



BOARD OF ADJUSTMENT/APPEALS REGULAR MEETING  
December 4, 2014 – 7:00 P.M.  
Third Floor Council Chambers, 301 Walnut Street, Windsor, CO 80550

AGENDA

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  
Jose Valdes  
Cindy Scheuerman  
Ken Gerlach  
Jim McIntyre

Also Present: Associate Planner  
Deputy Town Clerk

Paul Hornbeck  
Bruce Roome

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.

**C. BOARD ACTION**

1. Public Hearing – Variance of Municipal Code Section 16-12-40 pertaining to the building location for a single-family house in the Single Family Residential (SF-1) zoning district located at 500 Locust Street, Town Of Windsor Subdivision, Second Filing, Lot 1, Block 23 in the Town of Windsor – Phil Romero, Applicant – Paul Hornbeck, Associate Planner

**Ms. Scheuerman moved to open the Public Hearing; Mr. Gerlach seconded the motion. Motion carried unanimously.**

Mr. Phil Romero, applicant/owner, stated that the purpose is to replace the steps on the east side of residence. This is a turn of the century home with lots of character and they have restored it as such and want to keep that look and feel. This will be code

compliant but not ADA compliant. Mr. Romero feels that to not replace the steps makes it unsafe as it sits. Also this change will match what exists with other residences nearby.

Public comments:  
There was none

Per Mr. Hornbeck, the applicant, Mr. Phil Romero, is requesting a variance from Municipal Code Section 16-12-40 (Building Location) which states the following:

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

This request is for a variance to allow an existing set of exterior stairs to be replaced with new stairs with a setback of approximately ten (10) feet, rather than the required twenty (20) feet. The house has a setback of approximately seventeen (17) feet and the existing stairs have a setback of approximately thirteen (13) feet. The current steps do not comply with the building code and the applicant wishes to replace the steps with a safer design that meets building code.

Staff considers that the literal enforcement of the Code will result in an unnecessary hardship as defined by the Municipal Code and therefore is recommending approval of the variance request with the following findings of fact:

1. The existing stairs that are being replaced do not comply with the building code;
2. No stairs could be constructed without a setback variance because of the building setback;
3. The proposed ten (10) foot setback is within a range of residential setbacks on neighboring lots;
4. The proposed location of the stairs does not appear to result in a health or safety risk;
5. The situation is not a result of circumstances created by the landowner.

Dr. Valdes asked if this is the side of the home versus the front, are they parallel?  
Mr. Hornbeck stated yes it's the side.

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

Chairman Horner opened the floor for any further Board questions of discussion.  
There were none.

**Ms. Scheuerman moved to approve the variance request from Section 16-12-40 of the Municipal Code to approve a setback variance of ten (10) feet from the property line that abuts Fifth Street in order to allow the construction of new stairs as depicted in the application; Dr. Valdes seconded the motion. Motion**

**carried unanimously.**

2. Public Hearing – Variance of Municipal Code Section 16-12-40 pertaining to the building location for a detached garage in the Single Family Residential (SF-1) zoning district located at 519 2<sup>nd</sup> Street, Kerns Subdivision, Lot 15, Block 2, Windsor, CO – Rocky Clark, Applicant – Paul Hornbeck, Associate Planner

**Mr. McIntyre moved to open the Public Hearing; Dr. Valdes seconded the motion. Motion carried unanimously.**

Rocky Clark, applicant/owner, asked for a variance for a large shop that was built by the alley onto the lot. Unfortunately, it was built in the wrong spot. It is a 36' x 36' building built to store an RV out of the elements. If the building has to be reduced in size, the RV won't fit and the driveway is too short to hold the RV legally.

Public comments:

Dave Bishop, builder, stated he didn't realize there was a 3' easement and only held the building back another 1.5' which left it 1.5' over the currently approved line.

