



BOARD OF ADJUSTMENT/APPEALS

REGULAR MEETING

April 28, 2016 - 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 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 16-24-40 pertaining to Building Location Requirements in the Residential Mixed Use (RMU) zoning district located at 2023 Vineyard Drive
 - Staff presentation: Paul Hornbeck, Senior 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, May 26, 2016</u>	7:00 P.M.	Regular Board of Adjustment Meeting*
<u>Thursday, June 23, 2016</u>	7:00 P.M.	Regular Board of Adjustment Meeting*
<u>Thursday, July 28, 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: April 28, 2016
To: Board of Adjustment
Via: Scott Ballstadt, AICP, Director of Planning
From: Paul Hornbeck, Senior Planner
Re: Public Hearing – Variance of Municipal Code Section 16-24-40 pertaining to Building Location Requirements in the Residential Mixed Use (RMU) zoning district
Location: 2023 Vineyard Drive, Lot 6 Block 25, Water Valley South Subdivision in the Town of Windsor
Item #: C.1

Background/Discussion:

The applicant, Ms. Debra Gridley, is requesting a variance from Municipal Code Section 16-24-40 (Lot, area, and height requirements) pertaining to a side offset. Municipal Code Section 16-24-40 states the following:

Residential uses. 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.

Since the subject property is a single family residence, the Single Family Residential (SF-1) zone district setback and offset requirements apply. Municipal Code Section 16-12-40 pertaining to SF-1 setbacks and offsets states the following:

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

A deck was constructed at the single family residence adjacent to the south property line on the rear corner of the house. The deck was constructed with a building permit, but inspections revealed that the 5 foot offset required from the side, or south, property line had not been met. The deck was constructed 4.2 feet from the property line, as seen on the attached setback certification.

Analysis:

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

Variiances 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.

The property can be reasonably used under the condition allowed by the code, including the use of a deck.

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

There appear to be no circumstances unique to this property, such as topography or lot dimensions, that would justify the variance.

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

Approval of the variance would have little impact on the character of the surrounding neighborhood as a whole, but would impact the character of the adjacent property.

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 would be a cost associated with removing the portion of the deck within the setback but this should not be a consideration for granting a variance.

Comments:

The application materials were submitted to the Development Review Committee for their review. The Town's contract building inspection and review agency SafeBuilt submitted the following comments:

Per table R302.1(1) of the 2012 International Residential Code, projections may not extend closer than 5 feet from a property line unless constructed with a minimum 1-Hour fire resistive material.

The Board of Adjustment does not have the authority to grant variances to the Building Code so if the variance were approved the applicant would still need to ensure all materials within 5 feet of the property line are a 1-Hour fire resistive material.

A neighboring property owner also submitted comments objecting to the variance request, with their letter attached.

Recommendation:

Staff considers that the literal enforcement of the Code will not result in an unnecessary hardship, as defined by the Municipal Code and outlined above, and therefore is recommending denial of the variance request.

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:

March 8, 2016 development sign posted on the subject property
March 11, 2016 public hearing notice placed on the Town of Windsor's website
March 11, 2016 public hearing notice posted in the paper

Enclosures: Application Materials
Presentation Slides
Neighbor Comments



APPLICATION FOR VARIANCE

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

TOWN OF WINDSOR
301 Walnut Street
WINDSOR, CO 80550

Office: (970) 674-2415
Fax: (970) 674-2456

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*: 2023 Vineyard Drive, Windsor Colorado 80550

Lot: 6 Block: 25 Subdivision: Stomewater

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 asking for a variance on a deck that looks to be 6" over setback on the south side of the property.

Describe the specific conditions, practical difficulties or undue hardship believed to justify this request* Attached additional sheet(s) if necessary: The deck is already built. It is a ground level deck.

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 23 day of October, 2015

Jeremy Ferguson

Applicant (please print)

[Signature]
Applicant's Signature
610 Scoria Ave

Mailing Address (street, city, state, zip)
970 203 5996

Telephone Number (during the day)

Fax Number:

Email: jfergusoninc@comcast.net

Applicant's Representative (if any):

Name:

Address:

Telephone:

Email:

Debra A Gridley

Property Owner* (please print)

[Signature]
Property Owner's Signature*

5238 So Espana Cir, Centennial, Co
Mailing Address* (street, city, state, zip)

303-523-1168
Telephone Number* (during the day)

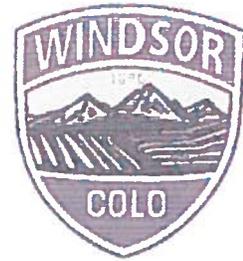
Fax Number:

