



**BOARD OF APPEALS/ADJUSTMENTS REGULAR MEETING**

August 25, 2016 – 7:00 P.M.

Town Board Chambers

301 Walnut Street, Windsor, CO 80550

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**MINUTES**

**A. CALL TO ORDER**

The meeting was called to order by Chairman Horner at 7:01 p.m.

1. Roll Call

The following members were present:

Chairman Danny Horner  
Cindy Scheuerman  
Jose Valdes  
David Sislowski  
Benjamin George

Also present:

Senior Planner	Paul Hornbeck
Director of Planning	Scott Ballstadt
Chief Planner	Carlin Barkeen
Town Attorney	Ian McCargar
Customer Service Supervisor	Jessica Scheopner

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**

**C. BOARD ACTION**

1. Public Hearing— Variance of Municipal Code Section 16-9-60(f) pertaining to an electronic message center sign in the Single Family Residential (SF-1) zoning district – Wayne Yauk, Bethel Lutheran Church, applicant
- Staff presentation: Paul Hornbeck, Senior Planner

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

Scott Ballstadt, Director of Planning, stated that the applicant is not in the audience at this time. He inquired if the Board would consider making a motion amending the agenda so this item is the last action item on the agenda in case the applicant appears.

**Ms. Scheuerman moved to take Action Item C.2 under advisory first on the agenda and move Action Item C.1 to the end; Dr. Valdes seconded the motion. Motion carried unanimously.**

2. Public Hearing— Variance of Municipal Code Section 16-9-100(a)(4) pertaining to an illuminated building-mounted sign within 150 feet of a residential zone district – Joe Ippolito, 1201 Cornerstone LLC./Tolmar, Inc., applicant
  - Staff presentation: Paul Hornbeck, Associate Planner

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

Applicant, Joe Ippolito, representing Tolmar at 1201 Cornerstone Drive explained the reason for the variance. He explained that the sign is located on the south side of the building. He presented pictures of the west side of the building and the sign from the view point of the neighboring church. He stated from this picture it is apparent that the sign, which is an illuminated box sign, is not visible. The box portion of the sign is not illuminated on the west side. The sign, if moved 30 feet to the east, would comply with the Municipal Code. He stated they chose to put the sign where it is now for two reasons—first, because the sign's illumination did not affect the residential area. Second, because the sign would be more visible from the roundabout.

Dr. George inquired if the picture represents the existing sign and if it is illuminated.

Mr. Ippolito replied that the picture is the existing sign which is illuminated only at night and only from the south side.

Mr. Horner opened the meeting for public comment to which there was none.

Mr. Horner requested the staff to present their report and recommendations.

Senior Planner Paul Hornbeck stated the applicant, 1201 Cornerstone LLC / Tolmar Inc., represented by Mr. Joe Ippolito, is requesting a variance to allow an

illuminated building-mounted sign within 150 feet of the nearest residential zone district. The subject property is located at 1201 Cornerstone Drive and is zoned Limited Industrial (IL). The proposed sign is located less than 150 feet east of the Single Family Residential (SF-1) zone district. Municipal Code Section 16-9-100(a)(4) states the following:

In no event shall any illuminated building-mounted sign be allowed within one hundred fifty (150) feet of the nearest residential district or development, with this distance being measured from the nearest portion of the sign to the nearest property line contained within any such residential district or development.

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

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

The Municipal Code defines unnecessary hardship as follows, with staff analysis listed below:

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

Analysis: The property can be reasonably used as allowed by the code.

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

Analysis: 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.

Analysis: In this case, allowing an illuminated wall mounted sign should have minimal impact on the essential character of the surrounding neighborhood due to the orientation of the sign and the sign location on the property. The sign faces south, with a setback of approximately 250 feet from Eastman Park Drive. Additionally, no homes are within 150 feet of the sign.

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

Analysis: The application materials failed to document a hardship of any kind, economic or otherwise. The property as it exists today can be reasonably used under the provisions of the Code.

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.

Furthermore, staff recommends the following findings of fact:

1. No hardship, as defined by the Municipal Code, exists in this case.

Mr. Horner asked if there were any questions of staff or the applicant at this time

Dr. Valdes inquired if the church was in the Residential zone.

