



BOARD OF ADJUSTMENT/APPEALS SPECIAL MEETING

December 5, 2024 - 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. 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.
4. 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 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 the April 25, 2024, Board of Adjustment/Appeals Regular Meeting Minutes - L. Richardson, Assistant Town Clerk

C. BOARD ACTION

1. Public Hearing – Variance from Section 16-1-40, Table 16-1-40(b) – Single Family One Residential (SF-1) lot development standards pertaining to a reduced rear yard setback – Elizabeth Gonzales (Owner); Trevor Gonzales (Applicant).
 - Quasi-judicial action
 - Staff presentation: Kimberly Lambrecht, Senior Planner
2. Variance from Section 16-1-40, Table 16-1-40(b) – Single Family One Residential (SF-1) lot development standards pertaining to a reduced rear yard setback – Elizabeth Gonzales (Owner); Trevor Gonzales (Applicant).
 - Quasi-judicial action
 - Staff presentation: Kimberly Lambrecht, Senior Planner

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: December 5, 2024
To: Board of Adjustment/Appeals Members
From:
Re: Approval of the April 25, 2024, Board of Adjustment/Appeals Regular Meeting Minutes - L. Richardson, Assistant Town Clerk
Item #: B.1.

Background / Discussion:

Financial Impact:

Relationship to Strategic Plan:

Recommendation:

CC:

Attachments:

1. 04.25.24 BOA Draft Minutes



Board of Adjustment/Appeals Regular Meeting

April 25, 2024 - 7:00 PM

Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

MINUTES

A. CALL TO ORDER

Chair Shea called the meeting to order at 7:00 p.m.

1. Roll Call

Present:

Chair Stacey Shea
Vice Chair Don Threewitt
Hunter Rivera
Jeremy Benintende
Barry McGuiness, Alternate

Absent:

Secretary James Penfold

Also Present:

David Eisenbraun, Long Range Planner
Kim Emil, Deputy Town Attorney
Laura Richardson, Assistant Town Clerk
Kim Lambrecht, Senior Planner
Mark Price, Planner I
Ron Steinbach, Town Board Member

Board of Adjustment/Appeals Board Member Benintende moved to promote Board Member Hunter Rivera from Alternate to a Full Time Board Member, Board of Adjustment/Appeals Board Member Threewitt seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuiness; Nays - None; Motion Passed.

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

Board of Adjustment/Appeals Board Member Threewitt moved to approve the agenda as written, Board of Adjustment/Appeals Board Member Rivera seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuiness; Nays - None; Motion Passed.

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."

Chair Shea read the statement of the documents to be entered into the record.

4. Public Invited to be Heard

Chair Shea opened the meeting up for public comment, to which there was none.

B. CONSENT CALENDAR

1. Approval of the January 25, 2024 Board of Adjustment/Appeals Regular Meeting Minutes - K. Cinnamon, Deputy Town Clerk

Board of Adjustment/Appeals Board Member Benintende moved to accept the consent calendar as presented, Board of Adjustment/Appeals Board Member Rivera seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuinness; Nays - None; Motion Passed.

C. BOARD ACTION

1. Election of Officers - Election of Board of Adjustment/Appeals Chair

Chair Shea opened the meeting for nominations, to which Board Member Benintende nominated Chair Shea to continue as the Chair of the Board of Adjustment/Appeals. Chair Shea consented to the nomination.

Board of Adjustment/Appeals Board Member Benintende moved to elect Chair Shea to Chair of the Board of Adjustment/Appeals, Board of Adjustment/Appeals Board Member Rivera seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Jeremy Benintende, Hunter Rivera, Barry McGuinness; Nays - None; Abstained - Stacey Shea; Motion Passed.

David Eisenbraun, Long Range Planner, addressed the Board to clarify that the elected officer's position will not take effect until the next Board of Adjustment/Appeals meeting.

2. Election of Officers - Election of Board of Adjustment/Appeals Vice Chair

Chair Shea opened the meeting for nominations, to which Chair Shea nominated Vice Chair Threewitt to continue as the Vice Chair of the Board of Adjustment/Appeals.

Board of Adjustment/Appeals Chair Shea moved to elect Board Member Threewitt to Vice Chair of the Board of Adjustment/Appeals, Board of Adjustment/Appeals Board Member McGuinness seconded the motion. Roll call on the vote resulted as follows; Yeas - Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuinness; Nays - None; Abstained - Don Threewitt; Motion Passed.

3. Election of Officers - Election of Board of Adjustment/Appeals Secretary

Chair Shea opened the meeting for nominations, to which Board Member Threewitt nominated Board Member Benintende for the position of the Secretary of the Board of Adjustment/Appeals.

Board of Adjustment/Appeals Board Member Threewitt moved to elect Board Member Benintende to Secretary of the Board of Adjustment/Appeals, Board of Adjustment/Appeals Board Member Rivera seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Hunter Rivera, Barry McGuinness; Nays - None; Abstained- Jeremy Benintende; Motion Passed.

4. Public Hearing - Major Variance from the Town of Windsor Municipal Code Section 15-17-110(e)(4) - Freestanding Signs to allow an increase in the allowable sign area for Iron Mountain Business Park - South Gate Business Park 8th Filing, Lot 1 (1015 Champion Drive) - Reese Foster, Owner, Southgate One LLC; and Marie Hashaw, DaVinci Sign Systems, Inc., applicant representative

Municipal Code Section 15-17-110(e) pertaining to development entrance signs:
Maximum sign area. The maximum sign area of development entrance signs which are located adjacent to arterial or major collector streets shall not exceed fifty (50) square feet in area for each one hundred (100) feet of street frontage of the development, but in no event shall the total sign area of any development entrance sign exceed two hundred (200) square feet in area.

The variance request is to allow for a monument sign to exceed 200 square feet (sqft) of display area.

A 133 sqft Electronic Message Center (EMC) sign was installed on the existing 192 (sqft) Iron Mountain Autoplex monument sign.

The monument sign text was also modified to Iron Mountain Business Park and the EMC board installed at some point in January 2024 without required sign permit or building permit approvals.

The addition of the EMC sign (133 sqft) brings the total sign area to 325 sqft which exceeds the code requirement by 125 sq ft.

A sign permit was administratively approved in 2006 (Permit # S-06-077), to allow the original monument sign to exceed the overall height requirements for the monument base and sign height code criteria.

Monument Base: shall not exceed six (6) feet in height.

Maximum Height: the height of any development entrance sign shall not exceed ten (10) feet.

Existing Sign Measurements: 21.33'(h) x 63.77'(w) – Monument Base: 8'(h)

Staff approved the sign permit, administratively, due to the circumstances related to the sign's location and setback distance from Highway 34.

A Variance was granted by the BOA on July 27, 2006, to allow letter heights exceeding 12 inches.

From 2006 until January 2024, the sign was a static display and identified Iron Mountain Autoplex.

Chair Shea opened the public hearing for the Major Variance from the Town of Windsor Municipal Code Section 15-17-110(e)(4) - Freestanding Signs to allow an increase in the allowable sign area for Iron Mountain Business Park - South Gate Business Park 8th Filing, Lot 1 (1015 Champion Drive).

Mark Price, Planner I, and the applicant, John Shaw, presented to the Board.

Chair Shea opened the hearing up for public comment, to which there was none.

Board Member Benintende asked questions of the applicant regarding the refacing and digitizing of the signage, to which the applicant, John Shaw, answered.

Chair Shea asked questions regarding the advertising purposes for the signage, to which the applicant, John Shaw, and Mark Price, Planner I, answered.

Board Member Threewitt asked questions of the applicant regarding the refacing of the sign to an EMC, to which John Shaw answered. Board member Threewitt then asked questions of staff regarding the administrative permit approval process and requirements, to which Mark Price, Planner I, responded.

Board of Adjustment/Appeals Board Member Benintende moved to close the public hearing, Board of Adjustment/Appeals Board Member Rivera seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuinness; Nays - None; Motion Passed.

Board Members discussed the modifications to the signage and their concerns amongst themselves.

Board of Adjustment/Appeals Board Member McGuinness moved to reopen the public hearing for the Major Variance from the Town of Windsor Municipal Code Section 15-17-110(e)(4) - Freestanding Signs to allow an increase in the allowable sign area for Iron Mountain Business Park - South Gate Business Park 8th Filing, Lot 1 (1015 Champion Drive), Board of Adjustment/Appeals Board Member Benintende seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuinness; Nays - None; Motion Passed.

