



BOARD OF ADJUSTMENT/APPEALS REGULAR MEETING

June 23, 2022 - 7:00 PM
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
3. Public Invited to be Heard

Individuals wishing to participate in Public Invited to be Heard (non-agenda item) are requested to sign up on the form provided in the foyer of the Town Board Chambers. When you are recognized, step to the podium, state your name and address then speak to the Town Board.

Individuals wishing to speak during the Public Invited to be Heard or during Public Hearing proceedings are encouraged to be prepared and individuals will be limited to three (3) minutes. Written comments are welcome and should be given to the Town Clerk prior to the start of the meeting.

B. CONSENT CALENDAR

1. Approval of April 28, 2022 Minutes

C. BOARD ACTION

1. Public Hearing – Variance Application from Section 16-3-10 of the Municipal Code
Presentation from Kim Lambrecht, Planner II

D. COMMUNICATIONS

1. Communications from Board of Adjustments/Appeals
2. Communications from Staff

E. ADJOURN

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



MEMORANDUM

Date: June 23, 2022
To: Board of Adjustment/Appeals Members
From: Trisha Conway, Deputy Town Clerk
Re: Approval of April 28, 2022 Minutes
Item #: B.1.

Background / Discussion:

Financial Impact:

Relationship to Strategic Plan:

Recommendation:

CC:

Attachments:

1. BOA MINUTES 04.28.22 DRAFT



BOARD OF ADJUSTMENT / APPEALS REGULAR MEETING

April 28, 2022 // 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-Chair Stacey Shea

Jeffrey Gelvin

Zoom James Penfold

Don Threewitt

Alternate

Absent

Shawn Wherry

Patrick Miller

Senior Planner

David Eisenbraun

Chief Planner

Carlin Malone

Director of Planning

Scott Ballstadt

Planner II

Kim Lambrecht

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 the testimony received at this hearing.

B. CONSENT CALENDAR

1. Approval of the minutes from February 24, 2022

Vice-Chair Shea moved to approve the consent calendar as presented; Mr. Threewitt seconded the motion. Roll call on the vote resulted as follows; Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

C. BOARD ACTION

1. Public Hearing – Variance Application from Section 16-1-60, 15-17-100©(3) and 15-17-110 (Signage) of the Municipal Code pertaining to area and height of freestanding signage, building-mounted signs / maximum sign height, and the refresh rate on the electronic message center included on signage proposed

throughout Future Legends sports complex – Future Legends, LLC, owner; Mark Kersting (Schlosser Signs), applicant/representative

Ms. Lambrecht reported the applicant, Mr. Mark Kersting, Schlosser Signs, is requesting a variance from Municipal Code Sections 15-17-60, 15-17-100(c)(3), 15-17-110(a)(1) and 15-17-110(f) (Signage) of the Municipal Code pertaining to the area and height of freestanding signage, building-mounted signs / maximum sign height, and the refresh rate on the electronic message center, included on signage proposed throughout the Future Legends sports complex.

Additionally, Staff recognizes that the design of the signs may have elements that conflict with Section 15-17-70(j) pertaining to the prohibition of pole mounted signs.

The proposed signs will be located throughout the property at Diamond Valley Subdivision 5th Filing (801 Diamond Valley Drive). The property is zoned Limited Industrial (LI) and is surrounded by other LI-zoned properties on all sides, with the exception of small parcels to the south and west that are zoned Estate Residential (ER). The proposed signs are presented as an overall package of site signage intended to be coordinated throughout the site. Note, building signage (with the exception of the professional stadium sign) will be reviewed at the time of submittal for the specific buildings and/or uses.

Variance Request

Municipal Code Section 15-17-60(f)(3) states the following:

The electronic message center must be programmed so that the displayed message does not change more frequently than once every two (2) minutes from one (1) static display to another instantaneously and without the use of scrolling, flashing, fading or other similar effects. The message or image displayed must be complete without continuation in content to the next message.

The applicant is requesting that the refresh rate of the electronic message board proposed at the main entry to the site be reduced. Staff supports a reduction from two (2) minutes to 30 seconds.

Municipal Code Section 15-17-100(c)(3) states the following:

Large-scale tenant. The height of building-mounted signs for large-scale tenants shall not exceed twenty-five percent (25%) of the height of the building elevation upon which the sign is mounted. However, in no event shall such sign exceed twenty (20) feet in height.

The applicant is requesting that the building mounted sign on the south elevation of the professional stadium be allowed to be 30% of the height of the building elevation upon which is it mounted. The proposed height of the wall is 33'-6" and the sign is 10-feet high.

Municipal Code Section 15-17-110(a)(1) states the following:

Maximum sign area: Shopping center developments exceeding a total of seventy-five thousand (75,000) square feet of total gross leasable area shall be eligible for a development identification sign. Such sign shall not exceed fifty (50) square feet in area per side of sign for each one hundred (100) feet of street frontage of the lot upon

which the development is located, not to exceed one hundred (100) square feet per side of sign.

Staff is considering the Future Legends development to be similar to a large shopping center development and is proposing to follow that criteria when evaluating the development identification signs. The street frontage totals over 800 lineal feet. The applicant is proposing a development identification sign and a tenant identification sign that both exceed the 100 square foot per side criteria allowed by the Code. The signs are proposed to have 171 square feet and 128 square feet, respectively.

