



BOARD OF ADJUSTMENT / APPEALS SPECIAL MEETING

August 1, 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

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 June 27, 2019

C. BOARD ACTION

1. Public Hearing – Variance of Municipal Code Section 16-24-40(1)/16-12-40 pertaining to building location in the Residential Mixed Use (RMU) zone district – The Ridge at Harmony Road Subdivision 2nd Filing - Lot 1 Block 11 – 1899 Holloway Drive - Bridgewater Homes LLC, owner; James Miller, 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

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, 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*
Thursday, November 28, 2019	CANCELLED	Thanksgiving Holiday

* 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

June 27, 2019 // 7:00 p.m. // Town Board Chambers
301 Walnut Street, Windsor, CO 80550

MINUTES

A. CALL TO ORDER

Chairman Horner called the meeting to order at 7:00 p.m.

1. Roll Call

The following members were present:

Chairman	Danny Horner
Vice-Chairman	Jose Valdes
	David White
	Jennifer Dionne
Alternate	Charles Schinner
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 May 23, 2019

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

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.

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

The applicants, Mr. Everett Darco, 829 Walnut Street stated he is 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.

Mr. Darco stated the house will be 5 feet from the property line on the south side alley access, 11 feet from the north side property line, and the east side will be 13 feet with a 10 foot sewer line easement. Mr. Darco's sewer line for 829 Walnut Street will be relocated in the 10 foot sewer line easement, due to conflicts with the line running underneath the projected new construction home site located at 317 9th Street.

Per Mr. Darco stated the total amount of open space is 3,579 sq. feet, and he believes the requirement is 3000 sq. feet. The new home is in compliance, and compatible with other homes in the neighborhood. The overall dimensions of the home are 32 wide by 52 deep, and the footprint of this home is to accommodate our disabled daughter. The home will be built on one level allowing access to the garage, kitchen, bedroom, living area with the possibility of expanding to 2nd level with installing a wheelchair lift mechanism.

Mr. Horner asked if there are any comments from public regarding the variance request; None

Ms. Berry stated this 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.

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.

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.

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

Mr. Valdes asked Mr. Darco if the home would be new construction.

Per Mr. Darco; Yes

Mr. Valdes asked Mr. Darco for clarification that this home would be for his daughter because he lives next door.

Per Mr. Darco; Yes

Mr. Valdes asked Mr. Darco if he had any concerns regarding the conditions recommended by staff.

Mr. Darco stated staff worked with him extremely well explaining what he could, and could not do prior to the hearing. The biggest finding was the sewer that Mr. Darco would have to move over into the 10 foot variance.

Mr. Schinner asked Ms. Berry whether we were discussing a garage or a house.

Ms. Berry stated the garage is attached to the house, and it would be the whole structure as shown in this variance application.

Mr. Schinner asked Ms. Berry to display, and explain the rendering for the requested variance.

Per Ms. Berry she explained the outline of the rendering.

Mr. Schinner asked Ms. Berry whether the garage off the alley complied with the visibility triangle.

Ms. Berry; Yes, engineering signed off on the request.

Mr. Schinner asked Ms. Berry where would the easement go just somewhere in that 13 foot space.

Per Ms. Berry; Correct, she clarified on the rendering, and specified it's a 10 foot wide easement with a leeway of 3 feet.

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

Mr. Horner asked for a motion on the variance.

Mr. White moved to approve the request for a variance with the conditions recommended by staff; Mr. Valdes seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Valdes, White, Dionne, Schinner; Nays – None; Motion carried.

2. Public Hearing – Variance of Municipal Code Section 16-12-40 of the Municipal Code 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.

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

The applicant, Ms. Bonnie Ham, 132 Ash Street 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).

Ms. Ham stated her house is fairly new construction, and no exterior landscaping has been completed, making the front porch the next step in the process. The house required a variance to be built, because the lot has a large easement across the backside for the lake trail. Ms. Ham is requesting this variance to shave the front entrance, block the rain, and create privacy.

Mr. Horner asked if there are any comments from public regarding the variance request; there were none.

Ms. Berry stated this a variance request Park Addition 2nd Filing Lot 1, 132 Ash Street, pertaining to a front setback along Ash Street for the single family residence. The site is located at the end of 2nd Street, south of Windsor Lake.

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

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 based on 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 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.

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.

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 of 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.

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

Mr. Valdes asked Ms. Ham do you foresee any changes to the rendering that would infringe on any of the distances or items discussed.

Ms. Ham stated there will not be any changes to the porch, and will not be any larger than 5 feet deep.

Mr. Valdes asked Ms. Berry whether this is the 2nd variance in the same location.

Ms. Berry; Yes, it is a front setback variance, but back in 2001 when the original variance was granted to get the easement a house was not yet proposed.

Mr. White asked Ms. Ham about replacing the concrete slab on the front of the home.

Per Ms. Ham the concrete slab is going to be incorporated into the design.

Mr. Schinner asked Ms. Berry about the distance between the house and sidewalk on the current rendering.

Ms. Berry stated about 11 feet to the property line, and 4 feet from the sidewalk.

