



BOARD OF ADJUSTMENT / APPEALS REGULAR MEETING

February 28, 2019 // 7:00 p.m. // First Floor Conference Room
301 Walnut Street, Windsor, CO 80550

MINUTES

A. CALL TO ORDER

Vice-Chairman Valdes called the meeting to order at 7:04 p.m.

1. Roll Call

The following members were present:

	Vice-Chairman	Jose Valdes
		David White
		Grant Lebahn
		Jennifer Dionne
	Alternate	Charles Schinner
	Absent	Danny Horner
Absent	Alternate	Patrick Miller
Also Present	Senior Planner	Millissa Berry
	Deputy Town Clerk	Amanda Mehlenbacher

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 from January 24, 2019

Mr. Schinner moved to approve the minutes, Mr. White seconded the motion. All Members voted Aye, Motion carried.

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-12-40 pertaining to setbacks and access to residential lots in the Single Family Residential (SF-1) Zone District – Kern Subdivision Lot 16 Block 4 (329 Locust); Mark Despain, owner/applicant

- Staff presentation: Millissa Berry, Senior Planner

Mr. White moved to open the Public Hearing; Ms. Dionne seconded the motion. Roll call on the vote resulted as follows:

Yeas – Valdes, Schinner, White, Dionne, Lebahn

Nays – None

Motion passed

The applicant, Mark Despain, 329 Locust Street, stated that they wish to align a 3 car garage with the setback that their current house sits at which would consist of a 10 foot setback from the lot line. The applicant stated that they have looked at other ways to incorporate the 3 car garage but feel that keeping it detached with lawn space in between the structures would be more in line with the charm of the downtown area.

Mr. Valdes asked if there was anyone from the audience who wished to speak on this matter.

Stuart Rafos, 515 4th St. Windsor, CO approached the Board and stated that he is in opposition of the variance. Mr. Rafos expressed concern regarding the public safety of the sidewalks, the lack of unnecessary hardship, and negative effects on his property value.

Per Ms. Berry, The applicant, Mr. Mark Despain is requesting a variance from Municipal Code Section 16-12-40 to allow for a detached garage to be built within the minimum setback in the Single Family Residential (SF-1) Zone District.

Municipal Code Section 16-12-40 states:

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

The variance request is to allow a front setback of 10' from the west property line for a detached garage.

Per Ms. Berry, Mr. Despain owns the property addressed as 329 Locust Street and located at the southeast corner of Locust Street and 4th Street. The proposed detached garage would be located on the southern portion of the lot with access from the alley. The western wall of the garage would line up with the western facade of the existing house on the property. The rear and side setbacks (offsets) would meet the code standard of 5' for each.

There is an existing garage on the lot that is attached to the house. This garage currently is setback approximately 10 feet from the western property line. The applicant intends to renovate this area for living space and construct the new garage on the southern portion of the lot.

Staff has not determined that an undue or unnecessary hardship exists. However, the request and circumstances of the site are consistent with variances granted in the recent past in the older part of town where the lot line is not abutting the sidewalk or street. Therefore, staff is recommending approval of the variance request - to allow the garage addition to be located as proposed with a setback of 10' from the western property line – with the following conditions of approval:

1. The applicant includes a plot plan with the existing location of the sanitary sewer service line, material and depth with the building permit application materials along with either information on relocation of the service line or materials and depth of a new line to meet building code.
2. All other zoning requirements and building permit requirements are met.

Since all motions are to be made in the affirmative, staff 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 with the two conditions recommended by staff.
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.

Should the BOA be inclined to approve the variance request, findings of fact supporting the decision are required.

Staff requests that the following be entered into the record:

- Application and supplemental materials
- Staff memorandum and supporting documents
- All testimony presented during the Public Hearing
- Recommendation

Mr. Valdes asked the Board if they had any questions for the applicant.

Mr. Schinner requested that staff look into having the area monitored to see if there is a public safety or limited visibility issue in that particular section.

Discussion between the Board members, staff, the applicant, and the neighbor revolved around the location of the garage and its access point, public safety and setback standards within the area.