Garrett Scallon of the Poudre Tech Metro District addressed the Board regarding the easement they granted the applicant on the property.

Board of Adjustment/Appeals Board Member Threewitt moved to close the public hearing, Board of Adjustment/Appeals Chair Shea seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuinness; Nays - None; Motion Passed.

5. Major Variance from the Town of Windsor Municipal Code Section 15-17-110(e)(4) - Freestanding Signs to allow an increase in the allowable sign area for Iron Mountain Business Park - South Gate Business Park 8th Filing, Lot 1 (1015 Champion Drive) - Reese Foster, Owner, Southgate One LLC; and Marie Hashaw, DaVinci Sign Systems, Inc., applicant representative

Please refer to Background / Discussion for the Public Hearing item.

Board of Adjustment/Appeals Board Member Rivera moved to approve the Major Variance from the Town of Windsor Municipal Code Section 15-17-110(e)(4) - Freestanding Signs to allow an increase in the allowable sign area for Iron Mountain Business Park - South Gate Business Park 8th Filing, Lot 1 (1015 Champion Drive), Board of Adjustment/Appeals Vice Chair Threewitt seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Jeremy Benintende, Hunter Rivera, Barry McGuinness; Nays - Stacey Shea; Motion Passed.

6. Public Hearing – Variance from Table 16-1-30(b): ER District Lot Development Standards pertaining to a reduced setback for buildings in the Estate Residential (ER) Zone District – Trent Kramer, Ascent Classical Academy (Owner/Applicant); Brian Campbell, Tait & Associates Engineering (Owner's Representative)

Brian Campbell of Tait & Associates Civil Engineering, on behalf of Trent Kramer, Headmaster of Ascent Classical Academy, is requesting a variance from Municipal Code Section 15-1-30 - Estate Residential (ER) Zone District, Table 16-1-30(b): ER District Lot Development Standards, pertaining to a reduced side yard setback. This variance request is to allow for a side setback of less than 25-feet from the property boundary at the southwest corner of the site.

The Ascent Classical Academy site is zoned Estate Residential (ER), and is located at 6402 S. County Road 5 (Lot 1, ASCENT CHARTER SCHOOL MLD NO 20-LAND4040), on the east side of Larimer County Road 5, approximately $\frac{3}{4}$ mile north of State Highway 392. Adjacent uses and zoning are as follows:

North: Vacant (former gravel mining) (Larimer County Agriculture Zoning);

East: Vacant (former gravel mining) (Larimer County Agriculture Zoning);

South: Vacant Pasture (Larimer County Agriculture Zoning);

West: Fossil Creek Ranch Subdivision – Single Family Homes (RMU-1 Zoning)

The Ascent Classical Academy opened in Northern Colorado in 2020, with occupancy at their current location starting in the Fall of 2022. When initially planning for the school at this site, the property was not located within the municipal boundaries of the Town, but was located within the Town's Growth Management Area (GMA). Thus, the applicant began the process in Larimer County in 2020, with Minor Land Division (subdivision) and Site Plan applications. These were subsequently sent to the Town, as a referring agency, for review and comment.

Upon review of the Larimer County applications, it was determined that the property was contiguous to the Town's municipal boundary, via the Larimer County Road 5 (LCR 5) right-of-way, and was proposed to be accessed from said right-of-way, thus supporting its eligibility for annexation to the Town.

An annexation application was received by the Town in the Spring of 2021. Because the site-specific development applications (Minor Land Division and Site Plan) were well under way in Larimer County, those processes continued to move forward, and the Town elected to incorporate a pre-annexation agreement into the process, in order to bridge the gap between Larimer County development standards / requirements, and those of the Town.

The Pre-Annexation agreement was signed in the Spring of 2021, and outlined development responsibilities for each party to the annexation, requirements that the Site Plan be developed in accordance with the lot development standards of the Town, and included specific thresholds that would drive the required improvements to bring Larimer County Road 5 up to urban street standards.

The site was then annexed to the Town in October 2021, and zoned Estate Residential (ER) in accordance with the land use designation of the Comprehensive Plan.

The Pre-annexation agreement has since seen two amendments to clarify enrollment thresholds that directed the timing of the LCR 5 improvements. To-date, the site is in compliance with the requirements of the Pre-annexation Agreement and Amendments.

The current site configuration is within the lot development standards for the Estate Residential (ER) zone district, which call for 25-foot setbacks on all sides, for ER zoned lots greater than 2.5 acres.

Due to a more rapid increase in enrollment than may have been originally expected, the school finds itself needing additional classroom space while they design and fund the planned Phase 2 expansion. The interim solution can be found in a way that many schools use to accommodate increased enrollment – modular classroom buildings. Ascent Classical Academy has determined that two modular buildings will serve their needs while the Phase 2 project is designed and implemented. These moduls will be 'dry', meaning they will not have plumbing extended to them. Potable water can be brought in via bottled water, and the existing building restrooms are able to serve the moduls. However, locating the two proposed modular classrooms has proved to be challenging, due to existing built conditions on the site.

The proposed location, at the southwest corner of the site, has been deemed to be the best solution, but it does not comply with the lot development standards of the ER zone district. Both modular buildings will encroach into the 25-foot side setback by three to four feet. Other locations that were explored but eliminated due to more significant impacts are:

- North side of the existing building – location of the proposed Phase 2 expansion
- East side of the site – too far from Building Code mandated distance to restrooms.

Note, the applicant has indicated that the moduls will be removed from the site once the Phase 2 expansion has been built and implemented.

VARIANCE REQUEST

The applicant is requesting a variance from the Lot Development Standards found in Table 16-1-30(b) in:

Municipal Code Section 16-1-30 (Estate Residential (ER) District Zoning which states:

(a) Purpose. The purpose of the ER zone district is:

- (1) To establish and preserve low-density single-family residential neighborhoods with urban level services that, in general, are located in a rural setting.
- (2) To provide an estate transition from higher urban densities in the Town to outlying rural densities and preserve environmentally sensitive areas.
- (3) To provide for generous building setbacks and lot frontages that ensure significant space between dwellings, resulting in an estate residential appearance within developed neighborhoods.

Staff has reviewed the proposed Site Plan which shows the location of the moduls along with the circulation of students and has determined the proposed location will generate the least impacts to the overall campus.

REVIEW CRITERIA (please refer the Application materials for detailed responses)

1. *Where, special circumstances exist, that strict application of the standards adopted in this development code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the property owner. For the purposes of this Section, undue hardship and practical difficulties means a situation where the property cannot be reasonably used under the conditions allowed by this Code, and are neither a result of a situation created by the property owner, nor exclusively due to economic or cost considerations. The situation shall result from circumstances unique to the property, such as, exceptional narrowness, shallowness, or shape of a specific piece of property, topographic conditions, existing lot configuration, existing building*

*locations on or adjacent to the property or other extraordinary and exceptional situation or condition of such piece of property that would result in peculiar and exceptional practical difficulties to, or exceptional undue hardship. Relief by variance may be granted if there is no substantial detriment to the public good and if it does not substantially impair the intent and purpose of the Comprehensive Plan and this Code. The variance, if granted, shall not alter the essential character of the surrounding neighborhood. Economic considerations alone shall not constitute an undue hardship if a reasonable use for the property exists under the provisions of this Code. It is the responsibility of the landowner to prove that an undue hardship exists; **Strict application of the setback requirement would be challenging due to the existing constructed conditions – i.e. the current school building, internal drive aisles and parking. Alternate locations were explored, (east side of existing building, north of existing building) but again, existing conditions negate these opportunities.***

2. *The applicant cannot derive beneficial use of the property without the variance; **The modulars are necessary in order to provide additional space for the current school population, while the Phase 2 expansion is being funded, designed and built. Upon completion of the Phase 2 project, the modulars will be removed from the property.***
3. *The purpose and intent behind the regulation would be maintained by granting the variance: **The purpose and intent of the setback requirements is to ensure significant space between dwellings.... The property to the south and west includes a ditch, and is not conducive to building construction, thus maintaining a significant space between any future buildings. The side setback will be reduced to a MINIMUM of 20-feet, to allow for slight variations in the actual site conditions.***
4. *Granting the variance will not be detrimental to any adjacent properties or the surrounding area: **the adjacent property will not be impacted by the addition of the modulars, nor will the modulars impact any future construction on the adjacent properties.***
5. *Granting the variance will not be detrimental to public health, safety, or welfare. **Building separations, building codes, and plumbing codes will be met.***
6. *Adequate relief cannot be reasonably obtained through a different procedure, such as a waiver or alternative compliance standards, if applicable: **Alternate locations have been explored, and ruled out. There are no waiver opportunities available for this situation.***
7. *Granting the variance will not create a building or fire code violation or other safety hazard: **Safety hazards are not anticipated with this proposal. The application does not seek any exceptions to the building code.***
8. *The need for the variance is not created by a self-imposed hardship: **Existing conditions, along with rapid growth in student enrollment are driving the need for an interim solution while plans for the Phase 2 development are started.***
9. *A variance shall allow only the least deviation from the standard that will afford relief: **Based on existing site conditions, the modulars have been placed to provide the least impacts to requirements of the Code, while still meeting the intent of the Code.***

SUMMARY

Staff has analyzed the Review Criteria, and found the following findings of fact, based on:

- *Whether special site-specific conditions exist:*

Staff has determined that the proposed Variance will aid in the ongoing development of the campus by providing a interim educational space for the students while plans for the building/campus expansion are underway.

