



**BOARD OF ADJUSTMENT / APPEALS  
REGULAR MEETING**

**May 23, 2019 // 7:00 p.m. // Town Board Chambers  
301 Walnut Street, Windsor, CO 80550**

**MINUTES**

**A. CALL TO ORDER**

Vice-Chairman Valdes called the meeting to order at 7:01 p.m.

**1. Roll Call**

The following members were present:

Vice-Chairman	Jose Valdes
	David White
	Jennifer Dionne
Alternate	Charles Schinner
Alternate	Patrick Miller
Senior Planner	Millissa Berry
Deputy Town Clerk	Trisha Conway

**2. Review of Agenda by the Board and Addition of items of New Business to the Agenda for Consideration by the Board of Adjustment / Appeals**

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 February 28, 2019

**Mr. Valdes moved to approve the consent calendar as presented; Mr. Schinner seconded the motion. Roll call on the vote resulted as follows; Yeas – Valdes, White, Dionne, Schinner, Miller; Nays – None; Motion carried.**

**C. BOARD ACTION**

1. Public Hearing – Variance of Municipal Code Section 16-9-110(d) pertaining to the size of monument sign – Ptarmigan Business Park PUD Subdivision 4<sup>th</sup> Filing Lot 1 (7494 Main Street – Ziggi's Coffee); Sarah and Steve Stoecker, owners/applicants.

Per Ms. Berry the applicant has decided to table the application until an undetermined date.

**Mr. Schinner made a motion to table the item; Mr. Miller seconded the motion. Roll call on the vote resulted as follows: Yeas – Valdes, White, Dionne, Schinner, Miller; Nays – None; Motion carried.**

2. Public Hearing – Variance of Municipal Code Section 16-12-50 of the Municipal Code pertaining to open space and Section 16-12-40 pertaining to setback in the Single Family Residential (SF-1) Zone District – Kern’s Subdivision 11<sup>th</sup> Filing Lot 1 (29 Locust Street); David Byrne, owner/applicant

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

The applicant, Mr. David Byrne, 29 Locust Street, stated that he is requesting a variance from Municipal Code Section 16-12-40 and Section 16-12-50 to allow for a garage to be built on his property in the Single Family Residential (SF-1) Zone District.

Mr. Byrne stated in 2003 the property was split and a variance was granted for the southern lot. The set back on the west side was changed from 20 feet to 10 feet, and the open space requirement was reduced from 3000 square feet (sf) to 1977 sf. He is requesting that the northern lot be given similar consideration, and the setback requirement be reduced from 20 feet to 10 feet.

Per Mr. Byrne the overall open space requirement would be 1850 sf with a 10 foot setback is consistent with other neighboring properties where homes were built prior to establishing the current codes. The existing setback of 20 feet would be difficult to align access to the garage with the southern entrance of the house. Locating the garage closer to the west property line would be more functional, and architecturally pleasing.

Mr. Byrne stated this addition to the property will enhance the appearance, and a good sense of style that will match his home. Mr. Byrne requested a variance on the north lot to create a building envelope to allow 25’x25’ garage addition or detached garage to be located within the home setback of 10 feet from the west property line and allow an open space of 1850 sf.

Mr. Valdes asked if there are any comments from public regarding the variance request. There was none.

Ms. Berry stated this variance request pertained to the setback in the Single Family Residential (SF-1) Zone District – Kern’s Subdivision 11<sup>th</sup> Filing Lot 1 (29 Locust Street), and the open space consideration on the lot.

Municipal Code Section 16-12-40 states:

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

Municipal Code Section 16-12-50 states:

“As a part of the minimum lot area of six thousand (6,000) square feet per dwelling unit, a minimum of three thousand (3,000) square feet thereof shall be livable open space.”

The variance request from Section 16-12-40 is to allow a front setback of 10 feet from the west property line for an attached garage addition. The variance request from Section 16-12-50 would allow the lot itself to have less than 3,000 sf of open space.

The request for the setback relates to the creation of the lot prior to the zoning code and a previous variance that allowed a lot to be less than 6,000 square feet in area.

Per Ms. Berry the site is located off of 1<sup>st</sup>, and Locust in the older part of town. It is zoned Single Family Residential (SF-1) Zone District. The lot towards the south of the property is vacant.

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 reasonably used under the conditions of the Code.  
The property can be reasonably used under the conditions of the Code.
- b. Whether circumstances unique to the property exist that were not created by the landowner.

