



Board of Adjustment/Appeals Regular Meeting

April 27, 2023 - 7:00 PM

Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

MINUTES

A. CALL TO ORDER

Chair Shea called the meeting to order at 7:00 p.m.

1. Roll Call

Present: Chair Stacey Shea
Vice Chair Don Threewitt
Jeffery Gelvin
Jeremy Benintende
Hunter Rivera

Absent: James Penfold
Dan Evans

Also Present: David Eisenbraun, Senior Planner
Mark Price, Planner 1
Kim Emil, Interim Town Attorney
Kaitlyn Cinnamon, Deputy Town Clerk

2. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration

Board of Adjustment/Appeals Board Member Threewitt moved to approve the agenda as presented, Board of Adjustment/Appeals Board Member Gelvin seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeffrey Gelvin, Jeremy Benintende, Hunter Rivera; Nays - None; Motion Passed.

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.*

4. Public Invited to be Heard

Chair Shea opened the meeting up for public comment, to which there was none.

B. CONSENT CALENDAR

1. Approval of the March 23, 2023 Board of Adjustment/Appeals Regular Meeting Minutes - K. Cinnamon, Deputy Town Clerk

Chair Shea stated that her last name is incorrectly spelled in a section of the minutes. Deputy Town Clerk, Kaitlyn Cinnamon, stated that it would be corrected before publishing.

Board of Adjustment/Appeals Board Member Gelvin moved to approve the consent calendar as presented, Board of Adjustment/Appeals Board Member Rivera seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeffrey Gelvin, Jeremy Benintende, Hunter Rivera; Nays - None; Motion Passed.

C. BOARD ACTION

1. Public Hearing – Variance from Municipal Code Section 16-1-70(b) for 303 E Chestnut pertaining to the minimum side setbacks in the RMU-1 (Residential Mixed Use-One) Zone District, and a Variance from Municipal Code Section 16-1-20(a) pertaining to setbacks for accessory buildings. Shelby Singleton, Owner/Applicant.

The owner of the subject property, Shelby Singleton, is requesting a variance from Municipal Code Section 16-1-70(b) to reduce the required five-foot (5') side yard setback from property line for a single family dwelling, to one foot (1'), and a variance from Municipal Code Section 16-1-20(a) to reduce the required five-foot (5') accessory building (over 120 square feet in size) setback 5 feet (5') from property line to one foot (1'). Additionally, this variance request will allow the property owner to construct a handicap accessible garage/storage area for the needs of a double-amputee tenant. Approval of the variance will allow an accessory building to be built within one (1) foot of the property line, adjacent to a single-family residential home, in the Residential Mixed Use One (RMU-1) zone district. A timeline of events and additional background is included in the presentation.

Municipal Code Section 16-1-70(b) (RMU-1 District Setbacks):

- Single Family Dwelling: Minimum side setback of 5 feet.
- The applicant is requesting a reduced setback to allow a proposed accessory building to be within 1 foot (1') of the property line.
- The proposed accessory building (Greater than 120 square feet) will provide ample, handicap accessible vehicle parking as well as storage.

Background:

- 303 E Chestnut was formerly modified to be and assisted living facility by previous owners.
- Current owners purchased home in 2017 due to its accessibility.
- The garage space was converted into living space with a bedroom and accessible bathroom for roll-in wheelchair access by previous owners.
- In its current state, the home is fully handicap accessible with ramps and railings installed for accessibility throughout.
- Has fire suppression installed.

Municipal Code Section 14-2-150(c) (Major Variance) Review Criteria: The Zoning Board of Adjustment may grant a Major Variance only when it is demonstrated that:

- (1) **Where, special circumstances exist, that strict application of the standards adopted in this development code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the property owner.**

For the purposes of this Section, undue hardship and practical difficulties means a situation where the property cannot be reasonably used under the conditions allowed by this Code, and are neither a result of a situation created by the property owner, nor exclusively due to economic or cost considerations.