Municipal Code Section 15-17-110(f) states the following:

Directional signs shall be allowed, as necessary. Such signs shall be constructed of materials and colors that are consistent with the materials, colors, and architectural elements of the project. The sign area of such signs shall not exceed four (4) square feet in area per side of sign, not to exceed two (2) sides per any one (1) sign and shall not exceed four (4) feet in height. Such signs shall be set back and offset a minimum distance of five (5) feet from all property lines.

The applicant is requesting that the directional signage be allowed to exceed the height and area criteria such that each sign be allowed to have an area of 12 square feet per side and a height of five (5) feet.

Municipal Code Section 15-17-70(j) states the following:

Pole-mounted signs are prohibited

Staff is requesting a variance from the section prohibiting pole-mounted signs based on the interpretation that the columns shown on the sign drawings are features of the design, intended to be a part of the overall sign composition, and not simply construed as a sign mounted onto a pole.

A n a l y s i s

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

- (1) Special circumstances exist that strict application of the standards adopted in this development code would result in undue hardship or practical difficulties for the owner of such property;
- (2) The applicant cannot derive beneficial use of the property without the variance;
- (3) The purpose and intent behind the regulation would be maintained by granting the variance;
- (4) Granting the variance will not be detrimental to any adjacent properties or the surrounding area;
- (5) Granting the variance will not be detrimental to public health, safety, or welfare;
- (6) Adequate relief cannot be reasonably obtained through a different procedure, such as a waiver or alternative compliance standards, if applicable;
- (7) Granting the variance will not create a building or fire code violation or other safety hazard;
- (8) The need for the variance is not created by a self-imposed hardship;
- (9) A variance shall allow only the least deviation from the standard that will afford relief

Staff has analyzed:

- whether special site-specific conditions exist

Staff has determined that the site is large enough to support signage as presented in this application, and the size of the development requires a significant signage presence.

- whether unnecessary hardship exists

Staff has determined that granting the variance will provide clear directions to visitors to the site

- the impact on public interest, safety, and welfare

Staff has determined that the proposed signage will benefit and assist with the visitor experience to the site

- the impacts to the neighborhood character.

Staff has determined that the design of the signage is coordinated with, and complementary to the industrial character of the neighborhood.

The variance request was referred to the Town Development Review Committee (DRC), which includes the Engineering, Public Works, Stormwater, Parks, and Fire Departments. Engineering requested to review the site-specific plans when the building permit submittal is received to ensure that conflicts with utilities and sight distances are not presented. Fire asked that site addresses be incorporated into the signage as appropriate. No comments were received from the remaining DRC members.

Findings

- The size and magnitude of the site, along with the variety of uses and users warrants a sign package that meets the needs of the businesses, athletes, and visitors.
- Appropriately placed signage will assist with vehicular and pedestrian safety
- The proposed signage does not present negative impacts to the surrounding property and land uses.

Staff considers the literal enforcement of the Code will result in an unnecessary hardship for the Future Legends development, as defined by the Municipal Code, and as presented. Therefore, staff is recommending approval of the variance request for the proposed signs as presented in the application based on the following findings of fact, based on **Municipal Code Section 14-2-150(c)**:

- (1) Given the magnitude and scale of the site and components of this development, larger, complimentary, and coordinated signs are warranted.
- (2) The variance supports efforts to assist visitors to the site in locating key features of the property, which include sports fields, hotels, retail, and restaurants.
- (3) The signage package will give proper venue and business identification, along with safe traffic flow.
- (4) The property owner will maintain a sensitive approach to surrounding properties and will operate the signage in a 'good neighbor' perspective.
- (5) Signage will be designed and located to provide adequate direction for safe and optimal vehicular and pedestrian flow.
- (6) The variance is intended to allow for the development of a variety of sign types created to form a unified sign package.

- (7) Signs will be designed and installed according to current building and fire code regulations. Building Permits will be required for large monument signs.
- (8) Proposed signs are being requested to support the scale of the site and features, which will help the visitor experience.
- (9) Proposed signage is shown at sizes and locations to meet the minimum standards found throughout the industry, and to meet the needs of the tenants and the visitors.

Recommendation

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

1. A motion to approve the request for a variance from Sections 15-17-60, 15-17-100(c)(3) and 15-17-110 (Signage) of the Municipal Code pertaining to the area and height of freestanding signage, building-mounted signs / maximum sign height, and the refresh rate on the electronic message center included on signage proposed throughout the Future Legends sports complex, based upon the aforesaid findings of fact and the applicant obtaining the applicable sign and building permits;
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

April 13, 2022, public hearing notice sent to surrounding property owners.
April 14, 2022, public hearing notice posted on Town of Windsor website.
April 14, 2022, development sign posted on the subject property.
April 15, 2022, public hearing notice published in the paper.

Chairman Horner opened the public meeting for public comment to which there was none.

Mr. Threewill moved to close the public hearing; Mr. Gelvin seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

Chairman Horner opened the meeting for Board discussion.

Discussion ensued between the board members, and staff.

Mr. Threewitt moved to approve staff's recommendation of the Variance of Municipal Code Section 16-1-60, 15-17-100©(3) and 15-17-110 (Signage) of the Municipal Code pertaining to area and height of freestanding signage, building-mounted signs / maximum sign height, and the refresh rate on the electronic message center included on signage proposed throughout Future Legends sports complex); Mr. Gelvin seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Gelvin, Penfold, Threewitt; Nays – None; Abstain – Shea; Motion carried.

