BOARD OF ADJUSTMENT / APPEALS
REGULAR MEETING

February 28, 2019 // 7:00 p.m. // Town Board Chambers
301 Walnut Street, Windsor, CO 80550

AGENDA

A. CALL TO ORDER

1. Roll Call

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

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 of the January 24, 2019

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
   a. Motion to open public hearing to receive evidence and comment regarding the variance request and second
   b. Presentation of variance request by applicant
   c. Receipt of any comments from the public regarding the variance request
   d. Staff report and Recommendation
   e. Questions and answers to/from BOA members to/from applicant, public, staff, legal counsel
   f. Motion to close public hearing and second
   g. Motion on variance and second
   h. Board discussion
   i. Board action on variance request

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
   a. Motion to open public hearing to receive evidence and comment regarding the variance request and second
   b. Presentation of variance request by applicant

The Town of Windsor will make reasonable accommodations for access to town services, programs, and activities, and will make special communication arrangements for persons with disabilities. Please call 970-674-2400 by noon on the Thursday prior to the meeting to make arrangements.

c. Receipt of any comments from the public regarding the variance request
d. Staff report and Recommendation
e. Questions and answers to/from BOA members to/from applicant, public, staff, legal counsel
f. Motion to close public hearing and second
g. Motion on variance and second
h. Board discussion
i. Board action on variance request

D. COMMUNICATIONS

1. Communications from the Board Members
2. Communications from staff

E. ADJOURN

STATE LAW DICTATES THAT A FAVORABLE VOTE OF 4 OUT OF 5 MEMBERS OF THE BOARD OF ADJUSTMENT IS REQUIRED TO GRANT ANY VARIANCE.

A SIMPLE MAJORITY VOTE IS NOT SUFFICIENT.

NOTE TO APPLICANTS: This agenda is considered tentative and may be revised at any time prior to the meeting. Applicants are advised to be present at 7:00 p.m. Final agendas will be available at the meeting.

Applicants may discuss the requests and the recommendations with staff during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. For the convenience of the applicants, appointments are recommended.

Upcoming Meeting Dates

Thursday, February 28, 2019	7:00 P.M.	Regular Board of Adjustment Meeting*
Thursday, March 28, 2019	7:00 P.M.	Regular Board of Adjustment Meeting*
Thursday, April 25, 2019	7:00 P.M.	Regular Board of Adjustment Meeting*
Thursday, May 23, 2019	7:00 P.M.	Regular Board of Adjustment Meeting*

* All regular and special meetings of the Board of Adjustment are subject to the receipt of an item of business to be placed on the meeting agenda.

BOARD OF ADJUSTMENT / APPEALS
REGULAR MEETING

January 24, 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 7:02 p.m.

1. Roll Call

The following members were present:

		Jose Valdes
		David White
		Grant Lebahn
		Jennifer Dionne
Arrived at 7:10 p.m.	Alternate	Charles Schinner
	Absent	Danny Horner
Absent	Alternate	Patrick Miller

Also Present	Senior Planner	Millissa Berry
	Deputy Town Clerk	Amanda Mehlenbacher

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.

2. 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 March 22, 2018
2. Approval of the minutes from April 19, 2018
3. Approval of the minutes from June 21, 2018
4. Approval of the minutes from July 19, 2018

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

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-12-30(d) pertaining to location of an accessory structure in the Residential Mixed Density (RMU) District – The Ridge at Harmony Road Subdivision Lot 8, Block 2; Darci and Shane Hale, owners/applicants
   - Staff presentation: Millissa Berry, Senior Planner

The Town of Windsor will make reasonable accommodations for access to town services, programs, and activities, and will make special communication arrangements for persons with disabilities. Please call 970-674-2400 by noon on the Thursday prior to the meeting to make arrangements.

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

The applicant, Shane Hale, 1879 Atna Ct. Windsor, CO, stated that he is limited on the area he can have a shed due to his narrow back yard and site constraints such as drainage easements, a utility easement and window wells. Mr. Hale further added that building the shed on the west side of the house would be the best option as it would not interfere with the views from the neighbors to the east and would be out of the site preference from his neighbor to the west. The shed will be stucco and painted to match the house which has been approved by his neighbors and the HOA.

Per Ms. Berry, the applicants, Mr. Shane Hale and Ms. Darci Hale, are requesting a variance from Municipal Code Section 16-12-30(d) to allow for a shed to be located closer to the front property line than the rear corners of the principal building.

Municipal Code Section 16-12-30(d) 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 72 square foot (6'x12') shed to be located in the side yard of the property addressed as 1879 Atna Court. The shed, which would be constructed to match the features and colors of the main house, is proposed to be located in the southwest corner of the lot flush with the house and immediately north of the rear corners of the house.

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.

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 16-8-30(d);
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.

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

Mr. Schinner wished to clarify that the applicant will use the exact materials on the shed as what is on the house.

Mr. Hale responded that his intent is to hire someone to stucco the shed and try to match the existing color on the house.

Mr. Valdes wished to reaffirm with staff that modifications will be made to this particular section of the code to help eliminate the repetitive number of variance requests for sheds.

Ms. Berry confirmed that it is included on the list of modifications to be on the code update.

Public Comments: No comments.

Mr. Lebahn moved to close the Public Hearing; Mr. White seconded the motion. Roll call on the vote resulted as follows:
Yeas – Valdes, White, Lebahn, Dionne, Schinner
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 16-12-30(d) as recommended by staff; Ms. Dionne seconded the motion. Roll call on the vote resulted as follows:

Yeas – Valdes, White, Lebahn, Dionne, Schinner

Nays – None

Motion passed

2. Public Hearing – Variance of Municipal Code Section 16-9-100(c)(2) pertaining to the height of building signs for major tenant – BBK II LLC, owner; Nicole Vatrano, DaVinci Signs, applicant

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

The applicant Nicole Vatrano, 4496 Bents Dr. Windsor, CO stated that they are requesting a variance due to the fact that the current height of 5’ 7” that is allowed for a sign would not be legible from Crossroads Blvd. Ms. Vatrano further stated that customers do not realize that Brands Beverage is a liquor store rather it’s thought of as a beverage distribution center. The applicant feels that having a larger sign would help mitigate these issues.

Per Ms. Berry, the applicant, Ms. Nicole Vatrano of DaVinci Signs, is requesting a variance from Municipal Code Section 16-9-100(c)(2) to allow for building-mounted projecting sign exceeding 8 feet in height / 25% of the building height.

The property is located at 4355 Fairgrounds Avenue (Lot 1 of the Eagle Crossing Subdivision 5th Filing), is zoned General Commercial (GC), and is surrounded by other GC-zoned properties. The building is greater than 5,000 square feet in area and, therefore, classified as a major tenant. The building is 22'8" feet in height with parapets of up to 26'8".

Municipal Code Section 16-9-100(c)(2) states the following:

> *Major Tenant. The height of building-mounted signs for major tenants shall not exceed twenty-five percent (25%) of the height of the building elevation upon which the sign is mounted. However, in no event shall such sign exceed eight (8) feet in height.*

The applicant is requesting to allow one building-mounted sign that is 124 feet in height on the west elevation. The proposed sign dimensions are approximately 12' x 3.5' for an approximate area of 42 square feet. Because the building is 22'8" feet in height, the maximum height allowed for the sign would be 5'7" feet. The sign meets the amount of signage allowable for the property
but will have a vertical profile.

Staff considers that the literal enforcement of the Code will result in an unnecessary hardship and, therefore, is recommending approval of the variance request for the proposed sign height as presented in the application be approved based on the following findings of fact:

1. The applicable sign regulation does not appear to adequately address vertically oriented signs nor projecting signs outside the Central Business Zone District;
2. The overall size of the sign is in proportion to the size of each building wall upon which it will mounted;
3. The granting of this variance request will not alter the character of the surrounding neighborhood;
4. The proposed height of the subject signs meets the spirit and intent of the sign regulations; and
5. The granting this variance will not pose any public safety or welfare concerns.

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 16-9-100 (c)(2) as depicted in the variance application to allow the construction of a vertically-oriented wall mounted projecting sign with a height of 12' based upon the aforesaid findings of fact and the applicant obtaining the applicable sign permit;
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 the Board if they had any questions for the applicant.

Mr. White inquired if the current sign on Brands Beverage will be removed.
Ms. Berry responded that the current sign will remain and that they do have adequate area on the building to have both signs.