- *Whether an unnecessary hardship exists:*

Staff has determined that the proposed Variance is a compromise that provides an interim remedy for the rapid increase in enrollment and the existing site conditions that were not anticipated to happen so quickly.

- *The impact on public interest, safety, and welfare:*

Staff has determined that the proposed Variance has no negative impacts on the public welfare and will assist the school in expanding their facilities and operations in a safe and efficient manner.

NOTIFICATIONS

The following notifications for the public hearing were made in accordance with the Municipal Code:

- April 3, 2024 - public hearing notice sent to surrounding property owners
- April 5, 2024 - public hearing notice posted on Town of Windsor website
- April 5, 2024 - public hearing notice published in the paper
- April 8, 2024 - development sign posted on the subject property

RECORD

Staff requests that the following be entered into the record:

- Variance application and supplemental materials
- Staff memorandum and supporting documents
- Testimony received during the public hearing
- Recommendation

Chair Shea opened the public hearing for the Variance from Table 16-1-30(b): ER District Lot Development Standards pertaining to a reduced setback for buildings in the Estate Residential (ER) Zone District.

Kim Lambrecht, Senior Planner, presented to the Board.

Chair Shea opened the hearing up for public comment, to which there was none.

Chair Shea asked staff questions regarding the properties' land use and intent, to which Kim Lambrecht, Senior Planner, responded.

Board Member Rivera and Chair Shea asked staff questions regarding phase timeline, expiration and conditional language to be included in the variance, to which Kim Lambrecht, Senior Planner, Kim Emil, Deputy Town Attorney, and David Eisenbraun, Long Range Planner, responded.

In addition, the owner/applicant, Trent Kramer, spoke to the Board regarding the land use, timeline and the intention behind the variance.

Board Member Benintende and Vice Chair Threewitt asked the applicant, Trent Kramer, questions regarding potential enrollment growth of the school, to which he answered. Additionally, Vice Chair Threewitt asked staff questions regarding road improvements, to which Kim Lambrecht, Senior Planner answered.

Board of Adjustment/Appeals Board Member Rivera moved to close the public hearing, Board of Adjustment/Appeals Board Member Benintende seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuinness; Nays - None; Motion Passed.

Board Members discussed conditions to the variance approval amongst themselves.

Board of Adjustment/Appeals Vice Chair Threewitt moved to reopen the public hearing for the Variance from Table 16-1-30(b): ER District Lot Development Standards pertaining to a reduced setback for buildings in the Estate Residential (ER) Zone District, Board of Adjustment/Appeals Board Member Rivera seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuinness; Nays - None; Motion Passed.

The applicant, Trent Kramer, spoke to the Board regarding the additional conditions to the variance.

Board of Adjustment/Appeals Vice Chair Threewitt moved to close the public hearing, Board of Adjustment/Appeals Board Member Rivera seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Barry McGuinness; Nays - Hunter Rivera; Motion Passed.

7. Variance from Table 16-1-30(b): ER District Lot Development Standards pertaining to a reduced setback for buildings in the Estate Residential (ER) Zone District – Trent Kramer, Ascent Classical Academy (Owner/Applicant); Brian Campbell, Tait & Associates Engineering (Owner's Representative)

Please refer to previous agenda item for background information.

Board of Adjustment/Appeals Board Member Rivera moved to approve the Variance from Table 16-1-30(b): ER District Lot Development Standards pertaining to a reduced setback for buildings in the Estate Residential (ER) Zone District of 20 feet, the variance of which shall be revoked upon the end of the academic year in session when Certificate of Occupancy is issued, Board of Adjustment/Appeals Board Member Threewitt seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuinness; Nays - None; Motion Passed.

D. COMMUNICATIONS

1. Communications from Board of Adjustments/Appeals

Chair Shea stated that she looks forward to serving with the other Board Members.

2. Communications from Staff

David Eisenbraun, Long Range Planner, congratulated Chair Shea, Vice Chair Threewitt and Secretary Benintende on their appointments. Additionally, he congratulated Board Member Rivera on his appointment. Additionally, David Eisenbraun advised that Board Member Penfold and the new Alternate Board Member, Victor Tallon, will be present at the next meeting. Lastly, David provided an update on status of the other Boards and the approval of the master plan.

Kim Emil, Deputy Town Attorney, spoke to the Board regarding the new approval process and meeting procedures.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 8:35 p.m.

Laura Richardson, Assistant Town Clerk



MEMORANDUM

Date: December 5, 2024
To: Board of Adjustment/Appeals Members
From: Kimberly Lambrecht, Senior Planner
Re: Public Hearing – Variance from Section 16-1-40, Table 16-1-40(b) – Single Family One Residential (SF-1) lot development standards pertaining to a reduced rear yard setback – Elizabeth Gonzales (Owner); Trevor Gonzales (Applicant).
Item #: C.1.

Background / Discussion:

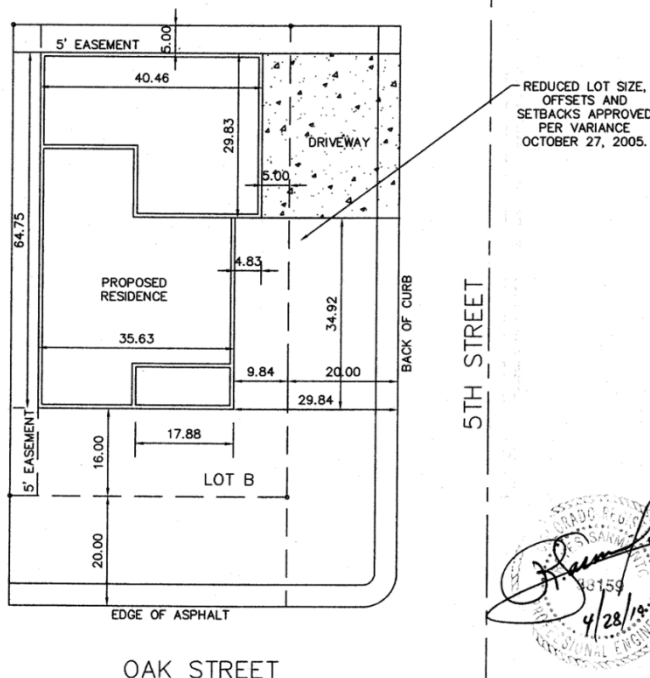
329 Oak Street (Lot A Franco Subdivision) is a property located in the older residential part of Windsor, zoned Single Family One (SF-1), located at the southeast corner of 4th Street and Oak Street. The property is surrounded by SF-1 zoned property.