Mr. Hornbeck replied that the church is in the Residential zone.

Dr. Valdes inquired if the church is the closet building to the sign.

Mr. Hornbeck replied that it is the closest building within the Residential zone district.

Dr. Valdes inquired if the actual residences along Sandstone and Eastman Park Drive are beyond the scope of the 150 feet.

Mr. Hornbeck replied that yes, the residences are beyond the 150 feet.

Dr. Valdes inquired what the distance, measured per the Municipal Code, from the sign to the property line of the church is.

Mr. Hornbeck replied 120 feet.

Dr. Valdes inquired if the sign is an existing sign.

Mr. Hornbeck explained that the sign has been installed without a permit in the last year.

Dr. Valdes inquired if the issue is more that the sign was installed without a permit.

Mr. Hornbeck replied that is correct.

Ms. Scheuerman inquired of the applicant the reason for having the illuminated sign.

Mr. Ippolito replied the illumination is only so that it can be seen at night. He further stated that when he applied for the variance he asked if it is

possible to not illuminate the sign if it gets to be a hardship. He continued to explain moving the sign 30 feet to the right (west) will serve no purpose to benefit the neighborhood. They did apply for a sign permit. They chose the location of the sign with the intention of putting in an application for variance afterwards. He stated they were told, after applying for a permit, a variance application was needed.

Planning Director Scott Ballstadt clarified that the variance was only prompted after the sign was installed incorrectly. The applicant had asked the Town for direction regarding the Code. The Code was clearly explained to the applicant, but as stated earlier by the applicant, they chose to install the sign in violation of the Code. Only after multiple requests from the Town of Windsor, including one from Mr. Ballstadt, did the applicant request a variance.

Dr. Valdes stated the biggest point is that the applicant knowingly installed the sign in violation of the Code and took a chance.

Mr. Ippolito stated that was correct. He explained they took a chance and asked in the worst case scenario could the sign not be illuminated. He stated he was told regardless if the sign was illuminated it would still have to be moved and a variance would need to be applied for within 24 hours. No permits or inspections would be granted until then.

Dr. Valdes inquired for clarification if the sign is not illuminated is it still against code.

Mr. Hornbeck stated it would be in conformance if not illuminated.

Dr. Valdes inquired if the illumination is after hours.

Mr. Ippolito stated the sign is illuminated after hours.

Dr. Valdes inquired if it would constitute a hardship if the sign was not illuminated.

Mr. Ippolito said no and this is why they chose the location in case the variance was not granted, then they would not illuminate the sign. He stated he was told regardless if the sign was illuminated or not that a variance would need to be applied for.

Dr. Valdes inquired to staff if it was unnecessary if they did not illuminate the sign.

Mr. Ballstadt explained this is the first Town staff has heard of the applicant offering not to illuminate the sign.

Dr. Valdes stated he is trying to get to the bottom line. He explained that what he has heard tonight is that the applicant took a chance by putting the sign up fully illuminated knowing that it was in non-compliance. And that the applicant is willing, if the variance is not provide, to not illuminate the sign because it already serves its purpose.

Mr. Ippolito confirmed this to be correct.

Ms. Scheuerman directed her inquiry to Town Attorney Ian McCargar. She asked if the email from the local resident needs to be read to enter it into the record.

Mr. McCargar explained that if the email is being offered into evidence, the email needs to be presented and accepted by the Chair or read into the record. He advised if the Board wants the email to be introduced then it should be produced to the applicant before it is placed into record in order to afford the applicant the opportunity to review the email.

Ms. Scheuerman offered to enter into the record the email Mr. Hornbeck provided to the Board.

Mr. McCargar inquired if a copy can be provided to the applicant.

Mr. Hornbeck provided a copy to the applicant.

Dr. Valdes asked the applicant if they had any comments regarding the email.

Mr. Ippolito stated the sign, even if moved 30 feet to the right, would have no impact on the complainant. The sign is well over 150 feet from the complainant in the email; therefore, it is not significant.

Dr. George inquired of staff why the sign is considered to be an illuminated sign.