Mr. Schinner asked Ms. Berry about where the utilities are located in the property.

Per Ms. Berry the electrical runs perpendicular for individual lines to the house, and parallel main services along the street.

Mr. White asked Ms. Berry about the measurement giving him the impression this would leave about a 10 foot setback from the sidewalk to the porch.

Ms. Berry stated yes from the sidewalk to the porch.

Mr. Schinner asked Ms. Ham whether this was going to be a single step porch or whether the steps would protrude out of the 5 foot porch.

Per Ms. Ham there will be no change to the current concrete steps like shown in the rendering.

Mr. Valdes stated his assumption based off of the description, and rendering provided would be the porch would extend to the 2nd step keeping the dimensions the way they are giving Ms. Ham 5-6 feet in porch depth.

Mr. Valdes asked Ms. Ham whether that was an acceptable result.

Per Ms. Ham; Yes

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

Mr. Horner asked for a motion on the variance.

Mr. Valdes moved to approve the request for a variance with the conditions recommended by staff; Mr. White seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Valdes, White, Dionne, Schinner; Nays – None; Motion carried.

3. 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.

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

The applicant, Ms. Maura Rux was unable to attend the hearing, in attendance is Christopher Schmidt, Owner; Bright Sign Solutions located in Fort Collins. Mr. Schmidt is the contractor working with the sign for the Arby's restaurant 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. Schmidt stated the neighboring business to the east is 7-Eleven, and they have monument sign currently existing. To obtain the 100 feet separation Arby's monument sign would be sticking out in the drive-thru pass lane by about 2.5 feet. The applicant is requesting at least an 80 foot separation in a landscaped area allowing traffic to pass through that area.

Per Mr. Schmidt stated other options purposed to move the sign to the other end of the property, but that's where the drainage pond is located. The east side was also purposed as an option for the sign, but would potential cause problems with future infrastructure.

Mr. Horner asked if there are any comments from public regarding the variance request; there were none.

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

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

Ms. Berry stated 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.

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.

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.

Mr. Valdes asked Mr. Schmidt whether this is the preferred location to place the sign.

Mr. Schmidt stated the proposed location is per the variance proposal, because they are trying to grab the attention from the intersection.

Mr. Valdes asked Mr. Schmidt what are the dimensions of the sign.

Mr. Schmidt stated the sign is 9'3" long by 6' foot tall, there is a 4'x4' section with the Arby's logo, and 5'x4' zip track to put up special for the week.

Mr. Valdes asked Mr. Schmidt if there will be any issues obtaining the sign permit.

Mr. Schmidt stated he is at the final stages of the permit pending the variance.

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

Mr. Horner asked for a motion on the variance.

Mr. Valdes moved to approve the request for a variance with the conditions recommended by staff for the 78 foot variance; Mr. White seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Valdes, White, Dionne, Schinner; Nays – None; Motion carried.

D. COMMUNICATIONS

1. Communications from the Board Members

Mr. Valdes asked staff about the multitude of duplicated variances in the downtown area.

Ms. Berry stated we are working on updating the code, and working closely with site plan review.

2. Communications from staff

Ms. Berry asked the Board about postponing the July 25th due to meeting quorum requirements to August 1st.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 8:05 p.m.

Deputy Town Clerk, Trisha Conway



MEMORANDUM

Date: August 1, 2019
To: Board of Adjustment
From: Scott Ballstadt, Director of Planning
Re: Public Hearing – Variance of Municipal Code Section 16-24-40(1) / 16-12-40 pertaining to building location in the Residential Mixed Use (RMU) zone district – The Ridge at Harmony Road Subdivision 2nd Filing, Lot 1, Block 11 – 1899 Holloway Drive - Bridgewater Homes, LLC owner; James Miller, applicant
Item #: C.1

Background

The applicant, Mr. James Miller, is requesting a variance from Municipal Code Section 16-12-40 to allow for a reduced offset (side setback) in the Residential Mixed Use (RMU) District. The house is located at 1899 Holloway Drive in The Ridge at Harmony Road Subdivision 2nd Filing.

Municipal Code Section 16-12-40 states the following:

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

The contractor hired by Bridgewater Homes poured the foundation for the house three inches into the offset (side setback) on the north side of the house. When the site survey was conducted, it was determined that the north foundation wall was 4' 9" from the north property line. The applicant is asking to allow the reduced offset caused by the error.

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.

There are no circumstances unique to the property. The proposed house was designed to be constructed at the minimum setbacks and offsets allowed by the Municipal Code, leaving no room for error.

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

The essential character of the surrounding neighborhood would not be altered. The three inch difference is not detectable by normal observation.

- d) Public safety and welfare are not compromised.

A 25-foot wide landscape tract is located directly north of the subject lot on the side where the house encroaches into the offset. This will leave nearly 30 feet between the side of the house and the street, which exceeds the distance between the front of the house and street.

All other setbacks and offsets are compliant and the 10-foot building separation to the house to the south as required by building code has been met, so additional fire proofing is not required.

All drainage paths will have sufficient surface area.