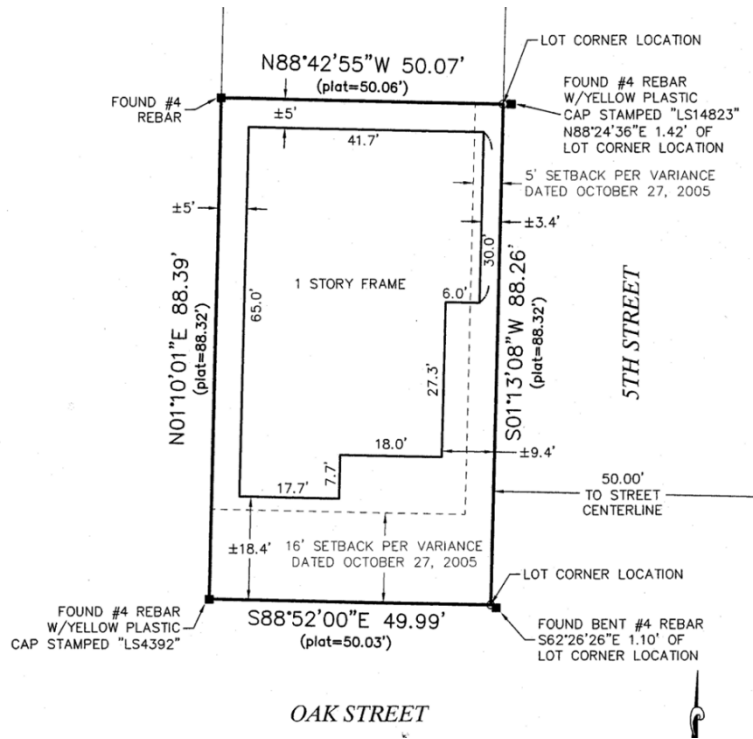
The property is among one of the early incorporation and subdivisions within the Town, as a part of the 1903 Kern Subdivision, where typical 50' by 176' (8,830 SF) lots were created. The original house at 329 Oak Street was then built in 1925. In 1991, the property owner, at that time, requested a subdivision of the lot into two equal lots, with the existing house remaining on the north lot. Following that subdivision, the existing brick house on the south lot (Lot B, Franco Subdivision) was built. It is important to note that the two 4,415 SF lots that were created by the Franco Subdivision are existing non-conforming lots, and each have existing non-conforming characteristics that may not have been contemplated at the time the Franco Subdivision was completed, and the 1991 house was built.

In support of the requested variance, several properties in this early 20th century part of Windsor can be pointed to, where similar conditions exist, and similar solutions were developed.

Neighborhood Context:

500 Oak Street has approved Variance for reduced setbacks – October 27, 2005

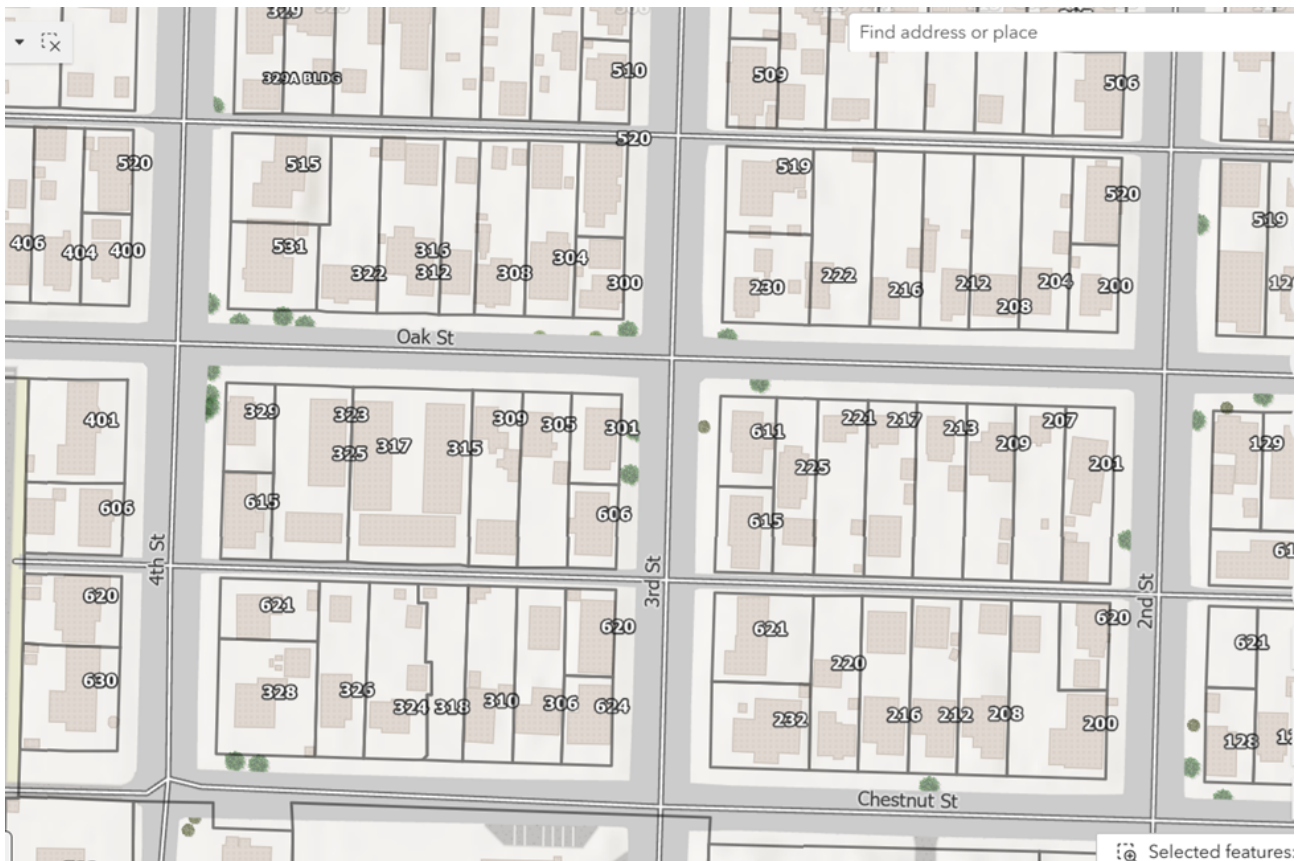




The reconfiguration of 329 Oak Street (adding onto the south and adding a door to the side) is also consistent with the work that was done at **401 Oak Street** (across the street to the west), where the property owner completed similar work.



The west facing elevation of 329 Oak Street also aligns with the existing front face of **615 4th Street**, (the property directly to the south - Lot B Franco Subdivision), thereby creating a consistent streetscape along that portion of the block. And although this type of scenario may not continue for a long length of the 4th Street streetscape, it is a situation that can be found throughout the original Town of Windsor and Kern Subdivisions where many of the original 50'x176' corner lots were subdivided, thereby creating unique lot development situations at many of the intersections in the older residential neighborhoods.



Review Criteria

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) *Where, special circumstances exist, that strict application of the standards adopted in this development code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the property owner. For the purposes of this Section, undue hardship and practical difficulties means a situation where the property cannot be reasonably used under the conditions allowed by this Code, and are neither a result of a situation created by the property owner, nor exclusively due to economic or cost considerations. The situation shall result from circumstances unique to the property, such as, exceptional narrowness, shallowness, or shape of a specific piece of property, topographic conditions, existing lot configuration, existing building locations on or adjacent to the property or other extraordinary and exceptional situation or condition of such piece of property that would result in peculiar and exceptional practical difficulties to, or exceptional undue hardship. Relief by variance may be granted if there is no substantial detriment to the public good and if it does not substantially impair the intent and purpose of the Comprehensive Plan and this Code. The variance, if granted, shall not alter the essential character of the surrounding neighborhood. Economic considerations alone shall not constitute an undue hardship if a reasonable use for the property exists under the provisions of this Code. It is the responsibility of the landowner to prove that an undue hardship exists;*

Strict application of the setback requirement would be challenging due to the existing constructed conditions that are due to the 1991 subdivision of the original lot which created 2 non-conforming lots.

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

The existing structure is 966 SF, with 2 small bedrooms and 1 bath. The current space constraints prevent an efficient layout for use of the property. Expanding the square footage

to include a useable garage requires an addition to the south.

- (3) *The purpose and intent behind the regulation would be maintained by granting the variance;*
Because the property is a corner lot, there are visibility restrictions to the west and north. Therefore, expanding to the south is the best option. Additionally, the ratio of hardscape to open space is maintained.
- (4) *Granting the variance will not be detrimental to any adjacent properties or the surrounding area;*
The house to the south does not have windows on the north wall. Granting the variance aligns with other properties in the neighborhood.
- (5) *Granting the variance will not be detrimental to public health, safety, or welfare.*
Building separations, building codes, and plumbing codes will be met. Expanding to the south will not impact traffic visibility at 4th & Oak.
- (6) *Adequate relief cannot be reasonably obtained through a different procedure, such as a waiver or alternative compliance standards, if applicable;*
Alternate designs have been explored, and ruled out. There are no waiver opportunities available for this situation.
- (7) *Granting the variance will not create a building or fire code violation or other safety hazard;*
Safety hazards are not anticipated with this proposal. The application does not seek any exceptions to the building code.
- (8) *The need for the variance is not created by a self-imposed hardship;*
This is due to the unique size of the property, the fact that it is a corner lot, and the position of the existing building.
- (9) *A variance shall allow only the least deviation from the standard that will afford relief;*
Based on existing site conditions, the addition has been placed to provide the least impacts to requirements of the Code, while still meeting the intent of the Code.