2. Public Hearing – Variance Application from Section 16-3-10 pertaining to location of an accessory structure on a residential lot in the Estate Residential (ER) Zone District – Hilltop Subdivision, Lot 31 (1268 Falcon Court) – Brent and Kimberly Huseman, Property Owners, and Applicants.

Ms. Malone reported the applicant, Mr. Brent, and Ms. Kimberly Huseman, are requesting a variance from Municipal Code Section 16-3-10 of the Municipal Code pertaining to location of accessory buildings on residential lots, in the Estate Residential (ER) Zone District.

Municipal Code Section 16-3-10 states the following:

"No accessory building, regardless of its size, shall be located any closer to the front property line than the rear corners of the principal building; that is, accessory buildings are only allowed in rear yards."

The applicants are proposing an accessory structure (garage/shop) to be located within the side yard of the property. The principal structure (single-family home) is situated in the middle portion of the lot and the proposed location of the accessory structure would be situated within the western side yard, setback 53 feet from the front of home and setback 25 feet from the side property line. The structure would comply with building setbacks.

The lot contains mature landscaping, including large evergreens, as well as leach line, which were installed by previous owners of the property. The applicants' narrative describes how the placement of the accessory structure in the rear yard would result in removal of mature landscaping and be most impactful to adjacent neighbors' views of open space. The proposed location would be located between the front and rear corners of the west side of the principal structure (residence), having the least impact on views (see application materials). Therefore, the applicant is seeking a variance to locate an accessory structure in a location that would amount to the least impact on the existing site conditions and surrounding properties.

The accessory structure is proposed to be 40 feet wide by 60 feet in length and of less height than the principal home. The accessory structure, which would be constructed to match the features and colors of the main house, will need building permits. The accessory building will adhere to the side yard setback of 20 feet in the ER zone district and adhere to height allowance of 40 feet in the ER zone district. The proposed height of the accessory structure would be less than the existing home.

The neighborhood is characterized with estate residential lots. Within the neighborhood, including the same street, there are accessory buildings within side yards, front yards, and rear yards. Prior to changes to the Town's development codes in October 2006, the location of accessory structures was not limited to the rear yard of a lot. Therefore, the proposed accessory structure location would be generally compatible with existing character of the neighborhood.

The proposed location of the accessory structure is the result of several site factors.

- Physical features of the lot:
- Impractical to locate accessory structure in the rear yard without losing mature landscaping.
- Impractical to attach structure to principal structure (an addition) due to existing lot conditions (mature landscaping and leach line).
- Rear yard location most impactful to adjacent neighbors' views.

- Principal structure (home) setback ranges from 107-130 feet from the front property line and 190 feet from the rear property line.
- The character of the neighborhood:
- Neighborhood contains multiple non-conforming accessory structure locations.
- Proposed location for the accessory structure is behind the principal structure and consistent with and compatible with other accessory structure locations in this neighborhood.

Based on the lot's existing conditions and configuration, as well as accessory structure locations within this subdivision, the variance would provide a practical location for the accessory structure.

Analysis

Municipal Code Section 14-2-150 (Major Variance) states the following:
Major Variances are intended to alleviate practical difficulties or hardship arising from the strict application of the provisions of Chapters 15 and 16 of this Code to a specific property. Variances address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission. A variance, if granted, will constitute a change in the zoning provisions of Chapter 15 or Chapter 16 of this Code as distinct from a conditional use grant which allows for inclusion within the zones established by this Code for certain anticipated uses of a unique nature or character justified by temporary.

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

- (1) *Special circumstances exist that strict application of the standards adopted in this development code would result in undue hardship or practical difficulties for the owner of such property;*
- (2) *The applicant cannot derive beneficial use of the property without the variance;*
- (3) *The purpose and intent behind the regulation would be maintained by granting the variance;*
- (4) *Granting the variance will not be detrimental to any adjacent properties or the surrounding area;*
- (5) *Granting the variance will not be detrimental to public health, safety, or welfare;*
- (6) *Adequate relief cannot be reasonably obtained through a different procedure, such as a waiver or alternative compliance standards, if applicable;*
- (7) *Granting the variance will not create a building or fire code violation or other safety hazard;*
- (8) *The need for the variance is not created by a self-imposed hardship;*
- (9) *A variance shall allow only the least deviation from the standard that will afford relief; and*

(d) Conditions on granting variances. *In granting any variance, the Board of Adjustment may impose such conditions and requirements with respect to location, construction, maintenance, and operation in addition to any which may be stipulated by this Chapter as deemed necessary for the protection of the adjacent properties and the public interest and welfare. Violation of such conditions and requirements, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Code. Any variance approval with conditions requiring affirmative action by the applicant prior to the variance becoming effective shall remain valid for a period of eighteen (18) months from the date the Board of Adjustment approves*

the variance and imposes the conditions requiring affirmative action. It shall be the sole responsibility of the applicant to satisfy all such conditions of approval within the eighteen-month period, or the grant of variance shall be deemed null and void.

