



**BOARD OF ADJUSTMENT/APPEALS
REGULAR MEETING**

December 10, 2015 - 7:00 P.M.

1st Floor Conference Room

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 Thursday prior to the meeting to make arrangements.

AGENDA

A. CALL TO ORDER

1. Roll Call
2. Review of Agenda by the Board and Addition of items of New Business to the Agenda for Consideration by the Board
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

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-12-40 pertaining to minimum setback in the Central Business (CB) zoning district located at 222 N 6th Street
 - Staff presentation: Paul Hornbeck, Associate Planner
 - a. Motion to open public hearing to receive evidence and comment regarding the variance request and second
 - b. Presentation of variance request by applicant
 - c. Receipt of any comments from the public regarding the variance request
 - d. Staff report and Recommendation
 - e. Questions and answers to/from BOA members to/from applicant, public, staff, legal counsel
 - f. Motion to close public hearing and second
 - g. Motion on variance and second
 - h. Board discussion
 - i. Board action on variance request

D. COMMUNICATIONS

1. Communications from the Board Members
2. Communications from staff

E. ADJOURN

STATE LAW DICTATES THAT A FAVORABLE VOTE OF 4 OUT OF 5 MEMBERS OF THE BOARD OF ADJUSTMENT IS REQUIRED TO GRANT ANY VARIANCE. A SIMPLE MAJORITY VOTE IS NOT SUFFICIENT.

NOTE TO APPLICANTS: This agenda is considered tentative and may be revised at any time prior to the meeting. Applicants are advised to be present at 7:00 p.m. Final agendas will be available at the meeting.

Applicants may discuss the requests and the recommendations with staff during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. For the convenience of the applicants, appointments are recommended.

Upcoming Meeting Dates

<u>Thursday, January 28, 2016</u>	7:00 P.M.	Regular Board of Adjustment Meeting*
<u>Thursday, February 25, 2016</u>	7:00 P.M.	Regular Board of Adjustment Meeting*
<u>Thursday, March 24, 2016</u>	7:00 P.M.	Regular Board of Adjustment Meeting*

* All regular and special meetings of the Board of Adjustment are subject to the receipt of an item of business to be placed on the meeting agenda.



MEMORANDUM

Date: December 10, 2015
To: Board of Adjustment
Via: Scott Ballstadt, AICP, Director of Planning
From: Paul Hornbeck, Associate Planner
Re: Public Hearing – Variance of Municipal Code Section 16-12-40 pertaining to minimum setback in the Central Business (CB) zoning district
Location: 222 North 6th Street, Lot 6, Block 2, Lakeview Subdivision in the Town of Windsor
Item #: C.1

Background/Discussion:

The applicant, Ms. Jeannette Mercer, represented by Mr. Heath Taylor, is requesting a variance from Municipal Code Section 16-12-40, Building location, to allow for the construction of a deck with a setback of 2 feet rather than the required 20 feet.

Municipal Code Section 16-12-40 states the following:

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

The property is zoned Central Business (CB) but as a single family use the property is subject to the Single Family Residential (SF-1) zone district standards in accordance with municipal Code Section 16-18-20(o). The house, according to the County Assessor, was built in 1909 while GIS data indicates the house has a setback of approximately 10 feet. Construction of a house in that time period predates any zoning or setback requirements. There is an existing deck in poor condition that the applicant wishes to replace with a new deck on the front of the house. The deck would be rebuilt in the same location as the current deck including the same setback. No documentation has been found as to the age of the deck but it was built prior to the applicant purchasing the home 2011.

The 6th street right-of-way width of 100 feet is typical of streets in Windsor's core neighborhoods. However, 6th Street is somewhat unique in that the width of the pavement within the right-of-way is less than most other streets, resulting in a wider strip of unused right-of-way between the back of the sidewalk and individual property lines.

Analysis:

Municipal Code Section 16-6-60(Variances) states the following:

Variances may be considered where, due to special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship. 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.

Furthermore, the Municipal Code defines unnecessary hardship as follows, with staff analysis below:

- a) *A situation where the property cannot be reasonably used under the conditions allowed by this Code.*

It could be considered that a home with no front porch or deck is not a reasonable use of a single family house.

- b) *The situation shall result from circumstances unique to the property and shall not be created by the landowner.*

The unique circumstances include the large distance between the property line and back of sidewalk. The situation was not created by the landowner, as the house and deck were both built previously.

- c) *The variance, if granted, will not alter the essential character of the surrounding neighborhood.*

The surrounding neighborhood has numerous encroachments into the setback.

- d) *Economic considerations alone shall not constitute an unnecessary hardship if a reasonable use for the property exists under the provisions of this Code.*

There are no economic considerations with this request.