In summary, Staff has analyzed the review criteria and found the following findings of fact, based on:

- *whether special site-specific conditions exist that warrant approval of the variance request*

Staff has determined that due to the 1991 subdivision of the original 8,830 SF lot, two (2) non-conforming lots were created, thus limiting opportunities for expansion of the existing home.

- *whether unnecessary hardship exists.*

Staff has determined that the existing built conditions on the site were not caused by the applicant's act or omission

- *the impact on public interest, safety, and welfare*

Staff has determined that the variance will have no negative impacts and will allow the addition to create a livable home, that is built in a safe and efficient manner.

- *the impacts to the neighborhood character.*

Staff has determined that a variance for a reduced rear yard setback will positively impact the neighborhood character by producing a streetscape that is consistent with several homes / streetscapes in the vicinity.

As of the date of publication of this packet, one person reached out with questions after seeing the sign posted at the site. Questions revolved around what zoning of the property is, and what variance was being requested. After responding that the variance request is for a reduced rear setback, the person expressed no other concerns.

Financial Impact:

Relationship to Strategic Plan:

Recommendation:

Staff recommends approval of a variance to reduce the rear setback to 5-feet for the proposed addition to the existing home at 329 Oak Street.

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 16-1-40 – Single Family One (SF-1) Zone District, Table 16-1-40(b): SF-1 District Lot Development Standards pertaining to a request for a reduced rear yard setback; based upon the aforesaid findings of fact, all Staff and BOA conditions being addressed, and the applicant obtaining the applicable 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.

CC:

Scott Ballstadt, Director of Planning

Attachments:

1. 329 Oak Street - Variance Application
2. 329 Oak Street - Site Plan
3. 329 Oak Street - Prelim West Elevation
4. Staff Presentation - 329 Oak Setback - 12.5.2024



Variance Application

☐

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

☐

____ Please review Sec. 14-2-140 and 14-2-150 of Chapter 14 of the [Town of Windsor Municipal Code](#) for variance requirements and procedures.

☐

____ Variance requests are considered by the Board of Adjustment, which meets 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.

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

Property Address: ____ 329 Oak

Street _____ Lot: ____ A ____ Block:

____ Subdivision: ____ Franco _____

A variance is being requested from the following Municipal Code section(s): 14-2-150 16-1-40,

Table 16-1-40(b)

Owner
Name(s): Elizabeth Gonzales
Address: 329 Oak Street
Phone #: Email: 970-481-5491; lisag1424@gmail.com

Applicant or Representative:

Name: Trevor Gonzales

Address: 329 Oak Street

Phone #: Email: _____970-573-8341_____

Town of Windsor – Planning Department
301 Walnut Street | Windsor, Colorado | 80550 | phone 970-674-2415 | fax 970-674-2456 | www.windsorgov.com

Variance Application

[Municipal Code Section 14-2-150\(a\)](#) states, in part:

Variances are intended to alleviate practical difficulties or hardship arising from the strict application of the provision of Chapters 15 and 16 of the Municipal Code to a specific property. Variances address

extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission.

4

Unnecessary hardship is defined by the Municipal Code as enumerated in items 1-9 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. Where, special circumstances exist, that strict application of the standards adopted in this development code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the property owner. For the purposes of this Section, undue hardship and practical difficulties means a situation where the property cannot be reasonably used under the conditions allowed by this Code, and are neither a result of a situation created by the property owner, nor exclusively due to economic or cost considerations. The situation shall result from circumstances unique to the property, such as, exceptional narrowness, shallowness, or shape of a specific piece of property, topographic conditions, existing lot configuration, existing building locations on or adjacent to the property or other extraordinary and exceptional situation or condition of such piece of property that would result in peculiar and exceptional practical difficulties to, or exceptional undue hardship. Relief by variance may be granted if there is no substantial detriment to the public good and if it does not substantially impair the intent and purpose of the Comprehensive Plan and this Code. The variance, if granted, shall not alter the essential character of the surrounding neighborhood. Economic considerations alone shall not constitute an undue hardship if a reasonable use for the property exists under the provisions of this Code. It is the responsibility of the landowner to prove that an undue hardship exists.

The existing structure is 966 sq. ft. on the corner lot at Oak St and 4th. It has two very small bedrooms and one bath. My goal is to remodel the existing structure and add additional sq. footage creating a modest, functional family home as I move into retirement in a few years. Due to the current placement of the structure, the only alternative is to extend the home to the south and add a second level above.

The plan includes a reasonably sized primary bedroom with ensuite on the main level. This is

important as I age and find navigating the stairs regularly difficult. It also includes a 2 ½ - 3 car garage to enclose my motorcycles, vehicle, and seasonal items. This addition is the width of a two-car garage.

The addition also allows for two bedrooms and bathrooms to be added on the second level with a small family room.

The elevation of the house which now faces north will be moved to face west. The house to the north and to the south also face west. The house across the street faces east. Changing the direction matches the other houses in the near vicinity.

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

The existing structure is 966 sq. ft. on the corner lot at Oak St and 4th with 2 very small bedrooms and 1 bath. The current space constraints prevent an efficient layout for the use of the property. Expanding the square footage to include a garage requires that I expand to the south. Without the variance, the garage door opening is reduced to 16 ft wide as well as the impact to the second level.

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

Because the property is a corner lot, there are visibility restrictions to the west and north. Therefore, expanding to the south is the best option. Additionally, the ratio of hardscape to open space is maintained.

Town of Windsor – Planning Department
301 Walnut Street | Windsor, Colorado | 80550 | phone 970-674-2415 | fax 970-674-2456 | www.windsorgov.com

Variance Application

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

No, it will not. The house to the south has no windows to the north. Additionally, the house located at 500 Oak Street and 500 Locust Street are just two examples of many in the neighborhood where the south of the lot is only five feet from the neighboring property. Granting the variance aligns with many properties in the neighborhood.

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

There are no public health, safety, or welfare concerns. Expanding to the south will not impede the visibility of traffic at the northwest corner of the property.

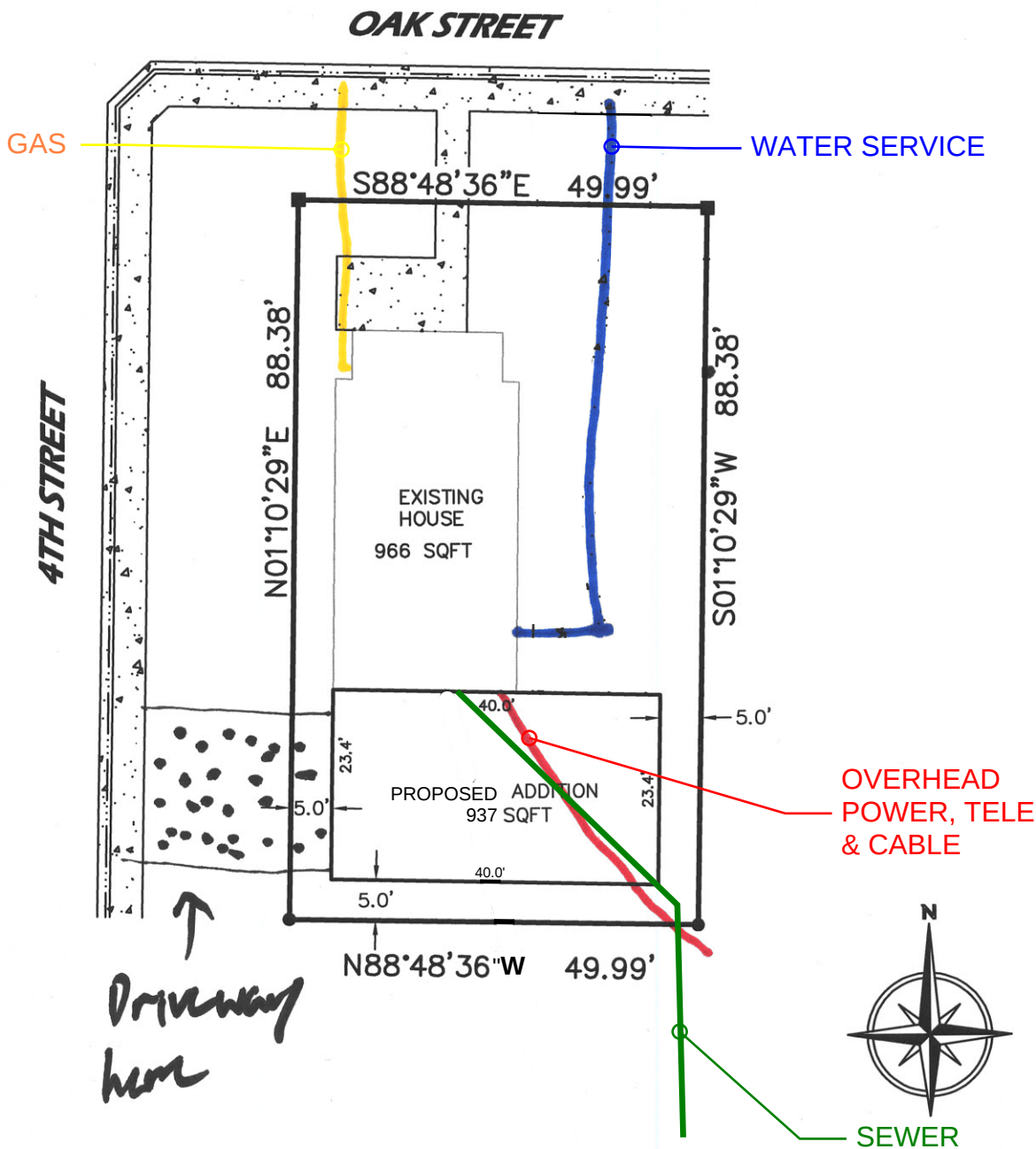
6. Adequate relief cannot be reasonably obtained through a different procedure, such as a waiver or alternative compliance standards, if applicable.