Email*: nursegridley@yahoo.com

* indicates required fields

Revised 03/13/2014

Town of Windsor Planning Department
301 Walnut Street, Windsor, Colorado 80550
Phone 970/686-7476 Fax 970/686-7180



SETBACK CERTIFICATION

THIS COMPLETED FORM MUST BE SUBMITTED FOR APPROVAL PRIOR TO THE UNDERGROUND PLUMBING INSPECTION (BEFORE INSTALLATION OF ANY FRAMING)

Date: 03/03/2016

Building Permit #

Lot 6 Block 25 Subdivision WATER VALLEY SOUTH

Address: 2023 VINEYARD DRIVE, Windsor, Colorado

On 03/01/2016, a field crew measured the
(Date)

setbacks (distances from all property lines along streets) and offsets (distances from all property lines that are not along streets) for the above referenced property and found them to be in compliance with the approved plans and the requirements of the Windsor Municipal Code.



BY: _____
Surveyor/Engineer

(SEAL)

CONTRACTOR CERTIFICATION

I, _____ representing _____
(PRINT Name and title) (Contractor/Builder)

have reviewed the setback certification and the approved plans for the above referenced project and concur that the location of this structure is in conformance with the approved plans and the setback and offset requirements of the Windsor Municipal Code. Furthermore, I hereby certify that all portion(s) of the structure to be framed including, but not limited to, garages, porches, decks, cantilevers, bay windows or other structures, shall maintain compliance with said setback and offset requirements.