Staff has analyzed the major variance criteria as follows:

(1) Special circumstances exist that strict application of the standards adopted in this development code would result in undue hardship or practical difficulties for the owner of such property;

Staff comment: Based on the impracticalities associated with locating the accessory structure within the rear yard and the compatibility with the character of the neighborhood, the proposed placement of the accessory structures is in line with the intent of how this lot was designed to be used and compatible with the accessory building placement of surrounding properties. Removal of mature landscaping, including mature trees, or disturbance of the existing leach line for the placement of the accessory structure and drive leading to the structure is impractical. Strict application of the development code would result in practical difficulties.

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

Staff comment: The property has use in its current condition; however, physical constraints associated with the property's existing conditions limit the location of development. The variance would allow an accessory structure in a location consistent with other properties within the neighborhood, while having the least impact on adjacent property views.

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

Staff comment: The purpose and intent behind the regulation restricting accessory buildings from the front and side yards is to provide an attractive and pedestrian-oriented streetscape. Most homes within this neighborhood are setback 75 to over 100 feet from the front property line. The acreage of estate residential subdivisions provides enough area where street frontages are not dominated by garage-facing homes and accessory buildings structures.

The subject lot layout is consistent with estate lots within the neighborhood.

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

Staff comment: The essential character of the surrounding neighborhood would not be altered. The proposed accessory building locations are consistent with the neighborhood. There are at least eleven lots with non-conforming accessory structures located outside of the rear yard. The applicant proposes a location that would have less of an impact on views than if the structure was situated in the rear yard, while maintaining the existing mature landscaping.

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

Staff comment: The building locations would not negatively impact public safety and welfare. The building location would not encroach into easements or setbacks. The location of the accessory structure is proposed to be setback 53 feet behind the primary structure/home, which is 164 feet from the front property line. The accessory structure will be located 25 feet from the side yard property line, consistent with the code requirement of 20 feet side yard setback. The accessory structure would be setback 153 feet from the rear property line.

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

Staff comment: There are no other procedures such as alternative compliance that would provide compliance with standards.

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

Staff comment: Granting the variance will not create a building or fire code violation or other safety hazard.

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

Staff comment: The layout and character of the neighborhood, which was primarily developed in the early 2000s, was not created by the applicants. The existing conditions, including the location of mature landscaping, leach line, and view corridor were not created by the party seeking the variance.

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

Staff comment: The variance will allow the least deviation from the standard to afford relief, allowing a comparable development pattern as that of lots within the subdivision, as well as the same street, while having the least impact on surrounding views from surrounding properties.

Recommendation

Staff considers that the literal enforcement of the Code will result in an unnecessary hardship as defined by the Municipal Code and outlined above. Therefore, staff is recommending approval of the variance request with the following conditions:

1. The accessory structures are to be designed in a manner compatible with the principal structure; and

2. The applicant obtains building permits for the proposed accessory structures.

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 16-3-10 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.

Furthermore, staff recommends the following findings of fact:

1. Special circumstances exist that strict application of the standards adopted in this development code would result in undue hardship or practical difficulties for the owner of such property, in this case.

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

Notification

April 14, 2022, development sign posted on the subject property.

April 15, 2022, public hearing notice published in the paper.

April 13, 2022, letters mailed to neighboring residents (150')

April 11, 2022, public hearing notice published on Town website.

Chairman Horner opened the public meeting for public comment to which there was none.

Vice-Chair Shea moved to close the public hearing; Mr. Gelvin seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

Chairman Horner opened the meeting for Board discussion.

Discussion ensued between the board members, and staff.

Mr. Threewitt moved to approve staff's recommendation of the Variance of Municipal Code Section 16-3-10 pertaining to location of an accessory structure on a residential lot in the Estate Residential (ER) Zone District – Hilltop Subdivision, Lot 31 (1268 Falcon Court); Vice-Chair Shea seconded the motion. Roll call on the vote resulted as follows: Yeas – Horner, Shea, Gelvin, Penfold, Threewitt; Nays – None; Motion carried.

D. COMMUNICATIONS

1. Communications from the Board Members

- None

2. Communications from staff

- None

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 8:09 p.m.

Trisha Conway, Deputy Town Clerk



MEMORANDUM

Date: June 23, 2022
To: Board of Adjustment/Appeals Members
From: David Eisenbraun, Senior Planner
Kimberly Lambrecht, Planner I
Re: Public Hearing – Variance Application from Section 16-3-10 of the Municipal Code
Item #: C.1.

Background / Discussion:

Background

The applicant, Mr. Jonathan Maxfield, is requesting a variance from Municipal Code Section 16-3-10 of the Municipal Code pertaining to the location of an accessory building on a residential lot, in the Residential Mixed Use (RMU-1) Zone District.

Municipal Code Section 16-3-10 states the following:

"No accessory building, regardless of its size, shall be located any closer to the front property line than the rear corners of the principal building; that is, accessory buildings are only allowed in rear yards."

The applicant is proposing an accessory structure (garage/shop) to be located within the side yard of the property. The principal structure (single-family home) is situated in the western portion of the lot and the proposed location of the accessory structure would be situated within the eastern side yard, setback 30 feet from the front of home and setback seven feet from the side property line. The structure would comply with building setbacks.

The lot includes new landscaping and is adjacent to a ditch which curves into his property, decreasing the overall size. The applicants' narrative describes how the placement of the accessory structure in the rear yard would result in not being compliant with the special HOA regulations of a 40' setback and be most impactful to adjacent neighbors' views of open space. The proposed location would be located between the front and rear corners of the east side of the principal structure (residence), having the least impact on views (see application materials). Therefore, the applicant is seeking a variance to locate an accessory structure in a location that would amount to the least impact on the existing site conditions and surrounding properties.