I am not aware of any other procedures available.

PLOT PLAN

PARCEL DESCRIPTION: LOT A, FRANCO SUBDIVISION, TOWN OF WINDSOR, COUNTY OF WELD, STATE OF COLORADO

ADDRESS: 329 OAK STREET, WINDSOR, COLORADO



NOTE

This is not a Land Survey Plat. Be aware that any information shown is based on platted or deeded dimensions. If discrepancies are discovered, the builder or owner must contact the surveyor immediately.

The elevations shown on this drawing are from the approved grading and drainage plan of the subdivision. No information shown is intended to alter design from the approved plans.

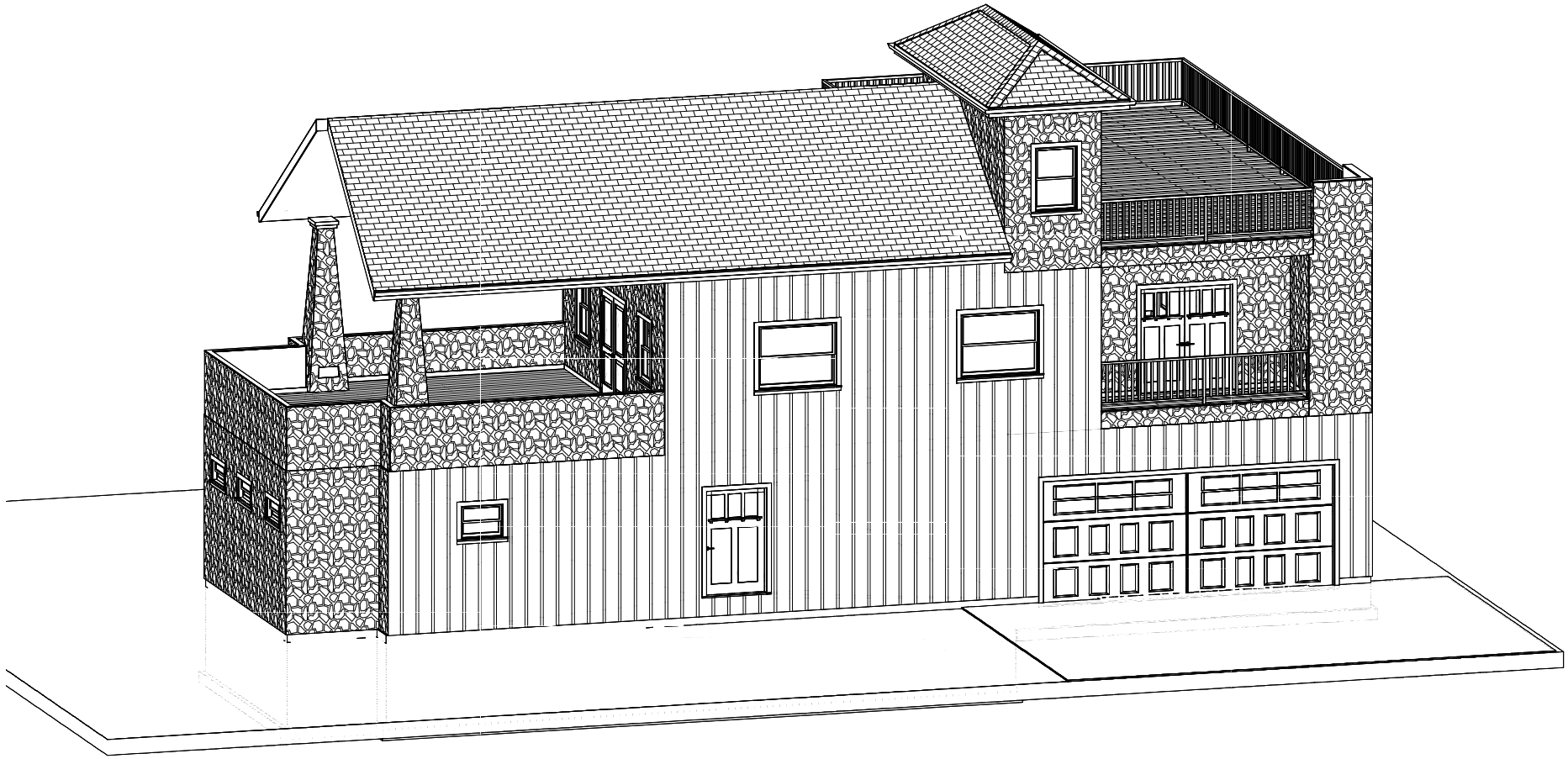
Notice: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (CRS 13-80-105)

PROJECT NO: 2023087
DATE: 04-18-2024

CLIENT: TREVOR GONZALES
SCALE: 1"=20'



Steven Parks, PLS 38348
On behalf of Majestic Surveying, LLC





329 Oak Street Variance Request

*Request to reduce rear setback
Kimberly Lambrecht - Senior Planner
Board of Adjustment – 12.5.2024*

Variance Request

Municipal Code Section 16-1-40 – Single Family One (SF-1) Zone District, Table 16-1-40(b): SF-1 District Lot Development Standards - pertaining to a request for a reduced rear yard setback.

The current Municipal Code outlines **building setbacks in each zone district** within the Lot Development Standards table.

This Variance Request is specifically addressing the rear setback for a proposed addition to the existing home.

Minimum Setbacks	
Front	20'
Side	5'
Rear	10'