Mr. Ippolito explained the sign is back-lit with LEDs in the logo area only.

Mr. Sislowksi inquired if the sign has been illuminated since it has been installed.

Mr. Ippolito said he was unsure since he has not been there at night.

Mr. Sislowksi inquired if there have been any complaints other than the one presented in the email tonight.

Mr. Ippolito replied no.

Dr. Valdes inquired how long has the sign been installed and illuminated in the evening.

Mr. Ippolito stated 6 months.

Charles, an employee of Tolmar, stated he has seen the sign illuminated at night, just not every night nor for 6 months. He has seen it illuminated on the nights he has left work late.

Mr. Ippolito added the sign has been up since November 30, 2015.

Mr. McCargar inquired to the applicant if either he or Charles has a photograph of what the sign looks like illuminated at night.

Mr. Ippolito and Charles both responded no.

Mr. Sislowksi inquired as to the nature of Tolmar's business.

Mr. Ippolito replied that Tolmar is a pharmaceutical company specializing in dermatological products and prostate cancer drugs.

Ms. Scheuerman inquired if there are customers that come in and out of the location daily.

Mr. Ippolito replied no. It is not a retail facility. The products are distributed through hospitals and pharmacies.

Charles stated that Tolmar is expected to operate 24 hours a day like the manufacturing facilities. As production begins to ramp up at this facility it is fully expected to have people there at night.

Mr. Ippolito added that the facility is a three shift operation at five days a week. He added another point on the application for variance which was not presented is the sign is easier to see from the roundabout in its current position.

Mr. Sislowski inquired about who exactly is intended to see the sign if the facility is not for retail use.

Mr. Ippolito stated there are vendors, regulatory agencies and contractors that do regular business with Tolmar.

Mr. Valdes inquired if these vendors, agencies and contractors do business in the evening.

Mr. Ippolito stated not right now because Tolmar is not fully operational and even then it would be rarely.

Ms. Scheuerman inquired of staff the distance of the sign to the residential mixed use area of Water Valley that the email complaint came from.

Mr. Ballstadt replied the distance is 355 feet and as far as staff is aware that is the only complaint received.

Mr. McCargar stated that if the email is going to be considered by the Board it should be expressly entered into the record, as well as the photographs presented by the applicant.

**Mr. Valdes moved to enter into record the email from Melissa McDoogle and the pictures provided by the applicant, Mr. Ippolito; Ms. Scheuermer seconded the motion. Motion carried unanimously**

Mr. Horner inquired of staff if the picture regarding the proposed sign in the packet and area marked in the picture indicates that the sign has to be moved to that specific point to have it illuminated and be compliant with the zoning ordinance.

Mr. Hornbeck replied yes.

Mr. Horner clarified that the applicant must either move the sign all the way over or not illuminate the sign according to the pictures and the wording.

Mr. Hornbeck replied correct.

Dr. George inquired if the nearest residential zone is on the south side of the road.

Mr. Hornbeck replied that the complaint was over 350 feet away. In general, the residential area to the south is beyond the required 150 feet.

Dr. George asked for clarification if the measurement included the church as part of the residential area.

Mr. Hornbeck explained it is the measurement to the zoning district, per code, regardless of whether the church is there or a vacant lot or a residence.

Dr. Valdes inquired of the applicant if there would be any advantage to moving the sign and allow for it to be lit even if it is not in the most advantageous location from Tolmar's point of view.

Mr. Ippolito replied that for financial reasons it would be easier not to move the sign.

Dr. George inquired of staff if the sign will alter the character of the neighborhood.

Mr. Hornbeck replied that staff's analysis is that the sign will not alter the essential character of the neighborhood.

Mr. Ippolito pointed out that although the sign is illuminated, it is not illuminated in the westerly direction. Although technically it is an illuminated sign, there is no illumination in the direction of the residential district.

Mr. Horner inquired if the only people that may see the sign would be the businesses across Eastman Park Drive.

Mr. Ippolito replied yes.

Mr. Horner asked for a motion to close the Public Hearing.

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

Mr. Horner asked for a motion on the variance.

