



BOARD OF ADJUSTMENT / APPEALS REGULAR MEETING

June 27, 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 May 23, 2019

C. BOARD ACTION

1. 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 – Bowman's Addition Lot 16 Block 3 - 317 9th Street; Everett and Beverly Darco, 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 n 16-12-40 pertaining to setback in the Single Family Residential (SF-1) Zone District – Park Addition 2nd Filing Lot 1 – 132 Ash Street; Bonnie Ham, 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 sign setbacks and offsets – Eagle Crossing 6th L2 - 6435 Crossroads Blvd – Maura Rux, 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, 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*
Thursday, October 24, 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

May 23, 2019 // 7:00 p.m. // Town Board Chambers
301 Walnut Street, Windsor, CO 80550

MINUTES

A. CALL TO ORDER

Vice-Chairman Valdes called the meeting to order at 7:01 p.m.

1. Roll Call

The following members were present:

Vice-Chairman	Jose Valdes
	David White
	Jennifer Dionne
Alternate	Charles Schinner
Alternate	Patrick Miller
Senior Planner	Millissa Berry
Deputy Town Clerk	Trisha Conway

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

There were no changes to the agenda.

3. Reading of the statement of the documents to be entered into the record:

I enter into the record the Town's Comprehensive Plan, the Town's Zoning Ordinance, the staff report regarding the action items of this hearing, and all of the testimony received at this hearing.

B. CONSENT CALENDAR

1. Approval of the minutes from February 28, 2019

Mr. Valdes moved to approve the consent calendar as presented; Mr. Schinner seconded the motion. Roll call on the vote resulted as follows; Yeas – Valdes, White, Dionne, Schinner, Miller; Nays – None; Motion carried.

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-9-110(d) pertaining to the 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.

Per Ms. Berry the applicant has decided to table the application until an undetermined date.

Mr. Schinner made a motion to table the item; Mr. Miller seconded the motion. Roll call on the vote resulted as follows: Yeas – Valdes, White, Dionne, Schinner, Miller; Nays – None; Motion carried.

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

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

The applicant, Mr. David Byrne, 29 Locust Street, stated that he 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.

Mr. Byrne stated in 2003 the property was split and a variance was granted for the southern lot. The set back on the west side was changed from 20 feet to 10 feet, and the open space requirement was reduced from 3000 square feet (sf) to 1977 sf. He is requesting that the northern lot be given similar consideration, and the setback requirement be reduced from 20 feet to 10 feet.

Per Mr. Byrne the overall open space requirement would be 1850 sf with a 10 foot setback is consistent with other neighboring properties where homes were built prior to establishing the current codes. The existing setback of 20 feet would be difficult to align access to the garage with the southern entrance of the house. Locating the garage closer to the west property line would be more functional, and architecturally pleasing.

Mr. Byrne stated this addition to the property will enhance the appearance, and a good sense of style that will match his home. Mr. Byrne requested a variance on the north lot to create a building envelope to allow 25'x25' garage addition or detached garage to be located within the home setback of 10 feet from the west property line and allow an open space of 1850 sf.

Mr. Valdes asked if there are any comments from public regarding the variance request. There was none.

Ms. Berry stated this variance request pertained to the setback in the Single Family Residential (SF-1) Zone District – Kern's Subdivision 11th Filing Lot 1 (29 Locust Street), and the open space consideration on the lot.

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 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.

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.

Per Ms. Berry the site is located off of 1st, and Locust in the older part of town. It is zoned Single Family Residential (SF-1) Zone District. The lot towards the south of the property is vacant.

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.

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.

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 or ice buildup onto the walk which is particularly important in the winter months when it 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.

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.

Mr. Valdez asked Mr. Byrne if he had an architectural rendering of the garage to give the Board an idea of the design, and compatibility of the home.

Ms. Berry responded it was not included in the packet of materials.

Mr. Valdez asked whether the garage was attached or detached, and if it would still fall within the infringed recommendation boundaries of approval that have been recommended.

Ms. Berry responded that the applicant would need to build within the envelope approved and meet building code. The design of the structure would need to be compatible with the neighborhood.

Per Mr. Byrne the house was built in 1930, and is a craftsman style home. It has a dormer in the front, and 6x6 post coming out. Mr. Byrne stated he is going to continue that design, and finish the siding the same as the house. The style will match the house, and Mr. Byrne stated he was very particular about that. Mr. Byrne also stated he built homes all of his life.

Mr. Valdes asked about the (2) conditions posed by staff. A setback survey is with the installation of the foundation of the garage to confirm setbacks, and the building permit.

Mr. Valdes discussed concern with surveys in the past, and wanted to verify notice requirements within the building permit.

Mr. Valdes asked Mr. Byrne if he understood the building envelope he had to work with, and the garage would not be 10 feet somewhere else.

Mr. Byrne responded that he was limited on space, and if the garage is detached it would be 20 feet wide at a minimum. Mr. Byrne would have 10 feet between the house and the garage. He will likely build the garage larger reducing that space by a couple of feet still remaining inside of the building envelope.

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

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

Mr. Valdes asked for a motion on the variance.

Mr. Schinner moved to approve the request for a variance with the wording of an 25'x25' building envelope with the conditions recommended by staff.

Ms. Berry commented that the building envelope will be much larger, but the garage will be 25'x25'.

Mr. Schinner asked Ms. Berry how large the building envelope will be.

Ms. Berry responded it will allow for the building envelope to be 10 feet from the West setback, 5 feet from the South setback, and 5 feet from the East setback.

Mr. Schinner asked Ms. Berry if there was a drawing that the board could reference.
Per Ms. Berry referenced Figure "A".

Mr. Schinner asked Ms. Berry if the document could be labeled.
Per Ms. Berry, it can.

Mr. Schinner moved to amend his approval making a motion to grant the variance adopting Figure "A" drawing of the building envelope with the (2) conditions recommended by staff for a survey, and building permit. Dionne seconded the motion. Roll call on the vote resulted as follows: Yeas – Valdes, White, Dionne, Schinner, Miller; Nays – None; Motion carried.

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

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

The applicant, Mr. Chris Ruff, 311 Habitat Bay, is the developer of East Pointe Subdivision. He stated that he was 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.

Mr. Ruff stated that when they designed the subdivision, they created an envelope on the corner of SH392 and SH257 for the monument sign to mark the name of the subdivision. East Pointe Subdivision subsequently sold the lot to Kum & Go, and Kum & Go went through the sign permitting process. The planning department did not consider the fact that East Pointe Subdivision already reserved an area for a monument sign. Kum & Go applied to have the sign, but where there monument sign stands was within 100 feet of where the building envelope stands for East Pointe Subdivision monument sign.

Mr. Ruff stated that he did not have any place to move the monument sign. The hardship is East Pointe Subdivision had an approved site for the sign, and they did not have any control over the Kum & Go process.

Per Mr. Ruff the distance between the (2) monuments signs is 75 feet, and the sign would not block the view of the Kum & Go sign. The sign would be compatible with the subdivision, and look nice.

Mr. Valdes asked if there were any comments from the public.

Ms. Berry repeated that this is a variance request for the East Pointe Subdivision the location is southeast of the intersection of SH392 and SH257. It is a request for reduction of separation between freestanding signs. She said the terms "monument sign" and "freestanding sign" maybe interchanged in this discussion.

Municipal Code Section 16-9-50(e) states the following: *Distance separation... Freestanding signs shall be separated by at least one hundred (100) feet.*

She stated that the East Pointe Subdivision is located at the southeast corner of the intersection of SH 392 and SH 257. The property is zoned General Commercial (GC). The subdivision plat includes an easement for the commercial center identification sign. The track is large at .2 acres, but a 30' Greeley water line easement runs along the western portion of the sign easement area. The Greeley Water department will not allow a sign to be installed within their easement.

Per Ms. Berry 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. It was overlooked that there was a sign easement that should have been considered, and 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. Any sign placed in the easement would be within 100 feet.

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.

Ms. Berry stated that 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 view shed (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.

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.

Mr. Valdes asked if there were any questions for staff or the applicant.

Mr. White asked Mr. Ruff if Kum & Go had not had their sign in place where it is located today would the placement of the sign been any different.

Mr. Ruff replied no.

Mr. Valdes asked Mr. Ruff if Kum & Go had any input on this matter, or if they have expressed any concern.

Mr. Ruff stated that he had not spoken to Kum & Go about the sign.

Mr. Valdes asked if there will be some issues with Kum & Go after the sign is installed.

Mr. Ruff stated Kum & Go knew of the sign easement when the lot was sold to them. The plat was already in place, and a conversation was held between buyers that a sign would be placed. Mr. Ruff stated that he did not have the intention to block their sign. He said that he just wanted to announce to the general public where East Pointe Subdivision is located and that the monument sign would be rather low key.

Mr. Valdes asked if the sign needed to be viewed by staff for the style or characteristics.

Ms. Berry stated that all signs need to be reviewed by staff.

Ms. Berry stated that Kum & Go may not have been aware of the separation, and many businesses are not fully aware of what is included in the sign code.

Mr. Valdes asked about the statement that was made for being as close to the water line as possible. Therefore will the Town of Windsor check on the final placement of that monument before it's actually installed.

Ms. Berry replied that the applicant will go through the sign permit application and with that, staff will see where it will be located in proximity to that water line.

Per Mr. Ruff City of Greeley is very protective of that water line, and there is no chance that he would be able to build in that area.

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

Mr. Valdes asked for a motion on the variance.

Mr. Schinner moved to approve the request for a variance as written; Ms. Dionne seconded the motion. Roll call on the vote resulted as follows: Yeas – Valdes, White, Dionne, Schinner, Miller; Nays – None; Motion carried.

D. COMMUNICATIONS

1. Communications from the Board Members

Mr. Schinner asked staff to please ask the Planning Director to look at the surrounding property so that some of this does not happen. Mr. Schinner stated to take in the whole environment under consideration and not just one plat.

2. Communications from staff

Ms. Berry has (1) announcement that Greg Lebahn has moved out of the Town of Windsor, and he can no longer sit on the board. Therefore, there is a regular seat open. She asked Patrick Miller and Charles Schinner to apply if either wanted to take a full-time seat.

Mr. Valdes asked Ms. Berry if there are any pending variances for Thursday, June 27th.

Per Ms. Berry stated the only one that might come back would be Ziggi's Coffee, but I think that they had hesitation for something that soon. We have to have notice by the 1st of the month, and I can let you know then.

Mr. Valdes stated he would not be in town on Thursday, July 25th.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:47 p.m.

Deputy Town Clerk, Trisha Conway



MEMORANDUM

Date: June 27, 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 – Bowmans Subdivision Lot 16, Block 3; Everett and Beverly Darco, owners/applicants
Item #: C.1

Background

The applicants, Mr. Everett Darco and Mrs. Beverly Darco, are requesting a variance from Municipal Code Section 16-12-40 and Section 16-12-50 to allow for a new house with an attached garage to be built on their property addressed as 317 9th Street in the Single Family Residential (SF-1) Zone District.

The variance request from Section 16-12-40 is to allow a front setback less than 20 feet from the west property line. 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 that allowed the lot to be less than 6,000 square feet in area.

The current 624 square foot house, built in 1902, would be removed and replaced with a house of approximately 2400 square feet (includes attached garage and second floor). The proposed front setback along 9th Street is 5 feet and the proposed open space for the lot is approximately 2,272 square feet. The proposed site plan can be found in the presentation. The proposed attached garage would be accessed from the alley.

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 a legal lot within the Town. The property was subdivided to its current size prior to the adoption of the current municipal code. The property was originally platted in the early 1900s and then subdivided to its current state. Records were not found but based on information found on nearby properties with similar conditions, the subdivision likely happened prior to 1950. The lot is approximately 4,000 square feet in area.

