



BOARD OF ADJUSTMENT / APPEALS REGULAR MEETING

May 23, 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 February 28, 2019

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-9-110(d) pertaining to size of monument sign – Ptarmigan Business Park PUD Subdivision 4th Filing Lot 1 (7494 Main Street – Ziggi's Coffee); Sarah and Steve Stoecker, 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
 - 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 16-12-50 of the Municipal Code pertaining to open space and Section 16-12-40 pertaining to setback in the Single Family Residential (SF-1) Zone District – Kern's Subdivision 11th Filing Lot 1 (29 Locust Street); David Byrne, 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
3. Public Hearing – Variance of Municipal Code Section 16-9-50(e) pertaining separation between monument signs – East Pointe Subdivision (Main Street and SH 257); Chris Ruff, owner/applicant
- 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
 - j. Staff report and Recommendation
 - k. Questions and answers to/from BOA members to/from applicant, public, staff, legal counsel
 - l. Motion to close public hearing and second
 - m. Motion on variance and second
 - n. Board discussion
 - o. 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, June 27, 2019	7:00 P.M.	Regular Board of Adjustment Meeting*
Thursday, July 25, 2019	7:00 P.M.	Regular Board of Adjustment Meeting*
Thursday, August 22, 2019	7:00 P.M.	Regular Board of Adjustment Meeting*
Thursday, September 26, 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

February 28, 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 7:04 p.m.

1. Roll Call

The following members were present:

Vice-Chairman Jose Valdes

David White

Grant Lebahn

Jennifer Dionne

Charles Schinner

Danny Horner

Patrick Miller

Alternate

Absent

Alternate

Absent

Also Present

Senior Planner

Millissa Berry

Deputy Town Clerk

Amanda Mehlenbacher

2. 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.

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 January 24, 2019

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

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

- Staff presentation: Millissa Berry, Senior Planner

Mr. White moved to open the Public Hearing; Ms. Dionne seconded the motion. Roll call on the vote resulted as follows:

Yeas – Valdes, Schinner, White, Dionne, Lebahn

Nays – None

Motion passed

The applicant, Mark Despain, 329 Locust Street, stated that they wish to align a 3 car garage with the setback that their current house sits at which would consist of a 10 foot setback from the lot line. The applicant stated that they have looked at other ways to incorporate the 3 car garage but feel that keeping it detached with lawn space in between the structures would be more in line with the charm of the downtown area.

Mr. Valdes asked if there was anyone from the audience who wished to speak on this matter.

Stuart Rafos, 515 4th St. Windsor, CO approached the Board and stated that he is in opposition of the variance. Mr. Rafos expressed concern regarding the public safety of the sidewalks, the lack of unnecessary hardship, and negative effects on his property value.

Per Ms. Berry, The applicant, Mr. Mark Despain is requesting a variance from Municipal Code Section 16-12-40 to allow for a detached 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.

Per Ms. Berry, 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.

Staff has not determined that an undue or unnecessary 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.

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

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

Mr. Schinner requested that staff look into having the area monitored to see if there is a public safety or limited visibility issue in that particular section.

Discussion between the Board members, staff, the applicant, and the neighbor revolved around the location of the garage and its access point, public safety and setback standards within the area.

**Mr. Schinner moved to close the Public Hearing; Mr. Lebahn seconded the motion. Roll call on the vote resulted as follows:
Yeas – Valdes, Schinner, White, Dionne, Lebahn
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 16-12-40 with the conditions recommended by staff; Ms. Dionne seconded the motion. Roll call on the vote resulted as follows:
Yeas – Valdes, Schinner, White, Dionne, Lebahn
Nays – None
Motion passed**

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
 - Staff presentation: Millissa Berry, Senior Planner

Mr. White moved to open the Public Hearing; Mr. Lebahn seconded the motion. Roll call on the vote resulted as follows:

Yeas – Valdes, Schinner, White, Dionne, Lebahn
Nays – None
Motion passed

The applicant, Christine Lawton, 18 Tulip Ct. Windsor, CO stated that they purchased their home in July with the intent to remodel and update. The applicant removed the existing deck and replaced with a new entry to improve the appearance of their home. During the construction of the deck, the applicant was made aware that a building permit was required for the work and that a variance was required to allow the new deck to encroach into the front setback. She asked the Board to allow her to continue to replace the deck and stairs as planned.

Public Comments: No comments.

Per Ms. Berry, 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 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.

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.

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

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

Discussion between Board members and staff revolved around the roof top extension on the porch.

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

Mr. Valdes asked for a motion on the variance.

Mr. Lebahn moved to approve the request for a variance from Section 16-12-40 with the conditions listed by staff with the exception of item No. 1.; Mr. Schinner seconded the motion. Roll call on the vote resulted as follows:

**Yeas – Valdes, White, Dionne, Lebahn
Nays – Schinner
Motion passed 4:1**

D. COMMUNICATIONS

1. Communications from the Board Members

Mr. Schinner requested that photos be as current as possible within the staff presentations.

2. Communications from staff

None

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 8:24 p.m.

Deputy Town Clerk, Amanda Mehlenbacher



MEMORANDUM

Date: May 23, 2019
To: Board of Adjustment
From: Millissa Berry, AICP, Senior Planner
Re: Public Hearing – Variance of Municipal Code Section 16-9-110(d) pertaining to size of freestanding (monument) sign – Ptarmigan Business Park PUD Subdivision 4th Filing Lot 1 (7494 Westgate Drive – Ziggi's Coffee); Sarah and Steve Stoecker, owners/ applicants
Item #: C.1

Background

The applicant, Mr. Steve Stoecker, is requesting a variance from Municipal Code Section 16-9-110(d) to allow for a minor tenant freestanding (monument) sign to exceed 6 feet in height and 24 square feet (sf) in sign area.

The property is addressed as 7494 Westgate Drive (Lot 1 of the Ptarmigan Business Park PUD Subdivision 4th Filing), is zoned General Commercial (GC), and is surrounded by other GC-zoned properties. The lot also front SH 392 along its southern border. The building is less than 5,000 sf in area and, therefore, classified as a minor tenant.

Municipal Code Section 16-9-110(d)(2) states the following:

Minor tenants, including individual single-use minor tenant buildings and multiple tenant buildings which are freestanding on their own lot, shall be allowed to erect one (1) freestanding monument sign to accommodate all tenants subject to the following limitations, unless otherwise specified in the subarea standards contained in this Section.

a. No such sign shall exceed six (6) feet in height.

b. No such sign shall exceed twenty-four (24) square feet in sign area per side of sign, exclusive of monument base.

The proposed sign is approximately 25 sf in area and stands 8 feet in height.

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

The site is located north of SH 392 near the I-25 interchange immediately east of the 7-11 business. The lot fronts SH 392 on its southern border but is accessed from Westgate Drive.

The subject lot is 20,000 square feet (sf) and contains a 624 sf drive-thru coffee shop. The building is set back from the SH 392 frontage approximately 85 feet. The building has wall-mounted signage that is allowed by code. Due to the building setback and size of the allowed signage, the existing building signage is not very visible from SH 392.

By code, the applicant is also allowed a freestanding sign that can be placed closer to the SH 392 right-of-way. The maximum sign allowed for a minor tenant is 6' in height and 24 sf in area. The request would allow for a sign that is 2 feet taller (8') or a 33% increase and a sign that is 1 sf (approximately 25 sf) or 4% larger in area. The sign would be within the allowed parameters of a major tenant freestanding sign. The proposed sign would replace (be located in the same location as) the existing freestanding sign.

Due to the property's location on a 4-lane highway and the speed of the traffic passing the site, the larger freestanding sign is found to be appropriate for the area is consistent with the existing found in the vicinity.

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, the proposed sign's size and height is found to be appropriate for the area both due to the lot's proximity to the highway and also compared to the existing signage found in the area.

Recommendation

If the Board of Adjustment moves to approve the variance request - to allow the freestanding sign to be approximately 25 square feet in area and up to 8 feet tall - the following condition is recommended by staff:

1. The applicant obtains a sign permit from the Planning Department prior to installation of the sign.

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

1. The overall size and height of the proposed sign is in proportion to the size of existing signs in the immediate vicinity and is appropriate for the specific lot and circumstances;
2. The granting of this variance request will not alter the character of the surrounding neighborhood;
3. The proposed height of the subject signs meets the spirit and intent of the sign regulations; and
4. The granting this variance will not pose any public safety or welfare concerns.

Since all motions are to be made in the affirmative, staff recommends that the following motion, second and action on the petition be made as follows:

1. A motion to approve the request for a variance from Section 16-12-40 with the condition 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.