329 Oak Street Variance Request

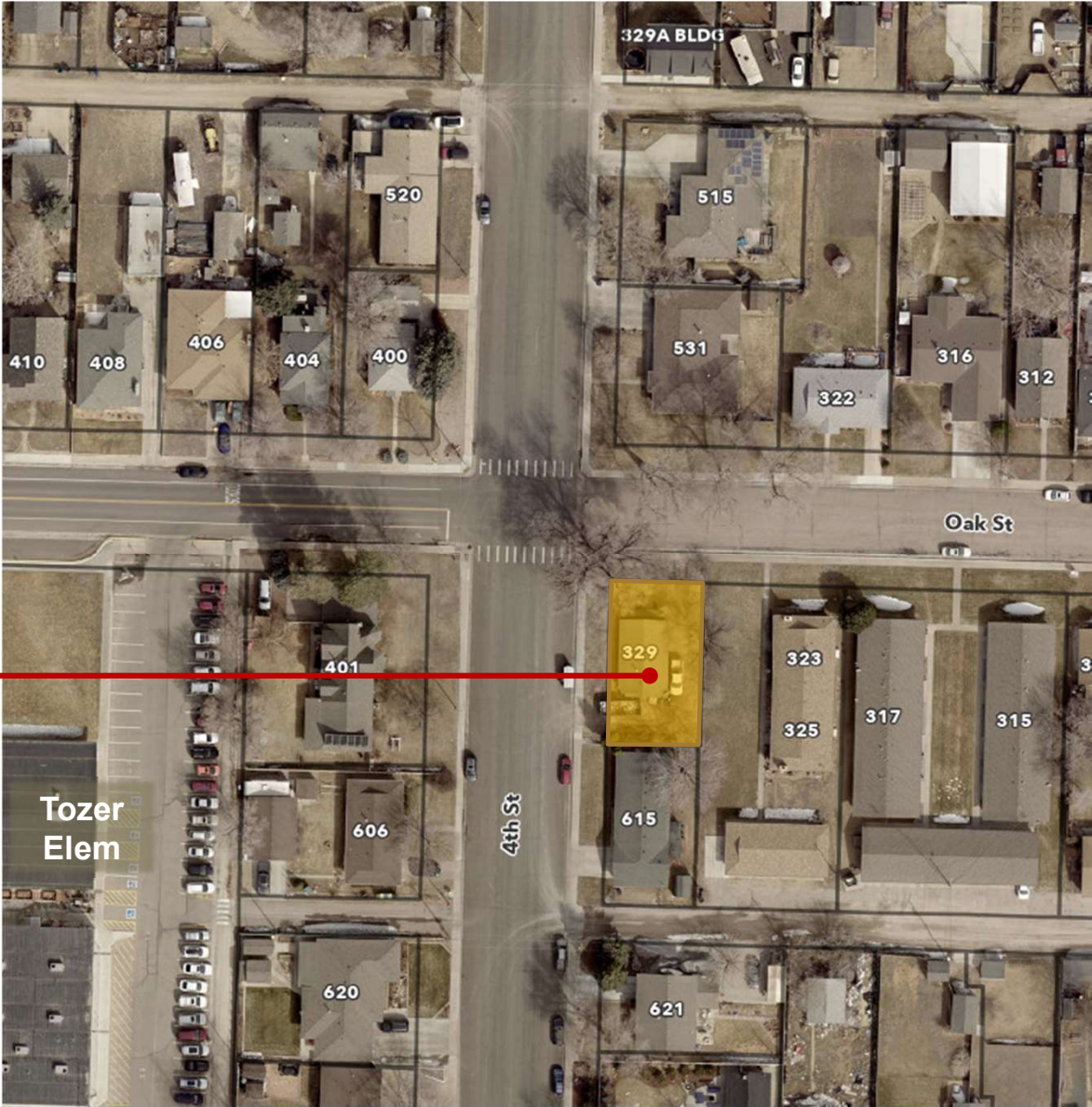
Town of Windsor Board of Adjustment – 12.5.2024



Vicinity Map

329 Oak Street
Lot A, Franco Subdivision

SITE





Zoning Map





Background

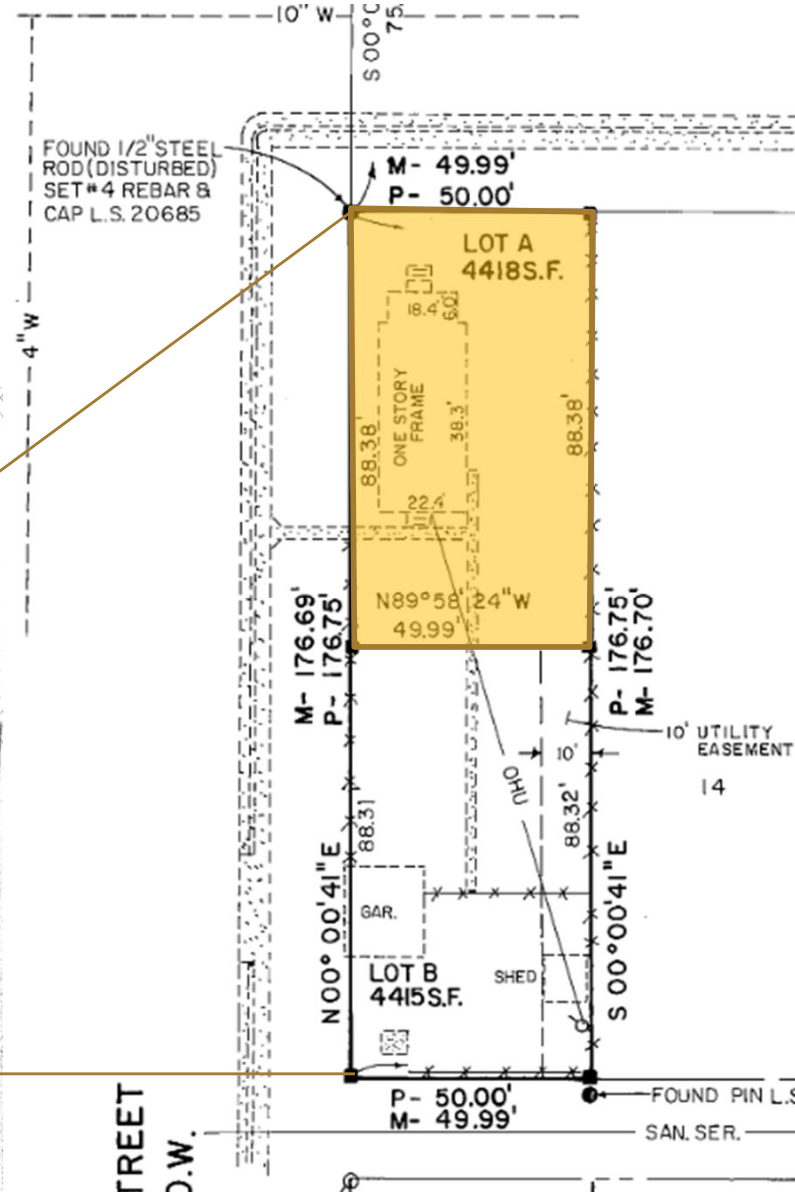
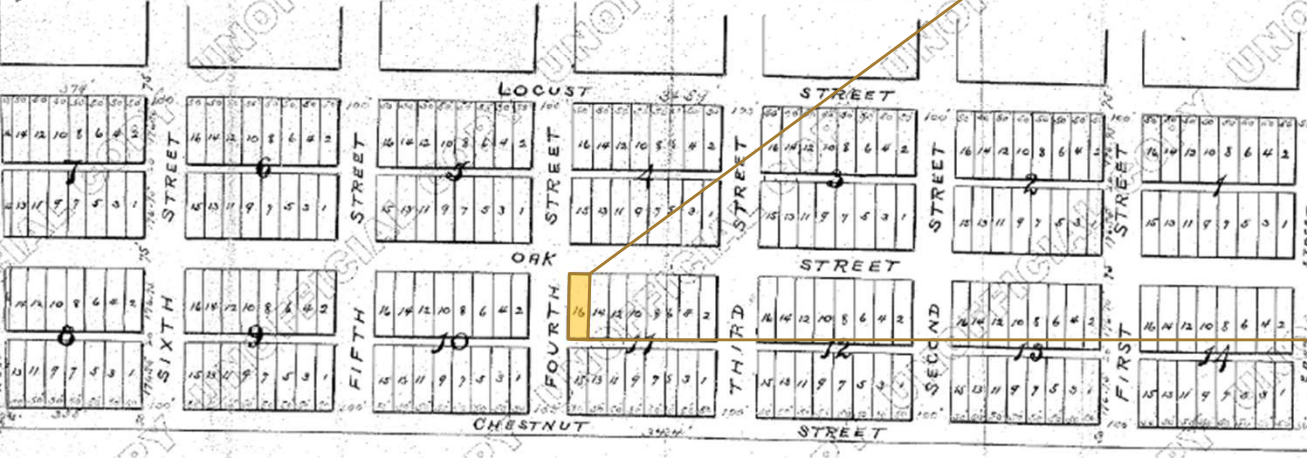
1903: Kerns Subdivision

1991: Franco Subdivision

ORADO
ELD
TIFY THAT THIS INSTRUMENT
OR RECORD IN MY OFFICE AT
OCK of M. P. ...
RECORDED IN BOOK NO. ...
RECORDER
DEPUTY

Kern's Subdivision
Being
a part of the South Half of the Northwest
Quarter and a part of the Southwest Quarter
of the Northeast Quarter of Section 21,
Township 6 North, Range 67 West.
SCALE 3/8" = 1"