Per Mr. Hornbeck, The applicant, Mr. Rocky Clark, is requesting a variance from Municipal Code Section 16-12-40 (Building Location) which states the following:

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

This request is for a variance to allow a reduced setback for a detached garage of one and one-half (1½) feet from the Second Street property line. The Board of Adjustment granted a number of variances for the property in 2013 to allow construction of a single-family home and detached garage, both within the required setbacks. The house and garage are currently under construction and an inspection and corresponding setback certification revealed that the detached garage was not constructed in accordance with the approved variance. The Board of Adjustment granted a variance from the twenty (20) foot setback requirement to allow a setback on the detached garage of four and one-half (4½) feet from the 2nd Street property line. The setback certification, completed by a licensed surveyor, shows that the garage was constructed with a setback of one and one-half (1½) feet from the Second Street property line.

The variance granted in 2013 would have left twenty (20) feet between the garage and the back of the public sidewalk. Furthermore, the Board of Adjustment included in that approval a condition that the applicant must provide a minimum of twenty (20) feet between the garage and the back of the sidewalk. The current configuration leaves only seventeen (17) feet between the garage and the back of the sidewalk. The twenty (20) foot clear zone would have allowed for adequate clearance for vehicles to park in the driveway without impeding the sidewalk. The proposed seventeen (17)

foot clear zone would create a situation where larger sized cars and trucks would likely impede the sidewalk.

A similar situation occurred previously at 500 Oak Street. In that case, a variance was granted to allow a garage to be constructed with a five (5) foot setback, providing a twenty (20) foot clear zone between the garage and the back of the public sidewalk. However, the garage was constructed with a setback of three feet, five inches (3'5"), leaving less than twenty (20) feet between the garage and the back of the public sidewalk. That variance was denied by the Board of Adjustment in 2010.

Staff does not consider that the literal enforcement of the Code will result in an unnecessary hardship as defined by the Municipal Code and therefore is recommending denial of the variance request with the following findings of fact:

1. The variance request is contrary to the public interest because a setback of one and one-half (1½) feet would not allow the driveway length to be at least twenty (20) feet and therefore would create a situation where parking standard vehicles on the driveway could significantly obstruct the public sidewalk;
2. The property, including a detached garage, could reasonably be used under the previously approved setback variance of four and one-half (4½) feet and;
3. The situation is a result of circumstances created by the landowner.

Ms. Scheurman asked if it would be an option to make it a no parking zone in the driveway

Per Mr. Hornbeck, it would be hard to enforce such a requirement.

Dr. Valdes asked the owner if he was aware of the previously approved variance.

Mr. Clark stated that yes he was and it was measured out and marked. He is unsure how it got passed on the set-back inspections if it was wrong. It was signed on the building permit by the inspector.

Mr. McIntyre asked actually dug the holes.

Per Mr. Bishop, a licensed Sub-contractor

Ms. Scheurman asked after the holes were dug who signed off on their location.

Per Mr. Clark Safebuilt did.

Ms. Scheurman asked since Safebuilt signed off on it, does any of this liability belong to them.

Per Mr. Hornbeck, at this point in time no evidence that it was signed off has been presented so he cannot answer that.

Ms. Scheurman asked if we could request those documents from Safebuilt.

Per Mr. Hornbeck, the owner can request it from Safebuilt by going through the Town's open records request process.

Mr. Horner asked Mr. Hornbeck if it would be feasible to table this case for 60 days to give the owner the time to gather the appropriate documentation to prove his case.

Mr. Hornbeck stated that it could be continued if that is how the Board wanted to proceed.

Mr. Horner offered the owner, Mr. Clark, up to 60 days in order to provide a paper trial

Mr. Clark requested a continuance

**Ms. Scheuerman moved to continue the hearing until the February meeting and indicated that it is the owners responsibility to perform the research necessary to provide proof of Safebuilt's approval; Dr. Valdes seconded the motion. Motion carried unanimously.**

#### **D. COMMUNICATIONS**

1. Communications from the Board Members

The Board asked if there were any agenda items for January.

Per Mr. Hornbeck nothing yet

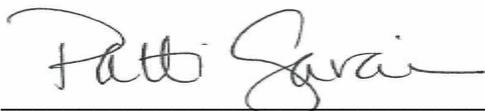
Ms. Scheuerman asked if it is possible to do an inquiry to see if a no parking zone option in a private driveway is reasonable.

2. Communications from staff

None

#### **E. ADJOURN**

**Upon a duly made motion and second the meeting was adjourned at 7:39 p.m.**



---

Patti Garcia, Town Clerk