Notification

May 7, 2019 public hearing notice posted on Town of Windsor website

May 7, 2019 development sign posted on the subject property

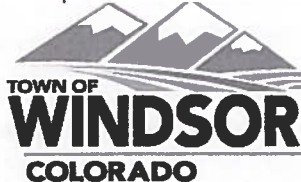
May 10, 2019 public hearing notice published in the paper

Attachments

Application materials

Presentation

cc: Steve Stoecker, 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*: 7494 Westgate Drive Windsor, CO 80525

Lot: 1 **Block:** **Subdivision:** Ptarmigan Business Park PUD 4th Filing

A variance is being requested from the following Municipal Code section(s)*:
16-9-110 Section D. Please allow sign for Major Tenant

3

OWNER:

Name(s)*: Sarah Stoecker (ZigStak Real Estate)

Address*: 6892 Spanish Bay Drive Windsor, CO 80550

Phone #: 970.214.5209 Email*: sarah.stoecker@ziggiscoffee.com

APPLICANT or REPRESENTATIVE:

Name*: Steve Stoecker

Address*: 6892 Spanish Bay Drive Windsor, CO 80550

Phone #: 970.227.1981 Email*: steve.stoecker@ziggiscoffee.com

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 complete 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*.**

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.**

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

Our business is located on Highway 392. With the speed of cars going by, the mature landscaping at 7-11, the size of the 7-11 sign, and the very large electrical boxes on the lot east of us, our small sign has very limited visibility. Our small building was required to be further north than preferred because of the drive-thru lane near the road, so the building does not provide good visibility, especially from the west. A larger sign (Major Tenant size at a minimum) would not impact the neighborhood and would not be a danger to the public. It is not near the Westgate intersection or the entrance/exit to the property. A larger sign would be more effective and provide appropriate visibility for our business.

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

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: Sarah K. Stoecker

Date: 4/9/2019

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

Print Name: Sarah Stoecker

Submitted On: April 9, 2019

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

*Required fields

Location of Sign – Ziggi's Windsor

- The sign will be located on the base where the current Monument Sign exists. The electricity is already there, and the sign will simply be larger. See Monument Sign attachment.

customer _____
 Ziggli's Coffee
 address _____
 TBD
 city / state / zip _____
 Windsor, CO
 drawing scale _____
 1:20

project name _____
 ZC-CO-WIN-15-01-ALL
 drawing name _____
 zc-co-wln-mon-final
 volts / amps _____
 N/A
 description _____

Quantity: 1
 OAH: 96
 OAW: 45.21
 SF: 3014

Custom Internally Illuminated
 Monument Sign

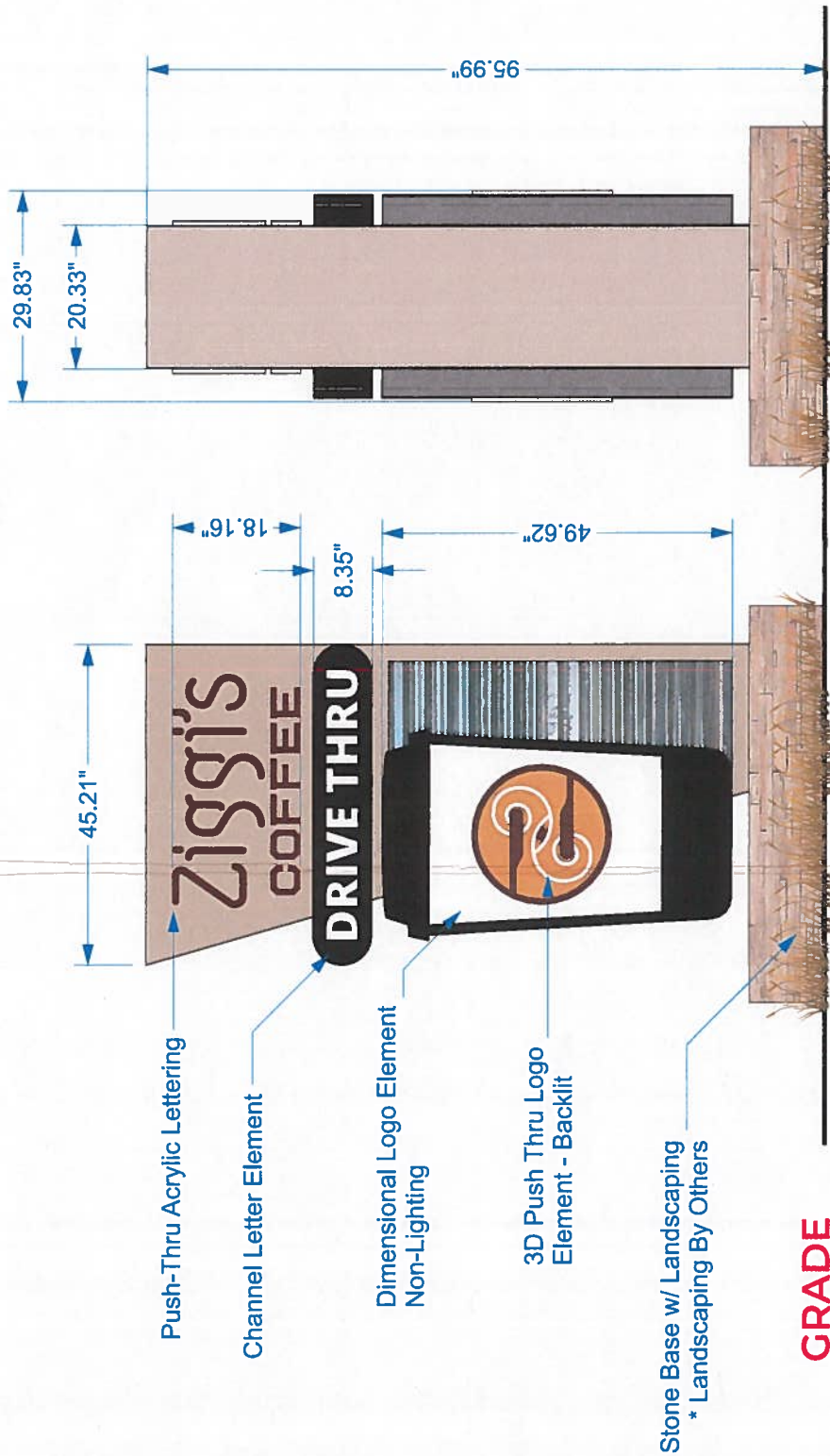
revision | date

1

2

3

4



MONUMENT SIGN



Variance Request:
7494 Westgate Drive-
Ptarmigan Business Park PUD
Subdivision 4th Filing Lot 1

Request for a larger freestanding sign

Board of Adjustment May 23, 2019

Variance Request

Variance of Municipal Code Section 16-9-110(d) to allow for a freestanding sign height in excess of 8 feet in height and 24 square feet in area.

Minor tenants, including individual single-use minor tenant buildings and multiple tenant buildings which are freestanding on their own lot, shall be allowed to erect one (1) freestanding monument sign to accommodate all tenants subject to the following limitations, unless otherwise specified in the subarea standards contained in this Section.

a. No such sign shall exceed six (6) feet in height.

b. No such sign shall exceed twenty-four (24) square feet in sign area per side of sign, exclusive of monument base.