Mr. Valdes inquired if the 12 feet is within the 25% limit to the height of the building and is the 12 feet in size arbitrary.
Ms. Berry responded that if the 25% limit was kept then the height of the sign would have to be 6 feet tall to meet what the code allows for now.
Ms. Berry further added that the 12 feet in height was chosen in order to allow the lettering to be legible from a 300 foot distance.

Mr. Schinner inquired if the purposed sign will stay below roofline and if the blue color in the sign is illuminated.
Ms. Berry confirmed that the sign will stay below roofline.
Ms. Vatrano responded that the lettering will be the only thing illuminated.

Mr. Schinner inquired as to what the sign size was for Fuzzy's Taco.
Ms. Berry responded that it is 14 feet in height.

Public Comments: No comments.

Mr. Schinner moved to close the Public Hearing; Mr. Lebahn seconded the motion. Roll call on the vote resulted as follows:
Yeas – Valdes, White, Lebahn, Dionne, Schinner
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 16-9-100(c)(2) as recommended by staff; Ms. Dionne seconded the motion. Roll call on the vote resulted as follows:

Yeas – Valdes, White, Lebahn, Dionne, Schinner

Nays – None

Motion passed

3. Election of officers (chairperson, vice-chair and secretary) for the 2019 calendar year

The Board unanimously agreed to appoint Mr. Horner as Chairperson, Mr. Jose Valdes as Vice-Chair and Mr. Schinner as Secretary of the Board of Adjustment/Appeals.

D. COMMUNICATIONS

1. Communications from the Board Members

Mr. Schinner requested that staff review the commercial parking requirements as the new developments appear to be either under/overburdened.

Mr. Valdes inquired when a common area is shared such as a shopping center, if going to a common parking area rather than private parking would eliminate the scenario of who's parking belongs to whom.

Ms. Berry responded that it depends on the developer and property owner.

2. Communications from staff
   None

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:43 p.m.

Deputy Town Clerk, Amanda Mehlenbacher

MEMORANDUM

Date: February 28, 2019
To: Board of Adjustment
From: Millissa Berry, AICP, Senior Planner
Re: Public Hearing – Variance of Municipal Code Section 16-12-40 pertaining to building location / setbacks and access to residential lots in the Single Family Residential (SF-1) Zone District – Kerns Subdivision Block 4 Lot 16; Mark Despain, owner/applicant
Item #: C.1

Background

The applicant, Mr. Mark Despain is requesting a variance from Municipal Code Section 16-12-40 to allow for an attached 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.

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.

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 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 was platted in the early 1900s. The lot is 50' wide by 175' in length, similar to the proportions of the other lots in the area. The west property line is inset from the sidewalk by approximately 20 feet.

   The existing house, built in the 1890s, has a 10 foot setback from the property line.

   The property is located on a corner lot and therefore 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.

c) 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.
   - Many of the houses in the area have detached garages on the rear half of the lot.
   - The garage would be setback 30' from the sidewalk (the 20' distance between the property line and the sidewalk plus the 10' setback) and the west wall would line up with the west façade of the existing house on the lot.
   - The garage would not encroach into the setback more than the existing house does.
   - The garage would be located within the existing fence line on the south portion of the lot.

- Many properties in the area have accessory buildings located in a similar area on their lots.
- Garage would be located in an area that is currently a fenced yard.

The proposal appears to meet the zoning requirements including a minimum of 3,000 sf of open space , 5' side and rear setbacks, and a maximum height of 35'. The site plan will be reviewed once the building permit is submitted to ensure these standards are met.

d) 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 located outside of any visibility triangles. It would be set back far enough from the sidewalk so it will not cast shadows onto the walk which is particularly important in the winter months when ice could become an issue. The garage will be setback 5' setbacks from the south and east property lines and therefore will not encroach into utility easements. The access to the garage would be from the alley so will not need to have a 20' driveway which would be required if the garage took access from a street.

The applicant is aware that a sewer service line may be located where the garage would be built. The applicant is also aware that to build the garage in that location, the sewer line will either need to be up-graded to an appropriate material or re-routed to skirt the foundation of the garage.

Recommendation

Staff has not determined that an undue 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.

Notification

February 13, 2019 public hearing notice posted on Town of Windsor website.
February 13, 2019 development sign posted on the subject property.
February 15, 2019 public hearing notice published in the paper.

Attachments

Application materials
Presentation

CC: Mark Despain, owner/applicant

VARIANCE APPLICATION

(Please see the Town of Windsor Fee Schedule for Application Fees)

1

- ☑ Please review Sec. 16-6-60, 16-6-70 and 16-6-80 of Chapter 16 of the *Town of Windsor Municipal Code* for variance requirements and procedures.
- ☑ Variance requests are considered by the Board of Adjustment, which meets at 7 p.m. on the fourth Thursday of every month.
- ☑ Prior to submitting an application, a pre-application meeting with Planning Department staff is required. In order for an item to be placed on a given month's agenda, a complete application and fee must be received no later than the 1st day of that month. Incomplete applications will not be scheduled for consideration.
- ☑ Scaled drawings necessary for the proper consideration of this variance shall be submitted with this application. With new construction projects, building additions or remodels, you must contact SAFEbuilt Colorado, Inc. (970-686-7511) to determine compliance with applicable building codes.

2

A request is hereby made for a variance of the Town of Windsor ordinances due to special conditions where a literal enforcement of the ordinance would result in unnecessary hardship.

Property Address*: 329 Locust ST

Lot: 16 **Block:** 4 **Subdivision:** Kern

A variance is being requested from the following Municipal Code section(s)*:

Set backs on 4th Street

3

OWNER:

Name(s)*: Mark Despain

Address*: 329 Locust Street

Phone #*: 970-371-9371 Email*: mark@8z.com

APPLICANT or REPRESENTATIVE:

Name*: Same as above

Address*:

Phone #*: Email*:

4

Municipal Code Section 16-6-60(b) states, in part:

Variances may be considered where, due to special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship.

Unnecessary hardship is defined by the Municipal Code as enumerated in items 1-4 below. Please describe how each item is met in the space provided. Applications will be deemed compete once *all* criteria have been addressed. You may attach additional sheets if necessary.

1. **A situation where the property cannot be reasonably used under the conditions allowed by this Code*.**

We can build the auxiliary structure with in the code allowances, however, the orientation would result in additional driveway along 4th and less visible open space.

The existing house is not built within current setbacks and we would like to essentially build the garage to match the house setback.

2. **The situation shall result from circumstances unique to the property and shall not be created by the landowner*.** *Note: landowner also means any contractor or agent acting on behalf of the landowner.*

Being on the corner our 20 ft setbacks make it more difficult to work within our lot. The current home is only set back 10 ft from the property line. It does appear to be 30 ft from the property line as that is where the sidewalk is located (the actual property line sets in the middle of the yard).

3. **The variance, if granted, will not alter the essential character of the surrounding neighborhood*.**

Granting the variance will in fact help to preserve the visual integrity of the neighborhood as it allows better aesthetics and more visible open space than our alternative (within current code).

4. **Economic considerations alone shall not constitute an unnecessary hardship if a reasonable use for the property exists under the provisions of this Code*.**

We are expanding the current home into the attached garage to give us enough bedrooms for our family. We would also like garage space for our vehicles. To keep true with the neighborhood aesthetics we would like to match the detached garage with the current home setbacks.

5

I hereby depose and state under the penalties of perjury that all statements, proposals, and/or plans submitted within this application are true and correct to the best of my knowledge.