Setback

The existing house, built in 1902, has a 5 foot setback from the western property line. No prior variances were found on the subject property but a setback variance was approved in 2010 for the property immediately to the north where a reduced setback of 9.5 feet and lesser minimum open space of 2,142 square feet was approved.

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 15 feet. With this area and the requested 5 foot setback, the house would be 20 feet from the inside of the sidewalk. The house would also be setback at a distance from the sidewalk as the other houses on the east side of 9th Street in this neighborhood. The submitted materials show

the access to the garage being off of the alley and is allowed as proposed. If garage access ever was proposed off of 9th Street, verification would need to be presented to ensure a driveway was at least 20 feet in length.

One reason for the reduced setback is to allow a 10 foot sewer easement along the rear of the property and to provide more of a buffer and yard between the new house and the house immediately to the east. The Engineering Department will need verification of the location of the sewer and water lines at the time of building permit.

Open Space

The requested 2,272 square feet of open space is similar to the open space found on other lots in the area that were subdivided similarly to this one. The open space area in the right-of-way between the western lot line and the sidewalk is approximately 1,300 square feet. Combining the right-of-way area and proposed open space on the lot, the result would be open space of approximately 3,572 square feet.

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, including house size.
- There are several similar subdivisions at the end of blocks in the area. These some of the lots received variances to allow the reduced setback and lesser amount of open space; others there are no records found.
- The house will be designed with a pitched roof, asphalt shingles and exterior materials that meet code.

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 house 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 house would be approximately 20' from the sidewalk.
- The house would meet minimum setbacks for the side and rear yards.
- Drainage issues are not foreseen.

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 as proposed with the following conditions of approval:

1. The applicant obtains a building permit for the house.
2. A setback survey is conducted with the installation of the foundation of the house to confirm the setback.

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 lot was configured between 1903 and 1950 and is smaller than a typical single family lot due to the lot split.
2. The proposal is consistent with Town development decisions in the area.
3. The granting of this variance request will not alter the character of the surrounding neighborhood.
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 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

June 14, 2019 public hearing notice posted on Town of Windsor website
June 14, 2019 development sign posted on the subject property
June 14, 2019 public hearing notice published in the paper

Attachments

Application materials
Presentation

CC: Everett Darco, 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: 3 Subdivision: BOLOMAN'S

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

16-13-40 16-13-50

3

OWNER:

Name(s)*: EVERETT & BEVERLY DARCO

Address*: 317 9TH STREET

Phone #: 686-9902

Email*: SOIDB054@HOTMAIL.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 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 narrative for replies to questions _____

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: _____

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

Date: 6-5-2019

Print Name: _____

EVERETT C DARCO

Submitted On: _____

6-5-2019

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

*Required fields

Variance Request Narrative: 317 9th Street

1. I am asking for a 5' western setback and a 2,272 sq' open space.

Lot created is less than 6,000 sq'. It's 4,000 sq' so any typical house size would not meet code setback and open space with today's code.

2. The lot is legal.

3. 13' on rear design is to give a buffer to my neighbor to the east. Plus create an easement for sewer lines. The distance inside sidewalk to property line is ~15' plus 5' setback from property line creates this distance, 20' setback and ~1,307 sq' of open space.

The 1,307 sq' with the above mentioned ~2,272 sq' results in a total of over 3,000 sq' of open space, meeting code requirements for open space.

The garage access for this new build will be off the alley, which is adjacent to the property.

The sewer line will be located and relocated as necessary for the home at 289 Walnut street, which I own and live in. This sewer line runs through the property of 317 9th street. This sewer line will also be located within the above mentioned rear easement at 317 9th street.

New home build size and location of it are compatible with what is found in the neighborhood.

4. There is no economic issue.

We want to build a larger family dwelling for our disabled daughter. The current home is ~ 624 sq'.

Kind Regards,
Everett C Darco



Variance Request: Bowmans Subdivision Lot 16, Block 3– 317 9th Street

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

Board of Adjustment – June 27, 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.”



317 9th Street

Town of Windsor Board of Adjustment – June 27, 2019

Site Vicinity Map



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.*



317 9th Street

Town of Windsor Board of Adjustment – June 27, 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.*



317 9th Street

Town of Windsor Board of Adjustment – June 27, 2019

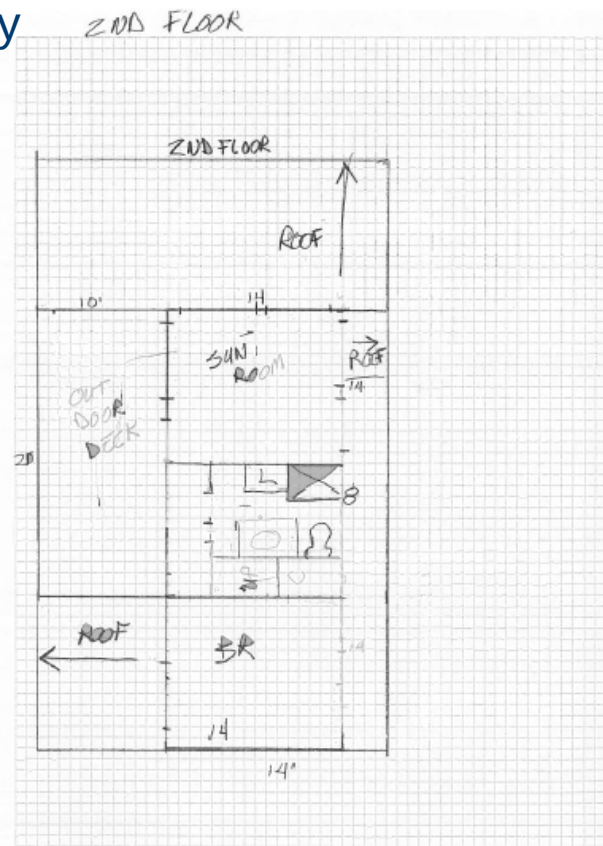
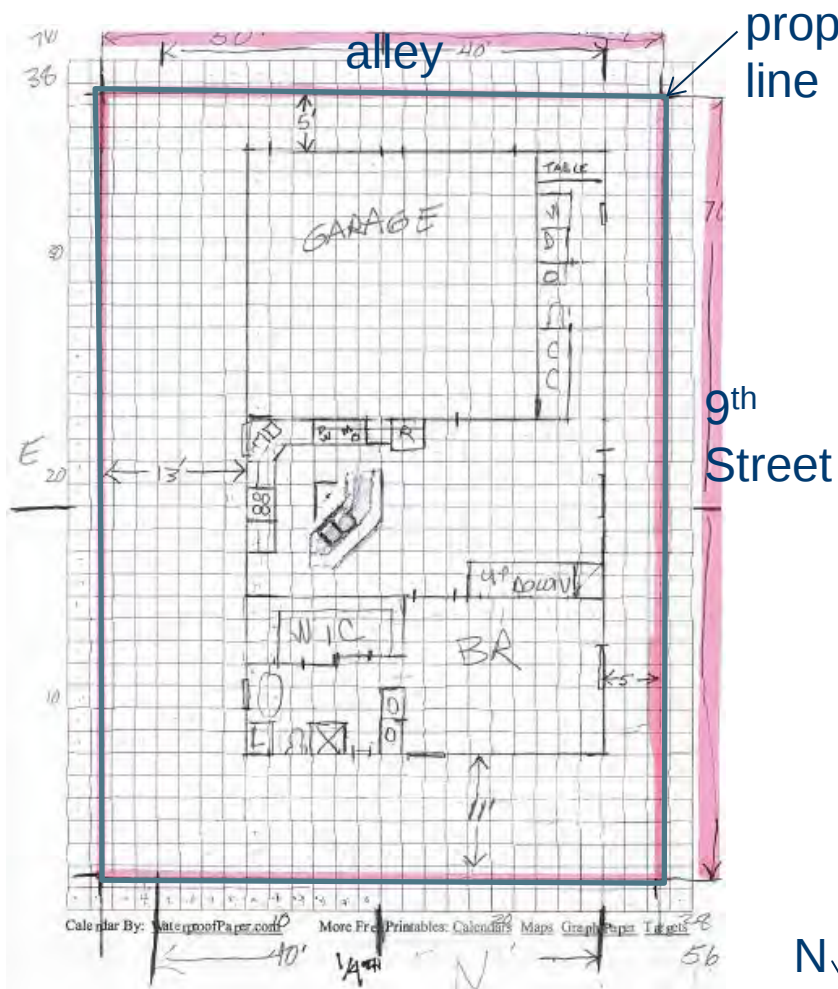


Analysis

- The property can be reasonably used under the conditions of the Code
- Older plat
- Subdivided prior to 1950
- 4,000 sf lot
- 1902 house (~624 sf)
- Existing setback from 9th Street is 5'
- Property line to sidewalk ~ 15'