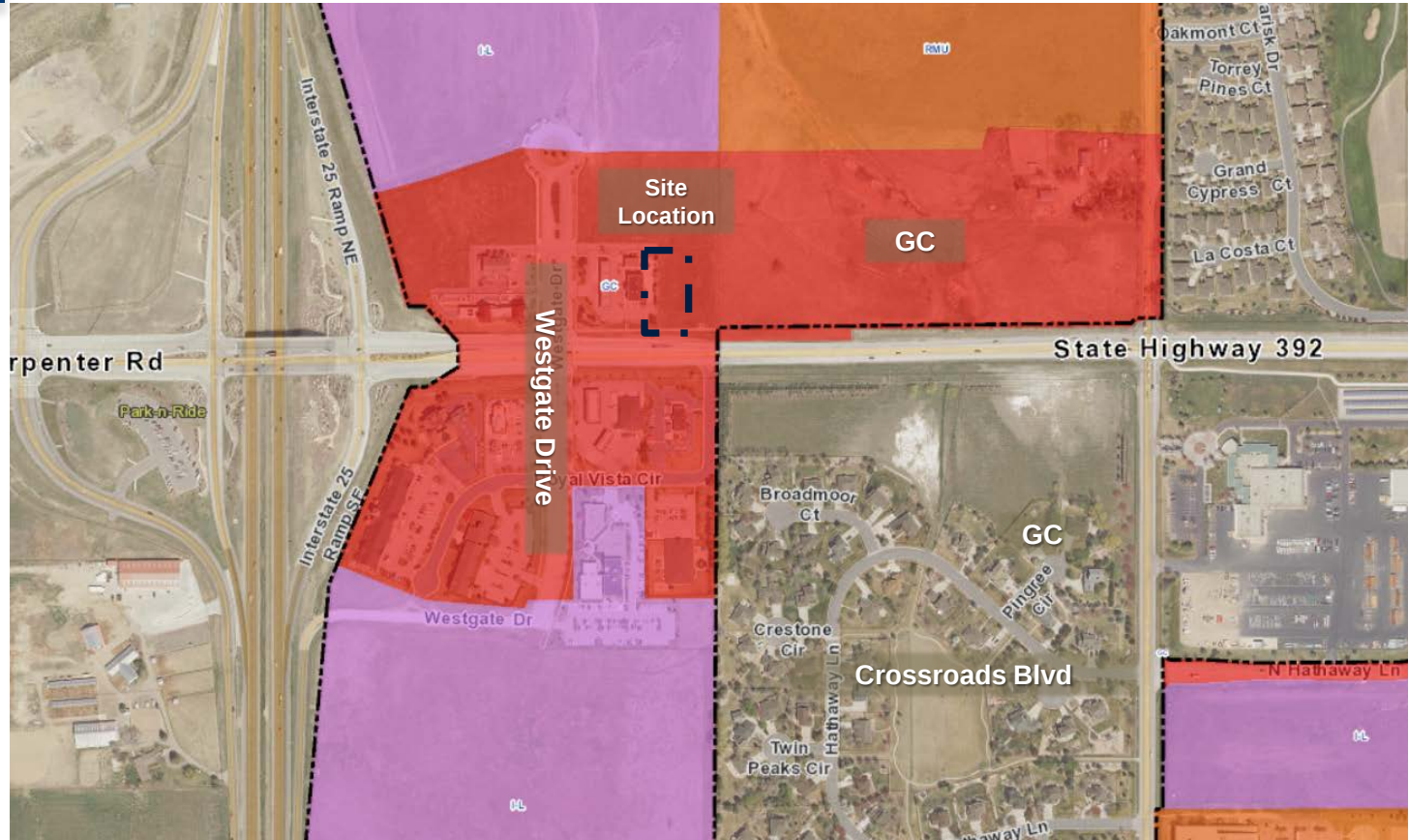
7494 Westgate Drive

Town of Windsor Board of Adjustment – May 23, 2019

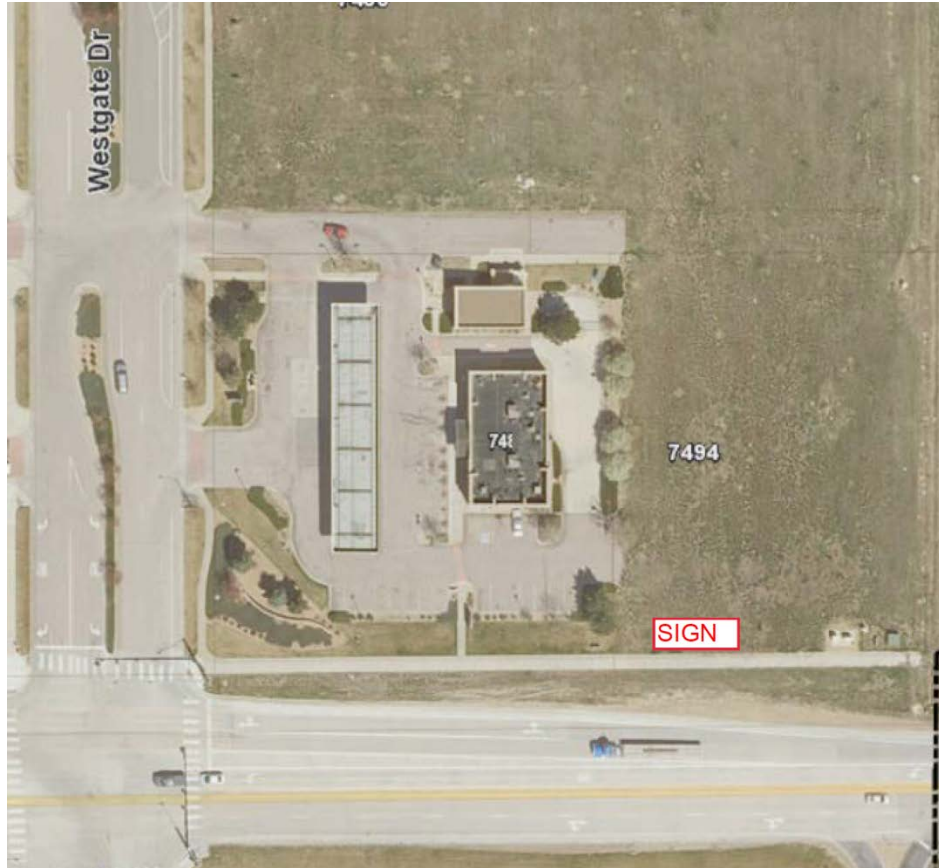
Site Vicinity Map



Site Zoning Map

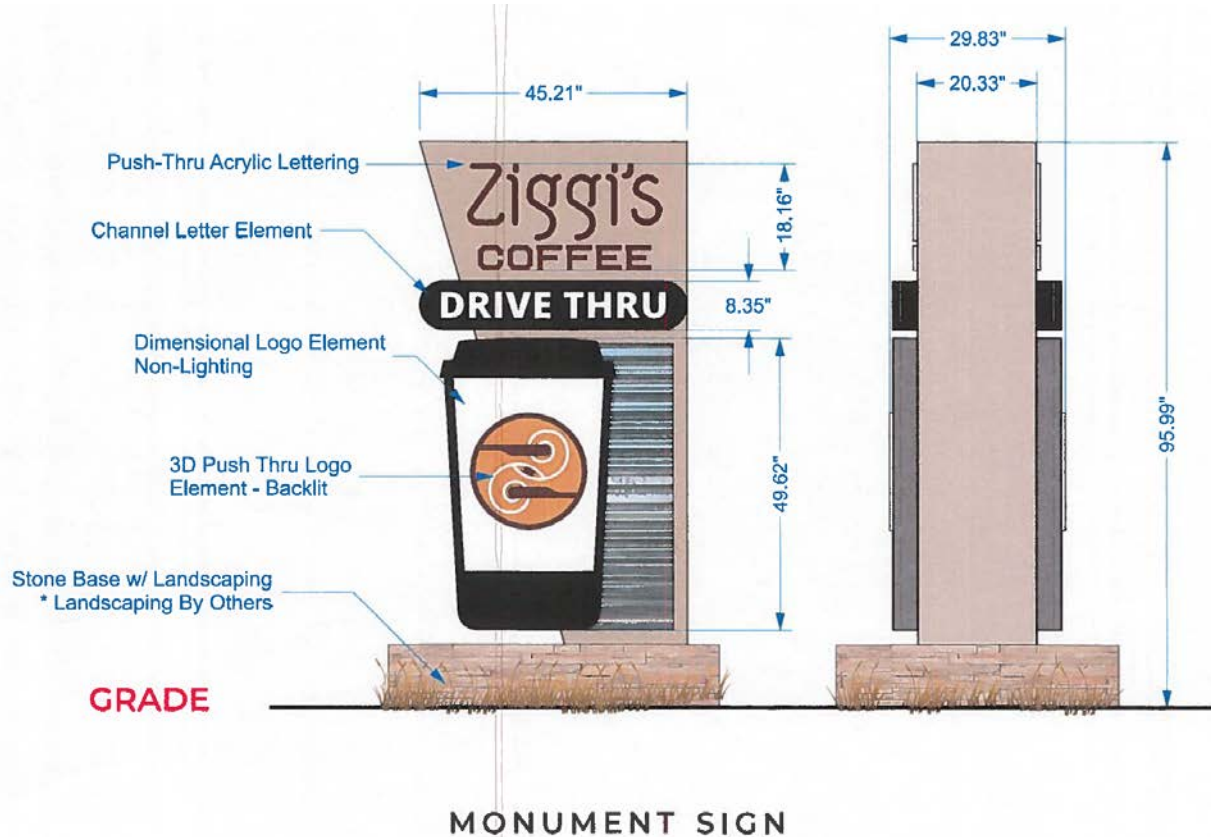


Proposed Sign Location



Proposed Sign

- 8' in height
- ~ 25 sf in area



Signs In Vicinity



Signs In Vicinity



Signs In Vicinity



Signs In Vicinity



Signs In Vicinity



Signs In Vicinity



Signs In Vicinity



Signs In Vicinity



Signs In Vicinity





Analysis

Staff has analyzed:

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

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.