The Town does have a minor variance process that addresses variance requests of less than 10% of the distance required. This application typically would fall under the minor variance process. However, this is the third variance requested by Bridgewater Homes, LLC of similar nature within the past year. Due to this trend and number of requests, as well as Bridgewater's failure to address the issue either through locating the home on the property with adequate room to allow for such errors, or conducting third party setback verification prior to pouring concrete, the standard variance process with the Board of Adjustment is being applied.

Recommendation

Staff considers that the literal enforcement of the Code will not result in an unnecessary hardship as defined by the Municipal Code and outlined above. Therefore, staff is recommending denial of the variance request as proposed.

However, if the Board chooses to grant the variance, the following conditions of approval are recommended:

1. The setback encroachment is only for that encroaching portion of the structure shown on submitted application materials.
2. A setback survey is required to show verification of the building setback.

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.
2. A second; and
3. The Chair calling for the vote as follows: All members in favor of the variance vote "yes"; all opposed to the variance request vote "no", with a minimum of four "yes" votes required to approve the variance request.

Furthermore, if the Board chooses to approve the variance request, staff recommends the following findings of fact:

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.

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

Notification

July 19, 2019 public hearing notice published in the paper.

July 19, 2019 public hearing notice posted on Town of Windsor website.

July 19, 2019 development sign posted on the subject property.

Attachments

Application materials

Presentation

CC: James Miller, 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*: 1899 Holloway Drive

Lot: 8 | **Block:** 12 | **Subdivision:** The Ridge at Harmony Road 2nd Filing

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

3

OWNER:

Name(s)*: Bridgewater Homes LLC

Address*: 4090 Clydesdale Parkway #205, Loveland CO 80538

Phone #*: 970-775-2611

Email*: james@bridgewaterhomes.com

APPLICANT or REPRESENTATIVE:

Name*: James C Miller

Address*: 3000 Ross Drive

Phone #*: 251-747-8839

Email*: james@bridgewaterhomes.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*.**

Foundation Contractor poured the foundation two inches outside the building envelope on the right side of the house. This condition was made aware to Bridgewater via Edmonds Surveying

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 lot size is narrow due to high density design of the subdivision. This leaves minimum side setbacks on both sides of the house. Other lots meet minimum side setbacks with up to 12 inches of cushion on both sides.

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

The variance is for 2-3 inches (0.2 ft) setback encroachment. This will not be noticeable at a glance or detailed inspection unless a surveying contractor is used to verify.

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 will be a financial burden incurred if a variance is not placed. The most cost effective option would require two inch deduction along the right side of the house and alter the front elevation curb appeal. The delay to correct the problem will likely extend ability to close prior to rate locks with the buyers.

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: 06/27/2019

Print Name: James C. Miller

Submitted On: 06/27/2019

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

*Required fields

IMPROVEMENT LOCATION CERTIFICATE

PROPERTY DESCRIPTION:

LOT 6, BLOCK 9, THE RIDGE AT HARMONY ROAD
SUBDIVISION 2ND FILING, TOWN OF WINDSOR,
COUNTY OF WELD, STATE OF COLORADO.

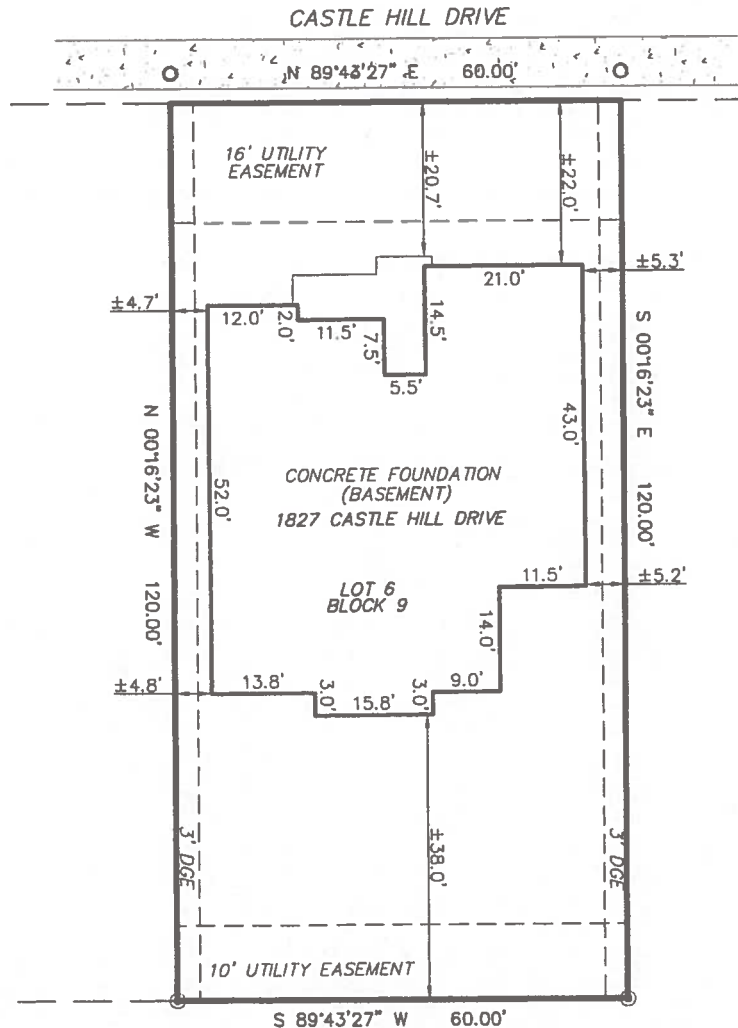
SOURCE:

PROVIDED BY CLIENT

- FOUND NAIL & TAG
PLS 38209 (WC/OS)
- FOUND 1/2" REBAR
WITH CAP, PLS 38209



SCALE: 1"=20'



NOTES:

- 1.) ALL LOT DIMENSIONS, EASEMENTS AND RIGHTS-OF-WAY SHOWN HEREON ARE TAKEN FROM THE PLAT OF **THE RIDGE AT HARMONY ROAD SUBDIVISION 2ND FILING**. LOT DIMENSIONS DO NOT REFLECT THOSE OF AN ACTUAL BOUNDARY SURVEY. THE LOCATION OF PROPERTY LINES CAN ONLY BE DETERMINED BY A MONUMENTED BOUNDARY SURVEY. THE FENCE LOCATIONS SHOWN HEREON (-X-) ARE APPROXIMATE. OWNERSHIP OF FENCES CANNOT BE DETERMINED BY AN IMPROVEMENT LOCATION CERTIFICATE.
- 2.) THIS IMPROVEMENT LOCATION CERTIFICATE WAS PREPARED FOR THE USE OF THE COMPANIES LISTED HEREON FOR A SPECIFIC TRANSACTION AND IS NOT TO BE USED AGAIN WITHOUT THE RE-CERTIFICATION OF THE SURVEYOR. EDMONDS LAND SURVEYING, INC. WILL NOT BE LIABLE FOR MORE THAN THE COST OF THIS IMPROVEMENT LOCATION CERTIFICATE AND THEN ONLY TO THE PERSON OR COMPANY FOR WHICH THE IMPROVEMENT LOCATION CERTIFICATE WAS PREPARED FOR.

IMPROVEMENT LOCATION CERTIFICATE

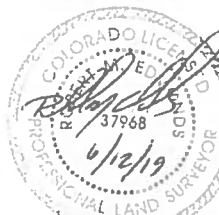
I HEREBY CERTIFY THAT THIS IMPROVEMENT LOCATION CERTIFICATE WAS PREPARED FOR **SAINT AUBYN HOMES**, THAT IT IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT, AND IT IS NOT TO BE RELIED UPON FOR THE ESTABLISHMENT OF FENCE, BUILDING, OR OTHER FUTURE IMPROVEMENT LINES. THIS CERTIFICATE IS VALID ONLY FOR USE BY **SAINT AUBYN HOMES** AND DESCRIBES THE PARCELS APPEARANCE ON **JUNE 11, 2019**. I FURTHER CERTIFY THAT THE IMPROVEMENTS ON THE ABOVE DESCRIBED PARCEL ON THIS DATE, **JUNE 11, 2019** EXCEPT UTILITY CONNECTIONS, ARE ENTIRELY WITHIN THE BOUNDARIES OF THE PARCEL, EXCEPT AS SHOWN, THAT THERE ARE NO ENCROACHMENTS UPON THE DESCRIBED PREMISES BY IMPROVEMENTS ON ANY ADJOINING PREMISES, EXCEPT AS INDICATED, AND THAT THERE IS NO APPARENT EVIDENCE OR SIGN OF ANY EASEMENT CROSSING OR BURDENING ANY PART OF SAID PARCEL EXCEPT AS NOTED.

THIS IMPROVEMENT LOCATION CERTIFICATE IS CERTIFIED TO THE FOLLOWING, AND DOES NOT EXTEND TO ANY UNNAMED PARTY WITHOUT THE RE-CERTIFICATION OF THE SURVEYOR:

BUYER: N/A

LENDER: N/A

TITLE CO: N/A



BY: ROBERT M. EDMONDS
COLORADO PLS NO. 37968

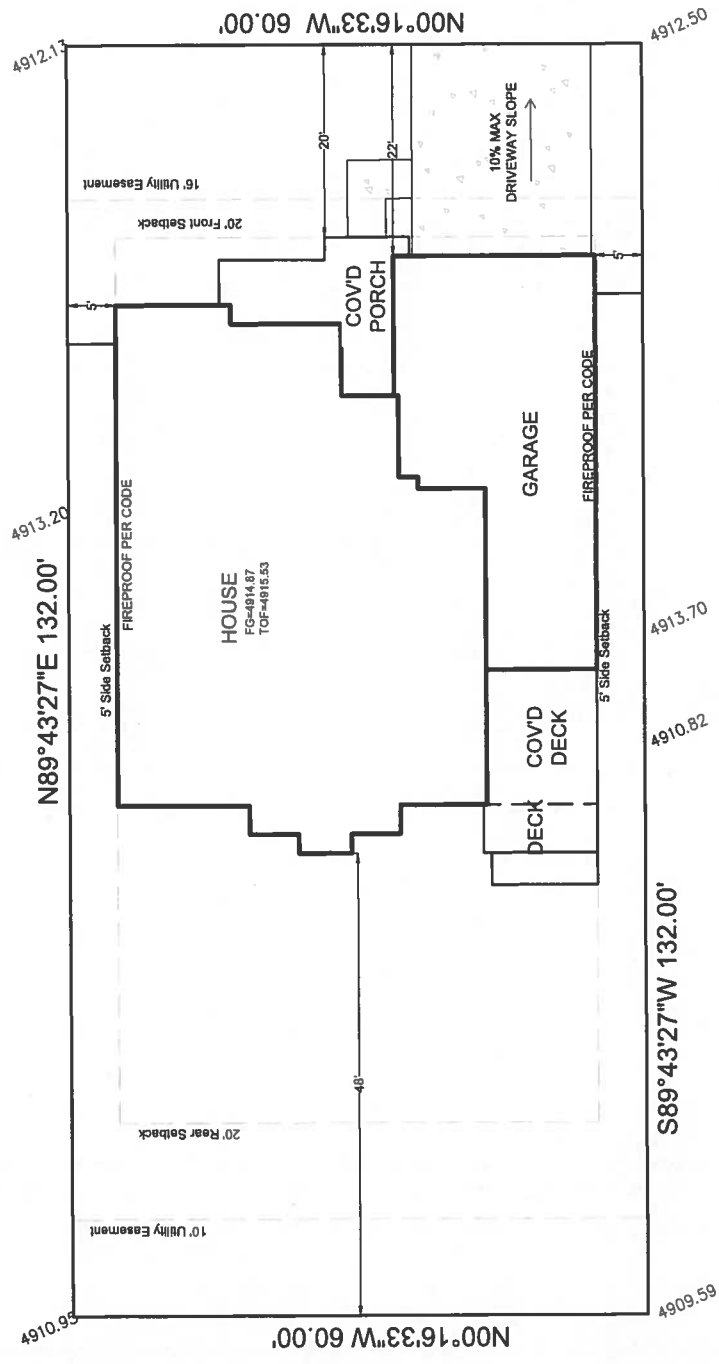
EDMONDS LAND SURVEYING, INC.
P.O. BOX 641
KERSEY, CO 80644
PHONE: (970) 686-6970
FAX: (970) 284-6802
www.EdmondsLandSurveying.com



PROPERTY ADDRESS	
1827 CASTLE HILL DRIVE WINDSOR, CO	
SCALE: 1"=20'	FORMAT: 8.5"x14"
DATE: 06/12/19	FIELD BK: P
DWG BY: RME	PROJ. NO: 19-0329

Actual location

Intended Location



5% (Min) Grading Slope @ 1st 10'
then 2% (Min) Grading Slope

Lot Size:	
Driveway and Sidewalk:	7,920 SqFt
Front Yard:	453 SqFt
Back Yard:	972 SqFt
Opt Fence:	3,567 SqFt
	277 Ft