The situation shall result from circumstances unique to the property, such as, exceptional narrowness, shallowness, or shape of a specific piece of property, topographic conditions, existing lot configuration, existing building locations on or adjacent to the property or other extraordinary and exceptional situation or condition of such piece of property that would result in peculiar and exceptional practical difficulties to, or exceptional undue hardship. Relief by variance may be granted if there is no substantial detriment to the public good and if it does not substantially impair the intent and purpose of the Comprehensive Plan and this Code. The variance, if granted, shall not alter the essential character of the surrounding neighborhood. Economic considerations alone shall not constitute an undue hardship if a reasonable use for the property exists under the provisions of this Code. It is the responsibility of the landowner to prove that an undue hardship exists;

Applicant: The home was modified, by previous owners, to be an assisted living facility and is fully handicap accessible. The accessible nature of this home was the contributing factor to the purchase, with the former garage space converted to livable space for a double amputee in a wheelchair who is currently residing in the home. To attach a garage to the house would eliminate the only the livable space for the individual and would compromise the existing fire suppression system.

-Staff comment: The modification of the home, by the previous owner, created undue hardship for the current owners. While accessibility is paramount, the conversion of the garage space into livable space has generated an accessible, suitable living space; however, to the detriment of vehicle/mobility limitations and storage on property. Additionally, attaching a garage or accessory building to the home's living area is not permitted per building code and would eliminate the living space and accessible bathroom for the resident, generating financial hardship for the owner to modify the home.

(2) The applicant cannot derive beneficial use of the property without the variance;

Applicant: Without the approval of the variance allowing for a 1' setback from property line, a garage would be limited to 9' wide, making it unusable space which would create difficulties for a non-ambulatory individual to enter or exit an accessible vehicle.

-Staff comment: Accessibility will be limited with current vehicle parking and storage located in the driveway and along the street.

(3) The purpose and intent behind the regulation would be maintained by granting the variance;

Applicant: Overall, with the garage addition, all other lot requirements will be maintained.

-Staff comment: The intent of the Code is to establish a 5' minimum setback between residence/accessory buildings and the property line for single-family residential lots within the RMU-1 Zoning District. The proposed variance would allow for the owner to construct an accessory building within 1' of the property line for the purposes of accessibility for a non-ambulatory person. All other lot requirements would be maintained.

(4) Granting the variance will not be detrimental to any adjacent properties or the surrounding area;

Applicant: The neighbor to the east 305 E Chestnut (neighbor potentially impacted by accessory building) has written a letter in support of the accessory building with consideration to the proximity to their property.

-Staff Comment: The Adam's family at 305 E Chestnut would be directly impacted by the building but have shown support of the construction and building.

(5) Granting the variance will not be detrimental to public health, safety, or welfare;

Applicant: Granting the variance will not be detrimental to public health, safety or welfare and will in fact, benefit the neighborhood by removing clutter (parked cars and storage items) from the property, thus creating a more appealing environment.

-Staff Comment: Staff has addressed potential issues, primarily focused on fire safety, which have been addressed by Safebuilt staff during concept review application.

(6) Adequate relief cannot be reasonably obtained through a different procedure, such as a waiver or alternative compliance standards, if applicable;

Applicant: No other procedure is known that can provide adequate relief due to the existing layout of the home and lot.

-Staff comment: Staff agrees, the alternative (attached garage) would displace the current resident's living quarters creating additional hardship, and is prohibited by building code.

(7) Granting the variance will not create a building or fire code violation or other safety hazard;

Applicant: SAFEbuilt reviewed the initial concept review application and determined that the east wall of the building will need to be constructed with a 1-hour fire rating. The garage will have no overhangs and will maintain setbacks as determined in the proposed design.

-Staff comment: SAFEbuilt determined the viability of the proposed and provided the applicant with required safety information pertaining to the proposed plans.