The accessory structure is proposed to be 40 feet wide by 80 feet in length and of less height than the principal home. The accessory structure, which would be constructed to match the features and colors of the main house, will need building permits. The accessory building will adhere to the side yard setback of 5 feet in the RMU-1 zone district and adhere to height allowance of 40 feet in the RMU-1 zone district. The proposed height of the accessory structure would be less than the existing home at 27' to the peak.

Table 16-1-70 RMU-1 Lot Development Standards								
Building Type	Vehicular Access ¹	Lot Standards		Minimum Setbacks			Rear Abutting Alley	Building Height
		Min. Size (square feet)	Maximum Lot Coverage	Front	Side	Rear		
Single Family Dwelling	Any	6,000	65%	20'	5'	10'	5'	40''
Duplex, Standard or Over-Under	Any	4,500 ²	65%	20'	5'	10'	5'	40'
Townhouse	Any	2,400 ³	80% ⁴	20'	5' / 0' ⁵	10'	5'	40'
Multifamily Apartment	Any	1,400 ³	80%	20'	½ of building height	½ of building height	n/a	40'
Commercial, Mixed Use, or Institutional	Any	20,000	80%	25'	20'	20'	n/a	40'

The neighborhood is characterized with single family detached residential lots. Within the neighborhood, including the same street, there are large accessory buildings within rear yards because other lots have greater depths to accommodate the HOA's 40' rear yard setback. Therefore, the proposed accessory structure location would be generally compatible with existing character of the neighborhood.

The proposed location of the accessory structure is the result of several site factors.

- Physical features of the lot:
 - Impractical to locate accessory structure in the rear yard without violating HOA setbacks.
 - Impractical to attach structure to principal structure (an addition) due to existing lot conditions (ditch route).
 - Rear yard location most impactful to adjacent neighbors' views.
- The character of the neighborhood:
 - Proposed location for the accessory structure is behind the principal structure and consistent with and compatible with other accessory structure locations in this neighborhood.

Based on the lot's existing conditions and configuration, as well as accessory structure locations within this subdivision, the variance would provide a practical location for the accessory structure.

Analysis

Municipal Code Section 14-2-150 (Major Variance) states the following:

Major Variances are intended to alleviate practical difficulties or hardship arising from the strict application of the provisions of Chapters 15 and 16 of this Code to a specific property. Variances address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission. A variance, if granted, will constitute a change in the zoning provisions of Chapter 15 or Chapter 16 of this Code as distinct from a conditional use grant which allows for inclusion within the

zones established by this Code for certain anticipated uses of a unique nature or character justified by temporary conditions.

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

- (1) Special circumstances exist that strict application of the standards adopted in this development code would result in undue hardship or practical difficulties for the owner of such property;*
- (2) The applicant cannot derive beneficial use of the property without the variance;*
- (3) The purpose and intent behind the regulation would be maintained by granting the variance;*
- (4) Granting the variance will not be detrimental to any adjacent properties or the surrounding area;*
- (5) Granting the variance will not be detrimental to public health, safety, or welfare;*
- (6) Adequate relief cannot be reasonably obtained through a different procedure, such as a waiver or alternative compliance standards, if applicable;*
- (7) Granting the variance will not create a building or fire code violation or other safety hazard;*
- (8) The need for the variance is not created by a self-imposed hardship;*
- (9) A variance shall allow only the least deviation from the standard that will afford relief; and*

*(d) **Conditions on granting variances.** In granting any variance, the Board of Adjustment may impose such conditions and requirements with respect to location, construction, maintenance and operation in addition to any which may be stipulated by this Chapter as deemed necessary for the protection of the adjacent properties and the public interest and welfare. Violation of such conditions and requirements, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Code. Any variance approval with conditions requiring affirmative action by the applicant prior to the variance becoming effective shall remain valid for a period of eighteen (18) months from the date the Board of Adjustment approves the variance and imposes the conditions requiring affirmative action. It shall be the sole responsibility of the applicant to satisfy all such conditions of approval within the eighteen-month period, or the grant of variance shall be deemed null and void.*

Staff has analyzed the major variance criteria as follows:

1. Special circumstances exist that strict application of the standards adopted in this development code would result in undue hardship or practical difficulties for the owner of such property;

Staff comment: Based on the impracticalities associated with locating the accessory structure within the rear yard and the compatibility with the character of the neighborhood, the proposed placement of the accessory structures is in line with the intent of how this lot was designed to be used and compatible with the accessory building placement of surrounding properties. Strict application of the development code would result in practical difficulties.

1. The applicant cannot derive beneficial use of the property without the variance;

Staff comment: The property has use in its current condition; however, physical constraints associated with the property's existing conditions limit the location of development. The variance would allow an accessory structure in a location consistent with other properties within the neighborhood, while having the least impact on adjacent property views.

1. The purpose and intent behind the regulation would be maintained by granting the variance;

Staff comment: The purpose and intent behind the regulation restricting accessory buildings from the front and side yards is to provide an attractive and pedestrian-oriented streetscape. Most homes within this neighborhood are setback 25 feet from the front property line. The acreage of these lots provides enough area where street frontages are not dominated by garage-facing homes and accessory buildings structures. The subject lot layout is consistent with other large lots within the neighborhood.