The property is located on a corner lot and therefore has two frontages. The current municipal code requires buildings to be setback a minimum of 20' building from each property line fronting a public street / right-of-way. The property was originally platted in the early 1900s. As originally platted, the lot was 50' wide by 175' in length, similar to the proportions of the other lots in the area. Like many of the corner houses in the area that were built prior to the adoption of a zoning code, the existing house was built with a setback less than 20 feet on one of the street frontages (1st Street). The existing house, built in the 1930s, has a 9.2 foot setback from the western property line. Also like many properties in the area, a portion of the right-of-way appears to be part of the subject property's yard. In this case, the west property line is inset from the sidewalk by approximately 16 feet.

In 2003, the lot was subdivided to create 2 lots. A variance was obtained to allow the subdivision of lots less than 6,000 sf for both lots. The north lot is now 4,900 square feet and the south lot is 3,927.5 square feet. The variance allowed for a

new house to be constructed on the southern lot with a 10-foot setback from the west property line. However, the variance did not include the 10-foot setback for the northern property. The variance also allowed for approximately 1,977 sf of open space on the south lot but did not include a new minimum for the north lot.

The applicant calculated 2,424 sf of open space on the lot currently. Staff calculations from the plat and aerial resulted in the subject lot having approximately 2,000 sf of open space if only area without impervious surfaces is considered. If all areas without structures are considered, it is close to the figure submitted by the applicant. The permeable land surrounding the lot between the inside of the sidewalk and the lot is approximately 1,700 sf. With this considered, the area functions as if it has more than 3,000 sf of open space.

According to the plat, the amount of impervious surface appears to be similar to what existed in 2003. The garage would be built over an area that currently is largely paved. An additional area – approximately 150 sf - beyond the current paved area may also become foundation for the garage. The 1,850 sf of open space is in the range that has been allowed for similar variance for subdivisions of end lots in the neighborhood, particularly those with pervious right-of-way immediately adjacent to the lots.

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 a residential zone and is adjacent to residential properties of similar proportions.
- There are several similar subdivisions at the end of blocks in the area. These lots received variances to allow the reduced setback and lesser amount of open space.
- The garage will be designed to match / complement the existing house.
- 25' x 25' garage is typical for area.
- The garage would not encroach into the setback more than the existing house does.

Public safety and welfare are ensured. It is not foreseen that public safety and welfare will be compromised with the granting the variance request.

- The garage would be set back far enough from the sidewalk so it will not cast shadows or ice buildup onto the walk which is particularly important in the winter months when it could become an issue.
- Garage location would allow for a 20'+ driveway between the garage and sidewalk.
- The garage will be setback 5' setbacks from the south and east property lines and therefore will not encroach into utility easements.
- Drainage should not be impacted since the garage will be built in an area that is currently hard surface.

Staff has not determined that an undue hardship exists because the property can be reasonably used under the conditions of the Code . However, the request and circumstances of the site are consistent with variances granted in the recent past in the older part of town. Therefore, staff is recommending approval of the variance request - to

create a building envelope to allow a 25'x25' garage addition or a detached garage to be located as proposed with a minimum setback of 10' from the western property line and open space of 1,850 square feet – with the following conditions of approval:

1. The applicant obtains a building permit for the garage.
2. A setback survey is conducted with the installation of the foundation of the garage to confirm setbacks.

Should the BOA be inclined to approve the variance request, findings of fact supporting the decision are required. Suggested findings for this case are as follows:

1. The proposal is consistent with Town development decisions in the area.
2. The granting of this variance request will not alter the character of the surrounding neighborhood.
3. The granting this variance will not pose any public safety or welfare concerns.

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 and 16-12-50 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.

Mr. Valdes asked Mr. Byrne if he had an architectural rendering of the garage to give the Board an idea of the design, and compatibility of the home.

Ms. Berry responded it was not included in the packet of materials.

Mr. Valdes asked whether the garage was attached or detached, and if it would still fall within the infringed recommendation boundaries of approval that have been recommended.

Ms. Berry responded that the applicant would need to build within the envelope approved and meet building code. The design of the structure would need to be compatible with the neighborhood.

Per Mr. Byrne the house was built in 1930, and is a craftsman style home. It has a dormer in the front, and 6x6 post coming out. Mr. Byrne stated he is going to continue that design, and finish the siding the same as the house. The style will match the house, and Mr. Byrne stated he was very particular about that. Mr. Byrne also stated he built homes all of his life.