No.	Revision/Issue	Date
1	SITE PLAN FOR REVIEW	4/10/19

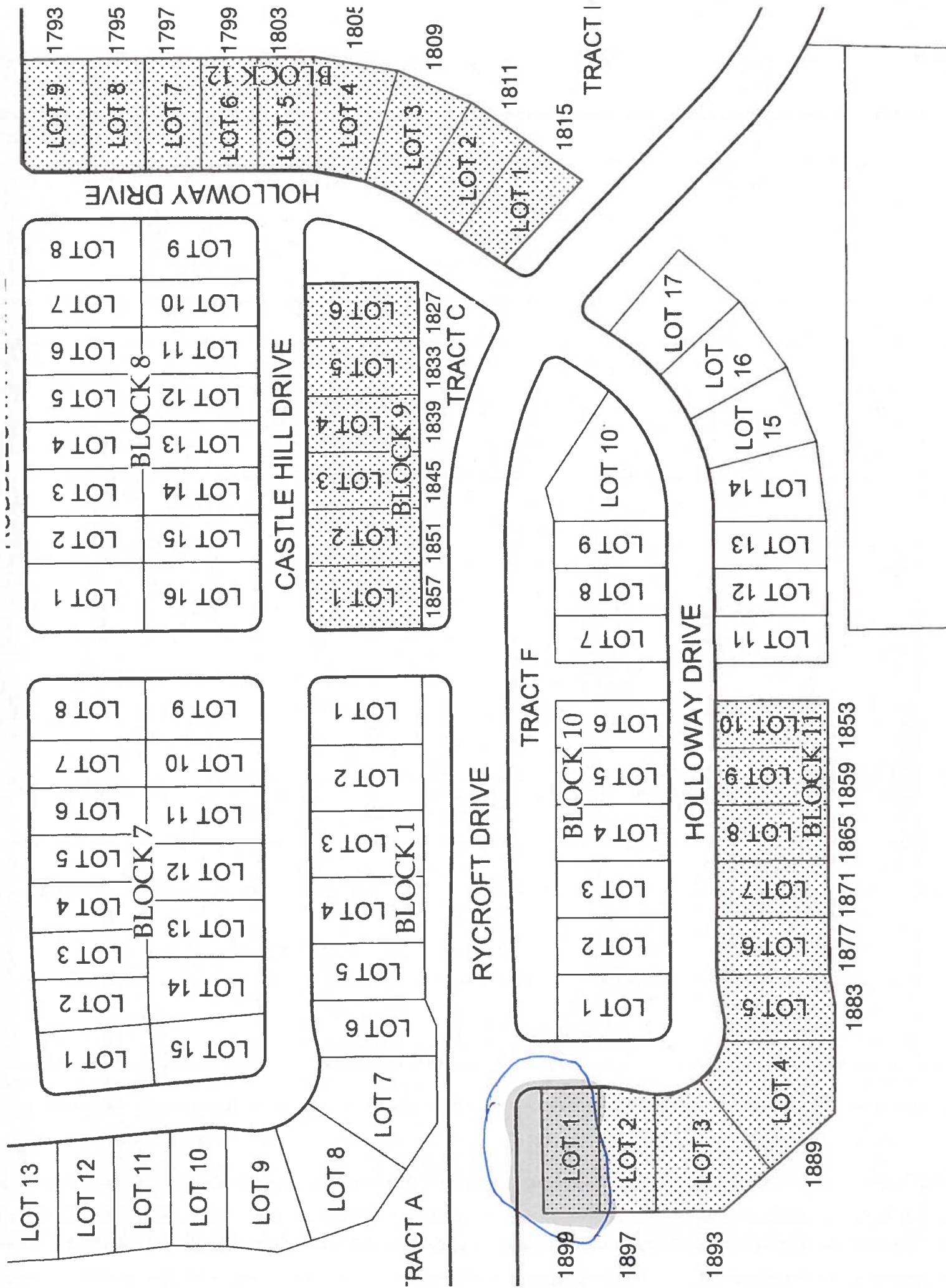
Bridgewater Homes
4090 Clydesdale Pkwy
Suite 205
Loveland, CO 80538

Project Name and Address
1899 Holloway Drive
The Ridge at Harmony Rd
2nd Filing
Lot 1, Block 11
Windsor, CO

Project Name and Address	1899HOLLOWAY
Date	4/10/19
Scale	1"=20'-0"

1







Variance Request:

The Ridge at Harmony Road Subdivision 2nd Filing, Lot 1, Block 11- 1899 Holloway Drive

Request for a reduced offset

Board of Adjustment August 1, 2019

Variance Request

Variance of Municipal Code Section 16-12-40 pertaining to building location:

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

The request is to allow for a 4’ 9” offset on the north side of the house.

