



BOARD OF ADJUSTMENT/APPEALS

REGULAR MEETING

March 22, 2018 - 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.

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
Julie Dionne
David Sislowski
Jose Valdes
David White

Also Present:

Senior Planner

Millissa Barry

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 October 26, 2017

Mr. Valdes moved to approve the minutes, Mr. Sislowski seconded the motion. All Members votes Aye. Motion carried.

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-9-100 (a)(4) pertaining to the prohibited use of building mounted illuminated signs within 150 feet of a residential district or development – Highlands Industrial Park Subdivision 1st filing, Lot 1, Block 4 – Nicole Vatrano, applicant

- Staff presentation: Millissa Berry, Senior Planner

This item was rescheduled for April 26, 2018 agenda per applicants request.

2. Public Hearing – Variance of Municipal Code Section 16-9-100(a)(4) pertaining to prohibited use of building-mounted illuminated signs within 150 feet of a residential district or development – Windsor Town Block 11 – Eric Thompson, applicant; Kailee Harvey, applicant’s representative
 - Staff presentation: Millissa Berry, Senior Planner

Mr. Sislowksi moved to open the public hearing; Mr. White seconded the motion. All Members voted Aye. Motion carried.

The applicant, Eric Thompson, 806 Shore Pine Court, Fort Collins, part owner requested a variance to allow a building-mounted illuminated sign within 150 feet of a residential district or development. He explained that the sign is LED illuminated and uses halo illumination that bounce off the back panel. The illumination measures less than 9 lumens. The applicant explained that the sign is in place but not illuminated at this time. He continued to explain that the location of the building in relation to residential zoning line. The distance is 138 feet and they are asking for a 12 foot or 8 % variance. He explained the hardship with not illuminating the sign. He explained most clients come after 5 pm and when the sign is not illuminated it makes it hard to find the business and keep things safe. He explained the past use of the building could not be consider as this is the first time the location was used as a retail location with a client base that comes in most hours of the day including evening.

Public Comments: No comments.

Ms. Berry reported, the applicant is Mr. Eric Thompson of Windermere Real Estate and is represented by Kailee Harvey, also of Windermere Real Estate. The applicant is requesting a variance from Municipal Code Section 16-9-100(a)(4) to allow for an internally illuminated building-mounted sign within 150 feet of a residential district or development.

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.

The property is located at 207 4th Street in Windsor’s downtown and is zoned Central Business District. The property is in close proximity of the Single-Family Residential (SF-1) Zone. The business, Windermere Real Estate, is located in a building that is approximately 138 feet from the SF-1 Zone.

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.

Section 16-6-60 defines unnecessary hardship as follows:

For purposes of this Article, unnecessary hardship shall be defined as a situation where the property cannot be reasonably used under the conditions allowed by this Code. The Page 2 of 3 situation shall result from circumstances unique to the property and shall not be created by the landowner. The variance, if granted, will not alter the essential character of the surrounding neighborhood. Economic considerations alone shall not constitute an unnecessary hardship if a reasonable use for the property exists under the provisions of the Code. It is the responsibility of the landowner to prove that an unnecessary hardship exists.

Municipal Code Section 16-1-10 (Declaration of Purpose) provides guidance on the purpose and spirit of the zoning code:

The regulations contained in this Chapter shall be held to be minimum requirements enacted to promote the health, safety and general welfare of the Town. To these ends such regulations have been prepared in accordance with the Comprehensive Development Plan for the Town and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land and undue concentration of population...

Staff has analyzed:

- whether special site specific circumstances unique to the property exist that were not created by the landowner
- whether an unnecessary hardship exists
- the impacts to the neighborhood character.

Staff analysis:

- a) 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.
- b) Unnecessary hardship - a situation where the property cannot be reasonably used under the conditions allowed by this Code.
Staff does not find that an unnecessary hardship exists.
Unnecessary hardship is defined as a situation where the property cannot be reasonably used under the conditions allowed by the Windsor Municipal Code. The business is able to have a building mounted sign in the proposed location. It just cannot be illuminated. The property itself has been used for commercial purposes in the past.
- c) The variance, if granted, will not alter the essential character of the surrounding neighborhood.
In this case, allowing an illuminated wall mounted sign may have minimal impact on the essential character of the surrounding

neighborhood due to the orientation of the sign facing west and the sign location on the property compared to the residential district to the south. Additionally, no houses are within 150 feet of the sign and the sign is back lit. However, the purpose of the regulation was to avoid the potential impact of illuminated signs on non-residential uses on adjacent residential districts and Page 3 of 3 development. This includes the visual impact of the illuminated sign on the residential neighborhood character and not necessarily solely light from the sign shining onto the adjacent properties.

