



**BOARD OF ADJUSTMENT / APPEALS
REGULAR MEETING**

**August 1, 2019 // 7:00 p.m. // Town Board Chambers
301 Walnut Street, Windsor, CO 80550**

MINUTES

A. CALL TO ORDER

Chairman Horner called the meeting to order at 7:06 p.m.

1. Roll Call

The following members were present:

Chairman	Danny Horner
Vice-Chairman	Jose Valdes
	David White
	Jennifer Dionne
Alternate	Charles Schinner
Director of Planning	Scott Ballstadt
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 June 27, 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 – Horner, Valdes, White, Schinner; Nays – None; Motion carried.

Recess... Waiting for sitting member of the commission.

Ms. Jennifer Dionne entered the Town Board Chambers, and took her seat on the dais.

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-24-40(1)/16-12-40 pertaining to building location in the Residential Mixed Use (RMU) zone district – The Ridge at Harmony Road Subdivision 2nd Filing - Lot 1 Block 11 – 1899 Holloway Drive - Bridgewater Homes LLC, owner; James Miller, applicant.

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

The applicant Mr. James Miller 3000 Ross Drive, Fort Collins stated the variance request is for 2" inch offset with side setbacks of 5' feet. The form moved 2" inches to the left, and we are 4' feet 10" inches, and 5' feet 2" inches on the side. There are 15-20 houses in Phase 2 of The Ridge at Harmony Road with 5' foot setback on the sides of the home. If those foundation shift that would create a setback bust. The foundation foreman is present, and Bridgewater Homes is hashing out procedures to remedy this type of situation from happening. Bridgewater Homes has had this issue twice in rapid succession. We are now doing field measurements making sure the concrete forms are in the correct place before pouring concrete. We will have our engineer doing site plans to certify the offset pins, which means the concrete foreman works from those pins while setting the concrete forms. The concrete foreman identified a couple of other things moving forward to avoid this issue from happening in the future.

Mr. Horner asked if there are any comments from public regarding the variance request. None

Per Mr. Scott Ballstadt the variance from Municipal Code Section 16-12-40 to allow for a reduced offset (side setback) in the Residential Mixed Use (RMU) District. The house is located at 1899 Holloway Drive in The Ridge at Harmony Road Subdivision 2nd Filing. The code requires a minimum of 5' feet for the side yard setback offset and this request is to allow for 4'9 offset on the North side of this house. The property is located just North of Harmony Road off of Weld County Road 13 (WCR) in the Southwest corner of The Ridge at Harmony Road Subdivision. There is a 25 foot open space tract, in essence almost 30 feet between the street and the house. There will not be any other neighbor to the North of the property.

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.

There are no circumstances unique to the property. The proposed house was designed to be constructed at the minimum setbacks and offsets allowed by the Municipal Code, leaving no room for error.

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

The essential character of the surrounding neighborhood would not be altered. The three inch difference is not detectable by normal observation.

- d. Public safety and welfare are not compromised.

A 25-foot wide landscape tract is located directly north of the subject lot on the side where the house encroaches into the offset. This will leave nearly 30 feet between the side of the house and the street, which exceeds the distance between the front of the house and street.

All other setbacks and offsets are compliant and the 10-foot building separation to the house to the south as required by building code has been met, so additional fire proofing is not required.

All drainage paths will have sufficient surface area.

The Town does have a minor variance process that addresses variance requests of less than 10% of the distance required. This application typically would fall under the minor variance process. However, this is the third variance requested by Bridgewater Homes, LLC of similar nature within the past year. Due to this trend and number of requests, as well as Bridgewater's failure to address the issue either through locating the home on the property with adequate room to allow for such errors, or conducting third party setback verification prior to pouring concrete, the standard variance process with the Board of Adjustment (BOA) is being applied.

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 as proposed.

However, if the Board chooses to grant the variance, the following conditions of approval are recommended:

1. The setback encroachment is only for that encroaching portion of the structure shown on submitted application materials.
2. A setback survey is required to show verification of the building setback.

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.