1. Granting the variance will not be detrimental to any adjacent properties or the surrounding area;

Staff comment: The essential character of the surrounding neighborhood would not be altered. The proposed accessory building locations are consistent with the neighborhood. The applicant proposes a location that would have less of an impact on views than if the structure was situated in the rear yard, while maintaining the existing HOA rules.

1. Granting the variance will not be detrimental to public health, safety, or welfare;

Staff comment: The building locations would not negatively impact public safety and welfare. The building location would not encroach into easements or setbacks. The location of the accessory structure is proposed to be setback 30 feet behind the front property line. The accessory structure will be located 7 feet from the side yard property line, consistent with the code requirement of 5 feet side yard setback. The accessory structure would be setback 40 feet from the rear property line.

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

Staff comment: There are no other procedures such as alternative compliance that would provide compliance with standards.

1. Granting the variance will not create a building or fire code violation or other safety hazard;

Staff comment: Granting the variance will not create a building or fire code violation or other safety hazard.

1. The need for the variance is not created by a self-imposed hardship;

Staff comment: The layout and character of the site would normally comply with the Town's setbacks of 10' in the rear, but the HOA has more strict standards and therefore is not self imposed.

1. A variance shall allow only the least deviation from the standard that will afford relief; and

Staff comment: The variance will allow the least deviation from the standard to afford relief, allowing a comparable development pattern as that of lots within the subdivision, as well as the same street, while

having the least impact on surrounding views from surrounding properties.

Recommendation

Staff considers that the literal enforcement of the Code will result in an unnecessary hardship as defined by the Municipal Code and outlined above. Therefore, staff is recommending approval of the variance request with the following conditions:

1. The accessory structure is to be designed in a manner compatible with the principal structure;
and
2. The applicant obtains a building permit for the proposed accessory structure.

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 16-3-10 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.

Furthermore, staff recommends the following findings of fact:

1. Special circumstances exist that strict application of the standards adopted in this development code would result in undue hardship or practical difficulties for the owner of such property, in this case.

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

Notification

June 8, 2022, development sign posted on the subject property.

June 10, 2022, public hearing notice published in the paper.

June 10, 2022, letters mailed to neighboring residents (150')

June 10, 2022, public hearing notice published on Town website.

Financial Impact:**Relationship to Strategic Plan:****Recommendation:**

Staff considers that the literal enforcement of the Code will result in an unnecessary hardship as defined by the Municipal Code and outlined above. Therefore, staff is recommending approval of the variance request with the following conditions:

1. The accessory structure is to be designed in a manner compatible with the principal structure;
and
2. The applicant obtains a building permit for the proposed accessory structure.

CC:**Attachments:**

1. Item C.1.c Presentation



Variance Request:

1610 Northcroft Drive

The Ridge at Harmony Road

Subdivision Third Filing

Allowance for an accessory structure within side yard

Board of Adjustment – June 23, 2022

Variance Request

Variance of Municipal Code Section 16-3-10 pertaining to building location:

“No accessory building, regardless of its size, shall be located any closer to the front property line than the rear corners of the Principal building; that is, accessory buildings are only allowed in rear yards.”