N↓





Site Pictures



Site Pictures



Site Pictures



Site Pictures



Site Pictures



Site Pictures



Site Pictures



Site Pictures



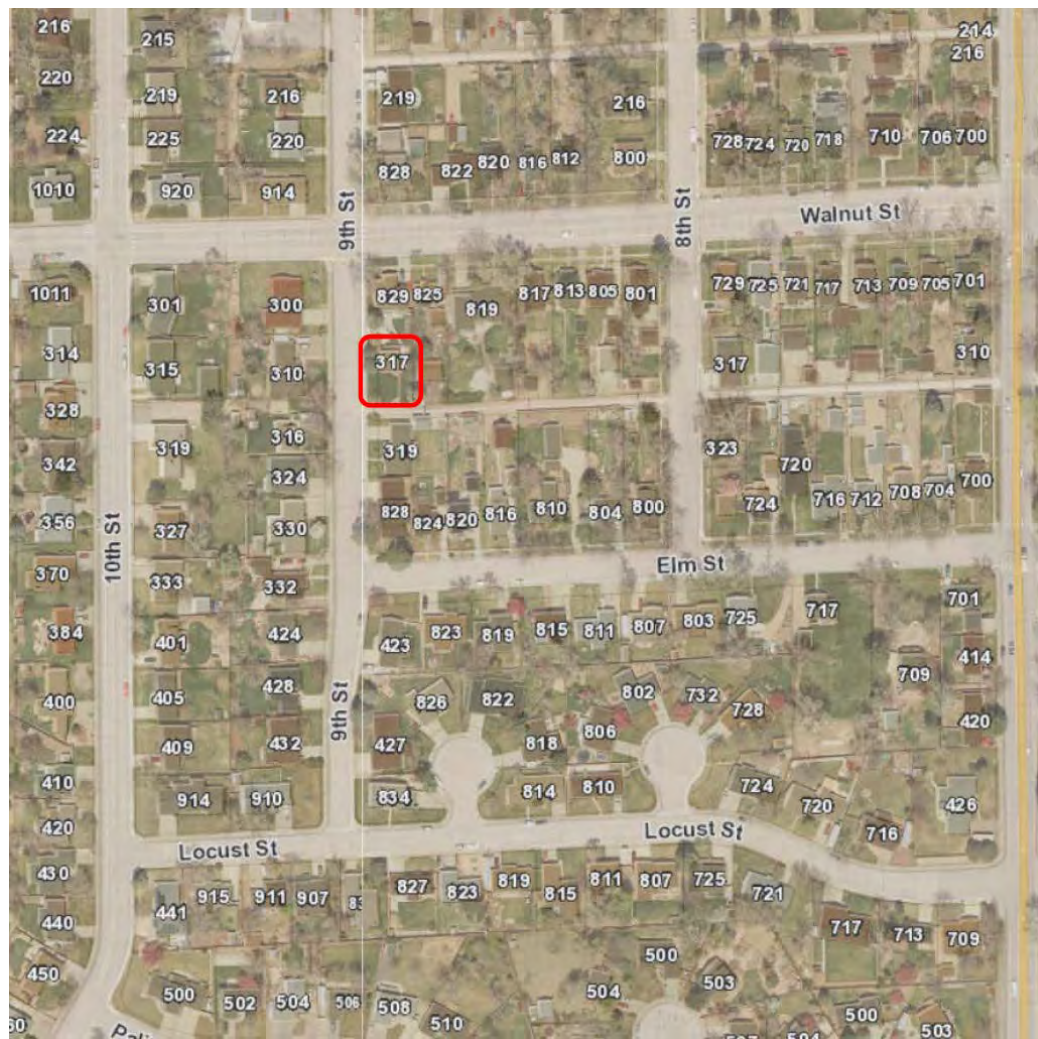


N↑





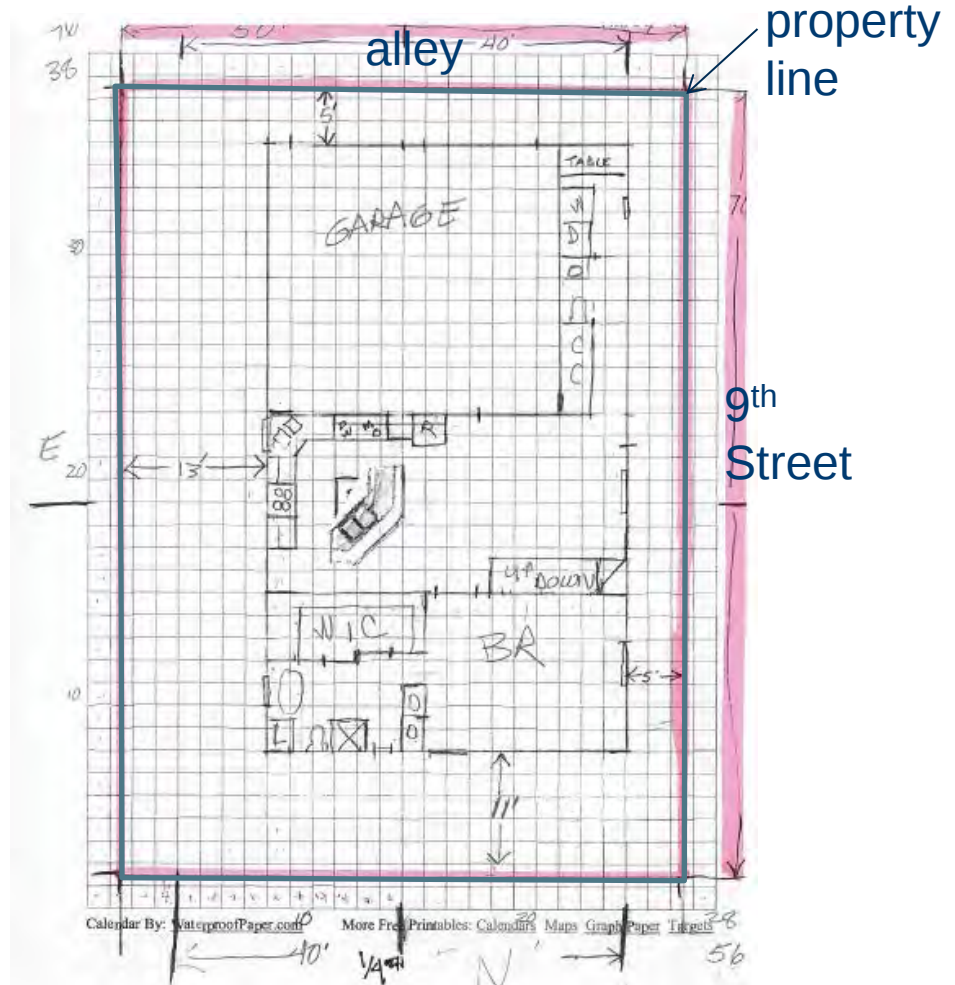
N↑



Analysis

- Proposed house ~ 2400 sf / ~1730 sf footprint
- Proposed setback from west property line: 5'
 - 20' from sidewalk
- Proposed open space ~ 2,272 sf
 - Open space in row ~1,300 sf
 - Total open space ~ 3,572 sf

N↓



Analysis

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

- Adjacent to residential properties of similar proportions
- Setback seen along 9th Street
- 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
- The house will be designed with a pitched roof, asphalt shingles and exterior materials that meet code.



317 9th Street

Town of Windsor Board of Adjustment – June 27, 2019

Analysis

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

- The house 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 house would be approximately 20' from the sidewalk.
- The house would meet minimum setbacks for the side and rear yards.
- Drainage issues are not foreseen.
- The garage access from alley.



29 Locust Street

Town of Windsor Board of Adjustment – June 27, 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 allow the house to have a 5' setback from the western property line and open space of 2,272 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.



317 9th Street

Town of Windsor Board of Adjustment – June 27, 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.



317 9th Street

Town of Windsor Board of Adjustment – June 27, 2019



MEMORANDUM

Date: June 27, 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 in the Single Family
Residential (SF-1) Zone District – Park Addition Subdivision
2nd Filing, Lot 1; Bonnie Ham, owner/applicant
Item #: C.2

Background

The applicant, Ms. Bonnie Ham, is requesting a variance from Municipal Code Section 16-12-40 to allow for a porch to be constructed on the front of her house addressed as 132 Ash Street. The property is in the Park Addition Subdivision 2nd Filing and is zoned Single Family Residential (SF-1).

Municipal Code Section 16-12-40 states:

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

The variance request from Section 16-12-40 is to allow the porch to be within 20 feet of the front property line. The proposed setback is 6 feet to allow for a porch that is 5 feet in depth and approximately 30 feet wide.

According to the application, the house was built 11 feet from the front setback. In addition to the setback, there is approximately 4 feet between the property line and the sidewalk creating 15 feet between the sidewalk and the house. Please see the packet for additional information on the project.

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 current house was built in 2017. The applicant received a variance in 2001 to allow the house to be built with up to a 10 foot setback. Support for the reduced setback was a trail easement that ran across the north portion of the lot on the Windsor Lake Levee. Having the house be closer to the southern property line would allow more room for the trail.

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

In a number of ways, 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, including house size.
- Many of the houses in the neighborhood have front setbacks less than 20 feet and closer to 10 feet.
- Houses with porches exist in the neighborhood.

However, although the setbacks in the neighborhood tend to be near 10 feet, this would be the closest a structure would be built to the street, which may be considered as not compatible with the neighborhood.

- 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 porch addition would not increase shadows onto the walk than the existing house does.
- The porch would be approximately 15' from the sidewalk.
- The porch would not encroach into utility easements.

- Drainage issues are not foreseen.

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 as proposed with the following conditions of approval:

1. The applicant obtains a building permit for the porch.
2. A setback survey is conducted with the installation of the foundation of the porch to confirm the setback.

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 house was permitted a reduced setback in the past.
2. The proposal is consistent with Town development decisions in the area.
3. The granting of this variance request will not alter the character of the surrounding neighborhood.
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 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

June 14, 2019 public hearing notice posted on Town of Windsor website

June 14, 2019 development sign posted on the subject property

June 14, 2019 public hearing notice published in the paper

Attachments

Application materials

Presentation

CC: Bonnie Ham, 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*: 132 Ash Street

Lot: 1 Block: Subdivision: Park Add 2nd Filing

A variance is being requested from the following Municipal Code section(s)*: setback Sec 16-12-40

3

OWNER:
Name(s)*: Bonnie Ham
Address*: 132 Ash Street
Phone #*: 970-481-3988 Email*: bonnie.ham@colostate.edu

APPLICANT or REPRESENTATIVE:

Name*:

Address*:

Phone #*:

Email*:

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.

4

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*.**

The setback requirement prevents the freedom to have a front porch which is a reasonable use of property.

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 property is unique because the back half of the property is not usable due to the easement for the bike path which was allowed by me. The bike path was not created by me.

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

The surrounding neighborhood is made up of houses, the majority of which have a front porch.

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

A front porch is a reasonable use of the property which not only allows enjoyment and privacy, it also provides shade which reduces the waste of energy to heat and cool - and thus is a green sustainable improvement.