Furthermore, if the Board chooses to approve the variance request, staff recommends the following findings of fact:

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

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

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

Mr. Valdes asked Mr. Ballstadt about the Planning Commission recommending denial of variance request, however if the variance is approved by the BOA staff recommends certain parameters associated with the variance.

Mr. Ballstadt stated; Yes, the setback encroachment is only for that encroaching portion of the structure shown on submitted application materials. A survey would be the final requirement to show verification of the building setback.

Mr. Schinner asked Mr. Miller if the VIN has been located by an LPS.

Mr. Miller stated; Yes, we had a surveyor come out, completing an ILC discovering the exact location of the setback.

Mr. Valdes asked Mr. Miller about whether this issue has been a reoccurrence.

Mr. Miller stated we had this issue approximately 1 year ago in Winter Farm Subdivision, and we had another variance request 2-3 weeks ago.

Mr. Valdes asked Mr. Miller about his operation plan for improving the scope of work.
Mr. Miller stated that's why our foundation contractor is present at today's hearing.

Per Mr. Richard Cordova, Chavez Concrete he explained that when he arrives to the site, the site has already been surveyed. The survey company gives them offset pins to where the foundation should be poured. We are unable to pull up property pins, because the dirt has been shifted around. If our measurement from the offset pins are off, we immediately contact the superintendent to have the property resurveyed.

Mr. Valdes asked Mr. Cordova why wasn't the superintendent contacted for incorrect measurements.

Mr. Cordova stated the measurement weren't off his Forman told him the offset pins were correct, and square.

Mr. Valdes asked Mr. Cordova in your experience where do you think this offset occurred.

Mr. Cordova stated he believes the surveyor, and the additional person whom laid it out.

Mr. Valdes asked Mr. Miller whether this the same surveyor used from the last 2 variance requests.

Mr. Miller stated; Yes, we are searching for a new surveyor, due to recent issues. It has prompted the change getting site plans, and engineers involved now verify they are certifying the offset pins.

Mr. Cordova stated the new procedure they are implemented to help with Bridgewater is making sure they pull property pins. If they are unable to locate the property pins, we are going to request the surveyor come out to double check the work.

Mr. Miller stated we need to make sure our excavator isn't burying property pins. Making sure the dirt isn't impeding other trades from doing their job properly, and verifying our surveyors did it correctly.

Mr. Valdes asked Mr. Miller whether there would be some checks, and balances to that process.

Mr. Miller stated; Yes, we have been avidly looking for a new surveyor. The cost of other companies is extensive, and my boss doesn't want to increase costs especially in this housing market.

Mr. Cordova stated we are going to offer our services, and if there is a problem we aren't going to pour the foundation. I understand it's not our problem, but we don't want our clients to face hardship. It's all about reputation, and we want to stand by our clients.

Mr. White asked Mr. Ballstadt looking at the concept plan only having 5' feet on the side of this home. Is this common practice for there to be zero tolerance for error.

Mr. Ballstadt stated he could not give a percentage. He does know allot of builders that try to build in some wiggle room, and make sure they don't run into

this scenario. Models can be redesigned to make up for a few inches, but I don't know how many come in at the minimum standard.

Mr. White asked Mr. Ballstadt where are the offset pins measured too.
Mr. Ballstadt stated the offset pins are measured to the foundation.

Mr. Schinner asked Mr. Miller who was the surveyor on this project.
Mr. Miller stated our surveyors are Rocky Mountain Group (RMG).

Mr. Schinner asked Mr. Miller where are they located.
Mr. Miller stated RMG has a wide presence in Northern Colorado, and Colorado Springs. There are a lot of builders that use them for this purpose, and I believe past issues have been site specific conditions.

Mr. Miller wanted to clarify on a previous question to staff. Most of our lots aren't this tight with zero tolerance for error, but this lot is only 60 feet wide. We are working with CTL Thompson who does our engineering to produce a smaller product for smaller lots. Mr. Miller stated a lot of this is buyer driven, and this model is a Hudson. Buyers see the model, and want the home. We cannot just shave 2 feet off the Hudson, and that's why we are working on a redesign. We have some smaller 40 foot wide product, and 45 foot product that we are trying to push out. We are hoping to alleviate some of the smaller lots, but lots are starting to shrink. The subdivision Winter Farm .5% percent of our lots have the same width, and most of them are pie shaped to allow for more setback to make sure we don't run into this issue.