1610 Northcroft Drive

Town of Windsor Board of Adjustment – June 23, 2022



Site Vicinity Map



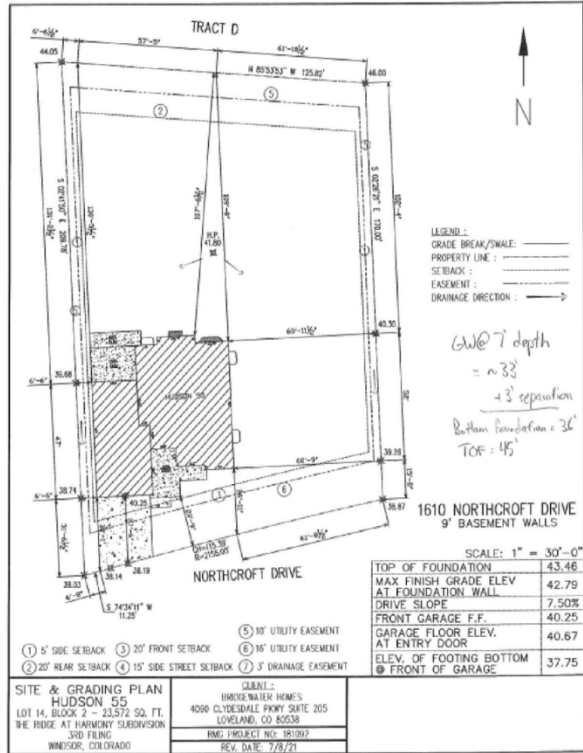


Site Zoning Map



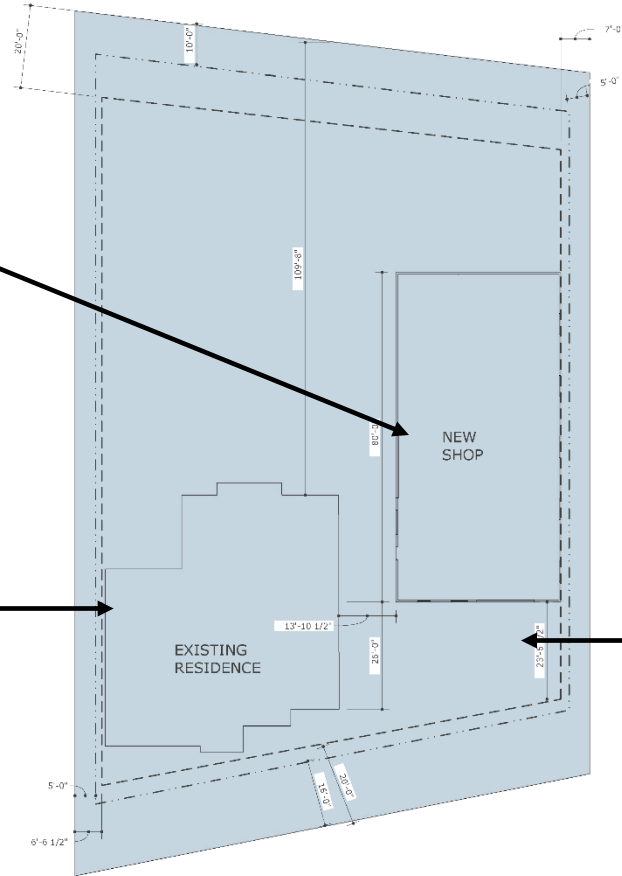


Site Concept Plan



Proposed
accessory
Structure
(garage/shop)

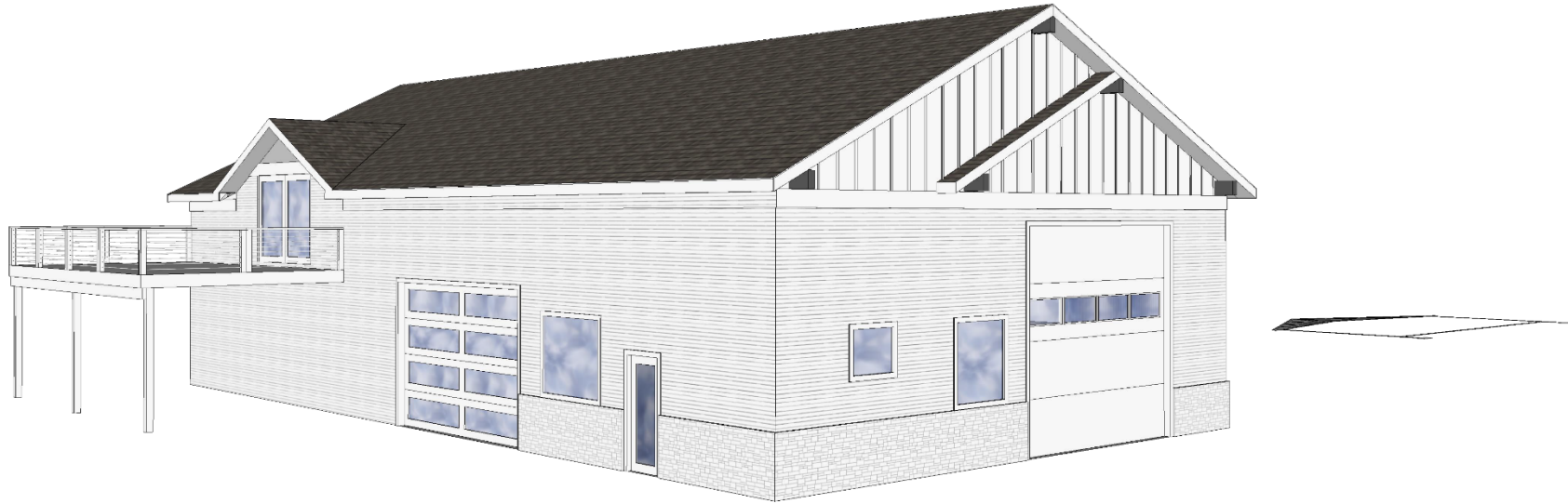
Principal
structure



Matching
Fence
location to
screen
building
with new
curb cut.