Mr. Valdes asked about the (2) conditions posed by staff. A setback survey is with the installation of the foundation of the garage to confirm setbacks, and the building permit. Mr. Valdes discussed concern with surveys in the past, and wanted to verify notice requirements within the building permit.

Mr. Valdes asked Mr. Byrne if he understood the building envelope he had to work with, and the garage would not be 10 feet somewhere else.

Mr. Byrne responded that he was limited on space, and if the garage is detached it would be 20 feet wide at a minimum. Mr. Byrne would have 10 feet between the house and the garage. He will likely build the garage larger reducing that space by a couple of feet still remaining inside of the building envelope.

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

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

Mr. Valdes asked for a motion on the variance.

**Mr. Schinner moved to approve the request for a variance with the wording of an 25'x25' building envelope with the conditions recommended by staff.**

**Ms. Berry commented that the building envelope will be much larger, but the garage will be 25'x25'.**

Mr. Schinner asked Ms. Berry how large the building envelope will be.

Ms. Berry responded it will allow for the building envelope to be 10 feet from the West setback, 5 feet from the South setback, and 5 feet from the East setback.

Mr. Schinner asked Ms. Berry if there was a drawing that the board could reference. Per Ms. Berry referenced Figure "A".

Mr. Schinner asked Ms. Berry if the document could be labeled. Per Ms. Berry, it can.

**Mr. Schinner moved to amend his approval making a motion to grant the variance adopting Figure "A" drawing of the building envelope with the (2) conditions recommended by staff for a survey, and building permit. Dionne seconded the motion. Roll call on the vote resulted as follows: Yeas – Valdes, White, Dionne, Schinner, Miller; Nays – None; Motion carried.**

3. Public Hearing – Variance of Municipal Code Section 16-9-50(e) pertaining separation between monument signs – East Pointe Subdivision (Main Street and SH 257); Chris Ruff, owner/applicant

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

The applicant, Mr. Chris Ruff, 311 Habitat Bay, is the developer of East Pointe Subdivision. He stated that he was requesting a variance from Municipal Code Section 16-9-50(e) to allow for the separation between freestanding signs to be less than 100 feet.

Mr. Ruff stated that when they designed the subdivision, they created an envelope on the corner of SH392 and SH257 for the monument sign to mark the name of the subdivision.

East Pointe Subdivision subsequently sold the lot to Kum & Go, and Kum & Go went through the sign permitting process. The planning department did not consider the fact that East Pointe Subdivision already reserved an area for a monument sign. Kum & Go applied to have the sign, but where there monument sign stands was within 100 feet of where the building envelope stands for East Pointe Subdivision monument sign.

Mr. Ruff stated that he did not have any place to move the monument sign. The hardship is East Pointe Subdivision had an approved site for the sign, and they did not have any control over the Kum & Go process.

Per Mr. Ruff the distance between the (2) monuments signs is 75 feet, and the sign would not block the view of the Kum & Go sign. The sign would be compatible with the subdivision, and look nice.

Mr. Valdes asked if there were any comments from the public.

Ms. Berry repeated that this is a variance request for the East Pointe Subdivision the location is southeast of the intersection of SH392 and SH257. It is a request for reduction of separation between freestanding signs. She said the terms “monument sign” and “freestanding sign” maybe interchanged in this discussion.

Municipal Code Section 16-9-50(e) states the following: *Distance separation... Freestanding signs shall be separated by at least one hundred (100) feet.*

She stated that the East Pointe Subdivision is located at the southeast corner of the intersection of SH 392 and SH 257. The property is zoned General Commercial (GC). The subdivision plat includes an easement for the commercial center identification sign. The track is large at .2 acres, but a 30' Greeley water line easement runs along the western portion of the sign easement area. The Greeley Water department will not allow a sign to be installed within their easement.

Per Ms. Berry the property immediately to the east of the sign easement obtained a sign permit from the Town of Windsor for a freestanding sign to be located 15 feet from its western property line. It was overlooked that there was a sign easement that should have been considered, and freestanding sign is approximately 75 feet from the water line easement. The combination of the water line easement and location of the neighboring property owner's freestanding sign reduces the ability for the planned commercial center identification sign. Any sign placed in the easement would be within 100 feet.

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 special site specific conditions exist
- whether an unnecessary hardship exists
- the impact on public interest, safety, and welfare
- the impacts to the neighborhood character.