Signature: [signature] **Date:** 2/4/19

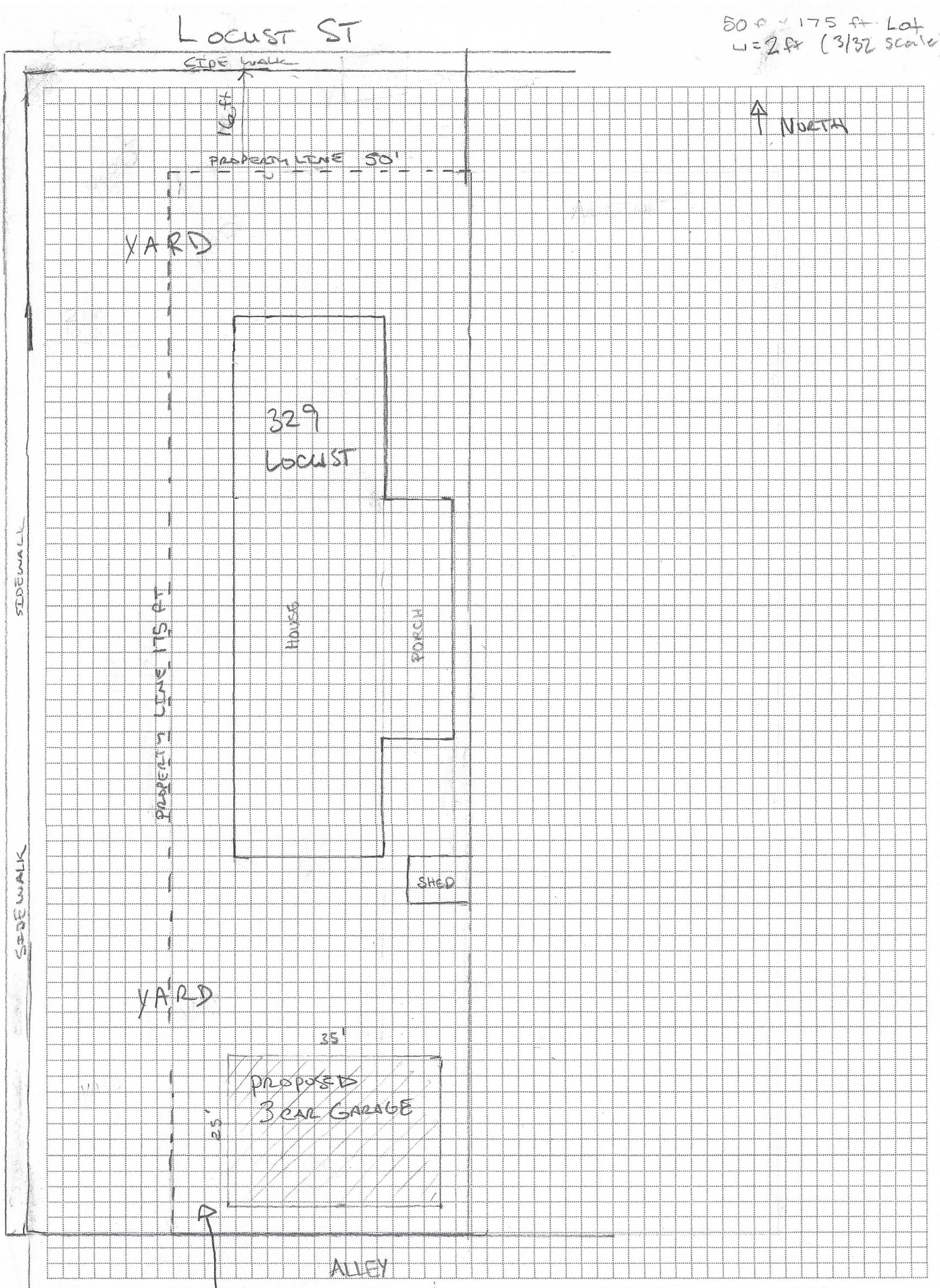
(Proof of owner's authorization is required with submittal if signed by Applicant)

Print Name: MARK DESPAIN

Submitted On: 2/4/19

(Please email completed application and materials to planningtechs@windsorgov.com)

**Required fields*



Calendar By: WaterproofPaper.com More Free Printables: Calendars Maps Graph Paper Targets

Variance Request:

Kerns Subdivision Lot 16 Block 4 – 329 Locust Street

Allowance for reduced setback for a garage

Board of Adjustment - February 28, 2019

Variance Request

Variance of Municipal Code Section 16-12-40 pertaining to building location in the Single Family Residential (SF-1) Zone District:

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

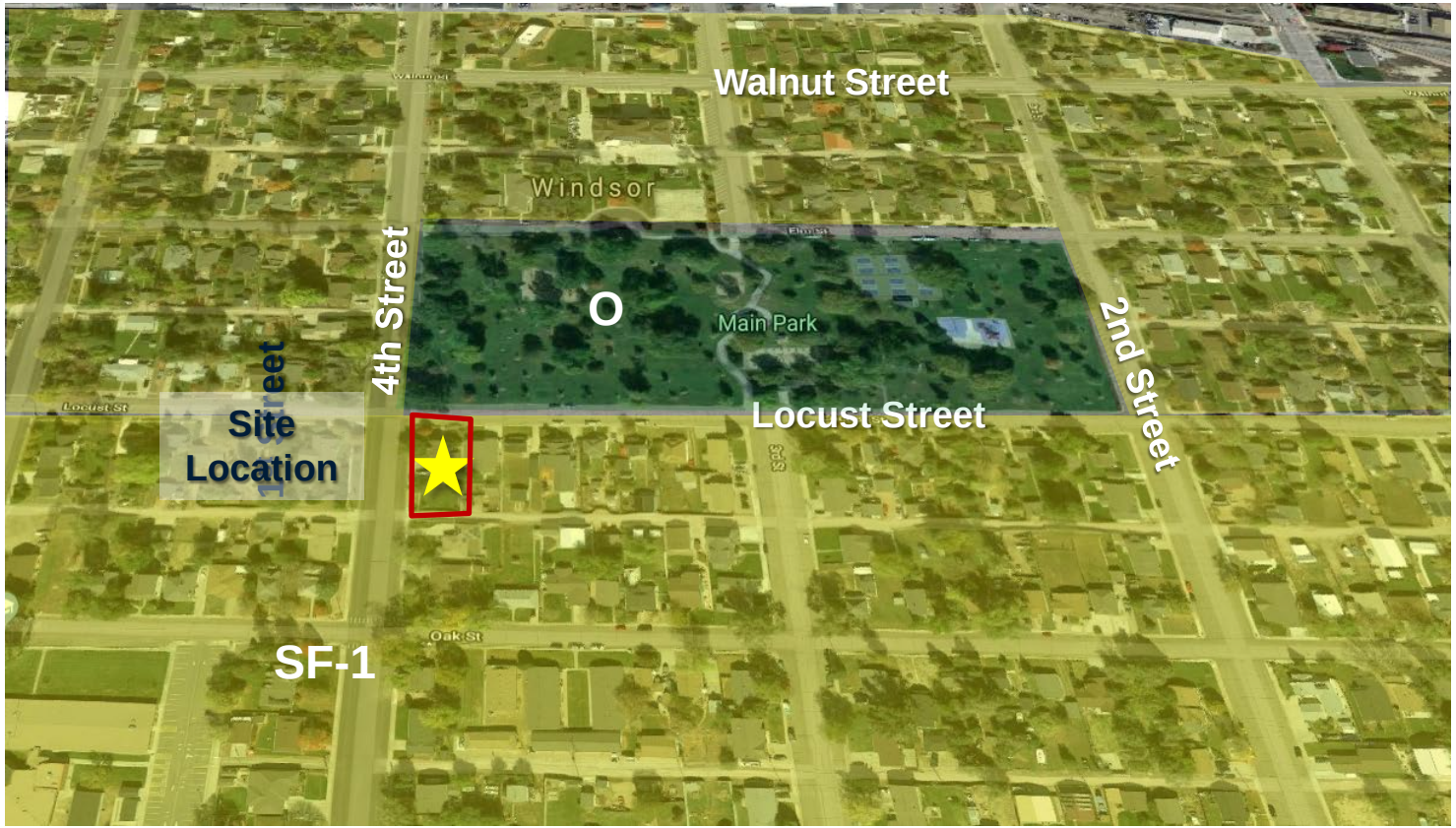
TOWN OF WINDSOR COLORADO

329 Locust Street

Town of Windsor Board of Adjustment – February 28, 2019

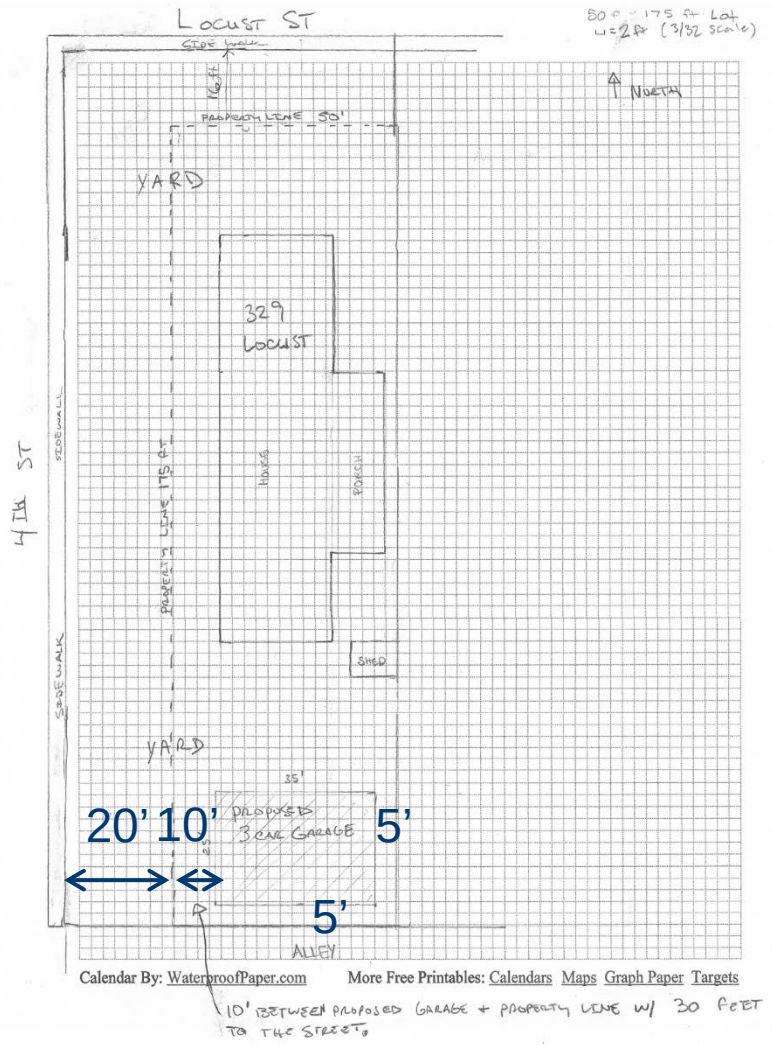
Site Vicinity Map

Zoning Map


Walnut Street
Windsor
4th Street
O
Main Park
2nd Street
Locust Street
Site Location
SF-1
Oak St

Site Plan

329
325
515


LOCUST ST
SIDE WALK
PROPERTY LINE 50'
NORTH
YARD
329
LOCUST
HOUSE
PORCH
SHED
4TH ST
SIDEWALK
PROPERTY LINE 175 FT
YARD
35'
PROPOSED
3 CAR GARAGE
20' 10'
5'
5'
ALLEY
Calendar By: WaterproofPaper.com
More Free Printables: Calendars Maps Graph Paper Targets
10' BETWEEN PROPOSED GARAGE + PROPERTY LINE W/ 30 FEET TO THE STREET

Site Pictures

Site Pictures

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.*

TOWN OF WINDSOR COLORADO

329 Locust Street

Town of Windsor Board of Adjustment – February 28, 2019

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.*

TOWN OF WINDSOR COLORADO

329 Locust Street

Town of Windsor Board of Adjustment – February 28, 2019

Analysis

- The property can be reasonably used under the conditions of the Code.
- Older plat
- 1890s house
- Front setback requirement from both 4th Street and Locust Street
- Does not impact essential character of neighborhood
- Outside of visibility triangle, easements
- Meets other zoning requirements
- Sewer line location and options

TOWN OF WINDSOR COLORADO

329 Locust Street

Town of Windsor Board of Adjustment – February 28, 2019

Recommendation

Staff has not determined that an undue hardship exists. However, the request and circumstances of the site are consistent with variances granted in the recent past. 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. Staff recommends the following condition 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.

TOWN OF WINDSOR COLORADO

Variance Request

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

TOWN OF WINDSOR COLORADO

329 Locust Street

Town of Windsor Board of Adjustment – February 28, 2019

MEMORANDUM

Date: February 28, 2019
To: Board of Adjustment
From: Millissa Berry, AICP, Senior Planner
Re: Public Hearing – Variance of Municipal Code Section 16-12-40 pertaining to building location / setbacks in the Single Family Residential (SF-1) Zone District –Windsor Village Subdivision 1st Filing Lot 37 Block 3; Christine Lawton and Victor Gutierrez, owners/applicants
Item #: C.2

Background

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 applicants removed the deck and stairs that were accessing the front door to the house. They began building a new entry feature when they were made aware of the need for a building permit. During the review of the building permit, it was found that the entry feature encroached into the front setback.

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.

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.

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 subdivision and houses were built in the 1970s. Most houses in the subdivision are built between 20' and 25' from the front property line (20' feet being the minimum setback required). This particular style of house has a front door that is not at the same grade as the ground (see presentation for images); therefore, stairs of some sort are required to use the door. The newly built porch replaces a deck / stair structure that also encroached into the front setback but to a lesser extent.

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

The essential character of the surrounding neighborhood would not be altered. There are a number of houses in the area that are the same style of house where there is an elevated entry door. Each of these houses has a set of stairs with a deck or platform that appear to encroach into the front setback.

Staff is currently updating the zoning chapter of the Municipal Code. There is a proposal to allow a front entry features to be located closer to the street than the rest of the house. Right now, the proposal is to allow for front entry features to be set back 15' from the front property line for standard access lots (i.e. lots accessed from the street in front of the lot). It should be noted that this allowance is proposed for the SF-2 zone, multi-family zone, and a new residential mixed use zone and is not being proposed for the SF-1 zone.

d) Whether public safety and welfare are secured

It is not foreseen that public safety and welfare will be compromised with the granting of the variance request. If the structure is built at a 10' setback, the structure will be outside the utility easement along the front property line and be at a distance where snow off of the roof will not enter the right-of-way.

Recommendation

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.

Notification

February 13, 2019 public hearing notice posted on Town of Windsor website.
February 13, 2019 development sign posted on the subject property.
February 15, 2019 public hearing notice published in the paper.

Attachments

Application materials
Presentation

CC: Christine Lawton and Victor Gutierrez, applicants

TOWN OF WINDSOR COLORADO

VARIANCE APPLICATION

(Please see the Town of Windsor Fee Schedule for Application Fees)

1

☐ Please review Sec. 16-6-60, 16-6-70 and 16-6-80 of Chapter 16 of the *Town of Windsor Municipal Code* for variance requirements and procedures.

☐ Variance requests are considered by the Board of Adjustment, which meets at 7 p.m. on the fourth Thursday of every month.

☐ Prior to submitting an application, a pre-application meeting with Planning Department staff is required. In order for an item to be placed on a given month's agenda, a complete application and fee must be received no later than the 1st day of that month. Incomplete applications will not be scheduled for consideration.

☐ Scaled drawings necessary for the proper consideration of this variance shall be submitted with this application. With new construction projects, building additions or remodels, you must contact SAFEbuilt Colorado, Inc. (970-686-7511) to determine compliance with applicable building codes.

2

A request is hereby made for a variance of the Town of Windsor ordinances due to special conditions where a literal enforcement of the ordinance would result in unnecessary hardship.

Property Address*: 18 Tulip Court Windsor, CO 80550

Lot: 37 **Block:** 3 **Subdivision:**

A variance is being requested from the following Municipal Code section(s)*:

Article 16 - Sec. 16-12-40

3

OWNER:

Name(s)*: Christine Lawton & Victor Gutierrez

Address*: 18 Tulip Ct Windsor, CO 80550

Phone #*: 970-820-7376 Email*: lawtonchristy@yahoo.com

APPLICANT or REPRESENTATIVE:

Name*:

Address*:

Phone #*: Email*:

4

Municipal Code Section 16-6-60(b) states, in part:

Variances may be considered where, due to special conditions, a literal enforcement of the provisions of this Chapter would result in unnecessary hardship.

Unnecessary hardship is defined by the Municipal Code as enumerated in items 1-4 below. Please describe how each item is met in the space provided. Applications will be deemed compete once *all* criteria have been addressed. You may attach additional sheets if necessary.

1. **A situation where the property cannot be reasonably used under the conditions allowed by this Code*.**

The deck that was previously in place was very unsafe. It had dated - rotting wood and exposed rusted nails/screws. The new deck will be much safer and extends out to almost the same location the previous deck did. We need a safe entrance into our home as for this is the only front entrance other than the garage. We need this amount of space to make a functional - safe front entrance for our family.

2. **The situation shall result from circumstances unique to the property and shall not be created by the landowner*.** *Note: landowner also means any contractor or agent acting on behalf of the landowner.*

The front door is risen up from the ground and needs steps for entry. we need the space that we have provided to make an easily accessible entrance to the front door.