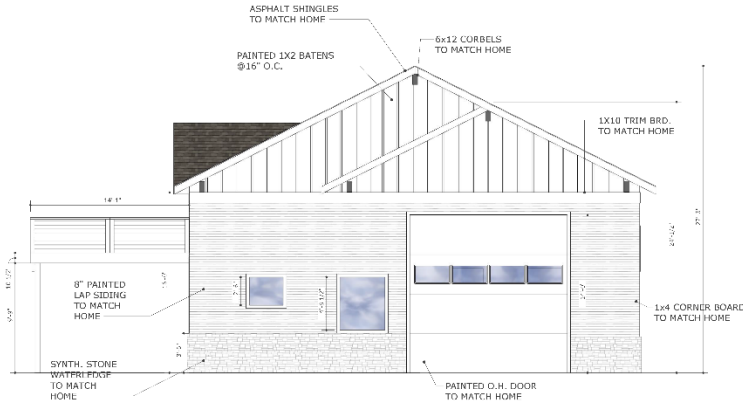


Perspectives

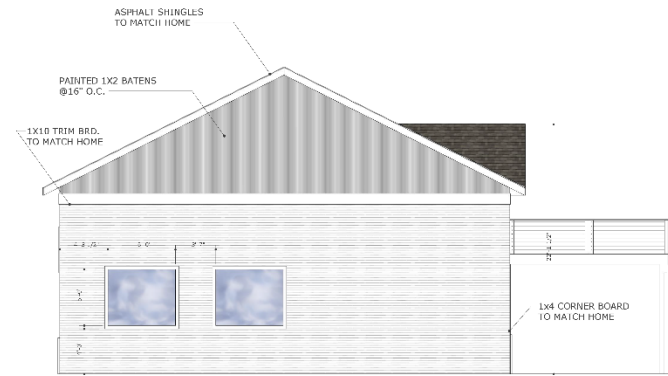




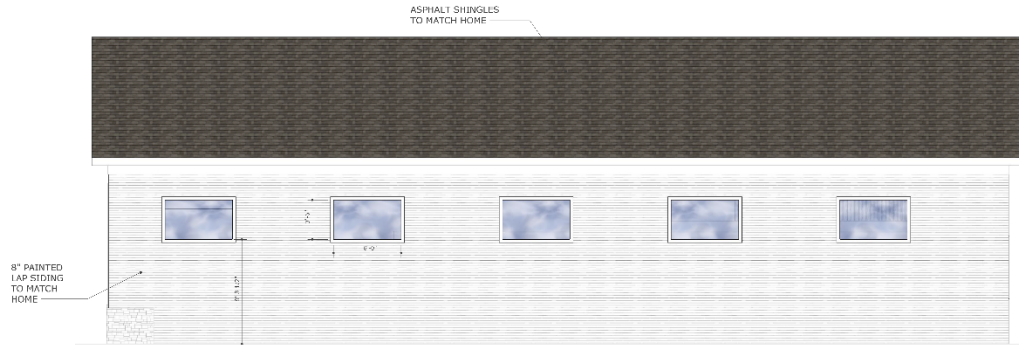
Elevations



A
2.1 SOUTH ELEVATION
1/8" = 1' FOOT



A
2.2 NORTH ELEVATION
1/8" = 1' FOOT



A
2.3 EAST ELEVATION
1/8" = 1' FOOT

Municipal Code Section 14-2-150 (Major Variance) states the following:

Major Variances are intended to alleviate practical difficulties or hardship arising from the strict application of the provisions of Chapters 15 and 16 of this Code to a specific property. Variances address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission. A variance, if granted, will constitute a change in the zoning provisions of Chapter 15 or Chapter 16 of this Code as distinct from a conditional use grant which allows for inclusion within the zones established by this Code for certain anticipated uses of a unique nature or character justified by temporary conditions.



1610 Northcroft Drive

Town of Windsor Board of Adjustment – June 23, 2022

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

- (1) Special circumstances exist that strict application of the standards adopted in this development code would result in undue hardship or practical difficulties for the owner of such property;*
- (2) The applicant cannot derive beneficial use of the property without the variance;*
- (3) The purpose and intent behind the regulation would be maintained by granting the variance;*
- (4) Granting the variance will not be detrimental to any adjacent properties or the surrounding area;*
- (5) Granting the variance will not be detrimental to public health, safety, or welfare;*
- (6) Adequate relief cannot be reasonably obtained through a different procedure,*



1610 Northcroft Drive

Town of Windsor Board of Adjustment – June 23, 2022

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

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

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

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



1610 Northcroft Drive

Town of Windsor Board of Adjustment – June 23, 2022

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

*(d) **Conditions on granting variances.** In granting any variance, the Board of Adjustment may impose such conditions and requirements with respect to location, construction, maintenance and operation in addition to any which may be stipulated by this Chapter as deemed necessary for the protection of the adjacent properties and the public interest and welfare. Violation of such conditions and requirements, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Code. Any variance approval with conditions requiring affirmative action by the applicant prior to the variance becoming effective shall remain valid for a period of eighteen (18) months from the date the Board of Adjustment approves the variance and imposes the conditions requiring affirmative action. It shall be the sole responsibility of the applicant to satisfy all such conditions of approval within the eighteen-month period, or the grant of variance shall be deemed null and void.*



1610 Northcroft Drive

Town of Windsor Board of Adjustment – June 23, 2022

Analysis

- Would not create negative impacts to public safety and welfare.
- The character of the surrounding neighborhood would not be altered.
- Granting the variance will not create a building or fire code violation or other safety hazard.
- The physical constraints associated with the lot and its configuration were not created by the applicant.
- The variance will allow the least deviation from the standard to afford relief.



1610 Northcroft Drive

Town of Windsor Board of Adjustment – June 23, 2022

Variance Request

Staff requests that the following be entered into the record:

- Application and supplemental materials
- Staff memorandum and supporting documents
- All testimony presented during the public hearing
- Recommendation



1610 Northcroft Drive

Town of Windsor Board of Adjustment – June 23, 2022

Recommendation

Staff considers that the literal enforcement of the Code will result in an unnecessary hardship or a practical difficulty, and therefore, is recommending approval of the variance request, based on the following findings of fact:

1. Special circumstances exist that strict application of the standards adopted in this development code would result in undue hardship or practical difficulties for the owner of such property, in this case.

With the following recommended conditions of approval:

1. The accessory structures are to be designed in a manner compatible with the principal structure; and
2. The applicant obtains a building permit for the proposed accessory structure.



1610 Northcroft Drive

Town of Windsor Board of Adjustment – June 23, 2022