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: Bonnie Ham

Date: 5-31-19

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

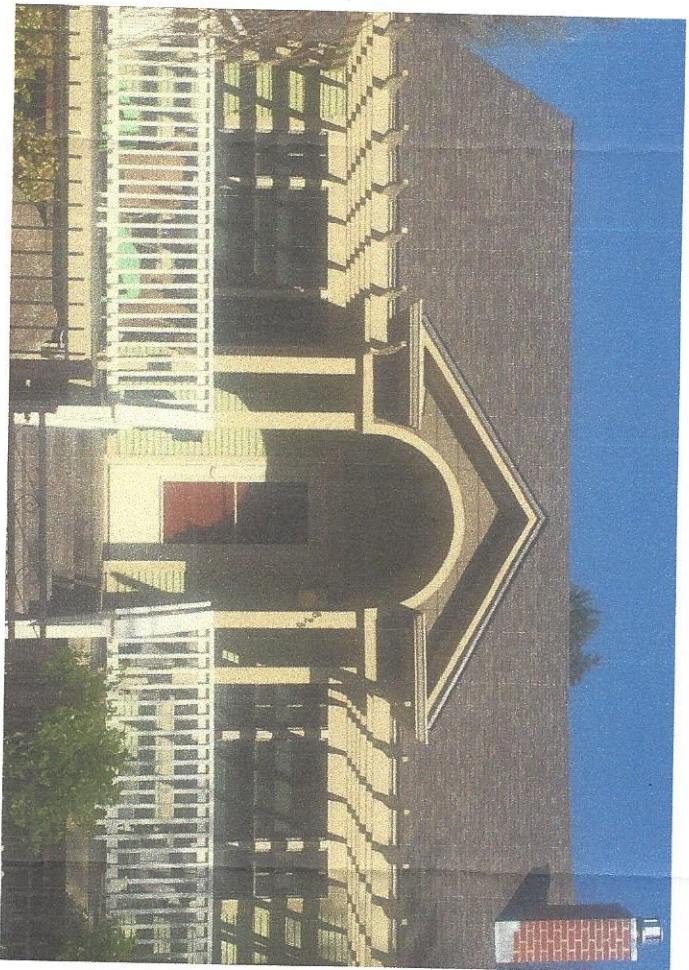
Print Name: Bonnie Ham

Submitted On: 5-31-19

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

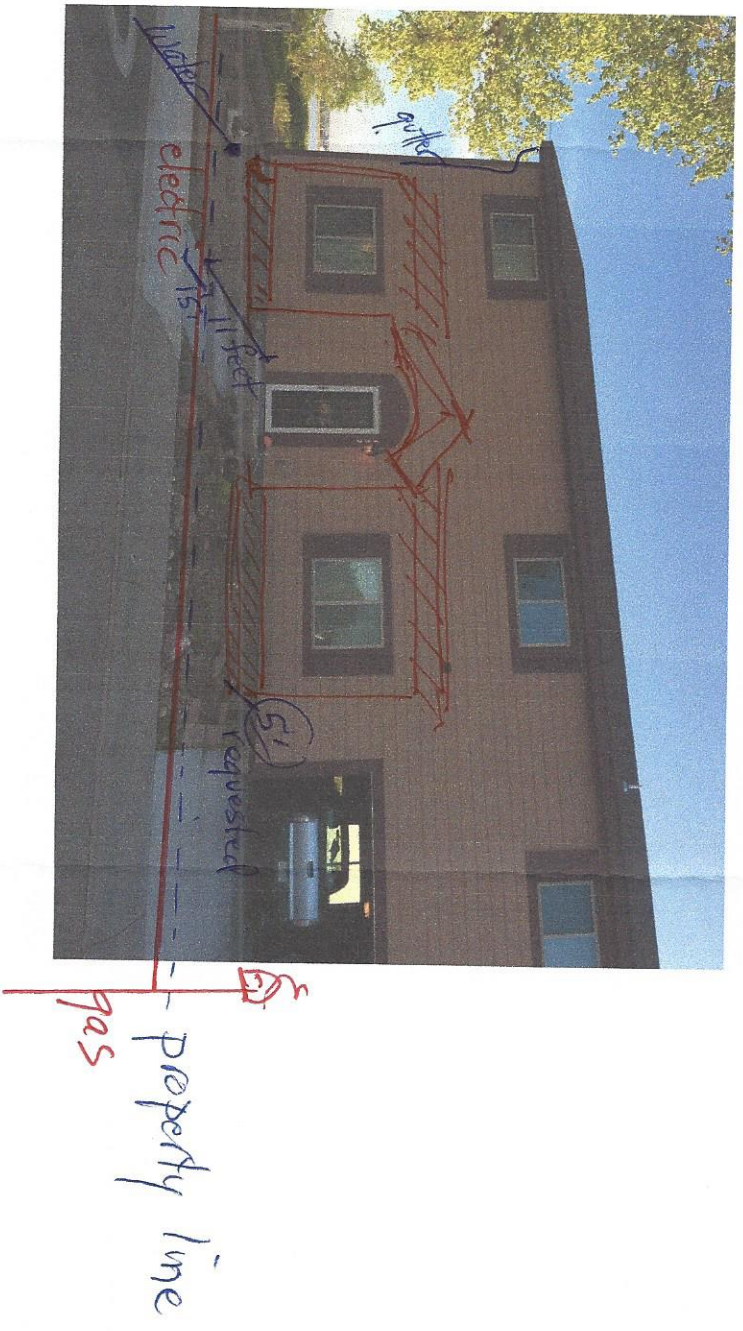
*Required fields

the design of the requested porch
I am requesting 5' (60") for the porch, which leaves 10 feet
to the sidewalk (it leaves 6' to the property line.)



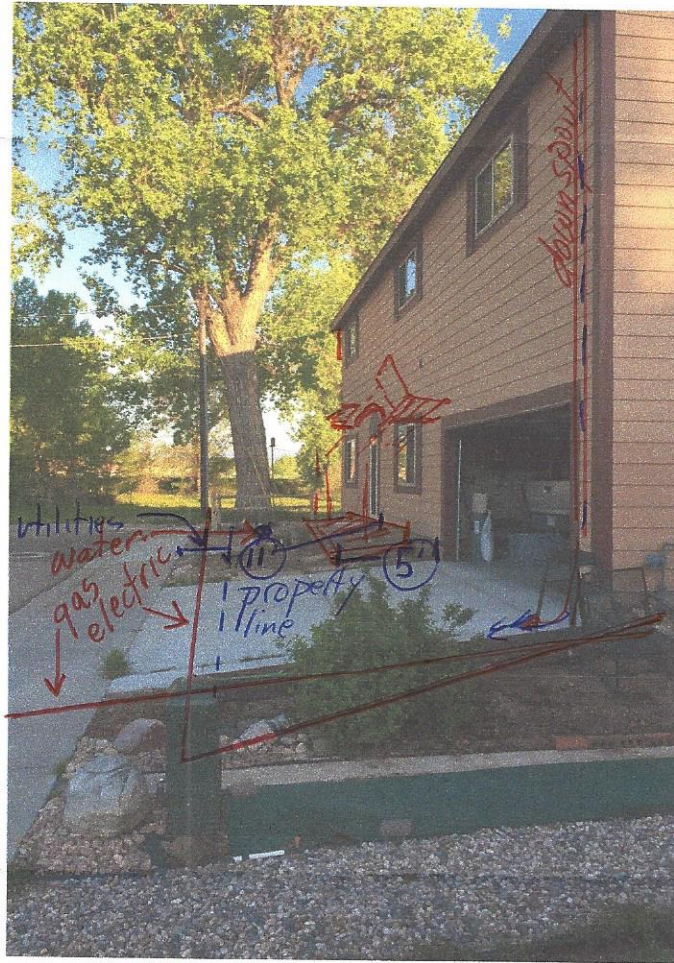
* If this is a problem, I request a minimum of 4 feet for porch

the distance from sidewalk to house is 15'
the distance from property line to house is 11'
in the 4' there is the electricity
the water meter is just inside the property line
the gas is east of the drive way
gutters will empty at the east + west end of the house for drainage



Neither
gas, electric, water or drainage is affected by a front porch

electric is in the area between the sidewalk
and the property line
gas is to the east of driveway
water is in front of proposed porch by 5 feet
drainage will be on east and west ends of house
* gutters are
to be installed



No utilities, drainage or snow removal is affected



Variance Request:

Park Addition

Subdivision 2nd Filing

Lot 1 – 132 Ash Street

Allowance for reduced setback for porch

Board of Adjustment – June 27, 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.”



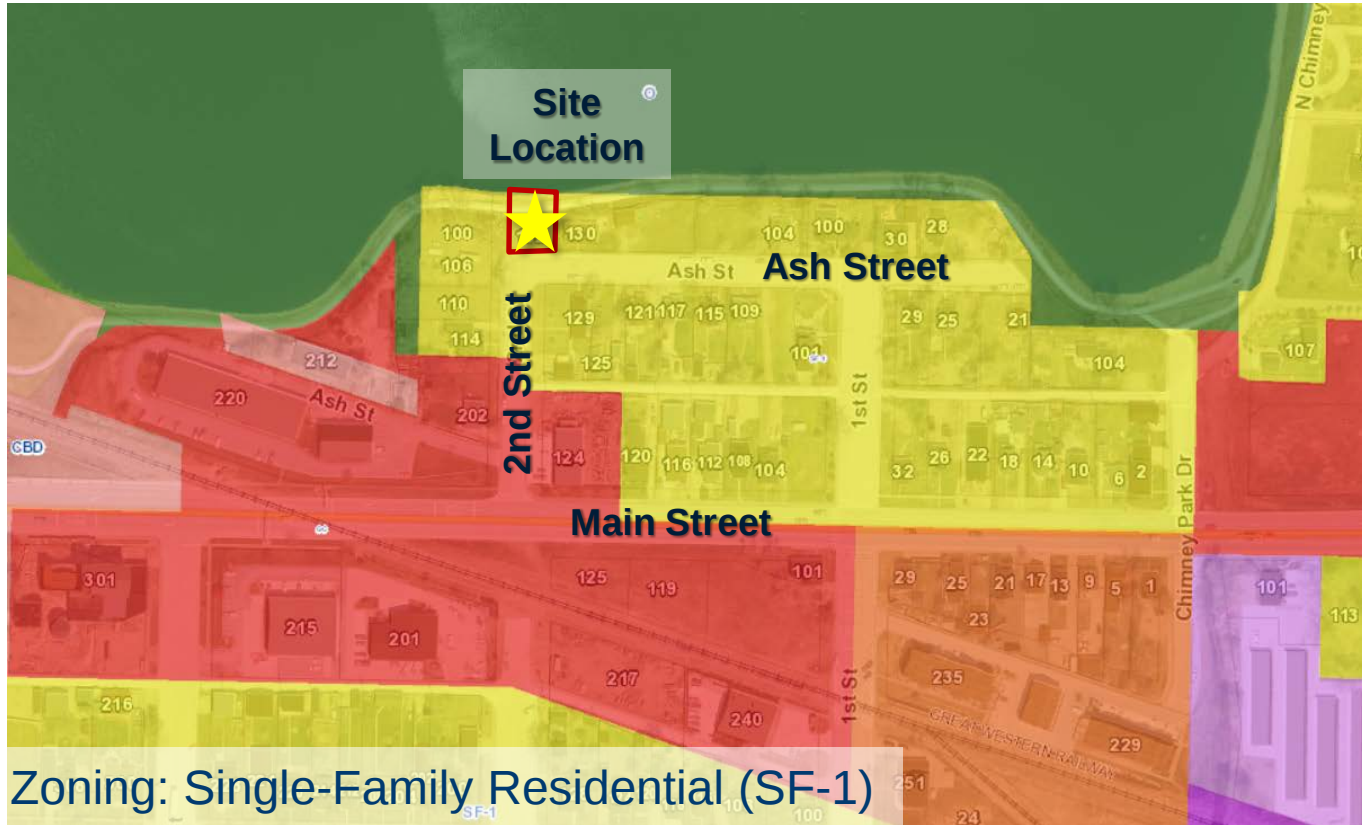
132 Ash Street

Town of Windsor Board of Adjustment – June 27, 2019

Site Vicinity Map



Zoning Map



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.*



132 Ash Street

Town of Windsor Board of Adjustment – June 27, 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.*



132 Ash Street

Town of Windsor Board of Adjustment – June 27, 2019



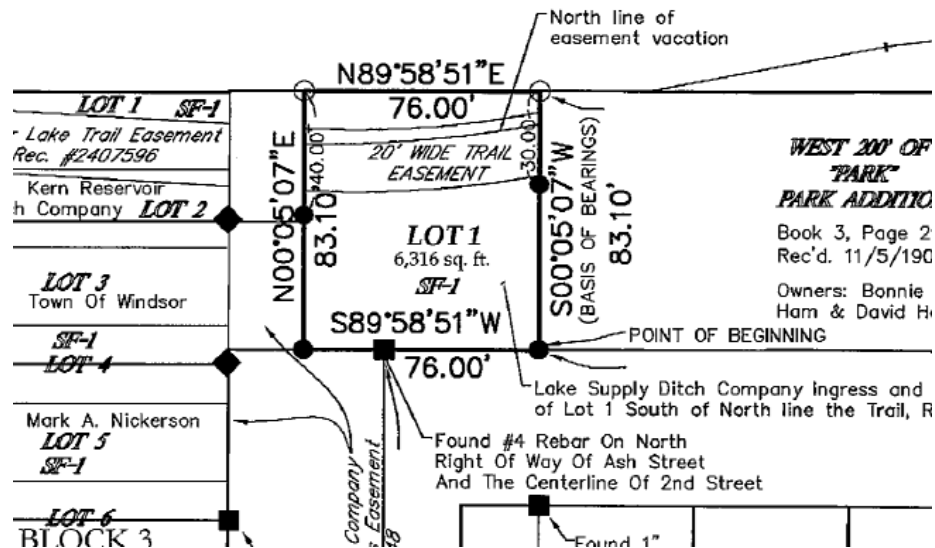
Analysis

- The property can be reasonably used under the conditions of the Code
- Previous variance
- House
 - ~11 feet from south property line
 - ~15 feet from sidewalk
- Proposed 6' setback for a 5' deep porch



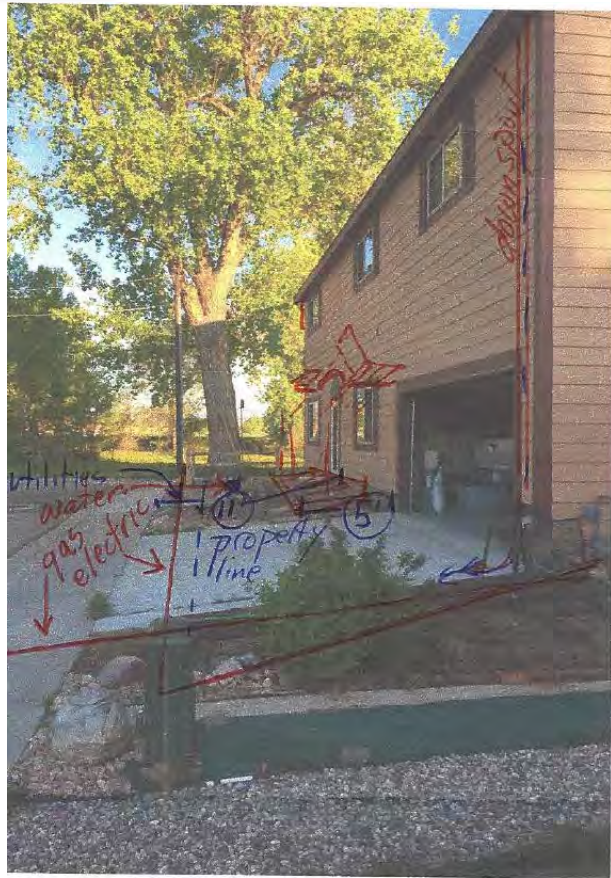


WINDSOR LAKE



Site Pictures





Site Pictures





Site Pictures



Site Pictures



Site Pictures



Site Pictures





Analysis

In a number of ways, 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, including house size.
- Many of the houses in the neighborhood have front setbacks less than 20 feet and closer to 10 feet.
- Houses with porches exist in the neighborhood.