3. **The variance, if granted, will not alter the essential character of the surrounding neighborhood*.**

Although this neighborhood is older, many people on our street are doing remodeling/improvements to update the neighborhood and bring more value to their homes. our intent is this and not to change the character. we are simply upgrading our porch and making it more modern, visually attractive and more practical/safe.

4. **Economic considerations alone shall not constitute an unnecessary hardship if a reasonable use for the property exists under the provisions of this Code*.**

The existing deck reached out to the same set back that we are building up to. The existing deck was unable to be fixed as is and needed to be taken down and replaced with a safer - more sturdy porch. We are trying to also make our property more visually attracted and updated.

5

I hereby depose and state under the penalties of perjury that all statements, proposals, and/or plans submitted within this application are true and correct to the best of my knowledge.

Signature: [signature] **Date:** 2/12/19

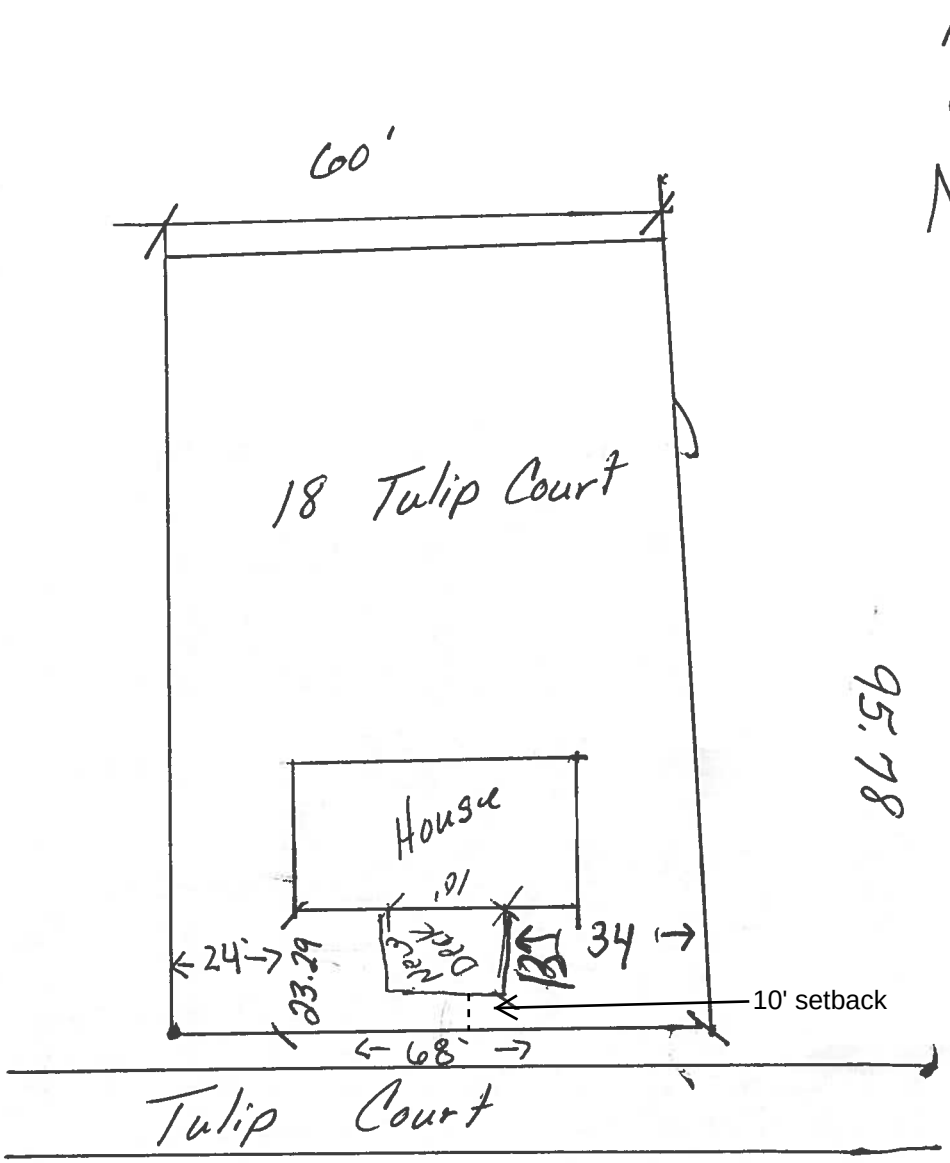
(Proof of owner's authorization is required with submittal if signed by Applicant)

Print Name: Christine Lawton

Submitted On: 2/12/19

(Please email completed application and materials to planningtechs@windsorgov.com)