Recommendation:

Staff considers that the literal enforcement of the Code will result in an unnecessary hardship and therefore is recommending approval of the variance request to allow a setback of 2 feet, based upon the following findings of fact:

1. The variance will not negatively impact public health, safety, or welfare
2. There is an abnormally large distance between the back of sidewalk and property line which helps mitigate a decreased setback
3. The house was built in 1909, prior to zoning requirements
4. The deck was built by a prior property owner
5. There are numerous other encroachments into the setback on the street

Furthermore, staff recommends the following conditions of approval:

1. In order to comply with building code, the deck shall be no closer than two feet from the property line
2. The applicant shall submit an Improvement Location Survey upon completion to verify the setback

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
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.

Notification:

November 19, 2015 development sign posted on the subject property
November 20, 2015 public hearing notice placed on the Town of Windsor's website
November 20, 2015 public hearing notice posted in the paper

Enclosures: Application Materials
Presentation Slides
Letter of neighbor support

Pc: Jeannette Mercer, applicant
Heath Taylor, applicant's representative
Planning staff



APPLICATION FOR VARIANCE

TOWN OF WINDSOR
301 Walnut Street
WINDSOR, CO 80550

(Please see the Town of Windsor Fee Schedule for Application Fees)

Office: (970) 674-2415
Fax: (970) 674-2456
www.windsorqov.com

TO BE COMPLETED BY APPLICANT

A request is hereby made for a variance of the Town of Windsor ordinances due to special conditions where a literal enforcement of the ordinance would result in unnecessary hardship on the property located at:

Street Address*: 222 N 6th St Windsor Co 80550
Lot: 6 Block: 2 Subdivision: Lakeview Subdivision

Describe the nature of the request for variance and the restriction(s) imposed by the ordinance(s). Attached additional sheet(s) if necessary: We are replacing original deck with a same size deck just New Deck, the view of the street will still be the same, This New Deck will improve looks and safety, Deck is rotting away. (The set back of 2ft is the problem with code at 30ft from property line.)

Describe the specific conditions, practical difficulties or undue hardship believed to justify this request* Attached additional sheet(s) if necessary: Deck is rotting away hand rail is very wobbly, Homeowner cant use deck as is now. They want to replace it (same size) but better material

SCALED DRAWINGS AND SPECIFICATIONS NECESSARY FOR THE PROPER CONSIDERATION OF THIS VARIANCE SHALL BE SUBMITTED WITH THIS APPLICATION. WITH NEW CONSTRUCTION PROJECTS YOU MUST CONTACT SAFEbuilt COLORADO, INC (970-686-7511) TO DETERMINE IF ANY SPECIAL REQUIREMENTS EXIST ACCORDING TO THE INTERNATIONAL BUILDING CODE.

I hereby depose and state under the penalties of perjury that all statement, proposals and plans submitted within this application are true and correct to the best of my knowledge.

Submitted this Nov day of 9th, 20 15

Heath Taylor
Applicant (please print)

Applicant's Signature

Mailing Address (street, city, state, zip)
620 Kenosha Ct Windsor Co 80550

Telephone Number (during the day)
970 388 2446

Fax Number:

Email: naterht80@gmail.com

Applicant's Representative (if any):

Kent A. Mercer
Property Owner* (please print)

Property Owner's Signature*

Mailing Address* (street, city, state, zip)
222 N 6th St WINDSOR CO 80550

Telephone Number* (during the day) (970) 371 2969

Fax Number:

Email*: j.j. mercer@msn.com

Name: KENT A. MERCER

Address: 222 N. 6th St WINDSOR, Co. 80550

Telephone: 970-518-9967 Fax:

Email: j-j. mercer@msn.com

* indicates required fields

Revised 03/13/2014

Please Turn over for Permit layout



VARIANCE REQUEST
222 NORTH 6TH STREET
LAKEVIEW SUBDIVISION
LOT 6, BLOCK 2

Paul Hornbeck, Associate Planner
December 10, 2015

Board of Adjustment

Item C.1



VARIANCE REQUEST

Municipal Code Section 16-6-60 outlines the regulations and provisions for granting variances.