However, although the setbacks in the neighborhood tend to be near 10 feet, this would be the closet a structure would be built to the street, which may be considered as not compatible with the neighborhood.



132 Ash Street

Town of Windsor Board of Adjustment – June 27, 2019

Analysis

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

- The porch addition would not increase shadows onto the walk than the existing house does.
- The porch would be approximately 15' from the sidewalk.
- The porch would not encroach into utility easements.
- Drainage issues are not foreseen.



132 Ash Street

Town of Windsor Board of Adjustment – June 27, 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, if the Board grants the variance, the following conditions of approval are recommended:

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



132 Ash Street

Town of Windsor Board of Adjustment – June 27, 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.



132 Ash Street

Town of Windsor Board of Adjustment – June 27, 2019



MEMORANDUM

Date: June 27, 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 – Eagle Crossing Subdivision 6th Filing Lot 1 – 6435 Crossroads Blvd; Maura Rux, applicant
Item #: C.3

Background

The applicant, Ms. Maura Rux, 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 property is located at 6435 Crossroads Blvd and is the future site of an Arby's Restaurant that is forecasted to open to the public in July. The applicant is requesting to install a freestanding sign in the southwest corner of the property. However, that location would put the proposed sign within 100 feet of the existing 7-11 freestanding sign on the property immediately to the west. The applicant is asking to allow the freestanding Arby's sign to be 78' to the west of the 7-11 freestanding 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.

The property can be reasonably used and there are three building-mounted signs on the property. There are also other locations on the site where a freestanding sign can be located while meeting code standards.

There is a utility easement that runs along the front of the property in which a freestanding sign cannot be placed. This easement and the layout of the drive thru aisle does limit where along the Crossroads frontage a freestanding sign can be located.

The subject sign could be located east of the proposed location without interference with the drive-thru or utility easement (see presentation) but it would still be 90 feet east of the 7-11 freestanding sign. With this location the developer would need to relocate a street tree to the west to allow for the sign to be installed. Irrigation lines may also have to be relocated.

For the proposed location or one farther east, no negative impacts on public interest, safety and welfare are foreseen. The sign would be outside utility easements and outside the sight visibility triangle for the intersection to the west.

The proposed sign in the proposed location would not negatively impact the neighborhood. There are many freestanding signs in the area of similar design and scale.

Recommendation

Staff has not found that an unnecessary hardship exists since the property can be used reasonably and there are other signs on the property announcing the business. Therefore, staff is recommending denial of the variance request.

Should the Board of Adjustment move to approve the variance request - to allow the freestanding sign to be within 100 feet of another freestanding sign as proposed in the application materials, the following conditions are 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 granting of this variance request will not alter the character of the surrounding neighborhood.
2. The granting this variance will not pose any public safety or welfare concerns.

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

June 14, 2019 public hearing notice posted on Town of Windsor website
June 14, 2019 development sign posted on the subject property
June 14, 2019 public hearing notice published in the paper

Attachments

Application materials
Presentation

cc: Maura Rux, 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*: 6435 Crossroads Blvd. (Parcel #: 8635322001)

Lot: _____ **Block:** _____ **Subdivision:** Eagle Crossing Subdivision

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

Sec. 16-9-50. (e) - Sign setbacks and offsets.

3

OWNER:

Name(s)*: Ferdinand Dirt LLC

Address*: PO Box 979, Scottsbluff, NE 69361

Phone #*: 308-632-5559 Email*: rick@bentley-miller.com

APPLICANT or REPRESENTATIVE:

Name*: Maura C. Rux

Address*: 319 Lincoln Ct Fort Collins, CO 80524

Phone #*: 970-889-3738 Email*: maura@brightsignsolutions.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*.**

Under the Code Sec. 16-9-50. (e) - Sign setbacks and offsets. The monument placement is currently being restricted by the conditions allowed by this code. The current proposed placement of the Arby's monument places the sign 78' from the 7-Eleven sign and if moved to east 22' it would interfere with the easement, drive-thru and potential conflict with dry utilities.

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 original placement of the 7-Eleven sign (which was to no fault of 7-Eleven) is such that all other business require a variance to avoid the easement area and not only does this become a safety concern but also can cause a negative impact to the commercial economy in the Eagle Crossing Subdivision. We also have to consider the Xcel Energy Gas line that will be located on the south side of the building.

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

No, it will not alter the surrounding neighborhood. In fact it will allow for enhancement of the developing commercial district by assuring that the adjacent neighbor to the east would be able to avoid the High Pressure Gas Line and easement.

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

There is reasonable use of this property but under the current code it is causing either placement of signs to cause economic loss or unsafe conditions.

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: Maura C. Rux

Digitally signed by Maura C. Rux
Date: 2019.06.05 12:32:04 -06'00'

Date: 06/05/2019

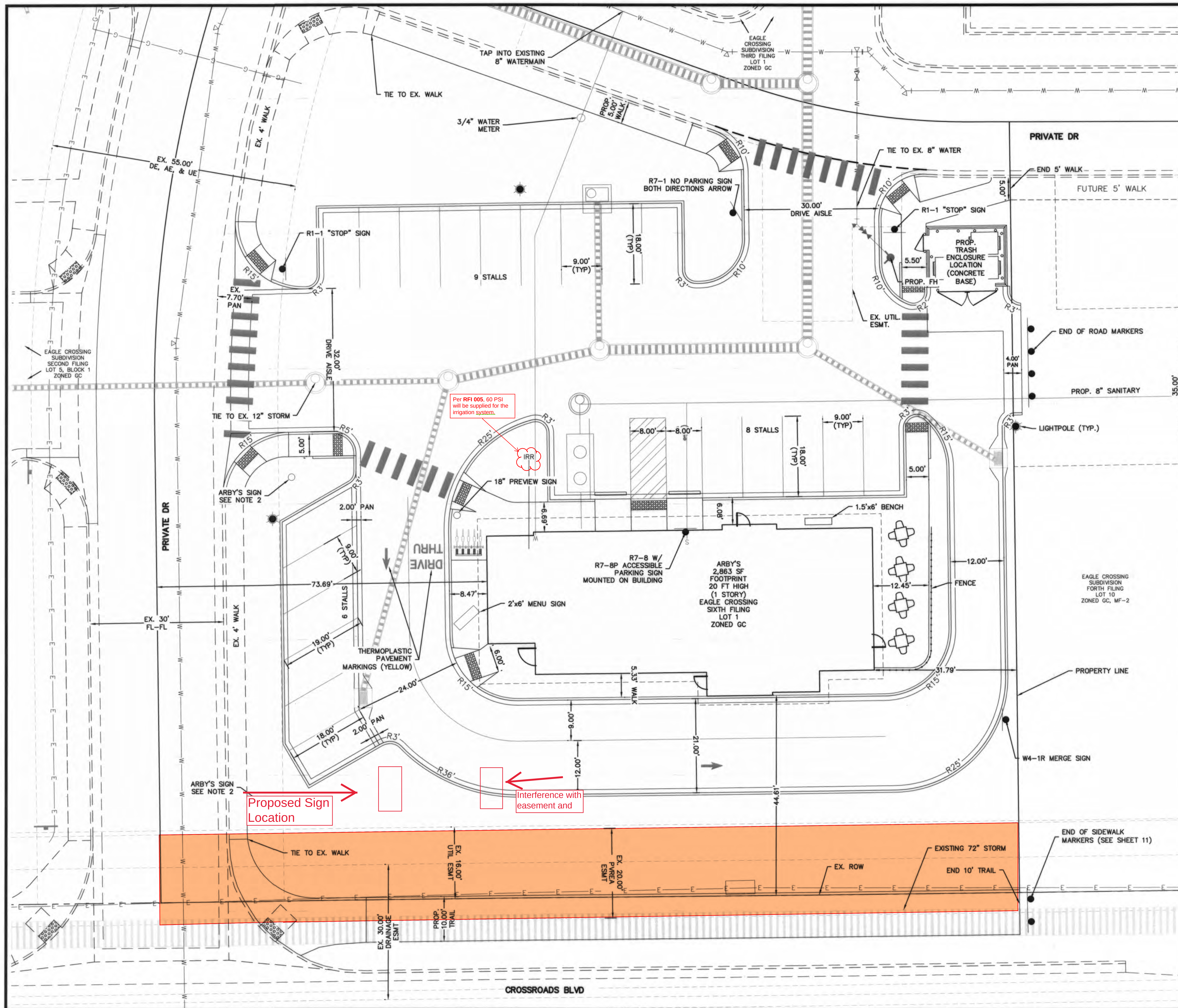
(Proof of owner's authorization is required with submittal if signed by Applicant)

Print Name: Maura C. Rux

Submitted On: 06/05/2019

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

**Required fields*



NOTES:

1. SURFACE SHALL BE ASPHALT UNLESS NOTED OTHERWISE. SEE APPROVED GEOTECHNICAL REPORT FOR ASPHALT/CONCRETE PAVING DEPTHS AND SUBGRADE PREPARATION.
2. ALL SIGNAGE TYPE AND LOCATION TO BE REVIEW/APPROVED WITH SIGN PERMIT APPLICATION.
3. ALL DRAIN PANS TO BE CONCRETE.

SITE USAGE TABLE

DESCRIPTION	NET AREA (SQ. FT.)	NET AREA (ACRES)	% OF TOTAL
BUILDING COVERAGE	2,863	0.07	8%
PARKING & DRIVES	20,748	0.48	57%
SIDEWALKS	2,468	0.06	7%
LANDSCAPE	10,574	0.24	29%
TOTAL SITE AREA	36,653	0.84	100%

PARKING:

GUEST PARKING 1 / 200 SF OF GLA = 15
 EMPLOYEE PARKING 1 / 2 EMPLOYEES = 5 (MAX PER SHIFT 9 EMPLOYEES)

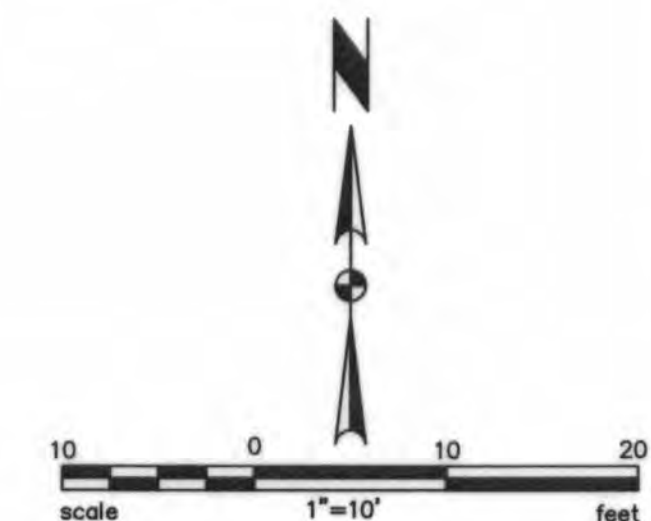
TOTAL REQUIRED 20 SPACES
 TOTAL PROVIDED 23 SPACES (1 HANDICAP)

*PARKING RATIO WAS TAKEN FROM CHAPTER 16 OF THE WINDSOR MUNICIPAL CODE.