7494 Westgate Drive

Town of Windsor Board of Adjustment – May 23, 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.*



7494 Westgate Drive

Town of Windsor Board of Adjustment – May 23, 2019

Findings

- Frontage on SH 392
- Speed of traffic on SH 392
- Small building setback ~ 85 feet
- Size and height of sign appropriate for area; fits in neighborhood
- Property is located on arterial roads where a sign of this size is appropriate.
- Impacts to safety, welfare, and public interest not foreseen



7494 Westgate Drive

Town of Windsor Board of Adjustment – May 23, 2019

Recommendation

No unnecessary hardship exists. However, should the BOA be inclined to approve the variance request, findings of fact supporting the decision are required. Suggested findings for this case are as follows:

1. The overall size and height of the proposed sign is in proportion to the size of existing signs in the immediate vicinity and is appropriate for the specific lot and circumstances;
2. The granting of this variance request will not alter the character of the surrounding neighborhood;
3. The proposed height of the subject signs meets the spirit and intent of the sign regulations; and
4. The granting this variance will not pose any public safety or welfare concerns.



7494 Westgate Drive

Town of Windsor Board of Adjustment – May 23, 2019

Recommendation

If the Board of Adjustment moves to approve the variance request - to allow the freestanding sign to be approximately 25 square feet in area and up to 8 feet tall - the following condition is recommended by staff:

1. The applicant obtains a sign permit from the Planning Department prior to installation of the sign.



7494 Westgate Drive

Town of Windsor Board of Adjustment – May 23, 2019

Recommendation

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 condition 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.



7494 Westgate Drive

Town of Windsor Board of Adjustment – May 23, 2019

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



7494 Westgate Drive

Town of Windsor Board of Adjustment – May 23, 2019



MEMORANDUM

Date: May 23, 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 and Code Section 16-12-50 pertaining to open space in the Single Family Residential (SF-1) Zone District – Kerns Subdivision 11th Filing Lot 1; David Byrne, owner/applicant
Item #: C.2

Background

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

This request is to create a building envelope for the garage. The garage would be no closer than 10 feet from the western property line, would meet side and rear offsets of 5 feet and would approximately 25'x25' in area.

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

Municipal Code Section 16-12-40 states:

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

Municipal Code Section 16-12-50 states:

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

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

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

In 2003, the lot was subdivided to create 2 lots. A variance was obtained to allow the subdivision of lots less than 6,000 sf for both lots. The north lot is now 4,900 square feet and the south lot is 3,927.5 square feet. The variance allowed for a new house to be constructed on the southern lot with a 10-foot setback from the west property line. However, the variance did not include the 10-foot setback for the northern property. The variance also allowed for approximately 1,977 sf of open space on the south lot but did not include a new minimum for the north lot.

The applicant calculated 2,424 sf of open space on the lot currently. Staff calculations from the plat and aerial resulted in the subject lot having approximately 2,000 sf of open

space if only area without impervious surfaces is considered. If all areas without structures are considered, it is close to the figure submitted by the applicant. The permeable land surrounding the lot between the inside of the sidewalk and the lot is approximately 1,700 sf. With this considered, the area functions as if it has more than 3,000 sf of open space.

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

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

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 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.
- Garage location would allow for a 20'+ driveway between the garage and sidewalk.
- The garage will be setback 5' setbacks from the south and east property lines and therefore will not encroach into utility easements.
- Drainage should not be impacted since the garage will be built in an area that is currently hard surface.

Recommendation

Staff has not determined that an undue hardship exists because the property can be reasonably used under the conditions of the Code . However, the request and circumstances of the site are consistent with variances granted in the recent past in the older part of town. Therefore, staff is recommending approval of the variance request - to create a building envelope to allow a 25'x25' garage addition or a detached garage to be located as proposed with a minimum setback of 10' from the western property line and open space of 1,850 square feet – with the following conditions of approval:

1. The applicant obtains a building permit for the garage.

2. A setback survey is conducted with the installation of the foundation of the garage to confirm setbacks.

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

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

Since all motions are to be made in the affirmative, staff recommends that the following motion, second and action on the petition be made as follows:

1. A motion to approve the request for a variance from Section 16-12-40 and 16-12-50 with the two conditions recommended by staff.
2. A second; and
3. The Chair calling for the vote as follows: All members in favor of the variance vote "yes"; all opposed to the variance request vote "no", with a minimum of four "yes" votes required to approve the variance request.

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

Notification

May 7, 2019 public hearing notice posted on Town of Windsor website
May 7, 2019 development sign posted on the subject property
May 10, 2019 public hearing notice published in the paper

Attachments

Application materials
Presentation

CC: David Byrne, 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*:

Lot: 16 Block: 1 Subdivision: KERNS

Lot 1 Kerns Subdivision 11th Filing

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

16-12-50 OPEN SPACE 16-12-40 SET BACK

3

OWNER:

Name(s)*: DAVID BYRNE

Address*: 29 LOCUST ST.

Phone #*: 970 405 9314 Email*: TRANSFORMATIONSDR@GMAIL.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 complete 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*.

See attached sheet

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.*

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

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

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:

David A. Byrne

Date:

4/19/19

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

Print Name:

DAVID A. BYRNE

Submitted On:

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

*Required fields

Town of Windsor – Planning Department

301 Walnut Street | Windsor, Colorado | 80550 | phone 970-674-2415 | fax 970-674-2456 | www.windsorgov.com

VARIANCE APPLICATION

DAVID BYRNE

29 LOCUST ST.

Lot: 16 Block: 1 Kerns Subdivision

ITEM #4 Code 16-12-40 (lesser set back from west property line)

1. In order to attach this proposed garage to the house and utilize the door into the house and match the existing roof line the 20' set back on the west will need to be reduced to 17'.
2. The existing house (built in 1930) encroaches into the set back 10.8'. This results in a situation where matching the house and adhering to set back requirements prohibits functional use for an attached garage.
3. This addition will enhance the appearance of the neighborhood since it architecturally matches the house and will keep our vehicles out of sight.
4. Economics are not a consideration. Functional use is the reason for this request.

ITEM #4 Code 16-12-50 (less amount of open space)

1. The current open space on this lot is 2424 sq ft.. The area where this proposed garage will sit is now covered with 973 sq. ft. of concrete paving, which will be removed. The proposed garage, driveway, and sidewalks will cover 1068 sq ft. This will result in an increase of covered space (95 sq ft) and a decrease of open space to 2329 sq ft. I request a reduction of the open space from 3000 sq ft to 2300 sq ft.
2. The amount of open space on this lot is restricted because of preexisting conditions. With the open lawn area in the right of way to the west and north there is still well over 3000 sq ft of open space.
3. This variance will not impact the character of the neighborhood.
4. Economic considerations don't pertain to this situation.



Variance Request:

Kerns Subdivision

11th Filing Lot 1–

29 Locust Street

*Allowance for reduced setback for a garage &
reduced minimum open space*

Board of Adjustment – May 23, 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.”

Variance of Municipal Code Section 16-12-50 pertaining to open space requirements:

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



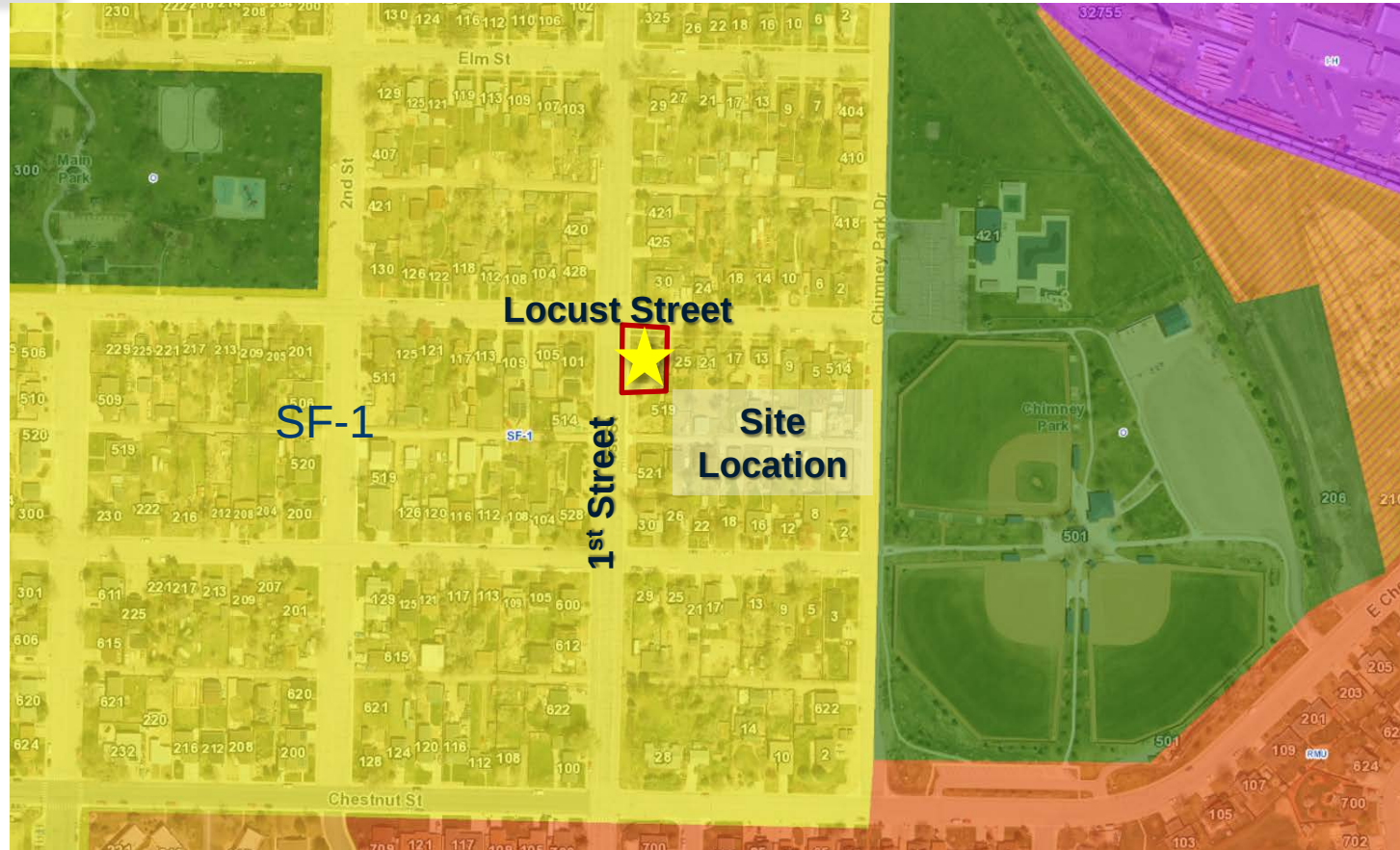
29 Locust Street

Town of Windsor Board of Adjustment – May 23, 2019

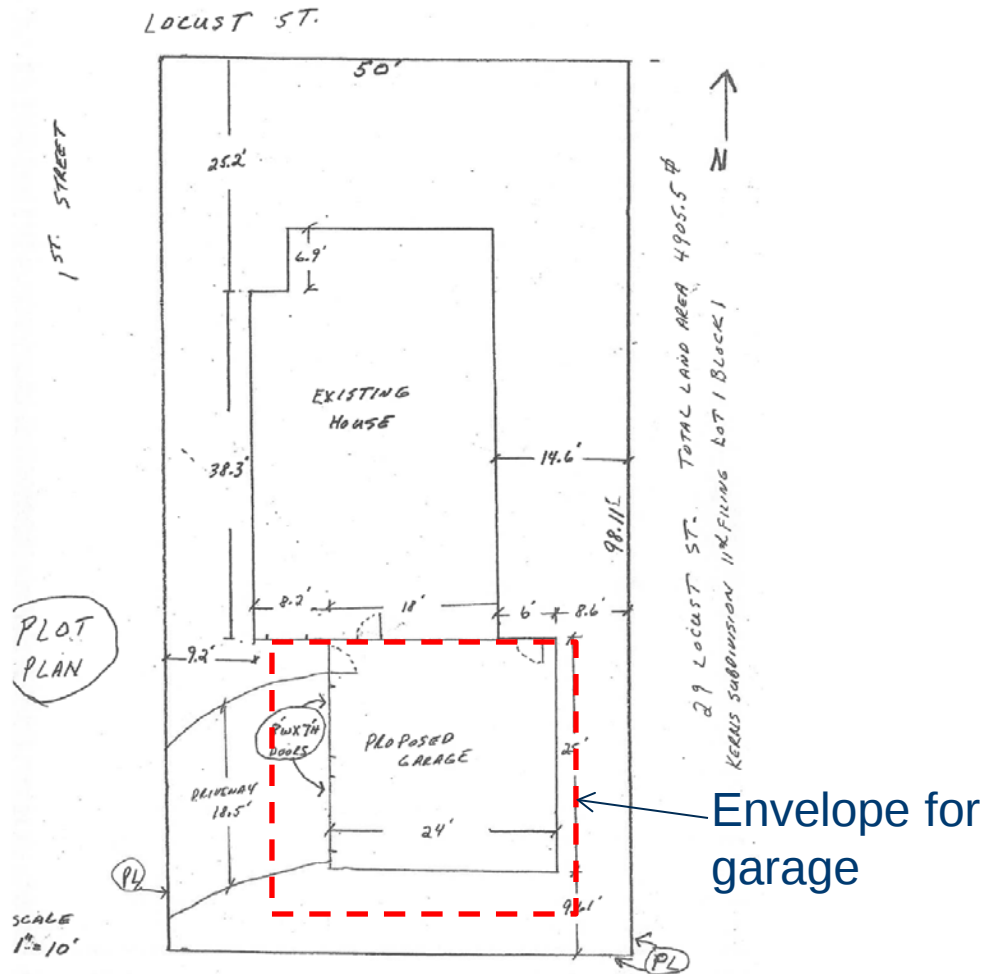
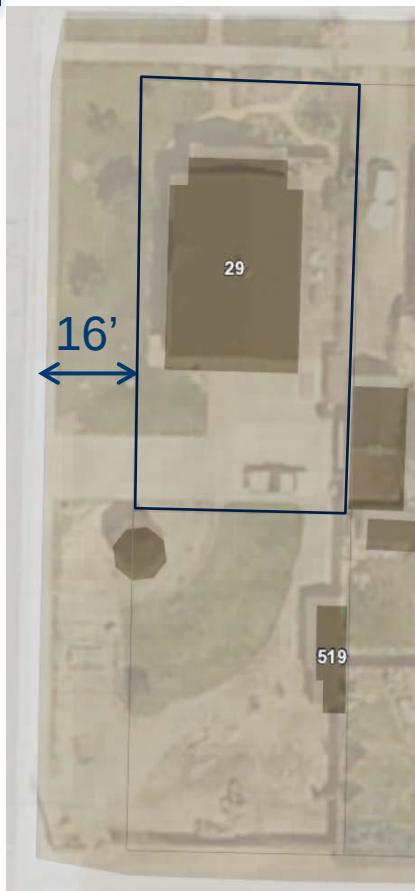
Site Vicinity Map



Zoning Map



Site Plan



Site Pictures



Site Pictures



Site Pictures



Site Pictures



Site Pictures



Site Pictures



Site Pictures



Site Pictures



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.*



29 Locust Street

Town of Windsor Board of Adjustment – May 23, 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.*



29 Locust Street

Town of Windsor Board of Adjustment – May 23, 2019

Analysis

- The property can be reasonably used under the conditions of the Code
- Older plat
- 1930s house
- Front setback requirement from both 1st Street & Locust Street
- Existing setback from 1st Street is 9.2'