Mr. Schinner asked Mr. Miller how the surveyors marked, and located the offset pins.
Mr. Miller stated they identify the property pin in the ground, and use laser to measure the distance.

Mr. Schinner stated it actually metal pins in the ground.
Mr. Miller stated; Yes.
Mr. Cordova described that they locate a metal stake, mark it with spray paint, and put a 5' foot stake behind it. The offset pins are a direction of a line between 0 and 90, measured clockwise or counterclockwise from North or South. The excavator digs the foundation, and leaves the offset pins as a monument for the concrete Forman.

Mr. Schinner asked Mr. Ballstadt what is the purpose of the 5' foot offset.
Mr. Ballstadt stated the municipal code coincides with the building code now. We are lucky in this instance that it's a corner lot, because other circumstances we get into fire proofing code violations, and limitation on openings of walls.

Ms. Dionne asked Mr. Ballstadt if this request is denied what are the next steps.
Mr. Ballstadt stated the home has gone vertical, and there would be 2 options. The builder would have the ability to submit a subdivision plat to work with the developer to carve off the 3" inches from the open space tract to incorporate that into the property. Additionally there have been extreme cases in years past where the board denied the request, and foundations have been removed. The reason behind the setback certification early on is to catch errors before homes go vertical. In this instance the setback certification indicated that it met the 5' foot requirement.

Mr. Valdes asked Mr. Ballstadt who does the setback certification.

Mr. Ballstadt stated the applicants surveyor does the setback certification, and the inspections are completed by the engineer that designed the foundation. The Town of Windsor gets a certification from the engineer certifying that it was constructed to their specifications.

Mr. Valdes asked Mr. Ballstadt did the engineer ignore the fact that the setback was wrong.

Mr. Ballstadt stated that was a better question for the applicant.

Mr. Schinner asked Mr. Ballstadt how many times this issue has presented itself in the last couple of years.

Mr. Ballstadt stated over a span of 2-3 years this issue has presented itself 4-5 times.

Mr. Schinner asked Mr. Ballstadt how many residential units have been built in the last 2-3 years.

Mr. Ballstadt stated roughly 1500 residential units, pointing out other builders made changes to their protocol ensuring this issue wasn't a common occurrence.

Mr. Valdes asked Mr. Ballstadt whether 80% present of the issues occurred was from Bridgewater Homes.

Mr. Ballstadt stated at least 50% percent occurred from Bridgewater Homes.

Mr. White asked Mr. Miller to repeat the purposed changes to remedy this situation from happening, and when those changes would take place.

Mr. Miller stated initially when we dig the foundation, we meet with the site plan concept engineer the engineer is signing off on the lots. I was unaware that we were burying property pin making it difficult for trades, and I will talk to the excavators first thing tomorrow morning. We will string the property making sure the property pins are accessible, and visible for all trades. We are going to be finding someone to do setbacks on wall forms before they pour the concrete. I've spoken to Wyatt at CTL Thompson to make that service available. We will also be contracting additional surveying services, but we haven't found someone to do it. The concrete was poured, and they backfill before we find out there was a mistake.

Mr. White asked Mr. Miller why the house went vertical before the engineer certified the offset pins, and the setback.

Mr. Miller stated he will have to talk to the field about this. The ILC should have been done right around the time the home was going vertical, and there was a disconnect in communication.

Mr. Schinner asked Mr. Miller what background or experience does the superintendent have to certify offsets.

Mr. Miller stated on this subdivision we have Wheatland Home he's been a superintendent for several large builders in the area, and is very knowledgeable.

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

Mr. Horner asked for a board discussion regarding this variance.

Mr. White described his concern for this happening again, even with the purposed process changes because of the rapid succession. A penalty have not been accessed, and there has been no pressure to correct this issue moving forward.