BUILDING DETAILS:

RESTURANT 2,863 SQ. FT.
 TOTAL 2,863 SQ. FT.

BUILDING HEIGHT: 20'
 MAXIMUM BUILDING HEIGHT: 55'(GC)
 EXISTING ZONING: GC



TOWN OF WINDSOR
DRAWING REVIEW

REVIEW IS FOR GENERAL COMPLIANCE WITH TOWN STANDARDS. NO RESPONSIBILITY IS ASSUMED FOR CORRECTNESS OF DESIGN.

DATE: 5-31-18 BY: *[Signature]*
 TOWN ENGINEER

EAGLE CROSSING SUBDIVISION SIXTH FILING,
LOT 1 (ARBY'S)

SITE PLAN



JOB NO. 1227.0001.00
 SCALE 1" = 10'
 DATE APRIL 18, 2018
 SHEET



Variance Request:
Eagle Crossing Subdivision
6th Filing Lot 1
6435 Crossroads Blvd

*Request for reduction of separation
requirement between freestanding signs*

Board of Adjustment – June 27, 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.



6435 Crossroads Blvd

Town of Windsor Board of Adjustment – June 27, 2019

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.



6435 Crossroads Blvd

Town of Windsor Board of Adjustment – June 27, 2019

Section 16-6-60 defines **unnecessary hardship** as follows:

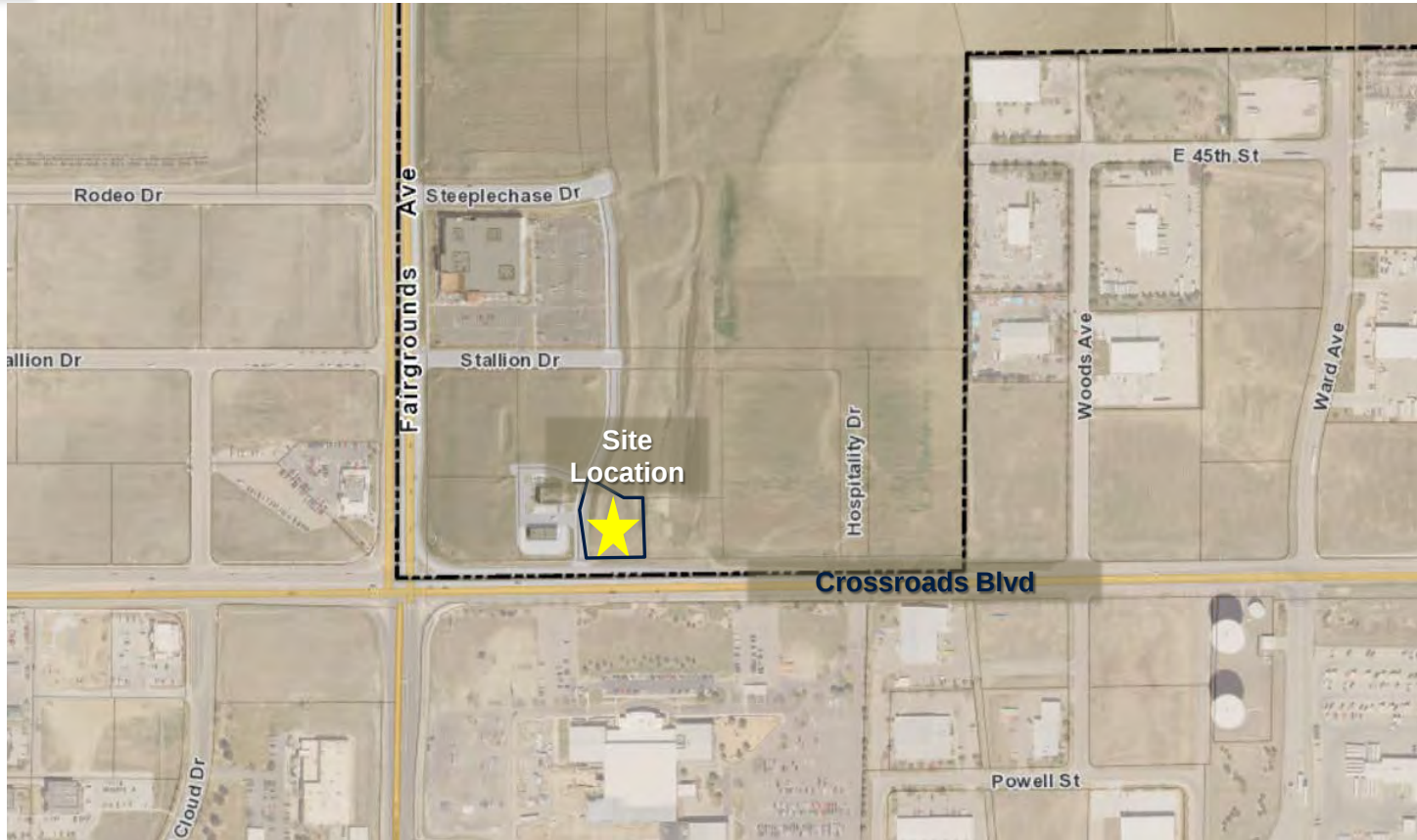
*For purposes of this Article, **unnecessary hardship** shall be defined as a situation where the property cannot be reasonably used under the conditions allowed by this Code. The situation shall result from **circumstances unique to the property** and **shall not be created by the landowner**. The variance, 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.*