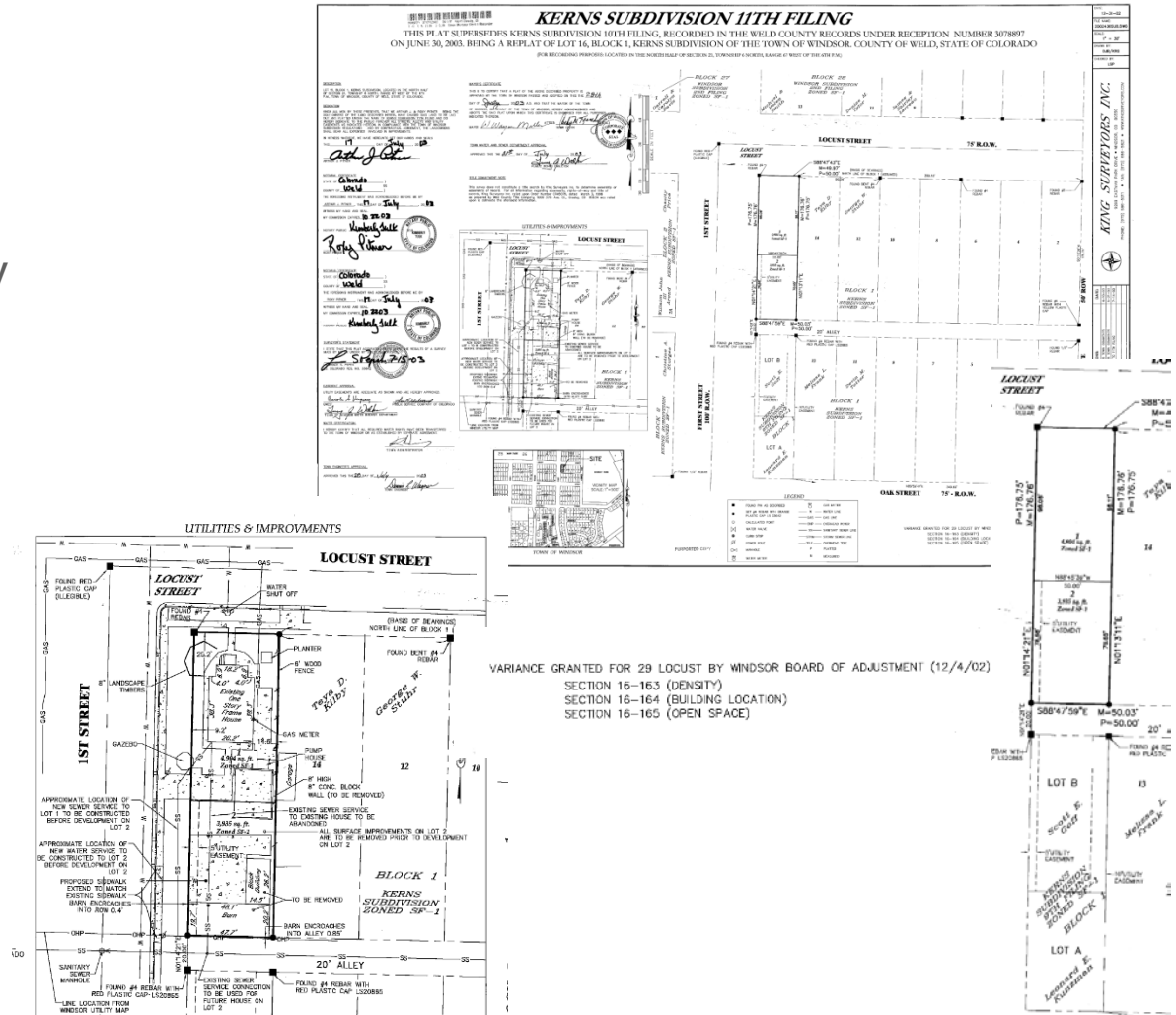
29 Locust Street

Town of Windsor Board of Adjustment – May 23, 2019



Analysis

- 2003 variance on property
- Setback, open space granted to southern lot
 - 10' setback
 - 1,977 sf open space
- With open space in row
 - ~2,000 lot
 - ~1,700 row
- Proposed open space: 1,850 sf
- Proposed setback from west property line: 10'





Analysis

DECISION OF THE WINDSOR BOARD OF ADJUSTMENT ZONING CERTIFICATE

This certificate is evidence that on December 4, 2002, the Windsor Board of Adjustment granted a Variance of Town of Windsor Municipal Code Section 16-163 – Density; Section 16-164 – Building Location and Section 16-165 – Open Space in the Single-Family Residential (SF-1) Zoning District located at 29 Locust Street. The applicants, Mr. Arthur and Ms. Roxy Pitner, had requested variances in order to subdivide Lot 16, Block 1 of Kern’s Subdivision into two (2) lots and allow construction of a new house on the south lot. The north lot would be 4,900 square feet in area and the south lot would be 3,927.5 square feet in area. Section 16-163 requires the minimum lot size in the SF-1 zoning district to be 6,000 square feet. The new house, on the south lot, is proposed to be constructed at ten feet (10’) from the west (front) property line. Section 16-164 requires a minimum front setback of twenty feet (20’). The proposed open space for the south lot would be approximately 1,977.5 square feet. Section 16-165 requires a minimum of 3,000 square feet livable open space.

Upon a motion duly made and seconded to approve this request, the Windsor Board of Adjustment voted unanimously, to approve the motion. The Variance of Section 16-163 to allow the north lot to be 4,900 square feet in area and the south lot to be 3,927.5 square feet in area; variance of Section 16-164 to allow the front (west) setback to be ten (10) feet from the property line and the variance of Section 16-165 to allow the open space for the south lot to be 1,977.5 square feet was granted based upon the special condition that this lot was created prior to the existing zoning code and that literal enforcement of the code would result in an unnecessary hardship.

This Variance of Section 16-163, Section 16-164 and Section 16-165 was granted to:

Mr. Arthur and Ms. Roxy Pitner

owner(s) of the property described as follows:

29 Locust Street
Lot 16, Block 1, Kern’s Subdivision
Windsor, CO 80550

NOTE: In order for this lot to be split, the owners will be required to apply for and receive approval of a minor subdivision, along with the associated fees, any required public improvements, easements, etc.

Analysis

The essential character of the surrounding neighborhood would not be altered.

- Adjacent to residential properties of similar proportions
- Several similar subdivisions at the end of blocks in the area that received variances to allow the reduced setback and lesser amount of open space
- Reflect house in design
- The garage would not encroach into the 1st Street setback more than the existing house does
- 25'x25' garage typical for area



29 Locust Street

Town of Windsor Board of Adjustment – May 23, 2019

Analysis

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

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



29 Locust Street

Town of Windsor Board of Adjustment – May 23, 2019

Recommendation

Staff has not determined that an undue hardship exists because the property can be reasonably used under the conditions of the Code . However, the request and circumstances of the site are consistent with variances granted in the recent past in the older part of town. Therefore, staff is recommending approval of the variance request - to create a building envelope to allow a 25'x25' garage addition or a detached garage to be located as proposed with a minimum setback of 10' from the western property line and open space of 1,850 square feet – with the following conditions of approval:

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



29 Locust Street

Town of Windsor Board of Adjustment – May 23, 2019

Recommendation

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

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



29 Locust Street

Town of Windsor Board of Adjustment – May 23, 2019

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



29 Locust Street

Town of Windsor Board of Adjustment – May 23, 2019



MEMORANDUM

Date: May 23, 2019
To: Board of Adjustment
From: Millissa Berry, AICP, Senior Planner
Re: Public Hearing – Variance of Municipal Code Section 16-9-50(e) pertaining to sign setbacks and offsets – East Pointe Subdivision (Main Street and SH 257); Chris Ruff, owner/applicant
Item #: C.3

Background

The applicant, Mr. Chris Ruff, is requesting a variance from Municipal Code Section 16-9-50(e) to allow for the separation between freestanding signs to be less than 100 feet.

Municipal Code Section 16-9-50(e) states the following:

Distance separation... Freestanding signs shall be separated by at least one hundred (100) feet.

The East Pointe Subdivision is located at the southeast corner of the intersection of SH 392 and SH 257. The subdivision plat includes an easement for the commercial center identification sign. A 30' Greeley water line easement runs along the western portion of the sign easement area.

The property immediately to the east of the sign easement obtained a sign permit from the Town of Windsor for a freestanding sign to be located 15 feet from its western property line. The freestanding sign is approximately 75 feet from the water line easement.

The combination of the water line easement and location of the neighboring property owner's freestanding sign reduces the ability for the planned commercial center identification sign.

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

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

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

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

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

Recommendation

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

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

1. Special site specific conditions exist due to the water line easement and tract configuration.
2. The granting of this variance request will not alter the character of the surrounding neighborhood.
3. The granting this variance will not pose any public safety or welfare concerns.

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

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

Since all motions are to be made in the affirmative, staff recommends that the following motion, second and action on the petition be made as follows:

1. A motion to approve the request for a variance from Section 16-9-50(e) with the conditions recommended by staff.
2. A second; and
3. The Chair calling for the vote as follows: All members in favor of the variance vote "yes"; all opposed to the variance request vote "no", with a minimum of four "yes" votes required to approve the variance request.

Notification

May 7, 2019 public hearing notice posted on Town of Windsor website
May 7, 2019 development sign posted on the subject property
May 10, 2019 public hearing notice published in the paper

Attachments

Application materials
Presentation

cc: Chris Ruff, 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*: _____

Lot: _____ **Block:** _____ **Subdivision:** _____

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

3

OWNER:

Name(s)*: _____

Address*: _____

Phone #*: _____ Email*: _____

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 complete 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*.**

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.***

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

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

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: _____ **Date:** _____

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

Print Name: _____

Submitted On: _____

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

**Required fields*



**Variance Request:
East Pointe Subdivision
SE of SH 392 & SH 257
Intersection**

*Request for reduction of separation
requirement between freestanding signs*

Board of Adjustment - May 23, 2019

Variance Request

Variance of Municipal Code Section 16-9-50(e) to allow for a reduced separation between 2 freestanding signs.