BY: _____

_____ Date

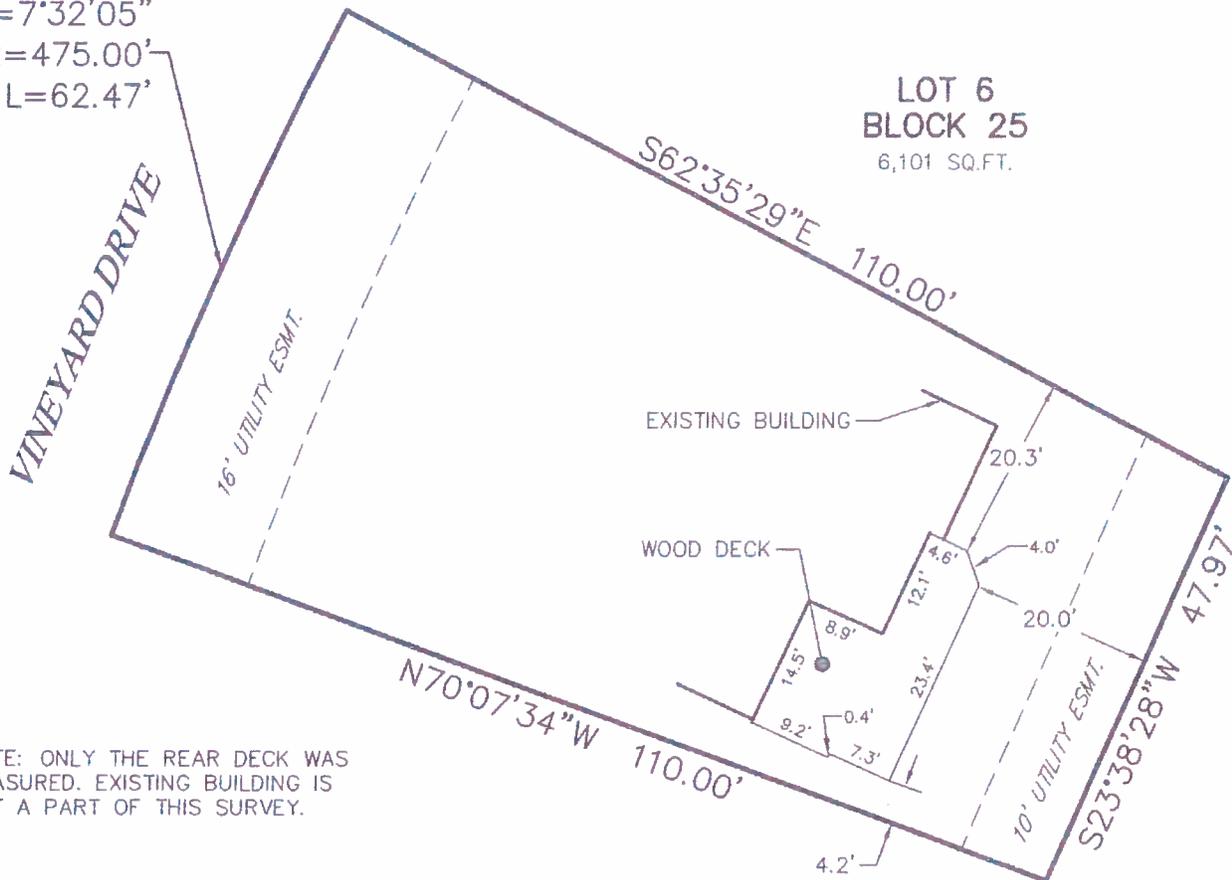
SETBACK CERTIFICATION

LOT 6 BLOCK 25 SUBDIVISION WATER VALLEY SOUTH

COUNTY OF WELD STATE OF COLORADO

ADDRESS 2023 VINEYARD DRIVE, WINDSOR

$A=7^{\circ}32'05''$
 $R=475.00'$
 $L=62.47'$



NOTE: ONLY THE REAR DECK WAS MEASURED. EXISTING BUILDING IS NOT A PART OF THIS SURVEY.

I, Robert J. Wesnitzer, A DULY LICENSED LAND SURVEYOR IN THE STATE OF COLORADO DO HEREBY STATE THAT THE DIMENSIONS SHOWN HEREON WERE DETERMINED FROM THE RESULTS OF AN ACTUAL FIELD SURVEY MADE BY ME OR UNDER MY SUPERVISION ON 03/01/2016 AND THE INFORMATION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY BELIEF AND KNOWLEDGE.



Robert J. Wesnitzer