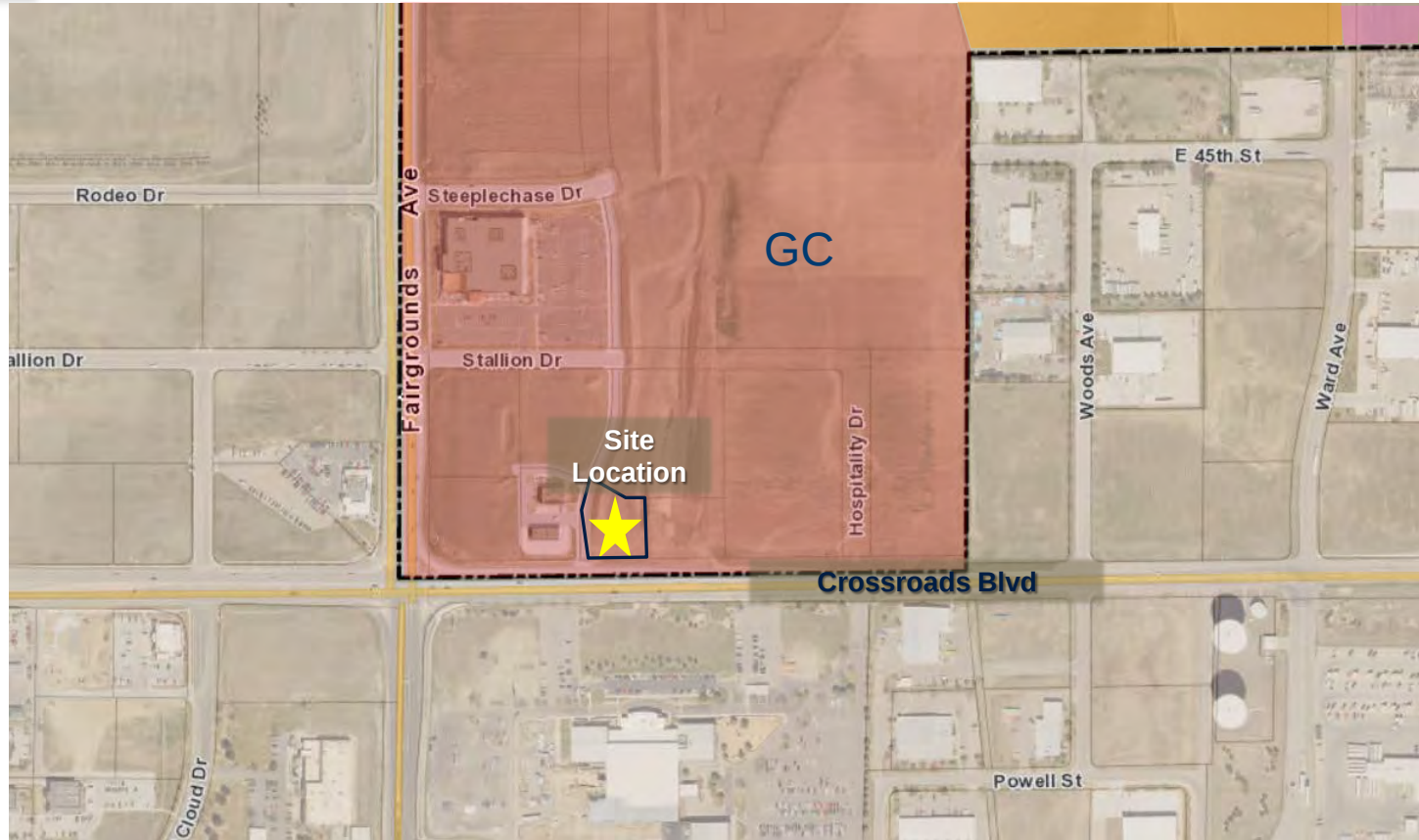
6435 Crossroads Blvd

Town of Windsor Board of Adjustment – June 27, 2019

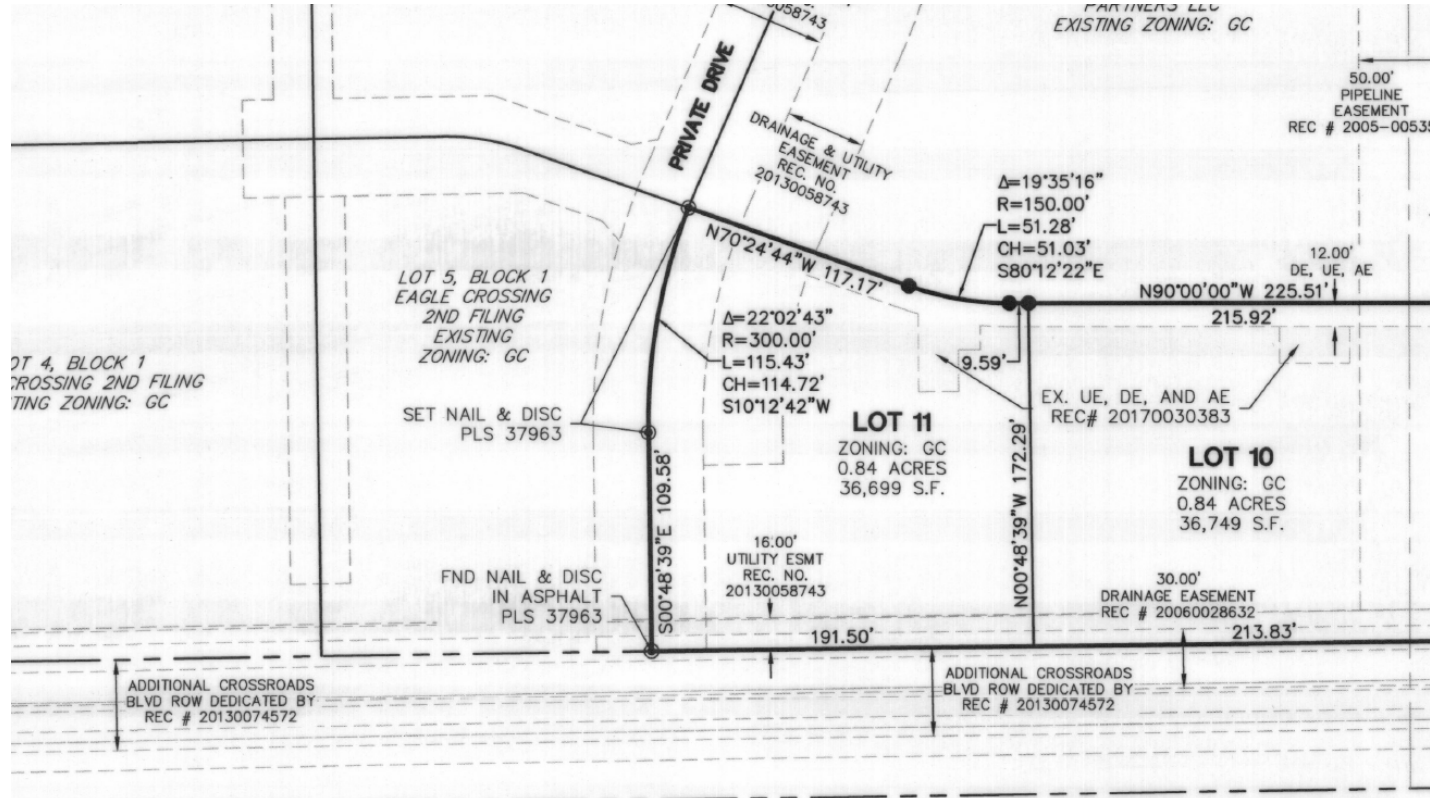
Site Vicinity Map

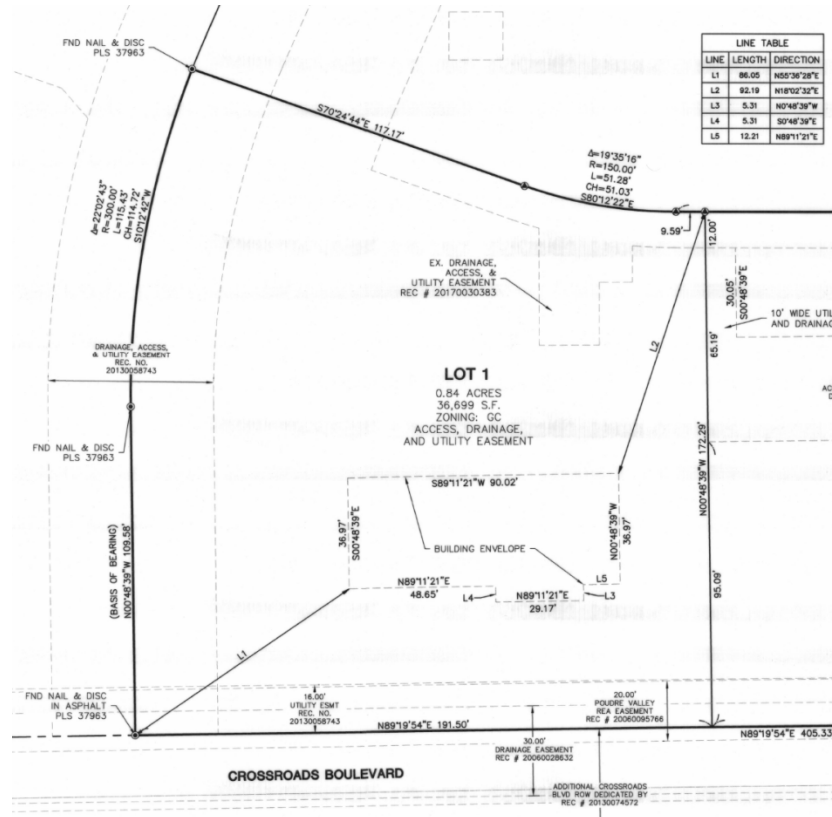


Zoning Map

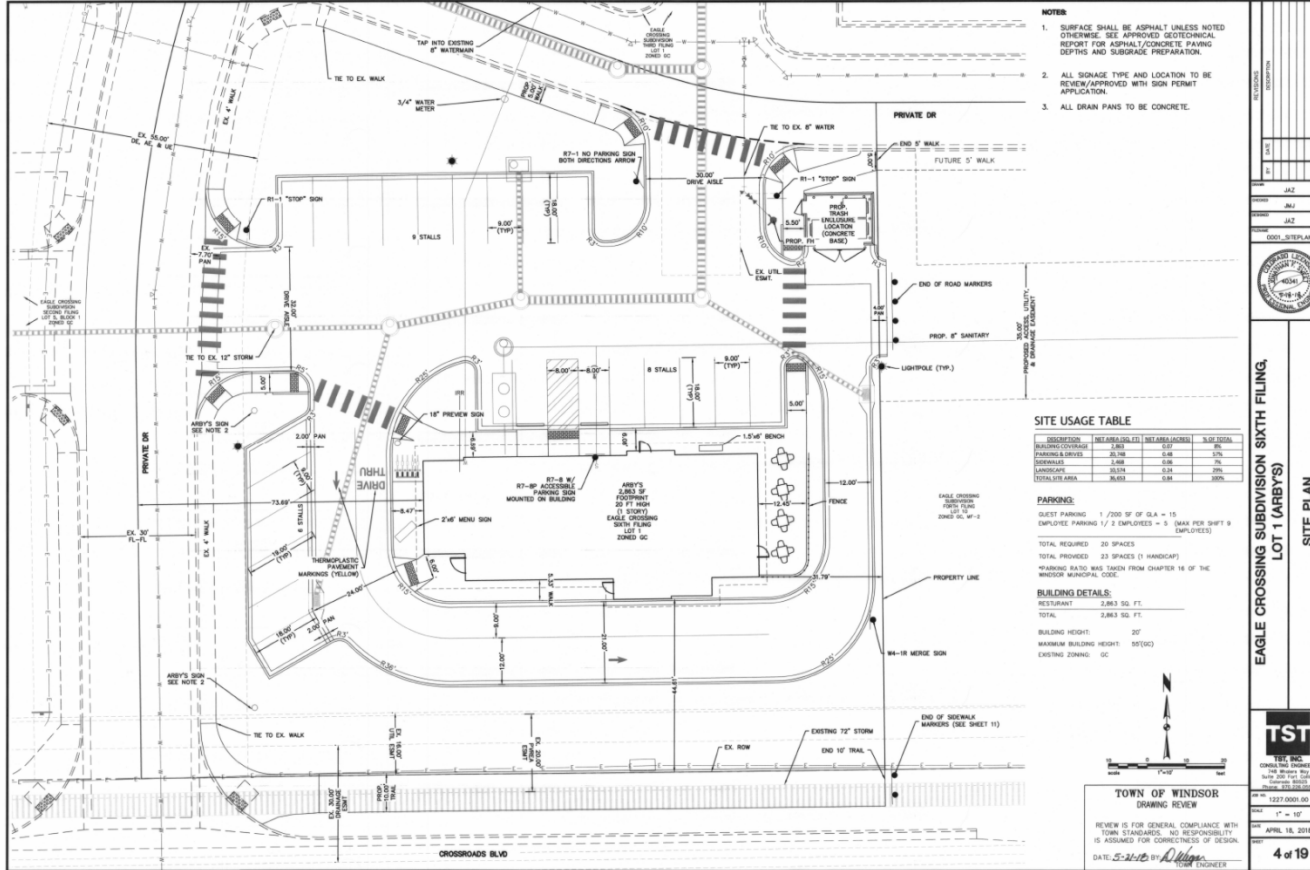


Eagle Crossing Subdivision Plat





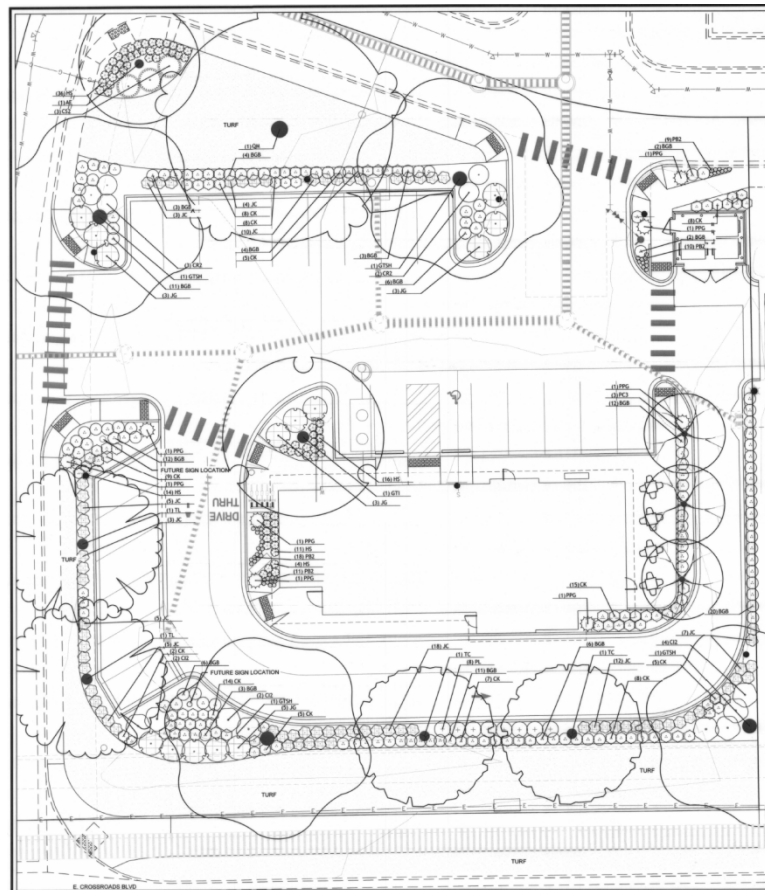
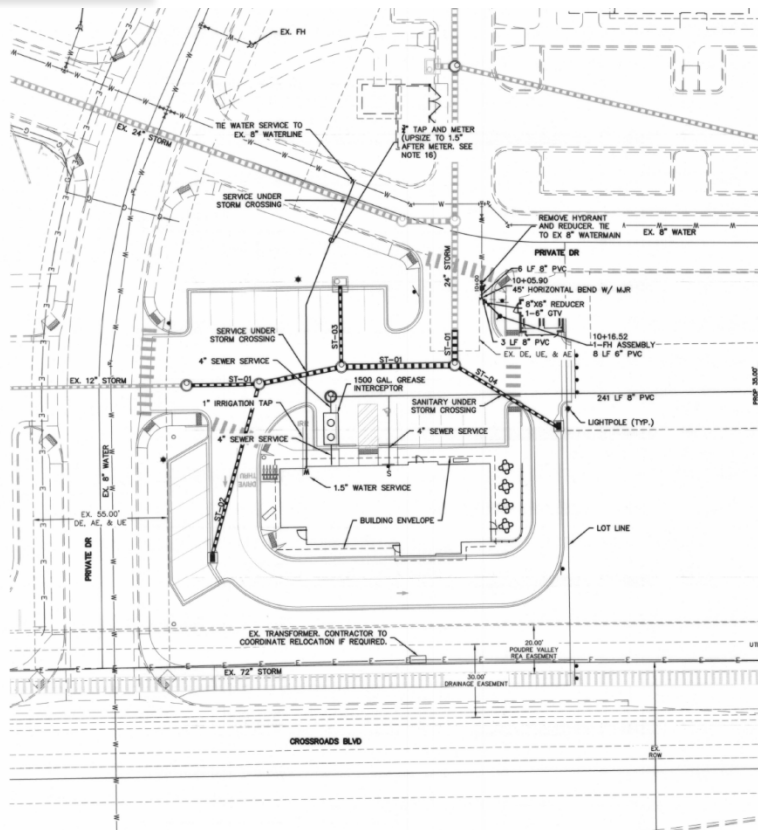
Site Plan



