwestern corner of Oak and 3rd Streets. The subject lot is currently 9,500 square feet with approximately twenty (20) feet between the property line and edge of curb along 3rd Street, according to the enclosed property survey site plan. The zoning at the site is Single Family Residential (SF-1). The existing single family residence is located on the southern portion of the lot.

Regarding Density, Mr. Olhava noted Municipal Code Section 16-12-30 which states the following:

Minimum lot area per dwelling unit shall be six thousand (6,000) square feet.

Mr. Olhava noted the applicant is requesting a Variance from Section 16-12-30 to subdivide the property into two lots that are less than the six thousand (6,000) square foot minimum. The southern lot with the existing home will be approximately 4,084 sq. ft., and the new lot to the north would be approximately 4,747 sq. ft., according to the attached site plan. The proposed minor subdivision would be in compliance with Windsor Municipal Code Section 16-8-40(b) (Basic location regulations), which states the following:

“One (1) building per lot. Except as otherwise provided for multifamily dwellings and planned unit developments, only one (1) principal residence structure shall be permitted on a lot.”

Mr. Olhava went on to say that utilities will need to be routed to serve the new lot to the north. Sewer service extends along the Alley Way on the north and will need to be extended to the northern lot; whereas water service extends along 3rd Street to the east and will need to be extended to serve the northern lot. Dry utility service locations will be worked out through the Minor Subdivision process with the applicable utility providers.

The proposed lot split is consistent with other residential lots located in central Windsor that are located on corner lots. The proposed lot sizes, in relation to the improved areas on the lots, do not appear to result in a health or safety risk, and will not overcrowd the neighborhood. By drawing the planned building envelope on the proposed north lot, the applicant has shown that the lot split will create two buildable

and livable lots.

Regarding Setback, Mr. Olhava noted the Municipal Code Section 16-12-40 which states the following:

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

Mr. Olhava stated the proposal to subdivide the subject property into two lots will create one lot to the south that is already improved and a second lot to the north that is unimproved. The applicant is requesting a variance from Section 16-12-40 for the unimproved lot to the north to build a home six (6) feet from the east property line. The new home would meet all offset requirements.

Mr. Olhava went on to say that the 3rd Street right-of-way width is one-hundred (100) feet and the street flow-line width is approximately fifty-nine (59) feet wide. Street flow-line width is measured from curb to curb. Additionally, the sidewalk along 3rd Street is an attached sidewalk and the distance from the west edge of the sidewalk to the property line (all within the 3rd Street right-of-way) is approximately fifteen (15) feet. This will result in over twenty (20) feet between the garage on the new northern lot and the edge of sidewalk. Based on the right-of-way width and street width, the 3rd Street setback does not appear to result in a health or safety risk and will meet the character of the neighborhood and surrounding properties.

Regarding Open Space, the Municipal Code Section 16-12-50 states the following:

As a part of the minimum lot area of six thousand (6,000) square feet per dwelling unit, a minimum of three thousand (3,000) square feet thereof shall be livable open space.

The applicant is proposing to subdivide the subject property into two lots and is requesting a Variance from Section 16-12-50 for the two new lots. Both lots will have a final open space square footage of more than 1,500 square feet, per lot. The proposed open space areas, in relation to the improved areas on the lots, do not appear to result in a health or safety risk. By drawing the planned building envelope on the proposed north lot, the applicant has shown that the lot split will create two buildable and livable lots with adequate Open Space to meet the spirit of the zoning code and be consistent with surrounding properties located within the core of Windsor.

Mr. Olhava noted the comments; the application materials were submitted to the Development Review Committee for their review. The specific location of any dry utility easements, if necessary, will be addressed during the subdivision process.

Mr. Olhava reported on the recommendations as follows:

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.”

Density

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 proposed Density for the two lots would be consistent with other lots in the core of Windsor.
2. Based on the location of the existing property line on the east relevant to the location of the sidewalk along 3rd Street, and the proposed building envelope on the north lot, the two lots would meet the *spirit* of the zoning code density regulation by creating two buildable and livable lots;
3. The proposed lot split and development is consistent with the Overall Land Use Goal and Policy #4 of the Town of Windsor Comprehensive Plan which states: *“Infill development of all types of land uses should be encouraged, to ensure more efficient use of infrastructure, strengthen existing neighborhood connections, preserve the economic viability of the Town Center, and meet all Town Development Standards.”*

Therefore, based upon the aforementioned findings of fact, staff recommends approval of the variance request for the proposed density of the two proposed lots, as shown on the site plan survey, subject to the following conditions of approval.

1. The applicant shall complete the Town’s Minor Subdivision application within six (6) months of the Board of Adjustment approval of this variance request. The Minor Subdivision Plat shall show the proposed building envelopes to meet all setbacks and open space variance requests.
2. The applicant shall maintain a minimum lot size of 4,000 square feet on both lots and meet the requirements and determination of the Open Space variance request.

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 16-12-30 of the Municipal Code to allow the minimum density on the two proposed lots to be less than the 6,000 square foot requirements, subject to staff’s conditions of approval;

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.