Mr. Schinner stated that offsets are put in place for a reason, and they are in the Municipal code as a minimum of a 5' foot setback. The licensed professional surveyors business is to know where things are located. This is a case setting precedence of violating the offsets, and setbacks that's in the Municipal code. I think there are other ways to mitigate this situation that staff presented. Additionally Mr. Schinner expressed his concern of designing a house with zero tolerance for error, when everyone is subject to fowl ability.

Chairman Horner stated there was zero tolerance for error on this project.

Mr. White stated the Hudson model does not fit on this lot.

Mr. Schinner stated on these small lots there isn't allot of room to pile dirt, and things are going to get covered. There are a number of factors for me believing this issue will be a reoccurrence.

Mr. Valdes stated he doesn't believe that procedures and steps have been followed, and the explanation doesn't leave me with a strong feeling that this will be fixed. Allowing another variance that allowed the residence to go vertical before the error was addressed is a concern.

Mr. White mentioned his experience on BOA about a year ago regarding the same situation.

Mr. Horner moved to deny the request for a variance with the conditions recommended by staff; Mr. Valdes seconded the motion. Roll call on the vote resulted as follows: Yeas – None; Nays – Horner, Valdes, White, Dionne, Schinner; Motion carried..

D. COMMUNICATIONS

1. Communications from the Board Members

- Mr. White asked Mr. Ballstadt about agenda items for August.
 - Mr. Ballstadt stated he received one request for signage at Windsor Mill.
- Mr. Schinner asked Mr. Ballstadt about an update for BOA seats.
 - Ms. Conway stated there are interviews taking place, and would follow up with Krystal Eucker, Town Clerk regarding status.
- Mr. White asked Mr. Schinner whether he was still an alternate.
 - Mr. Schinner stated he applied for a permanent seat on BOA.

- Mr. Ballstadt stated he didn't believe the position for alternate to permanent would require an interview just follow-up with Ms. Eucker.
- Mr. Schinner asked Mr. Ballstadt is there a procedural way to minimize this type of situation with zero tolerance.
 - Mr. Ballstadt stated a couple of years ago we did amend the Municipal code to administratively approve some variances. The applicant has gotten an administrative variance after we amended the code, but this is the 3rd request.
- Mr. Schinner asked Mr. Ballstadt is there some systematic way saying we can't have zero tolerance.
 - Mr. Ballstadt stated no the 5' foot is the Municipal code minimum. If someone presents a plan stating they can meet the minimum requirement we can't deny them the ability to try. If they can't execute the plan then we move into this type of variance request.
- Mr. Horner asked Mr. Ballstadt whether there is a way to confirm they have the setback certification before going vertical.
 - Mr. Ballstadt stated we require a setback certification early in the process to avoid this type of situation, and we received a certification that said it was ok. A couple of other situations from another builder the error was from measurement off the wrong pin, but in this case that wasn't the issue.
- Mr. Valdes stated they don't have the procedure in plan, and there could have been earlier steps to prevent these type of issues.
- Ms. Dionne stated this is just what happens when you're putting houses up as quick as possible, and using the least expensive contractors to just complete the project.
- Mr. White stated there is really no penalty for the builder except to have to come to the hearing.
- Mr. Valdes asked Mr. Ballstadt about next steps for the builder in the process.
 - Mr. Ballstadt stated they will most likely proceed by submitting a minor subdivision application. They will have to acquire the sliver of property from the developer, and the open space tract surrounds all of the lots and that block will need to be resurveyed.
- Ms. Dionne asked Mr. Ballstadt whether the builder submits the minor subdivision application to the Town of Windsor.
 - Mr. Ballstadt stated; Yes, if the project qualifies for a minor subdivision process that's an administrative approval from the Town of Windsor.
- Mr. White asked Mr. Ballstadt who is the developer for The Ridge at Harmony Road.
 - Mr. Ballstadt stated Landis Corporation, located in Colorado Springs is the developer for The Ridge at Harmony Road. There building arm is St. Aubyn Homes so they retain some lots to develop, and they have 4-5 other builder building in that subdivision.

2. Communications from staff

- Mr. Ballstadt stated they are interviewing 3 candidates tomorrow morning for the open position in Planning.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 8:00 p.m.



Deputy Town Clerk, Trisha Conway