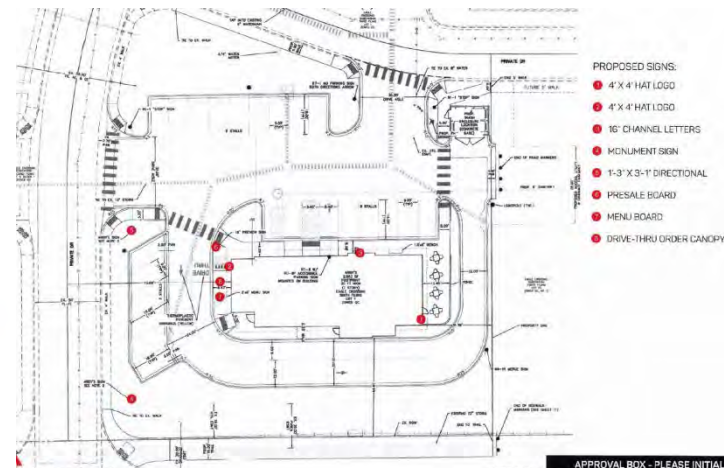
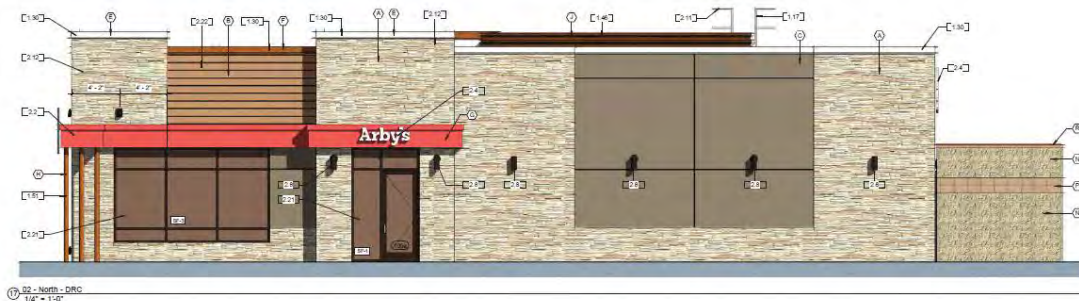
EAGLE CROSSING SUBDIVISION SIXTH FILING,
LOT 1 (ARBYS)

SITE PLAN

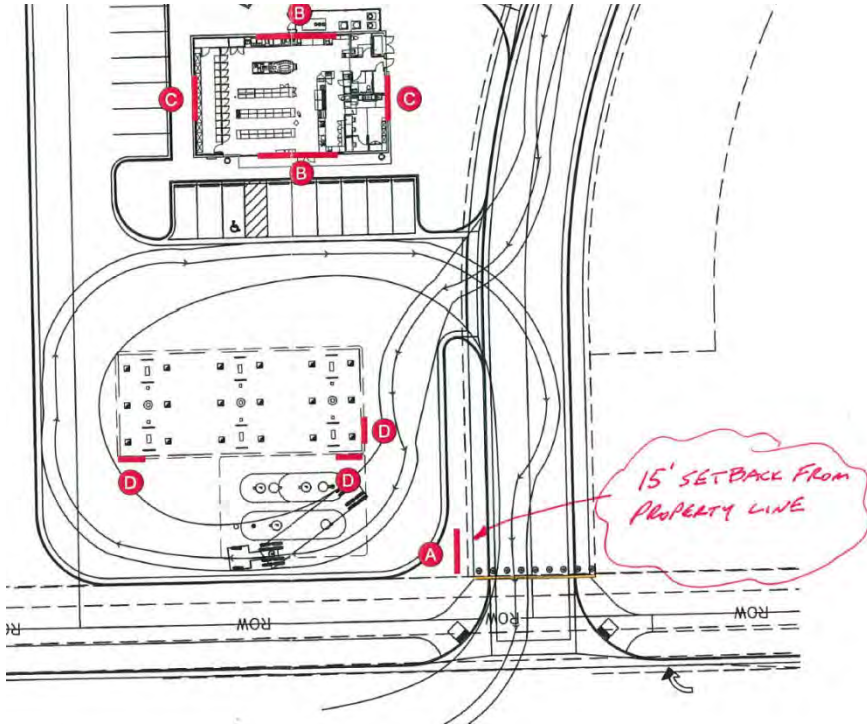
Site Plan



Elevations & Signs



7-11 Freestanding Sign



Vicinity Pictures



Vicinity Pictures



Vicinity Pictures

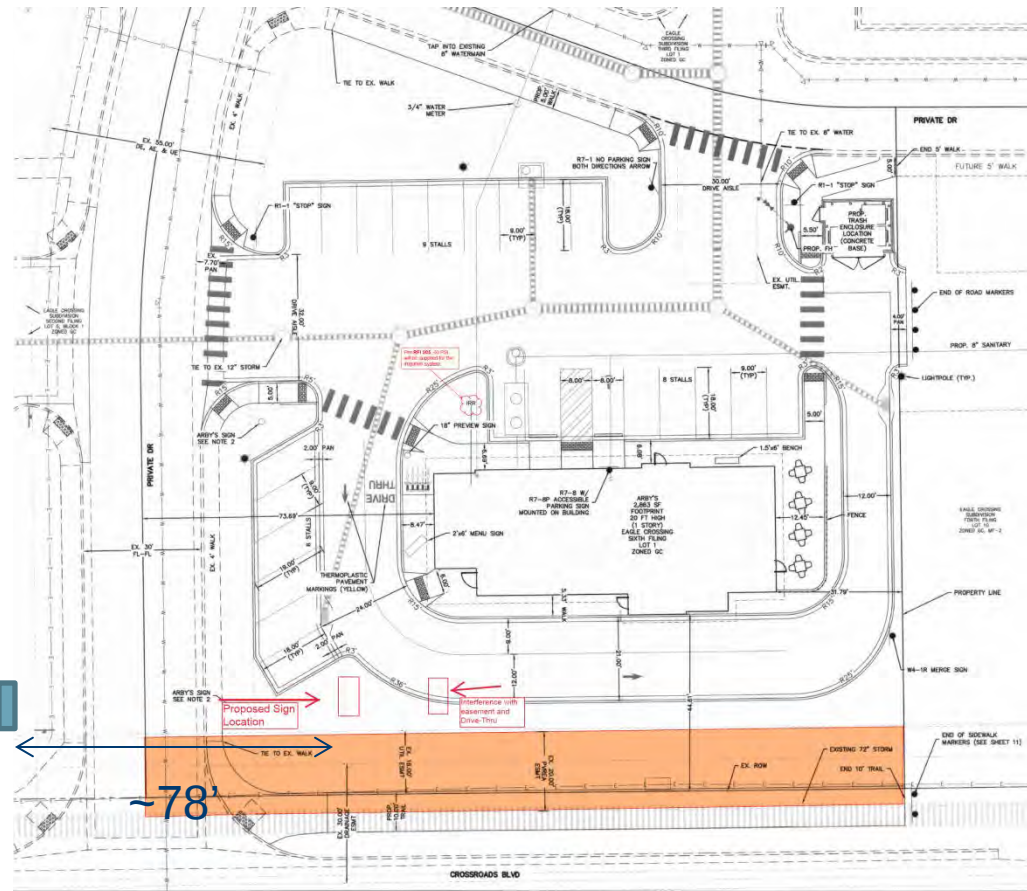


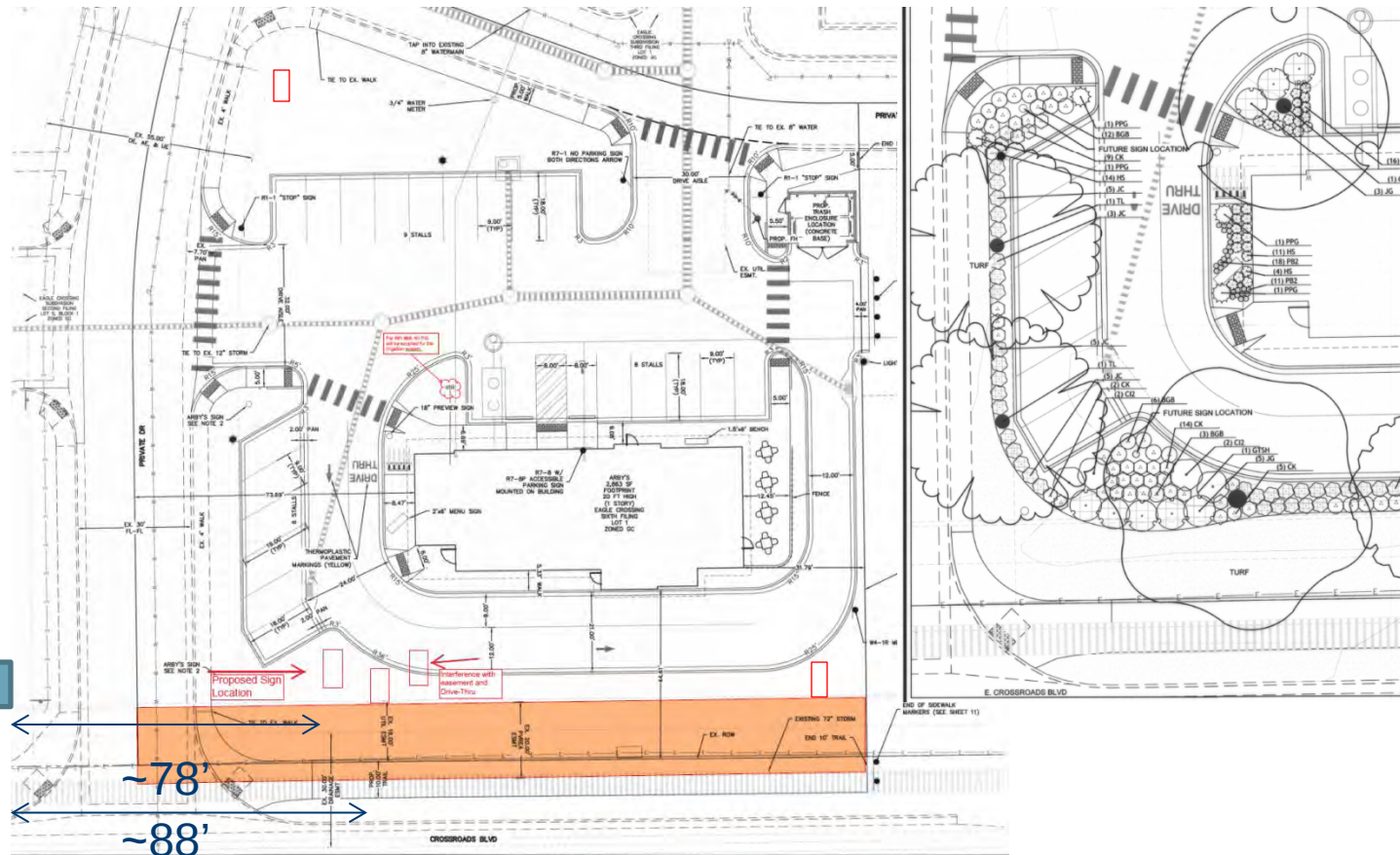
Vicinity Pictures



Vicinity Pictures







Findings

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.



6435 Crossroads Blvd

Town of Windsor Board of Adjustment – June 27, 2019

Findings

Special site specific conditions exist

- Utility easement

Unnecessary hardship exists

- Site can be used reasonable, approved building signage, other potential locations for a freestanding sign

Impact on public interest, safety, and welfare

- None foreseen – outside sight visibility triangle

Impacts to the neighborhood character

- None anticipated



6435 Crossroads Blvd

Town of Windsor Board of Adjustment – June 27, 2019

Recommendation

Staff has not found that an unnecessary hardship exists. Therefore, staff cannot recommend 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. The granting of this variance request will not alter the character of the surrounding neighborhood.
2. The granting this variance will not pose any public safety or welfare concerns.

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.



6435 Crossroads Blvd

Town of Windsor Board of Adjustment – June 27, 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:

- 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.



6435 Crossroads Blvd

Town of Windsor Board of Adjustment – June 27, 2019