LS 34990

DRAWN BY: EWL

SCALE: 1"=20'

DATE: 03-03-2016

JOB NO. 20160153

CLIENT: DEBRA GRIDLEY



KING SURVEYORS

650 E. Garden Drive | Windsor, Colorado 80550

phone: (970) 686-5011 | fax: (970) 686-5821

www.kingsurveyors.com



VARIANCE REQUEST
2023 VINEYARD DRIVE
WATER VALLEY SOUTH SUBDIVISION
LOT 6, BLOCK 25

Paul Hornbeck, Senior Planner
April 28, 2016

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 Municipal Code Section 16-24-40:

Residential uses. 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.

Municipal Code Section 16-12-40:

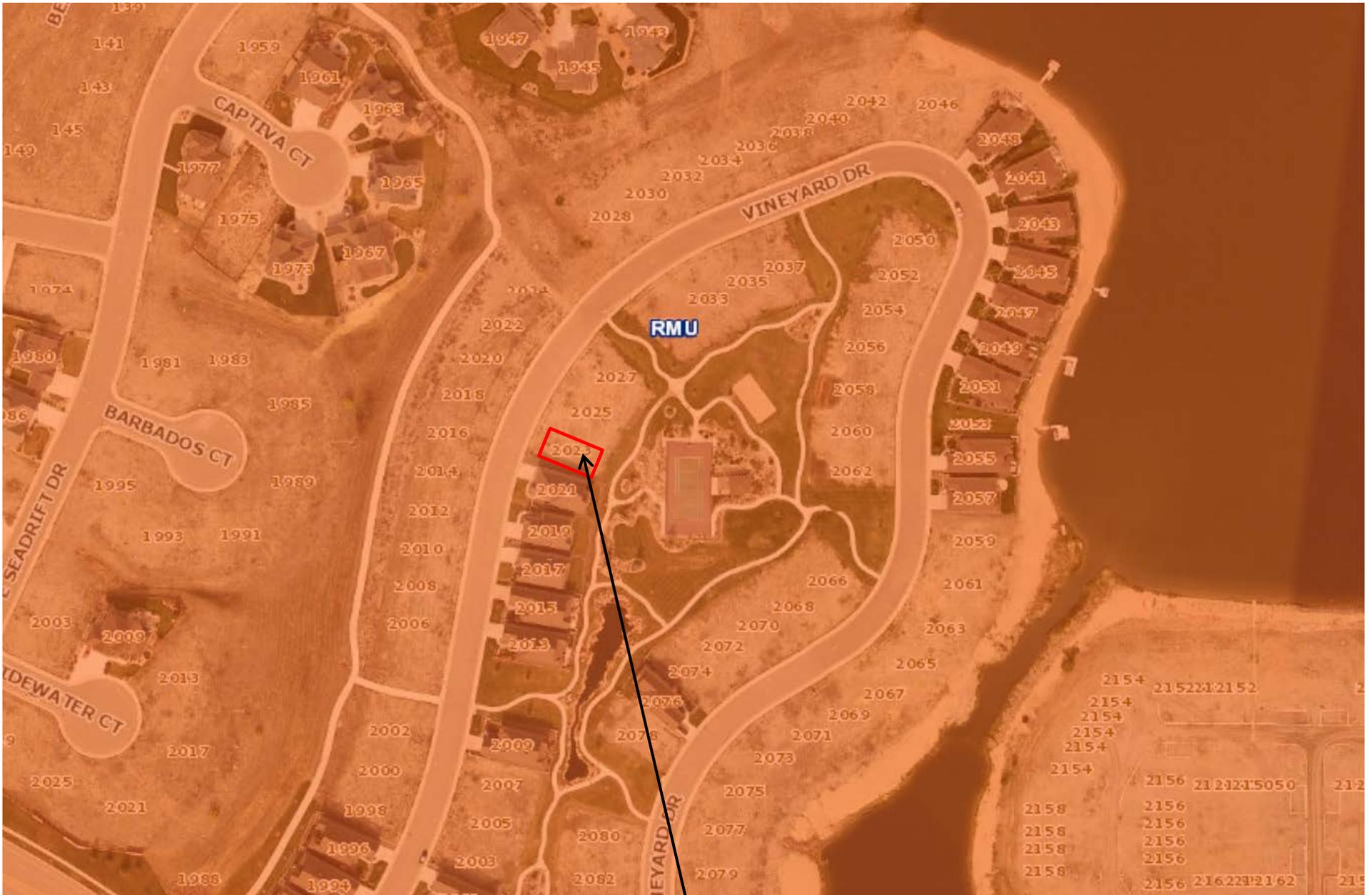
*Minimum setback shall be twenty (20) feet. **Minimum offset shall be five (5) feet** (emphasis added).*