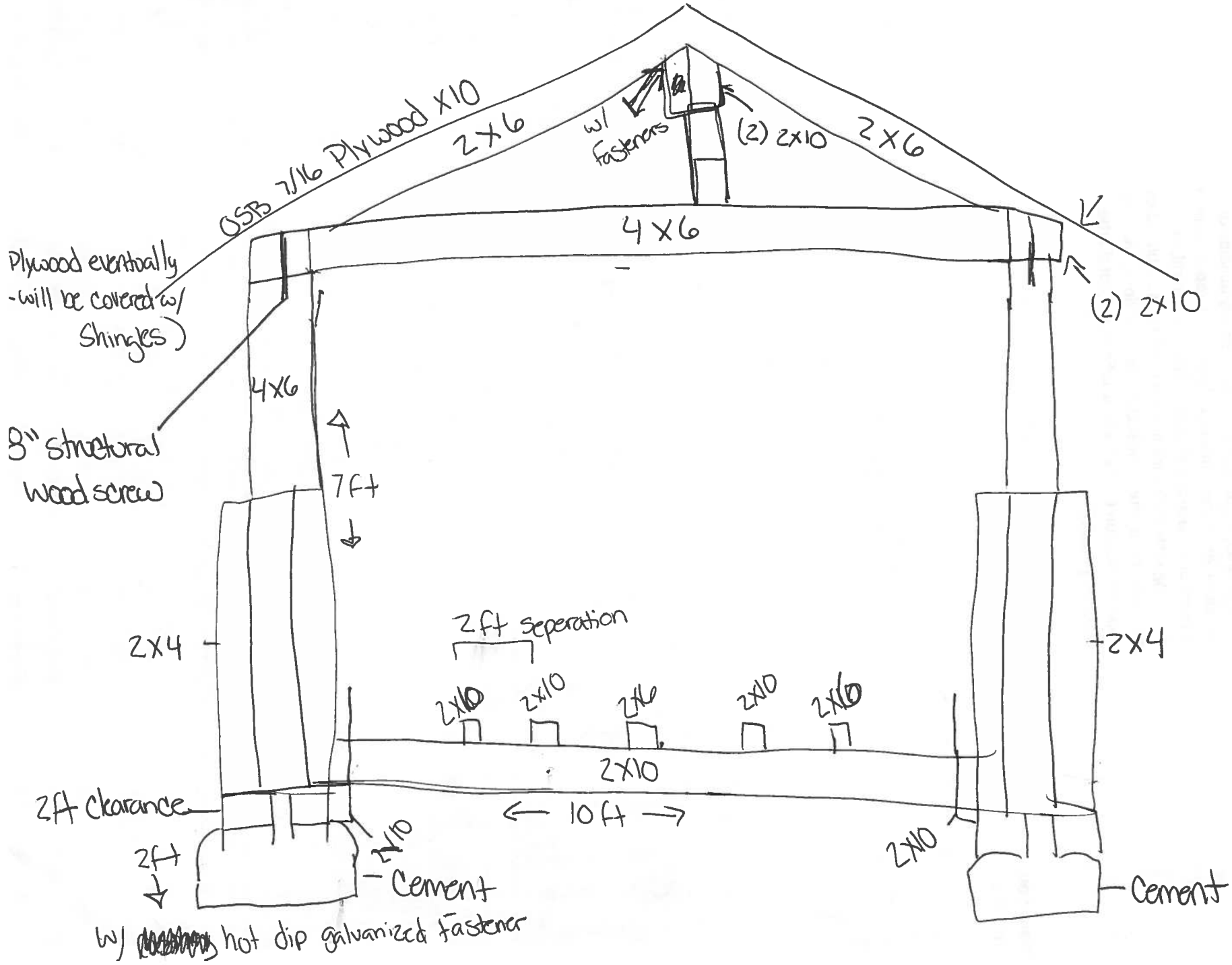
**Required fields*

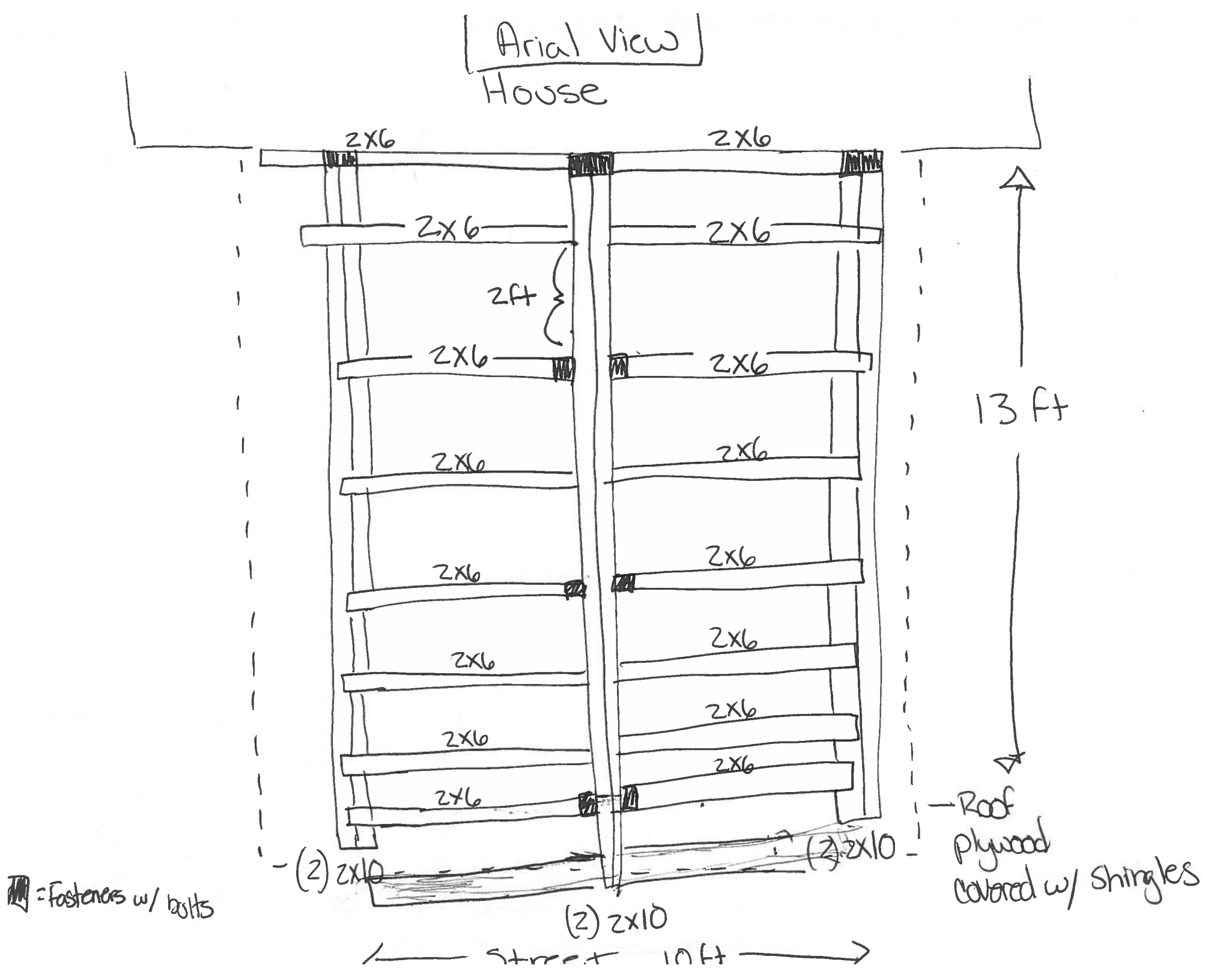


Lot 37, Block 3
Windsor Village

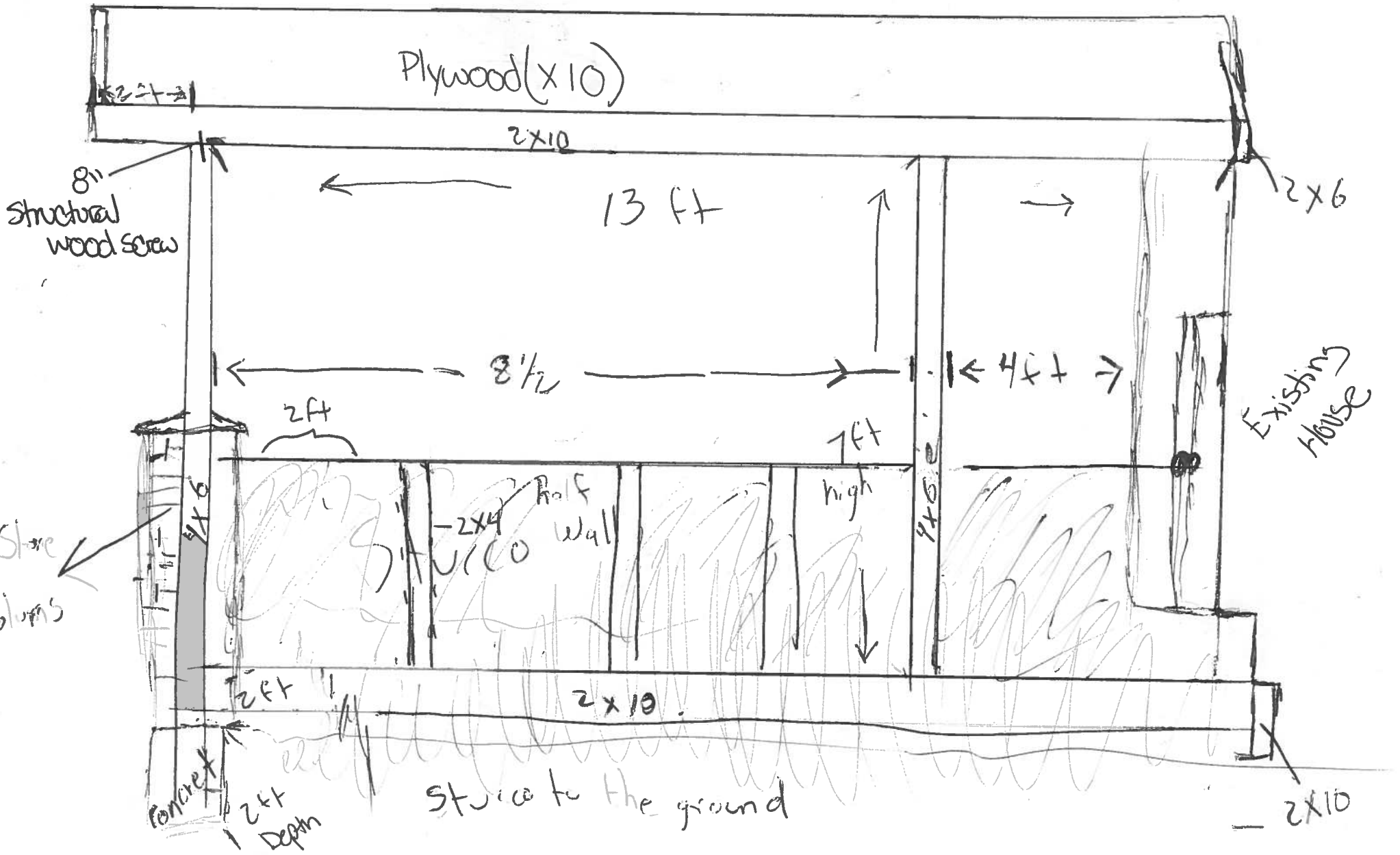
Setback To Be 10.29"

Front


OSB 7/16 Plywood X10
2X6
w/ fasteners
(2) 2X10
2X6
4X6
Plywood eventually -will be covered w/ Shingles)
(2) 2X10
4X6
8" structural wood screw
7ft
2X4
2ft seperation
2X4
2X10
2X10
2X6
2X10
2X10
2X10
2ft clearance
10ft
2ft
2X10
2X10
Cement
Cement
w/ hot dip galvanized fastener


Arial View
House
2X6
2X6
2X6
2X6
2ft
2X6
2X6
2X6
2X6
2X6
2X6
2X6
2X6
2X6
2X6
2X6
13 ft
Roof
plywood
covered w/ shingles
(2) 2X10
(2) 2X10
(2) 2X10
: Fasteners w/ bolts
Street 10 ft