(8) The need for the variance is not created by a self-imposed hardship;

Applicant: The house was modified by the previous owners. Purchased by the current owners in 2017 because of the need for accessible wheelchair accommodations. The previous owner converted the previous attached garage into bedrooms and a large wheelchair accessible bathroom which are necessary for the non-ambulatory resident. The lack of garage was not of concern at the time, as the benefits of the accessibility of the house are immense and maximize the quality of living for the individual. The garage will allow for the individual to enter and exit his vehicle during inclement weather, keeping in mind that in the future a van with a lift or other adaptive equipment may be necessary.

-Staff comment: The current owners purchased the property to the benefit of the previous owner's modifications and suitable to the needs of the non-ambulatory individual currently residing there. The greater needs for accessibility far outweighed the need for a garage, but the surrounding property and driveway have become the storage location. Staff concurs that the hardship is not self-imposed.

(9) A variance shall allow only the least deviation from the standard that will afford relief;

Applicant: A garage of sixteen feet wide, detached from the home, is what the owners consider to be the narrowest width possible to allow for the use accessibility vehicles and access.

-Staff comment: The minimum setback for side yard is the only deviation for the proposed variance. Allowing for an accessory building to be built with a 1' setback would provide the relief necessary for a detached garage with full accessibility for wheelchair access.

Staff has analyzed:

- whether special site-specific conditions exist that warrant the proposed accessory building.

-Staff has determined that the previous owner modified the house for accessibility while simultaneously creating hardship for any further modifications of the home and premises.

- whether unnecessary hardship exists.

-The conversion of the garage to livable space, by prior owners, has created hardship for future/current tenants, especially those with handicap accessibility needs, as it relates to external mobility around the property, outside of the occupiable space.

- the impact on public interest, safety, and welfare.

-Staff has determined that the inspection and approval from SAFEbuilt will be detrimental to the safety and welfare of the property and adjacent neighbors.

- the impacts to the neighborhood character.

-Staff has determined that the proposed accessory building will help to declutter the street front and temporary tent garage currently deployed in the driveway.

Board Member Gelvin recused himself in regard to this particular item due to a personal interest.

Chair Shea opened the meeting for public questions or comments, to which there was none.

Board Members asked questions to staff and the applicant. The applicant, Shelby Singleton, addressed the Board and spoke to their questions regarding fencing, sidewalks, and fire safety.

Board of Adjustment/Appeals Board Member Threewitt moved to close the public hearing, Board of Adjustment/Appeals Board Member Benintende seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera; Nays - None; Motion Passed.

2. Variance from Municipal Code Section 16-1-70(b) for 303 E Chestnut pertaining to the minimum side setbacks in the RMU-1 (Residential Mixed Use-One) Zone District, and a Variance from Municipal Code Section 16-1-20(a) pertaining to setbacks for accessory buildings. Shelby Singleton, Owner/Applicant.

Please see public hearing item.

Conversation between the Board Members ensued. Member Threewitt addressed concerns from the Board regarding fire hazards, maintenance, and the location of the building.

Board of Adjustment/Appeals Board Member Threewitt moved to approve a Variance for Municipal Code Section 16-1-70(b) for 303 E Chestnut pertaining to the minimum side setbacks in the RMU-1 (Residential Mixed Use-One) Zone District, and a Variance from Municipal Code Section 16-1-20(a) pertaining to setbacks for accessory buildings, subject to mutual execution and recording prior to issuance of a building permit for an irrevocable four-foot easement for the east side of the property for property maintenance purposes. Board of Adjustment/Appeals Board Member Shea seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera; Nays - None; Motion Passed.

D. COMMUNICATIONS

Board Member Gelvin returned to the meeting.

1. Communications from Board of Adjustments/Appeals

None

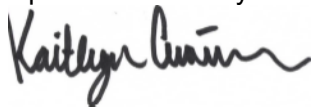
2. Communications from Staff

David Eisenbraun, Senior Planner, spoke to the Board regarding possible upcoming meeting items.

Kim Emil, Interim Town Attorney, welcomed new Board Members and thanked everyone for running a great meeting.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:50 p.m.



Kaitlyn Cinnamon, Deputy Town Clerk