**Dr. George moved to approve the variance request as presented; Dr. Valdes seconded the motion. Motion carried unanimously.**

Mr. Horner opened the meeting for discussion by the Board.

Dr. Valdes stated he does not know whether to award the variance because the applicant knowingly violated ordinance and took the chance of it being denied. He believes the applicant when they say the effect on the neighborhood is nil in terms of the light. However, the operation of the facility is not 24 hours a day and there is no requirement for customers to be there after hours. The applicant admitted without illumination the sign would still be functional, just may be not to the effect they had hoped for. He understands that moving the sign would be a financial hardship; but, with that said, it is hard to justify a variance under all those conditions.

Dr. George inquired if all three conditions need to be met to grant the variance.

Mr. Horner and Ms. Scheuerman replied yes.

Dr. George inquired if 4 out of the 5 Board members must approve the variance.

Mr. Horner replied yes.

**Roll call vote was taken on the motion.**

**Mr. Horner voted no.**

**Dr. George voted no.**

**Mr. Sislowski voted no.**

**Ms. Scheuerman voted no.**

**Dr. Valdes voted no.**

**Vote was unanimous for the denial of the variance.**

1. CONTINUED Public Hearing — Variance of Municipal Code Section 16-9-60(f) pertaining to an electronic message center sign in the Single Family Residential (SF-1) zoning district – Wayne Yauk, Bethel Lutheran Church, applicant
  - Staff presentation: Paul Hornbeck, Senior Planner

Planning Director Scott Ballstadt stated that the applicant is still not present.

Mr. Horner asked Town Attorney Mr. McCargar for advice regarding this situation.

Mr. McCargar replied that the burden is on the applicant to prove the variance. He recommends that the Board open up the public hearing. If the applicant has still not appeared by that time, then the applicant has not carried their burden of proof and action should be taken to deny the variance summarily.

Mr. Horner asked for a motion to open the Public Hearing.

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

Mr. Horner asked for the applicant to come forward to present.

Mr. McCargar stated for the record that the applicant is not present. Mr. Hornbeck will note on record that the applicant has been notified of tonight's hearing.

Mr. McCargar advised after which time the Board may close the Public Hearing and then take action regarding the variance.

Mr. Horner asked staff to present.

Mr. Hornbeck entered into record that an email was sent last week to Mr. Yauk to notify him of the meeting.

Dr. Valdes inquired if a response was received from this email.

Mr. Hornbeck stated he received no response to the email. A telephone call by a staff member was made prior to the email as well.

Dr. Valdes inquired if there is any concern that the applicant may have not realized they have been contacted.

Mr. Hornbeck replied that a member of staff did have a phone conversation with the applicant prior to the email and the applicant was notified at that time of the hearing.

Dr. Valdes suggested for future email notification that a receipt request and response are required.

Mr. Hornbeck added that a sign has been posted on the property that a variance is under consideration and the applicant received a written notice of the hearing.

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

Mr. Horner asked for a motion on the variance.

**Ms. Scheuerman moved to approve the variance as applied for but not presented. Mr. Sislowski seconded such motion.**

Mr. Horner opened the meeting for discussion by the Board.

There was no discussion.

**Mr. Horner called for a roll call vote.**

**Dr. George voted no.**

**Mr. Sislowski voted no.**

**Mr. Horner voted no.**

**Ms. Scheuerman voted no.**

**Dr. Valdes voted no.**

**Vote was unanimous for the denial of the variance.**

#### **D. COMMUNICATIONS**

1. Communications from the Board Members

Mr. Sislowski, Ms. Scheuerman, Dr. George will be out of town for the next meeting. There was discussion on potentially not having the next meeting.

2. Communications from staff

Mr. Hornbeck introduced David White as the new alternate Board member. Mr. Ballstadt explained with members absent next month, if something comes on the agenda there may be a need to call a special meeting. He added that staff will be working on improving the variance application process in order to receive better information from the applicants.

#### **E. ADJOURN**

**Dr. Valdes moved to adjourn; Ms. Scheurman seconded the motion. Motion carried unanimously.**

The meeting was adjourned at 7:48 p.m.



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Jessica Scheopner, Customer Service Supervisor