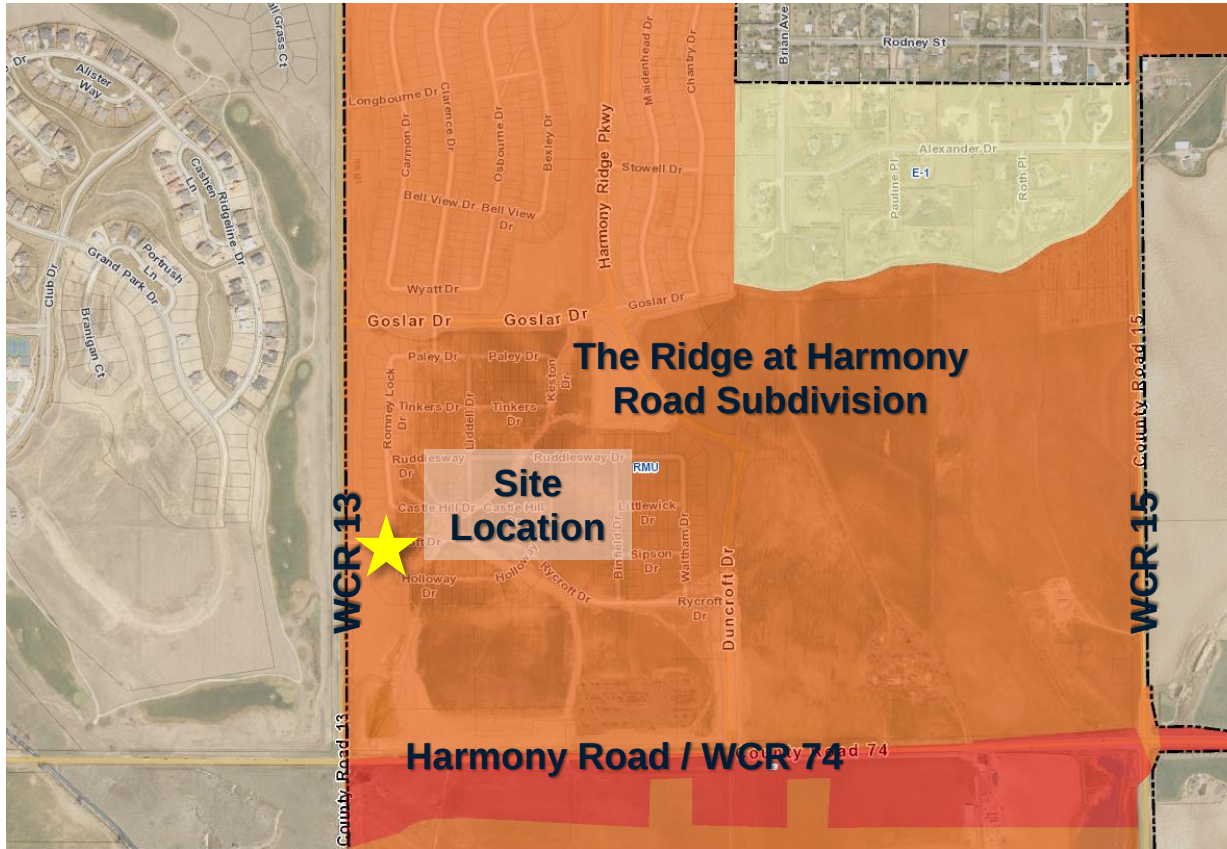


1899 Holloway Drive

Board of Adjustment – August 1, 2019

Zoning Map



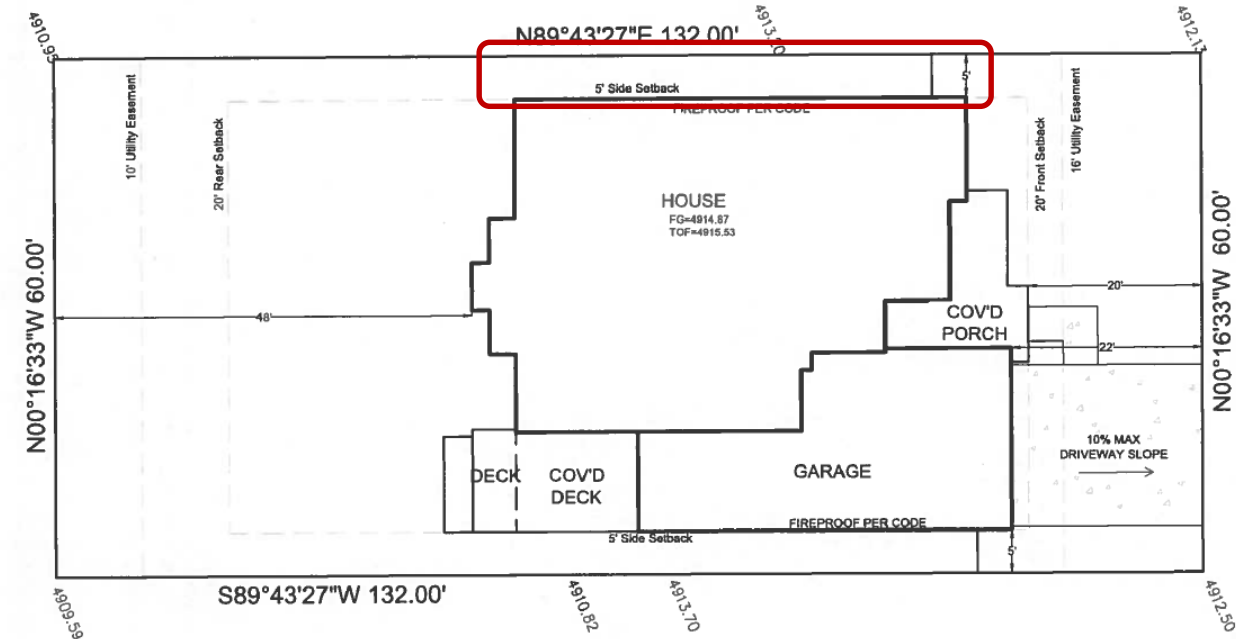




Site Concept Plan

5% (Min) Grading Slope @ 1st 10'
then 2% (Min) Grading Slope

Lot Size:
7,920 SqFt
Driveway and Sidewalk:
453 SqFt
Front Yard:
972 SqFt
Back Yard:
3,567 SqFt
Opt Fence:
277 Ft



SITE PLAN - 1899 Holloway Drive

Site Images



Site Images



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.



1899 Holloway Drive

Board of Adjustment – August 1, 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.



1899 Holloway Drive

Board of Adjustment – August 1, 2019

Analysis

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.

Whether circumstances unique to the property exist that were not created by the landowner.

- There are no circumstances unique to the property. The proposed house was designed to be constructed at the minimum setbacks and offsets allowed by the Municipal Code, leaving no room for error.



1899 Holloway Drive

Board of Adjustment – August 1, 2019

Analysis

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

- The essential character of the surrounding neighborhood would not be altered. The three inch difference is not detectable by normal observation.



1899 Holloway Drive

Board of Adjustment – August 1, 2019

Analysis

Public safety and welfare are not compromised.