Side


Plywood(x10)
2x10
8"
Structural
wood screw
13 ft
2x6
8 1/2
4ft
2ft
1ft
high
Existing
House
4x6
Store
Columns
2x4
Half
Wall
Stucco
2ft
2x10
Concrete
2ft
Depth
Stucco to the ground
2x10

Town of Windsor
301 Walnut Street
Windsor, CO 80550
(970) 674-2400
www.windsorgov.com

02/12/2019 at 1:22 PM
CASHIER: pcaivano
RECEIPT #: 00484953

CUSTOMER:
Town of Windsor, Planning
301 Walnut Street

Windsor CO 80550
CUSTOMER #: 033121

ITEMS:

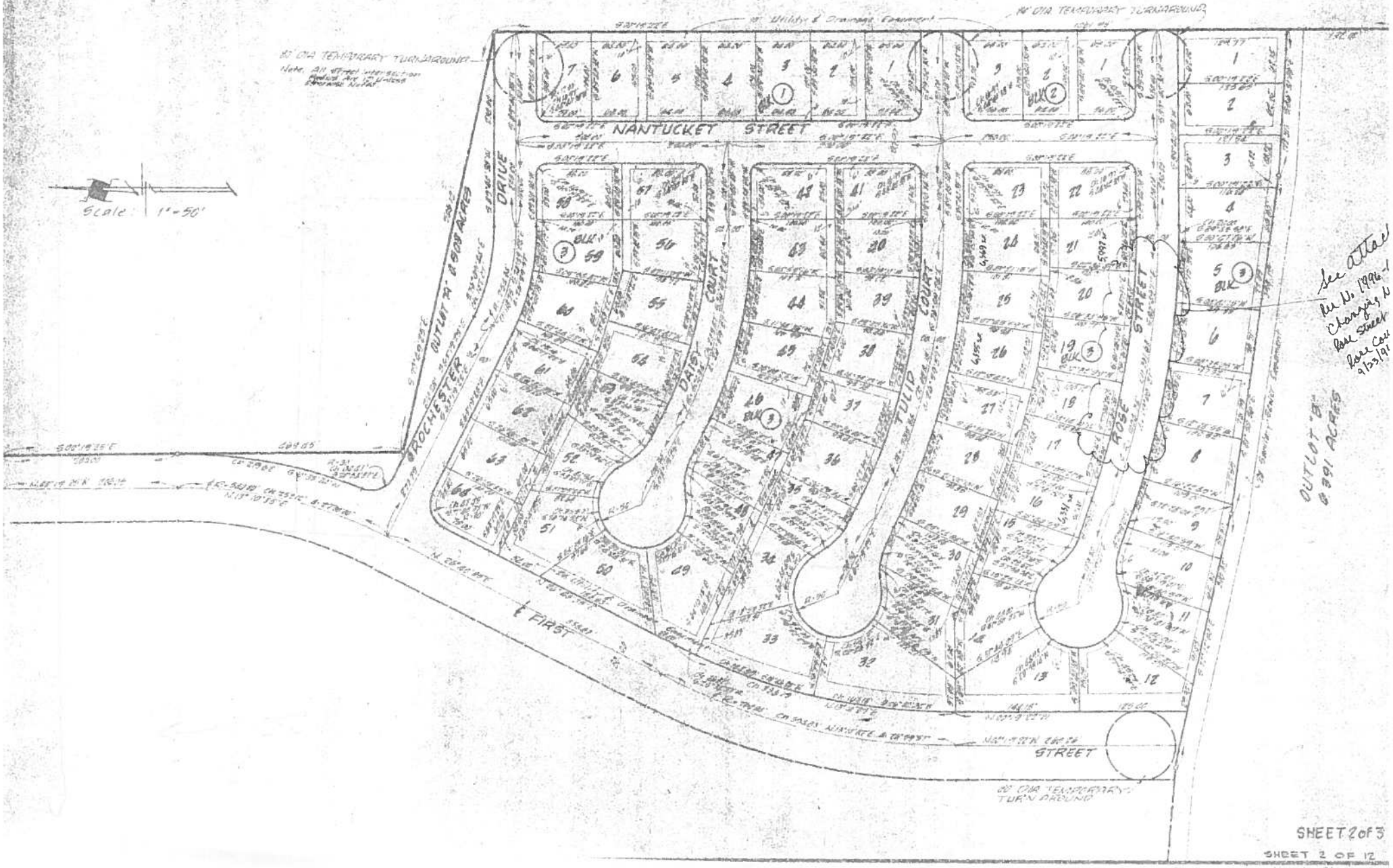
PLANNING FEES -18 TULIP CT		
VARIANCE		100.00
Total		100.00

PAYMENTS:

CC	045087	100.00
Change		0.00
TOTAL ENDING BALANCE:		$0.00

THANK YOU FOR YOUR PAYMENT!

WINDSOR VILLAGE
FIRST FILING



SHEET 2 of 3

Variance Request:

Windsor Village Subdivision
Lot 37 Block 3
18 Tulip Court

Allowance for entry feature

Board of Adjustment - February 28, 2019

Variance Request

Variance of Municipal Code Section 16-12-40 pertaining to building location in the Single Family Residential (SF-1) Zone District:

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

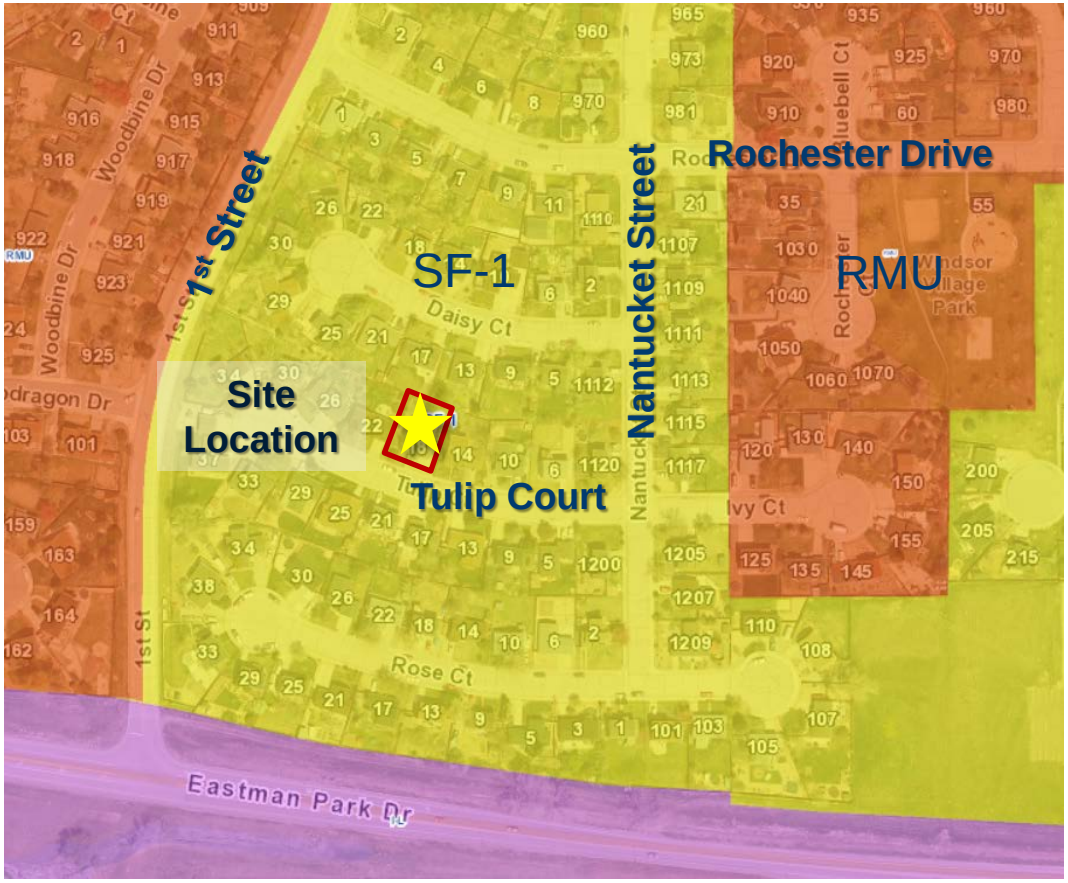
TOWN OF WINDSOR COLORADO

18 Tulip Court

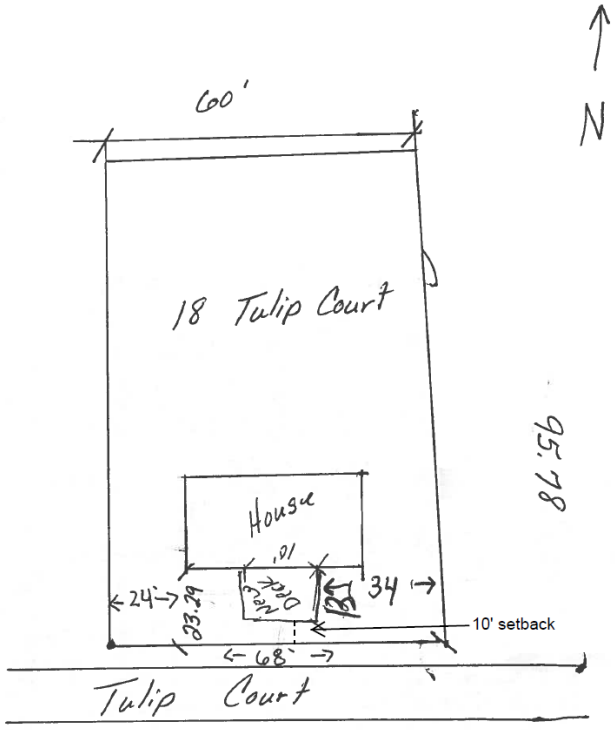
Town of Windsor Board of Adjustment – February 28, 2019

Site Vicinity Map

Site Vicinity Map



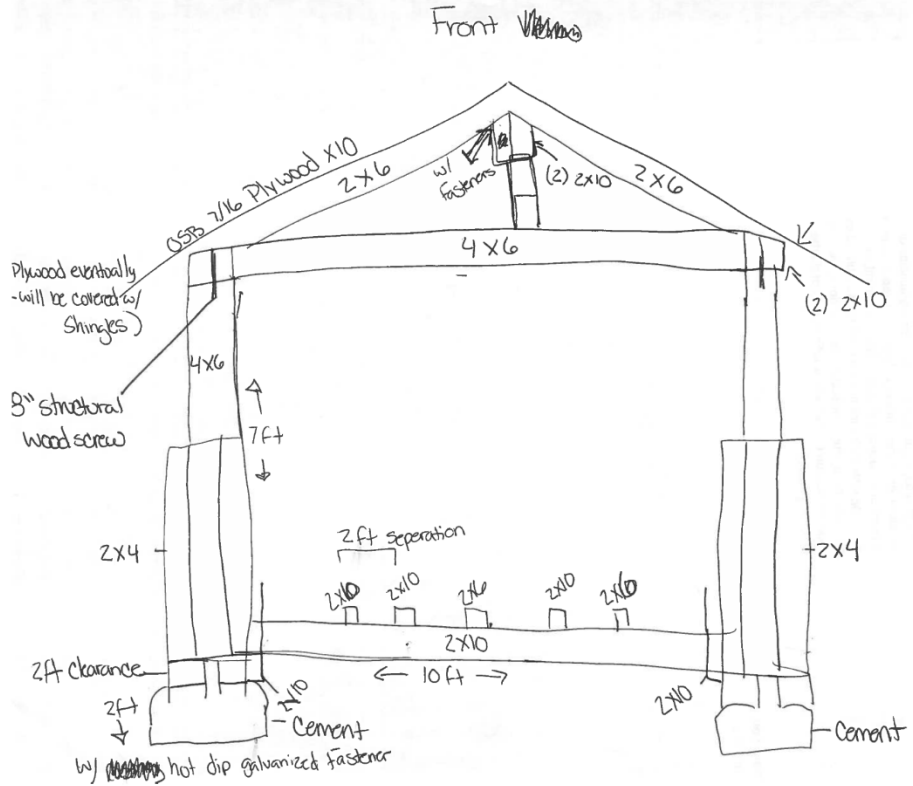
Site Plan

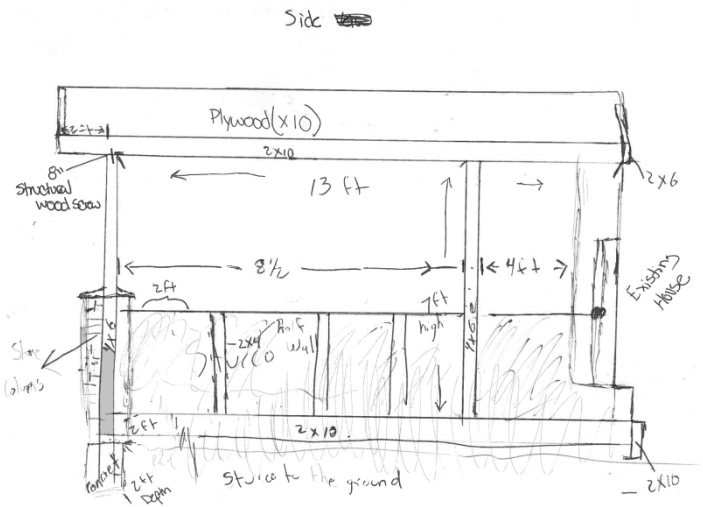


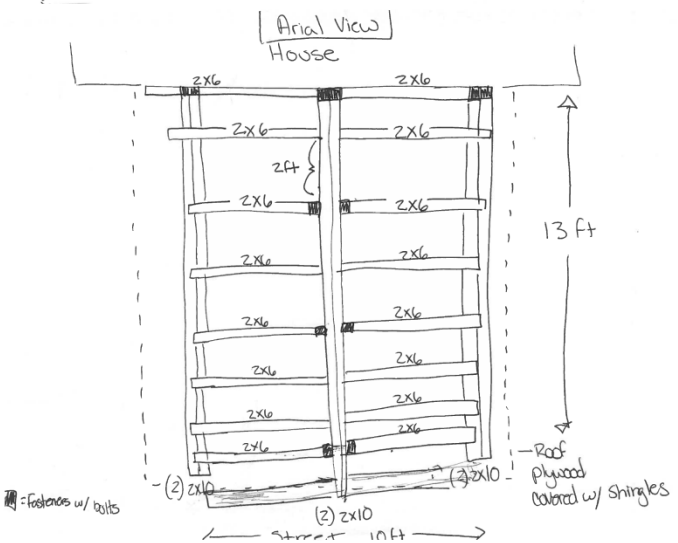
Lot 37, Block 3
Windsor Village

Setback To Be 10.29"

Elevation


Front
OSB 7/16 Plywood x10
2x6
w/ Fasteners
(2) 2x10
2x6
4x6
Plywood eventually will be covered w/ Shingles
(2) 2x10
4x6
8" structural wood screw
7ft
2x4
2ft separation
2x10
2x6
2x10
2x6
2x4
2ft clearance
2x10
10ft
2ft
2x10
Cement
Cement
w/ hot dip galvanized Fastener


Side
Plywood (x10)
2x10
8" Structural wood screw
13 ft
2x6
8½
4ft
2ft
7ft high
Existing House
Store
2x4
Half Wall
2ft
2x10
Footer
2ft Depth
Structure the ground
2x10


Arial View
House
2x6
2x6
2x6
2x6
2ft
2x6
2x6
2x6
2x6
2x6
2x6
2x6
2x6
2x6
2x6
2x6
2x6
13 ft
Roof plywood covered w/ Shingles
(2) 2x10
(2) 2x10
(2) 2x10
= Fasteners w/ bolts

Site Pictures

Neighborhood

Neighborhood

Neighborhood

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.*

TOWN OF WINDSOR COLORADO

18 Tulip Court

Town of Windsor Board of Adjustment – February 28, 2019

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.*

TOWN OF WINDSOR COLORADO

18 Tulip Court

Town of Windsor Board of Adjustment – February 28, 2019

Analysis

- The property can be reasonably used under the conditions of the Code.
- 1970s subdivision, construction
- ~20’ – 23’ setback
- House style - elevated door
- Does not impact essential character of neighborhood
- Outside of easements

Recommendation

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

If the Board of Adjustment moves to approve the variance request, staff recommends the following conditions:

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 enclose structure.1970s cons
4. The applicants obtain a building permit for the porch.

TOWN OF WINDSOR COLORADO

Variance Request

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

TOWN OF WINDSOR COLORADO

18 Tulip Court

Town of Windsor Board of Adjustment – February 28, 2019