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

The property as it exists today can be reasonably used under the provisions of the Code.

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. Therefore, staff is recommending denial of the variance request to allow for a building-mounted illuminated sign within 150 feet of a residential district of development.

Ms. Dionne inquired if the sign could be moved on the building enough to meet code.
The Applicant stated there is not enough room to do so.

Ms. Dionne asked could customers still find the location through GPS.
The Applicant replied it could be a safety risk for distracted driving.

Mr. Valdes inquired what reasonable time would be if there was a time limit for illumination.
The Applicant replied 10 pm.

There was discussion on the surrounding area of the applicant.

Mr. Valdes moved to close the public hearing; Mr. White seconded the motion. All Member voted Aye. Motion carried.

Mr. Valdes moved to approve the variance request as presented subject to the condition the sign's illumination is turned off at 10 pm daily; Mr. Sislowksi seconded the motion.

All Members voted Aye. Motion carried.

3. Public Hearing – Variance of Municipal Code Section 16-21-20(c)(5) pertaining to the maximum square footage of accessory outdoor storage allowable on a lot – Falcon Point Subdivision 3rd Filing, Lots 1 and 2 – Amy Tjardes, applicant, Patricia Kroetch, applicant representative

- Staff presentation: Millissa Berry, Senior Planner

Mr. Sislowksi moved to open the public hearing; Ms. Dionne seconded the motion. All Members voted Aye. Motion carried.

The applicant, Amy Tjardes, 40720 WCR 15 Fort, Collins, CO explained her intent to create on lot in a minor subdivision request that has a portion in the floodplain. The minor replat is to get proper financing and insurance for a building on the site. The floodplain is the hardship as it is out of her control. She stated that she would like a variance to allow for more than 65% of the lot to be outdoor storage.

Ms. Berry reported that the applicant is Ms. Amy Tjardes and the applicant's representative is Patricia Kroetch of NorthStar Design Inc. The applicant is requesting a variance from Municipal Code Section 16-21-20(c)(5) to allow for greater than sixty-five percent (65%) of a lot for accessory outdoor storage in the Limited Industrial (I-L) District. The property is located at 650 Gyrfalcon Drive in the Falcon Point Subdivision.

Municipal Code Section 16-21-20(c)(5) states the following:

The total square footage of accessory outdoor storage in the Limited Industrial I-L District shall not exceed sixty-five percent (65%) of the total square footage of the property.

The 100-year floodplain covers a portion of the subject property (Lot 2 of the Falcon Point Subdivision 2nd Filing). The property owner has submitted a minor subdivision request (Falcon Point Subdivision 3rd Filing) to create Lot 1 and Lot 2 of the 3rd Filing. The replat of the lot would create one lot completely out of the floodplain (Lot 1) and a lot (Lot 2) that has a portion within the floodplain. The purpose of the minor subdivision is for the applicant to get appropriate financing and insurance for a building that is proposed for the site.

The proposal is to keep the two properties under one ownership and develop the two lots as if one overall site. With this proposal, a building would be built on the western lot (Lot 1 which would not be encumbered by the floodplain). Also on the western lot would be an outdoor storage area. A parking lot associated with the building would be built on the eastern lot (Lot 2). All requirements (lot size, setbacks, parking count, landscaping area, access, etc.) of the Code would be honored for both sites.

To keep the accessory outdoor storage area as one unit and to keep the stored materials out of the floodplain, the applicant is asking for a variance to allow for greater than 65% of the site to be outdoor storage on Lot 1. The area of outdoor storage requested is 77% of Lot 1. No outdoor storage is proposed on Lot 2. If both lots were considered in the calculation then 61% of the lots would be accessory outdoor storage. However, if the applicant did not need to subdivide the property for financing purposes, the combined amount of outdoor storage on both Lots 1 and 2 if calculated together would be 61%, which would comply with the 65% maximum. The

total square footage of both lots is 97,995 square feet; the proposed area of outdoor storage is approximately 60,000 square feet.