SITE VICINITY MAP



Site Location

SITE PROXIMITY ZONING MAP



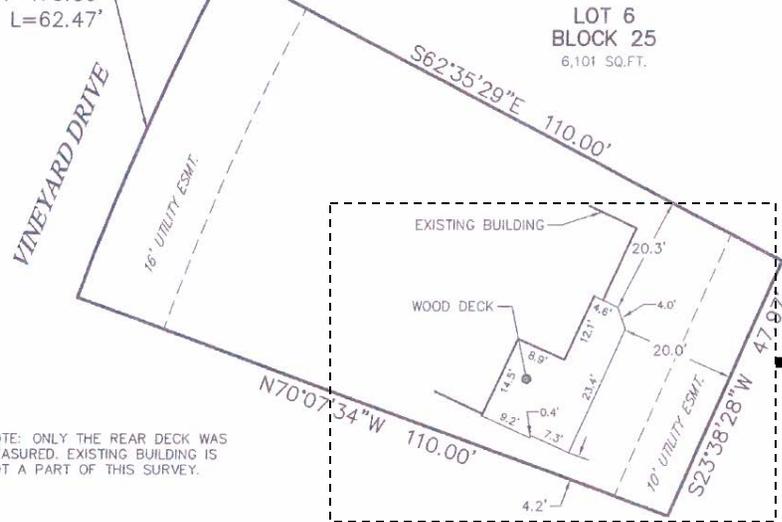
Site Location

SETBACK CERTIFICATION

SETBACK CERTIFICATION

LOT 6 BLOCK 25 SUBDIVISION WATER VALLEY SOUTH
 COUNTY OF WELD STATE OF COLORADO
 ADDRESS 2023 VINEYARD DRIVE, WINDSOR

$r=7'32'05''$
 $R=475.00'$
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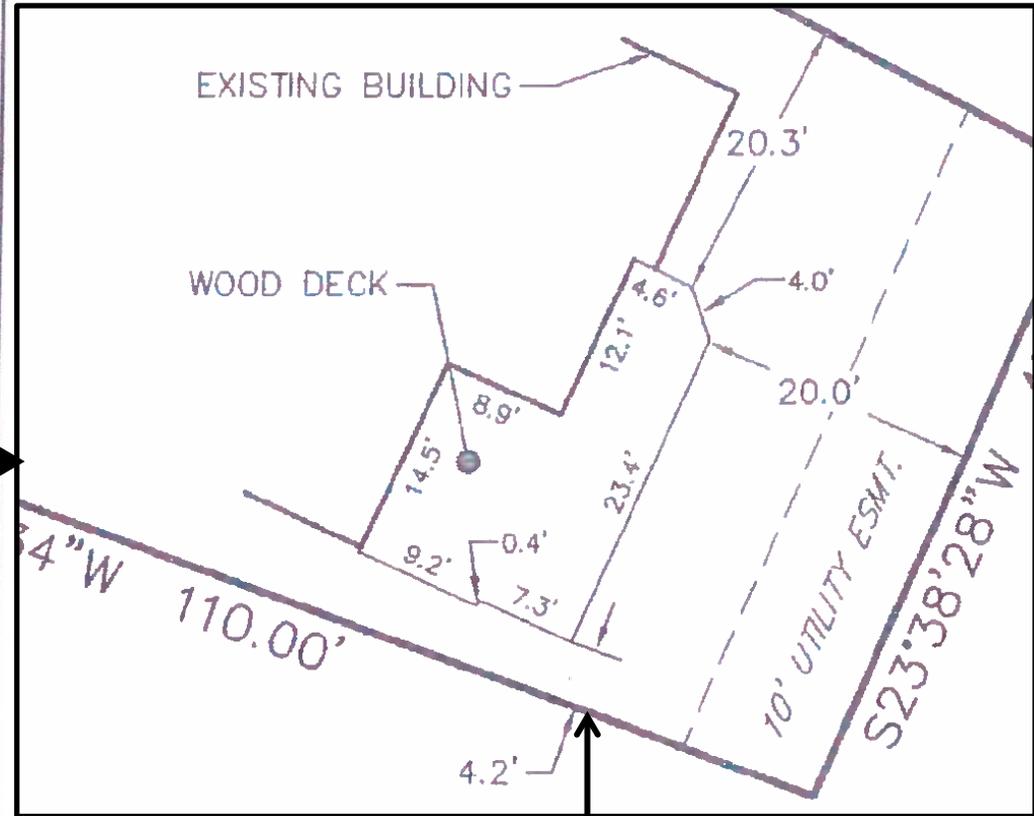
DRAWN BY: EWL

SCALE: 1"=20'

DATE: 03-03-2016

JOB NO. 20160153

CLIENT: DEBRA GRIDLEY



↑ Setback in question

SITE IMAGES



SITE IMAGES



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 situation where the property cannot be reasonably used under the conditions allowed by this Code.

- The property can be reasonably used under the condition allowed by the code, including the use of a deck.

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

- There appear to be no circumstances unique to this property, such as topography or lot dimensions, that would justify the variance.

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- Approval of the variance would have little impact on the character of the surrounding neighborhood as a whole, but would impact the character of the adjacent property.

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

- There would be a cost associated with removing the portion of the deck within the setback but this should not be a consideration for granting a variance.

COMMENTS

Safebuilt:

Per table R302.1(1) of the 2012 International Residential Code, projections may not extend closer than 5 feet from a property line unless constructed with a minimum 1-Hour fire resistive material.

Neighbor Comments:

Included in packet materials



RECOMMENDATION

Staff considers that the literal enforcement of the Code will not result in an unnecessary hardship, as defined by the Municipal Code and outlined above, and therefore is recommending denial of the variance request.

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:

- A motion to approve the request for a variance from Section 16-12-40
- A second; and
- 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.

Paul Hornbeck

From: mdeschene@neb.rr.com
Sent: Friday, March 18, 2016 8:29 AM
To: Paul Hornbeck
Cc: deschenco@gmail.com
Subject: 2023 Vineyard Drive Zoning Variance

3-18-2016

Re: 2023 Vineyard Drive, Windsor CO 80550 Zoning Variance Request To whom it may concern:

Please accept this letter as a petition to deny the requested Zoning variance by the party and or Contractor at 2023 Vineyard Drive, Windsor, CO 80550

Mark A Deschene and Dena Lynn Deschene, being the neighbor and owners of the home located at 2021 Vineyard Drive Windsor CO 80550 , the property that is directly adjacent to the property requesting the variance, are petitioning the Council; That the Contractor and Property owner be held to standards set by the city and county.

1. In the Stonewater sub-division the Property lines are very narrow and within close proximity to each house.
 - a. If the lots were Larger and the Structures were set apart at a further distance, this may not be an issue, but the property lines are very close to the existing home structures.
2. The Patio Homes have very little space and any infringement upon designated property lines is significant.
3. Contractors and Home owners should abide by standards set forth by the township and should be obligated to seek permits and comply accordingly.

That being said, we feel that it is our right to expect the Contractor and Home owner of 2023 Vineyard Drive to correct the Decking to be in line with codes set forth by the HOA and City guidelines.

In a day and age where rules and regulations are set aside so easily, we as Tax paying property owners in the township of Windsor, hope that the ruling is set forth in favor of correction of the structure that is encroaching on the property line, rather than allowing a variance.

Sincerely,

Mark A. and Dena Lynn Deschene
2021 Vineyard Drive, Windsor CO 80550
970-686-5844 or 402-429-1179