Ms. Berry stated that special site conditions do exist. The Greeley water line easement reduces the area that the commercial center identification sign can locate within its easement. Due to the location of the neighboring property owner's sign, there is no remaining location in the designated sign easement for the commercial center sign to be installed.

The tract designated for the sign is not a buildable lot. The shape of the tract and the water line easement over a large portion of the lot reduces the use of the tract if it were to be re-platted to become part of another lot. The lot could be used for landscaping but the original intention of the lot was for a freestanding commercial identification sign.

Impacts on public interest, safety and welfare are not foreseen. A freestanding commercial area identification sign would need to meet the 15' setback from SH 392 and SH 257 and be located outside a visibility view shed (sight triangle).

The commercial center identification sign would not negatively impact the neighborhood character. The sign would not advertise a business and other freestanding signs are allowed in the subdivision. The applicant states that the identification sign would be placed as far from the existing freestanding sign as possible and the sign will be designed so that it does not block the view of the existing freestanding sign.

An unnecessary hardship appears to exist. Therefore, staff recommends approval of the variance request.

Should the BOA be inclined to approve the variance request, findings of fact supporting the decision are required. Suggested findings for this case are as follows:

1. Special site specific conditions exist due to the water line easement and tract configuration.

2. The granting of this variance request will not alter the character of the surrounding neighborhood.
3. The granting this variance will not pose any public safety or welfare concerns.

If the Board of Adjustment moves to approve the variance request - to allow the commercial center identification freestanding sign to be within 100 feet of another freestanding sign, the following conditions are recommended by staff:

1. The applicant obtains a sign permit from the Planning Department prior to installation of the sign.
2. The identification sign is located as far from the existing freestanding sign as possible while not encroaching into the water line easement.

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 16-9-50(e) with the 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.

Mr. Valdes asked if there were any questions for staff or the applicant.

Mr. White asked Mr. Ruff if Kum & Go had not had their sign in place where it is located today would the placement of the sign been any different.

Mr. Ruff replied no.

Mr. Valdes asked Mr. Ruff if Kum & Go had any input on this matter, or if they have expressed any concern.

Mr. Ruff stated that he had not spoken to Kum & Go about the sign.

Mr. Valdes asked if there will be some issues with Kum & Go after the sign is installed.

Mr. Ruff stated Kum & Go knew of the sign easement when the lot was sold to them. The plat was already in place, and a conversation was held between buyers that a sign would be placed. Mr. Ruff stated that he did not have the intention to block there sign. He said that he just wanted to announce to the general public where East Pointe Subdivision is located and that the monument sign would be rather low key.

Mr. Valdes asked if the sign needed to be viewed by staff for the style or characteristics.

Ms. Berry stated that all signs need to be reviewed by staff.

Ms. Berry stated that Kum & Go may not have been aware of the separation, and many businesses are not fully aware of what is included in the sign code.

Mr. Valdes asked about the statement that was made for being as close to the water line as possible. Therefore will the Town of Windsor check on the final placement of that monument before it's actually installed.

Ms. Berry replied that the applicant will go through the sign permit application and with that, staff will see where it will be located in proximity to that water line.

Per Mr. Ruff City of Greeley is very protective of that water line, and there is no chance that he would be able to build in that area.

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

Mr. Valdes asked for a motion on the variance.

**Mr. Schinner moved to approve the request for a variance as written; Ms. Dionne seconded the motion. Roll call on the vote resulted as follows: Yeas – Valdes, White, Dionne, Schinner, Miller; Nays – None; Motion carried.**

D. COMMUNICATIONS

1. Communications from the Board Members

Mr. Schinner asked staff to please ask the Planning Director to look at the surrounding property so that some of this does not happen. Mr. Schinner stated to take in the whole environment under consideration and not just one plat.

2. Communications from staff

Ms. Berry has (1) announcement that Greg Lebahn has moved out of the Town of Windsor, and he can no longer sit on the board. Therefore, there is a regular seat open. She asked Patrick Miller and Charles Schinner to apply if either wanted to take a full-time seat.

Mr. Valdes asked Ms. Berry if there are any pending variances for Thursday, June 27<sup>th</sup>.

Per Ms. Berry stated the only one that might come back would be Ziggi's Coffee, but I think that they had hesitation for something that soon. We have to have notice by the 1<sup>st</sup> of the month, and I can let you know then.

Mr. Valdes stated he would not be in town on Thursday, July 25<sup>th</sup>.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:47 p.m.



Trisha Conway, Deputy Town Clerk