A concept plan of the proposed site development is included in the packet. Some modifications are necessary to meet all other aspects of the Code. However, there is adequate space on the lots to modify the plan so that it does meet Town standards. A site plan review and the proposed minor subdivision would move forward if the Board approves the variance request.

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.

Section 16-6-60 defines unnecessary hardship as follows:

For purposes of this Article, unnecessary hardship shall be defined as a situation where the property cannot be reasonably used under the conditions allowed by this Code. The situation shall result from circumstances unique to the property and shall not be created by the landowner. The variance, if granted, will not alter the essential character of the surrounding neighborhood. Economic considerations alone shall not constitute an unnecessary hardship if a reasonable use for the property exists under the provisions of the Code. It is the responsibility of the landowner to prove that an unnecessary hardship exists.

Municipal Code Section 16-1-10 (Declaration of Purpose) provides guidance on the purpose and spirit of the zoning code:

The regulations contained in this Chapter shall be held to be minimum requirements enacted to promote the health, safety and general welfare of the Town. To these ends such regulations have been prepared in accordance with the Comprehensive Development Plan for the Town and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land and undue concentration of population...

Staff has analyzed whether an unnecessary hardship exists:

- a) Whether the property can be reasonable used under the conditions of the Code.
The 100-year floodplain restricts the use of the site as well as the ability to finance and insure development on the site as it is. The proposal for the minor subdivision allows for the lot(s) to be developed and function as if the floodplain did not encumber the property.
- b) Whether circumstances unique to the property exist that were not created by the landowner.
The occurrence of the 100-year floodplain was not created by the landowner.

c) Whether the essential character of the surrounding neighborhood would be altered.

The essential character of the surrounding neighborhood would not be altered. The property is located in an industrial zone with industrial uses adjacent to it. The proposal for using both lots would not increase the number of industrial use in the area and, from appearance, the industrial uses in the area would all be of similar size and a number of them have or propose to have accessory outdoor storage areas of similar size to this one.

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

Due to the floodplain, it would depend on the financing institution and insurance providers to determine if 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 result in an unnecessary hardship as defined by the Municipal Code and outlined above. Therefore, staff is recommending approval of the variance request to allow an accessory outdoor storage area of greater than sixty-five percent (65%) up to seventy-seven percent (77%) of the proposed western lot (Lot 1 of the Falcon Point Subdivision 3rd Filing) with the following conditions:

1. The site plan meets all other standards of the Code for both Lots 1 and 2 of the Falcon Point Subdivision 3rd Filing.
2. The site plan and minor subdivision are reviewed and approved according to Town processes.
3. The variance approved herein shall be recorded in the books and records of the Weld County Clerk and Recorder's Office, and is expressly conditioned upon the following requirements:
 - a. In the event that unity of ownership for Lot 1 and Lot 2 is discontinued, then a Town approved instrument shall be recorded simultaneously with the instrument under which unity of ownership is severed. The Town-approved instrument shall require the continuous use of Lot 2 in conjunction with the use of Lot 1 and in accordance with this variance, regardless of separate ownership.

Public Comments: No comments.

Mr. Valdes asked if the intent was to use the parking for personal use and not business use.

Ms. Tjardes explained that the parking and storage is to support the business not personal use.

Mr. Valdes moved to close the public hearing; Ms. Dionne seconded the motion. All Member voted Aye. Motion carried.

Mr. Valdes moved to approve the variance request as presented subject to the conditions; Mr. Sislowski seconded the motion.

4. Election of Officers

Danny Horner was nominated as chairperson, David Sislowski was nominated as vice-chairperson and Jennifer Dionne was nominated as secretary.

Motion was seconded. All Member voted Aye. Motion carried

D. COMMUNICATIONS

1. Communications from the Board Members

None

2. Communications from staff

Ms. Berry gave on update on the code review process.

E. ADJOURN

Ms. Dionne moved to adjourn; Mr. Sislowski seconded the motion. All Members voted Aye. Motion carried.

The meeting was adjourned at 7:55 p.m.



Jessica Scheopner, Customer Service Supervisor