Variance request from Section 16-12-40:

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

SITE VICINITY MAP



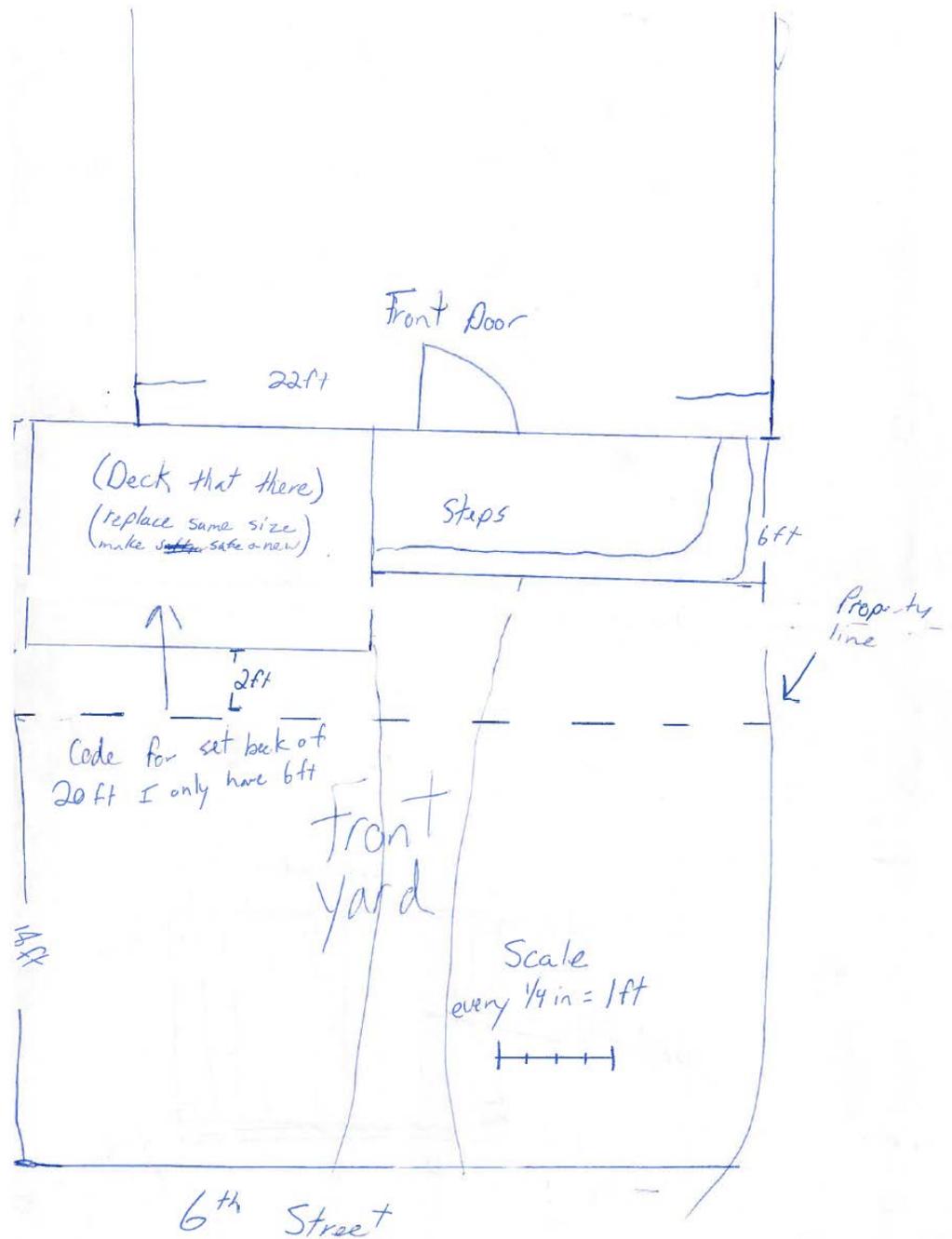
Site Location

SITE PROXIMITY ZONING MAP



Site Location

SITE PLAN



RECOMMENDATION

Staff considers that the literal enforcement of the Code will result in an unnecessary hardship and therefore is recommending approval of the variance request to allow a setback of 2 feet, based upon the following findings of fact:

- The variance will not negatively impact public health, safety, or welfare
- There is an abnormally large distance between the back of sidewalk and property line which helps mitigate a decreased setback
- The house was built in 1909, prior to zoning requirements
- The deck was built by a prior property owner
- There are numerous other encroachments into the setback on the street

In addition to the findings of fact, staff recommends approval of the variance be subject to the following conditions of approval:

- In order to comply with building code, the deck shall be no closer than two feet from the property line
- The applicant shall submit an Improvement Location Survey upon completion to verify the setback

From: J.D, [<mailto:dneruy@aol.com>]
Sent: Monday, November 30, 2015 10:08 AM
To: Scott Ballstadt; Carlin Barkeen
Subject: letter of support, 222 Nth 6th

This letter is in support of the requested variance at 222 Nth 6th

The requested variance is in a fully developed neighborhood and the structure in question dates back at least 30 years. The structure, to our knowledge, has never been cause for concern with any other element within the neighborhood. The variance request is to upgrade/maintain the home and will enhance the home as well as adding to the aesthetics of the neighborhood.

J.D. & Joyce Ruybal
224 Nth 6th