



BOARD OF ADJUSTMENT / APPEALS REGULAR MEETING

June 24, 2021 // 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 7:00 p.m.

1. Roll Call

The following members were present:

Chairman Danny Horner
Stacey Shea
Jeffrey Gelvin
James Penfold
Don Threewitt

Alternate

Absent

Shawn Wherry
Patrick Miller

Senior Planner

Deputy Town Clerk

David Eisenbraun
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.

Mr. Eisenbraun advised the board about changing the bylaws for remote attendance, and voting to be discussed during the next scheduled public hearing.

Chairman Horner reported we can have a discussion during the communication portion of the hearing.

B. CONSENT CALENDAR

1. Approval of the minutes from August 01, 2019

Ms. Shea moved to approve the consent calendar as presented; Mr. Penfold seconded the motion. Roll call on the vote resulted as follows; Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-3-10 of the Municipal Code pertaining to location of accessory buildings on residential lots, in the

Single Family Residential (SF-1) Zone District at 1048 Pinyon Court (Lot 11, Block 4, Mountain View Addition); Steven and Rachel Workman, owners/applicants.

Ms. Shea moved to open the Public Hearing; Mr. Threewitt seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

The applicants, Mr. Steven Workman and Ms. Rachel Workman, are requesting a variance from Municipal Code Section 16-3-10 of the Municipal Code pertaining to location of accessory buildings on residential lots, in the Single Family Residential (SF-1) Zone District.

Municipal Code Section 16-3-10 states the following:

"No accessory building, regardless of its size, shall be located any closer to the front property line than the rear corners of the Principal building; that is, accessory buildings are only allowed in rear yards."

The applicants are proposing a 14'x16' or 224 square foot shed to be located in the east side of the property addressed as 1048 Pinyon Court. The property is a cul-de-sac lot. The shed, which would be constructed to match the features and colors of the main house, is proposed to be 12'- 6" high, which would mean a building permit would need to be obtained for the structure and setback / offsets observed.

The proposed location of the shed is the result of several site factors.

- A large portion of the rear (south) yard is taken up by the existing home, leaving only 10' from the principle structure and the property line.
- An 8-foot utility easement (with utilities) is located along the south property line, making it physically impossible to locate a structure in this area.
- The west side of the house does not have any access via the main driveway and is inhibited by large mature trees.

The proposed location is an area where the shed would be outside the drainage area and not located over utilities. The shed would also be largely screened from the public right-of-way due to an existing fence and the neighboring house to the East.

Based on the horizontal nature of the parcel and house orientation, the east and west side yards function as the typical backyard of most other developments.

Analysis

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 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.

Based on the subdivision design of shallow, yet wide lots, it appears that the proposed placement of this shed is in line with the intent of how this lot was designed to be used. With the rear yard largely encumbered by a utility easement, and the screened side yards within the cul-de-sac are intended to function and serve the purpose of a traditional rear yard.

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

The essential character of the surrounding neighborhood would not be altered. The shed will match the construction features and colors of the main house. The 6-foot privacy fence will also partially screen the shed from offsite vantage points.

d) Public safety and welfare are not compromised. The shed's location should not negatively impact public safety and welfare.

The shed's location would not encroach into the sidewalk or block visibility at intersections.

Recommendation 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 with the following conditions:

1. The shed is to be constructed and designed in a manner that is similar to the principle structure.
2. The applicant obtains a building permit for the shed.

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.

Furthermore, staff recommends the following findings of fact:

1. An undue hardship, as defined by the Municipal Code, exists in this case.

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

Notification

- June 10, 2021 development sign posted on the subject property.
- June 11, 2021 public hearing notice published in the paper.
- June 12, 2021 letters mailed to neighboring residents (150')
- June 12, 2021 public hearing notice published on Town website.

Chairman Horner opened the meeting for Commissioner questions or comment.

Commissioner Threewitt asked Mr. Eisenbraun about other potential sites for the shed for economic consideration.

Mr. Eisenbraun reported it would still fall under the same variance request being considered a side-yard. The definition reads behind the rear corner of the principle building, and there is no functional use space for the easement.

Chairman Horner asked if there are any comments from public regarding the variance request to which there was none.

Mr. Gelvin moved to close the Public Hearing; Ms. Shea seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

Chairman Horner asked for a motion on the variance.

Ms. Shea moved to approve the request for a variance with the conditions recommended by staff; Mr. Gelvin seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

D. COMMUNICATIONS

1. Communications from the Board Members

- Discussion ensued among commissioner about changing the bylaws to support remote attendance and voting.
- Chairman Horner asked Mr. Eisenbraun about whether the Town of Windsor provides virtual training for Zoom participants.

Mr. Eisenbraun reported Commissioners can arrive 30 minutes early to scheduled public hearing to complete virtual training session for Zoom participation.

- Commissioner Shea asked Mr. Eisenbraun to have a draft revision of the bylaws at the next public hearing.
Mr. Eisenbraun reported the assistant/or Town attorney will draft a revision to the bylaws for board members to review as a board action item at the next public hearing.
- Chairman Horner set in action to exploring the option for amending the bylaws for remote access for board members, and the public at the next public hearing.

Ms. Shea moved for consideration of virtual attendance for board members, applicants, and general public on the agenda for the next public hearing; Mr. Threwitt seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threwitt; Nays – None; Motion carried.

2. Communications from staff

- Mr. Eisenbraun reported IT updated the Board of adjustments Town's email address group for future correspondence.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:36 p.m.



Trisha Conway, Deputy Town Clerk