Building Location

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. Based on the minimum setbacks and offsets as defined by Windsor Municipal Code Section 16-12-40, the proposed lots would meet all offset requirements;
2. The proposed Setback along 3rd Street for the new north lot would be consistent with other properties along 3rd Street;
3. Based on the location of the existing property line relevant to the location of the sidewalk; there is adequate distance between the proposed location of the residence to meet the *spirit* of the zoning code setback regulation;
4. Based on the proposed location of the structures, there is adequate distance between the east elevation of the proposed structures and the back of the 3rd Street sidewalk to meet the *spirit* of the zoning code setback regulation, and not impede pedestrian movement.

Therefore, based upon the aforementioned findings of fact, staff recommends approval of the variance request for the 3rd Street setback, as shown on the site plan survey, subject to the following conditions of approval.

1. The applicant shall complete the Town’s Minor Subdivision application within six (6) months of the Board of Adjustment approval of this variance request. The Minor Subdivision Plat shall show the proposed building envelopes to meet all setbacks and open space variance requests.
2. The applicant shall provide a minimum of twenty (20) feet between the back of the 3rd Street sidewalk (west side) and the east elevation of the proposed garage structures. The applicant shall provide to the Town a survey, stamped by a CO State licensed professional land surveyor or professional engineer, that confirms that there is a minimum twenty (20) feet between the back of the 3rd Street sidewalk (west side) and the east elevation of the proposed garage structures. The applicant shall provide said survey prior to issuance of building permits.

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 subject to staff's conditions of approval;
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.

Open Space

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 proposed Open Space for both lots would be consistent and proportional to other lots adjacent to and in the core of Windsor.
2. Based on the location of the existing property line on the east relevant to the location of the sidewalk along 3rd Street, and the proposed building envelope; there is adequate open space, including the right-of-way on the lots to meet the *spirit* of the zoning code open space regulation;
3. The proposed lot split and development is consistent with the Overall Land Use Goal and Policy #4 of the Town of Windsor Comprehensive Plan which states: *"Infill development of all types of land uses should be encouraged, to ensure more efficient use of infrastructure, strengthen existing neighborhood connections, preserve the economic viability of the Town Center, and meet all Town Development Standards."*

Therefore, based upon the aforementioned findings of fact, staff recommends approval of the variance request for the open space on the proposed north lot, as shown on the site plan survey, subject to the following conditions of approval.

1. The applicant shall complete the Town's Minor Subdivision application within six (6) months of the Board of Adjustment approval of this variance request. The Minor Subdivision Plat shall show the proposed building envelopes to meet all setbacks and open space variance requests.
2. The applicant shall maintain a minimum open space of 1,500 square feet on both lots.

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 16-12-50 of the Municipal Code to allow the minimum open space on the lots to be less than the 3,000 square foot minimum, and subject to staff's conditions of approval;

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.

Chairman Horner opened the meeting for comment, to which there was none.

Ms. Scheurman motioned to close the Public Hearing; Board Member Gerlach seconded the motion. All members voted Aye. Motioned carried.

Ms. Scheurman motioned to approve the request for a variance from Section 16-12-30 of the Municipal Code, to allow the minimum density on the two proposed lots to be less than the 6,000 square foot requirements, subject to staff’s conditions of approval at noted:

1. **The applicant shall complete the Town’s Minor Subdivision application within six (6) months of the Board of Adjustment approval of this variance request. The Minor Subdivision Plat shall show the proposed building envelopes to meet all setbacks and open space variance requests.**
2. **The applicant shall maintain a minimum lot size of 4,000 square feet on both lots and meet the requirements and determination of the Open Space variance request.**

Board Member Gerlach seconded the motion. All Members voted Aye. Motion carried.

Ms. Scheurman motioned to approve the request for a variance from Section 16-12-40 of the Municipal Code subject to staff’s conditions of approval as noted:

1. **The applicant shall complete the Town’s Minor Subdivision application within six (6) months of the Board of Adjustment approval of this variance request. The Minor Subdivision Plat shall show the proposed building envelopes to meet all setbacks and open space variance requests.**
2. **The applicant shall provide a minimum of twenty (20) feet between the back of the 3rd Street sidewalk (west side) and the east elevation of the proposed garage structures. The applicant shall provide to the Town a survey, stamped by a CO State licensed professional land surveyor or professional engineer, that confirms that there is a minimum twenty (20) feet between the back of the 3rd Street sidewalk (west side) and the east elevation of the proposed garage structures. The applicant shall provide said survey prior to issuance of building permits.**

Board Member McIntyre seconded the motion. All members voted Aye. Motioned carried.

Ms. Scheuerman motioned to approve the request for a variance from Section 16-12 -30 of the Municipal Code to allow the minimum density on the two proposed lots to be less than the 6,000 square foot requirements, subject to staff's conditions of approval as noted:

- 1. The applicant shall complete the Town's Minor Subdivision application within six (6) months of the Board of Adjustment approval of this variance request. The Minor Subdivision Plat shall show the proposed building envelopes to meet all setbacks and open space variance requests.**
- 2. The applicant shall maintain a minimum open space of 1,500 square feet on both lots.**

Board Member Gerlach seconded the motion. All members voted Aye. Motion carried.

D. COMMUNICATIONS

1. Communications from the Board Members
None.
2. Communications from staff
None.
3. Communications from the Town Attorney
None

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:45 p.m.

CERTIFICATION

Approved by the Board of Adjustment/Appeals this 22nd day of January, 2015.

Submitted By:



Patti Garcia, Town Clerk