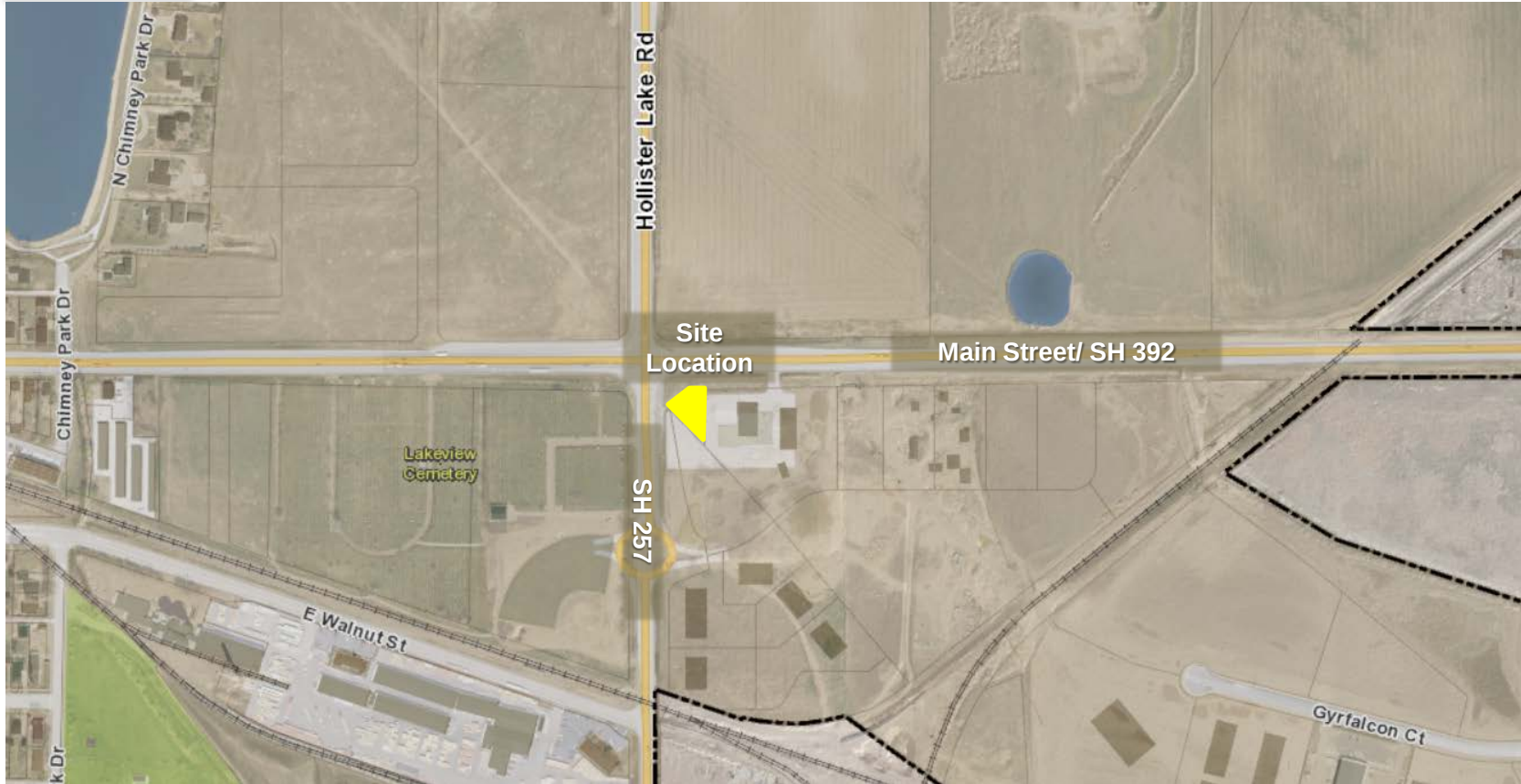
Distance separation... Freestanding signs shall be separated by at least one hundred (100) feet.