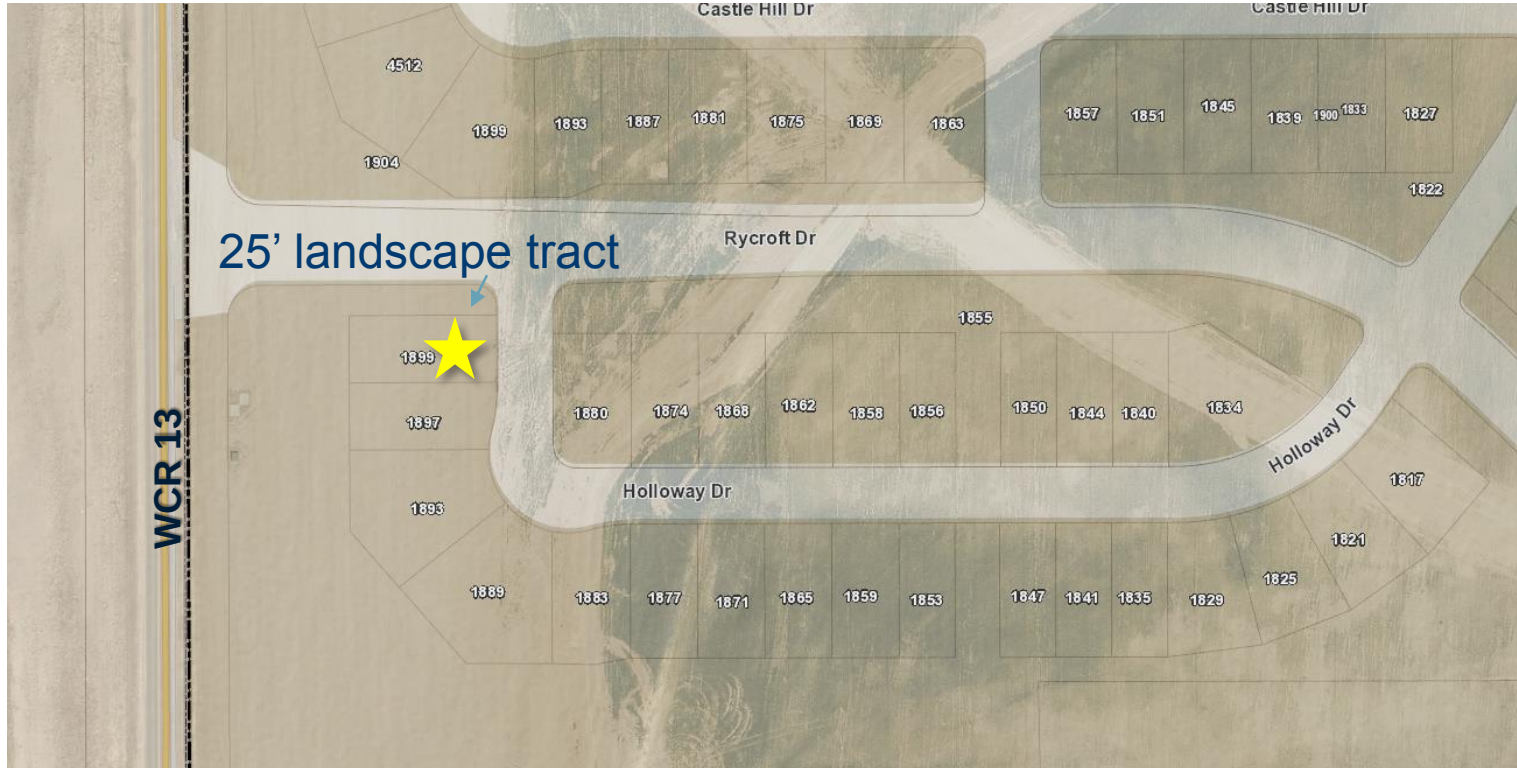
- A 25' wide landscape tract is located directly north of the subject lot on the side where the house encroaches into the offset. This will leave nearly 30 feet between the road and the house which exceeds the distance between the front of the house and the street.
- All other setbacks and offsets are compliant and the 10-foot building separation to the house to the south as required by building code has been met, so additional fire proofing is not required.
- All drainage paths will have sufficient surface area.



1899 Holloway Drive

Board of Adjustment – August 1, 2019

Site Location



Recommendation

Staff considers that the literal enforcement of the Code will not result in an unnecessary hardship as defined by the Municipal Code and as presented. Therefore, staff is recommending denial of the variance request as proposed.



1899 Holloway Drive

Board of Adjustment – August 1, 2019

Recommendation

However, if the Board chooses to grant the variance, the following conditions of approval are recommended:

1. The setback encroachment is only for that encroaching portion of the structure shown on submitted application materials.
2. A setback survey is required to show verification of the building setback.



1899 Holloway Drive

Board of Adjustment – August 1, 2019

Recommendation

Furthermore, if the Board chooses to approve the variance request, staff recommends the following findings of fact:

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.



1899 Holloway Drive

Board of Adjustment – August 1, 2019