**Mr. Schinner moved to close the Public Hearing; Mr. Lebahn seconded the motion. Roll call on the vote resulted as follows:
Yeas – Valdes, Schinner, White, Dionne, Lebahn
Nays – None
Motion passed**

Mr. Valdes asked for a motion on the variance.

**Mr. Schinner moved to approve the request for a variance from Section 16-12-40 with the conditions recommended by staff; Ms. Dionne seconded the motion. Roll call on the vote resulted as follows:
Yeas – Valdes, Schinner, White, Dionne, Lebahn
Nays – None
Motion passed**

2. Public Hearing – Variance of Municipal Code Section 16-12-40 of the Municipal Code pertaining to building location and setback in the Single Family Residential (SF-1) Zone District - Windsor Village Subdivision First Filing Lot 37 Block 3 (18 Tulip Court); Christine Lawton and Victor Gutierrez, owners/applicants
 - Staff presentation: Millissa Berry, Senior Planner

Mr. White moved to open the Public Hearing; Mr. Lebahn seconded the motion. Roll call on the vote resulted as follows:

Yeas – Valdes, Schinner, White, Dionne, Lebahn
Nays – None
Motion passed

The applicant, Christine Lawton, 18 Tulip Ct. Windsor, CO stated that they purchased their home in July with the intent to remodel and update. The applicant removed the existing deck and replaced with a new entry to improve the appearance of their home. During the construction of the deck, the applicant was made aware that a building permit was required for the work and that a variance was required to allow the new deck to encroach into the front setback. She asked the Board to allow her to continue to replace the deck and stairs as planned.

Public Comments: No comments.

Per Ms. Berry, The applicants, Ms. Christine Lawton and Mr. Victor Gutierrez, are requesting a variance from Municipal Code Section 16-12-40 to allow for a covered porch and stairs to be built within 10 feet of the front property line.

Municipal Code Section 16-12-40 states:
“Minimum setback shall be twenty (20) feet.”

The property is addressed as 18 Tulip Court and is located in the Windsor Village Subdivision. The proposed entry feature is a covered wood porch and stairs. The porch extends 13' from the existing house and is 10 feet wide. The roof is approximately 10' in height (9.5' from the bottom of the deck to the top of the inside of the roof). Please see the staff presentation for images of the porch. The porch is setback approximately 10' from the front property line.

Staff does not consider that the literal enforcement of the Code will result in an unnecessary hardship as defined by the Municipal Code and outlined above.

However, if the Board of Adjustment moves to approve the variance request - to allow the covered front entry addition to be located as proposed in the building permit application with a setback of approximately 10' feet from the front property line - the following conditions are recommended by staff:

1. The roof may extend into the front setback up to 5' to cover stairs and the portion of the porch closest to the house.
2. A setback survey is required to confirm that the porch is at least 10' from front property line and outside of the utility easement.
3. The porch cannot be a fully enclosed structure.
4. The applicants obtain a building permit for the porch.

Since all motions are to be made in the affirmative, staff 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 with the four conditions recommended by staff.
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.

Should the BOA be inclined to approve the variance request, findings of fact supporting the decision are required.

Staff requests that the following be entered into the record:

- Application and supplemental materials
- Staff memorandum and supporting documents
- All testimony presented during the Public Hearing
- Recommendation

Mr. Valdes asked the Board if they had any questions for the applicant.

Discussion between Board members and staff revolved around the roof top extension on the porch.

**Mr. Lebahn moved to close the Public Hearing; Ms. Dionne seconded the motion. Roll call on the vote resulted as follows:
Yeas – Valdes, Schinner, White, Dionne, Lebahn
Nays – None
Motion passed**

Mr. Valdes asked for a motion on the variance.

**Mr. Lebahn moved to approve the request for a variance from Section 16-12-40 with the conditions listed by staff with the exception of item No. 1.; Mr. Schinner seconded the motion. Roll call on the vote resulted as follows:
Yeas – Valdes, White, Dionne, Lebahn
Nays – Schinner
Motion passed 4:1**

D. COMMUNICATIONS

1. Communications from the Board Members

Mr. Schinner requested that photos be as current as possible within the staff presentations.

2. Communications from staff

None

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 8:24 p.m.



Town Clerk, Krystal Eucker