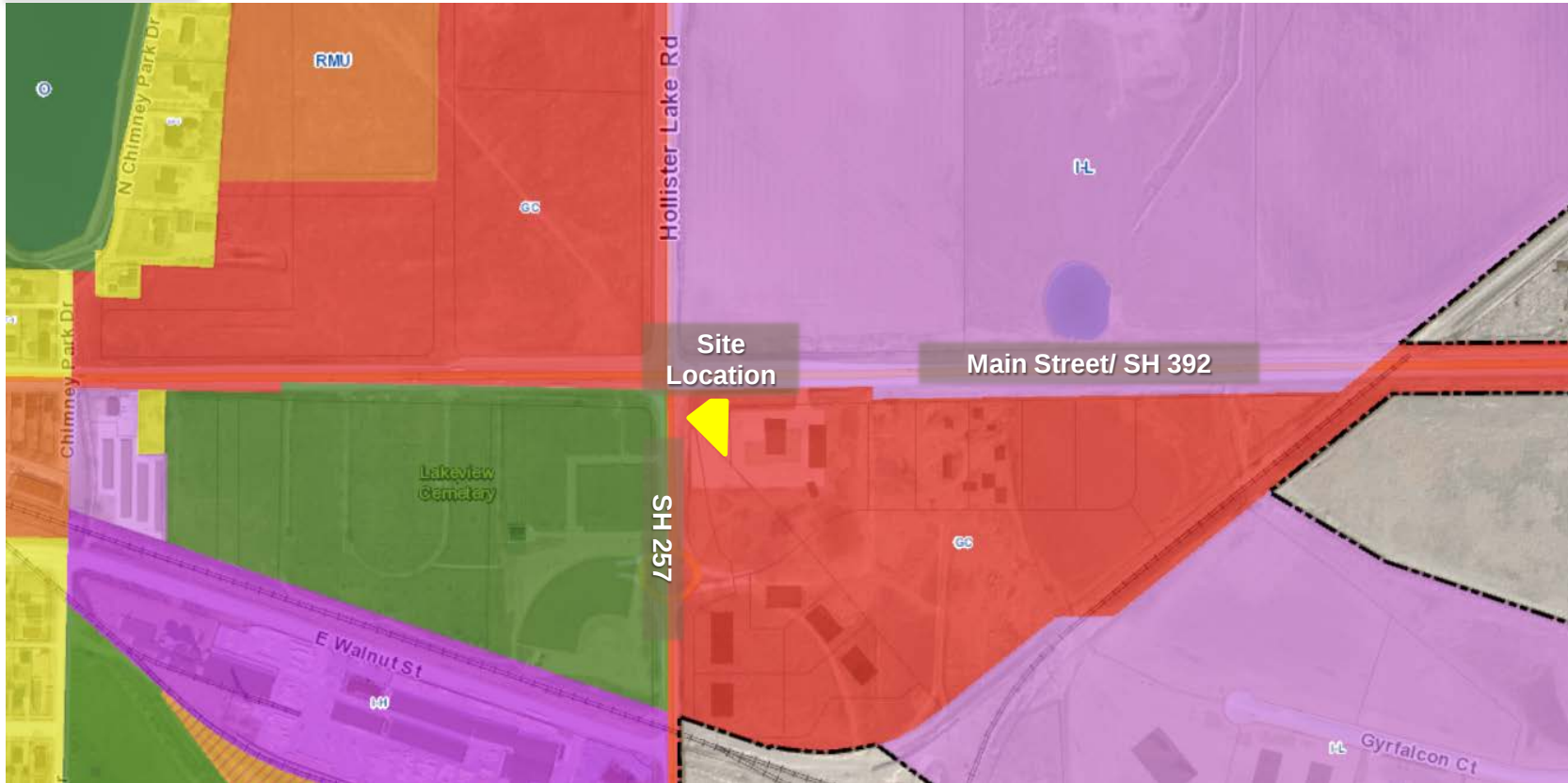
East Pointe Subdivision

Town of Windsor Board of Adjustment – May 23, 2019

Site Vicinity Map



Site Zoning Map

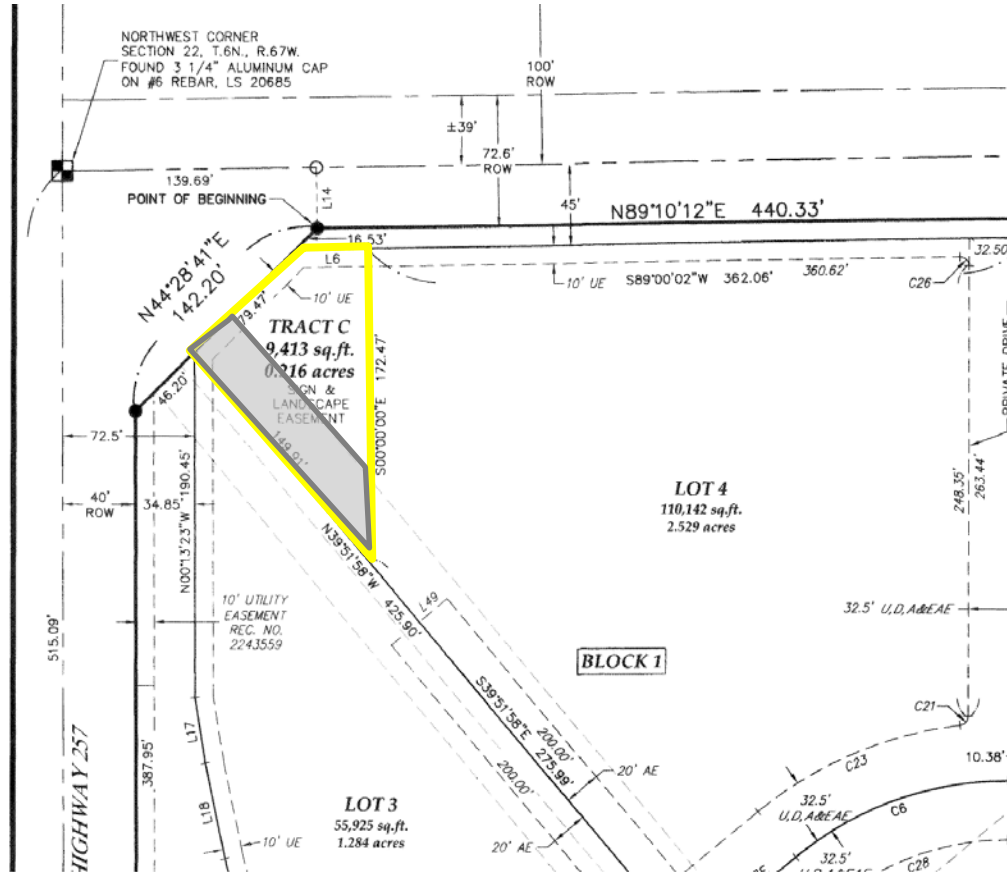




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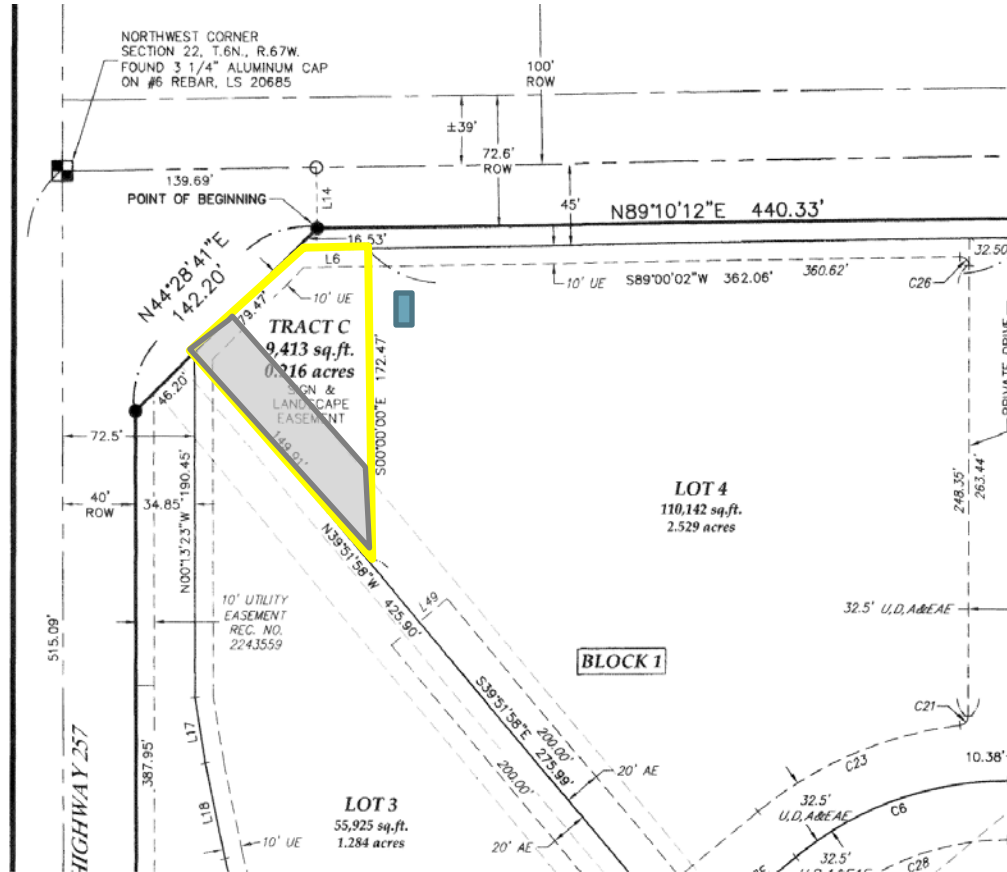
East Pointe Subdivision Plat

- sign tract
- water line easement



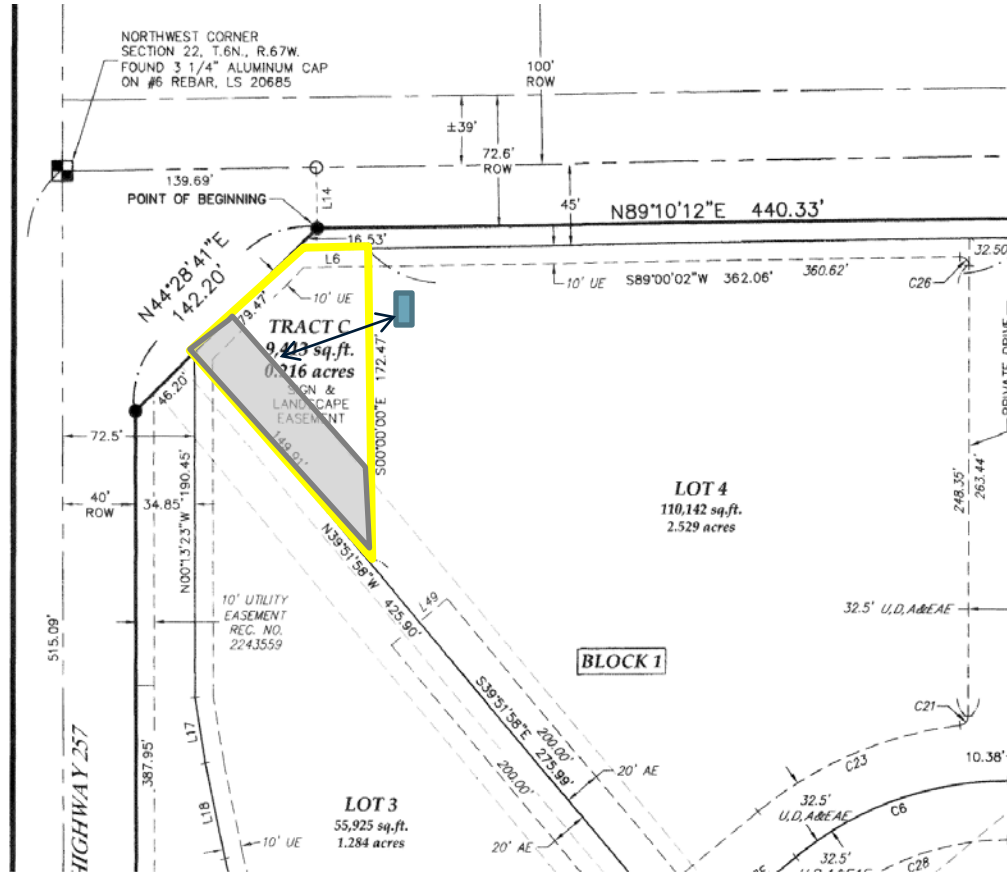
East Pointe Subdivision Plat

- sign tract
- water line easement
- existing monument sign



East Pointe Subdivision Plat

- sign tract
- water line easement
- existing monument sign
- ~75' separation



Commercial Center Sign



Nearby Sign



Viewing the sign's relative height versus the Kum & Go sign. Chris Ruff is in the photo and is 6' tall. The photographer is 5'6" tall and standing in the island at the SW corner of Hwy 257 & 392.

Nearby Sign



Nearby Sign



Nearby Sign





Site

Staff has analyzed:

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

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.



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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.*



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Findings

- Special site specific conditions exist
 - Greeley water line easement
 - Unbuildable, odd-shaped tract
- Impacts on public interest, safety and welfare not foreseen
 - Sign outside of traffic intersection sight triangle
 - Would not block existing freestanding sign
 - Outside water line easement
- The sign fits the character of the neighborhood.



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Recommendation

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

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

- Special site specific conditions exist due to the water line easement and tract configuration.
- The granting of this variance request will not alter the character of the surrounding neighborhood.
- The granting this variance will not pose any public safety or welfare concerns.



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Recommendation

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

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



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Recommendation

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:

- A motion to approve the request for a variance from Section 16-9-50(e) with the conditions recommended by staff.
- A second; and
- 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.



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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



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