TOWN OF WINDSOR, SECOND FILING





Background

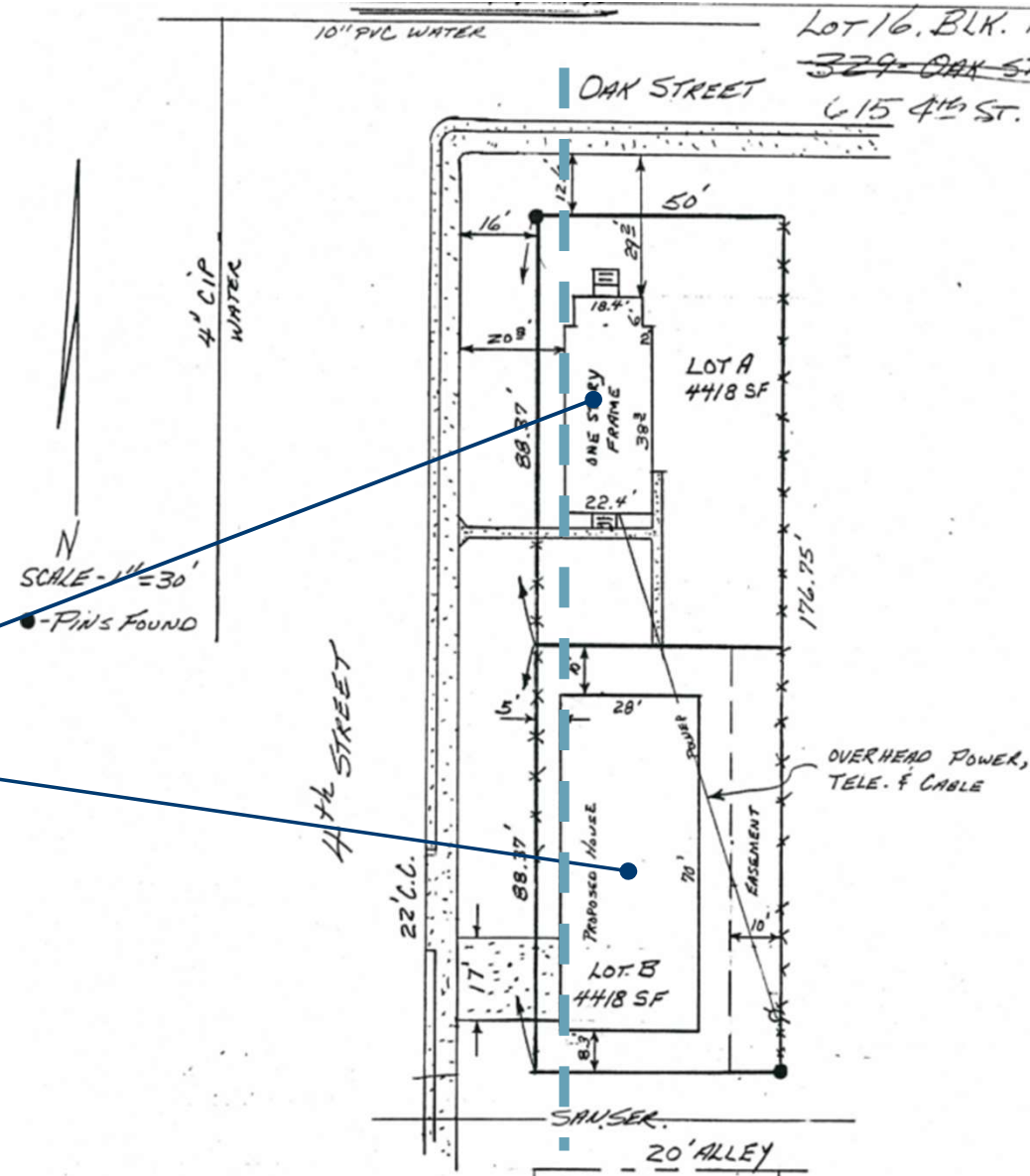
1925: Existing 329 Oak house built

1991: Existing brick house built

Existing non-conforming lot sizes

Existing non-conforming front setback

Side setback on north = 10-feet



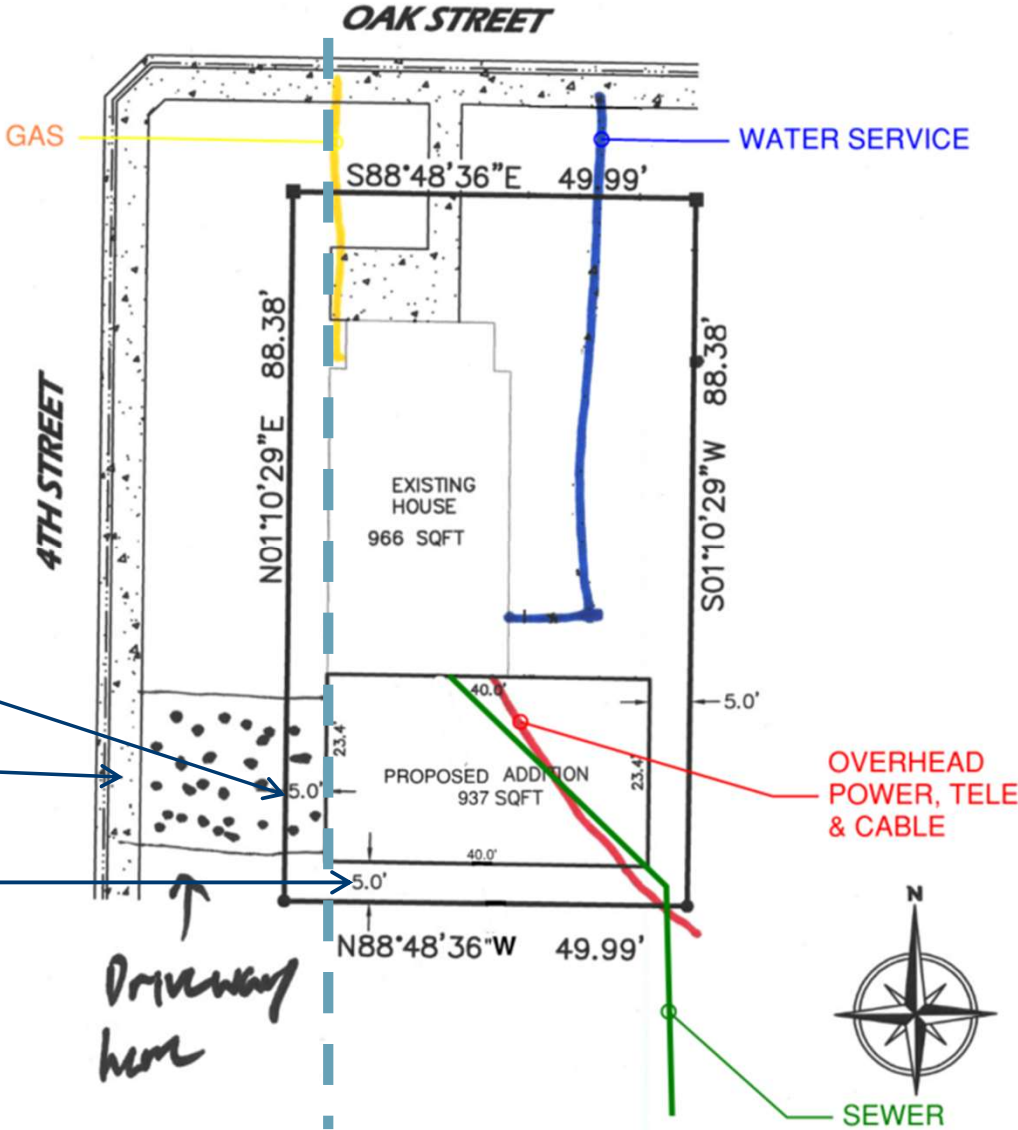


Site Plan

Side Setback =
5' in SF-1 Zone District

existing driveway
curb cut

Rear Setback
Encroachment
Area



Variance Request

Municipal Code Section 16-1-40 Single Family One (SF-1) Zone District states:

- (a) Purpose. The purpose of the SF-1 zone district is to establish and preserve low-density single-family residential areas, with ample open area and connections to nearby employment or commercial activity centers.
- (b) **Lot Development Standards. Development in the SF-1 zone district shall adhere to the standards contained in Table 16-1-40(b) and this Section.**

Table 16-1-40(b): SF-1 District Lot Development Standards	
Vehicular Access Types Permitted	
Residential Uses	Standard, Limited, Rear
Non-Residential Uses	Any
Lot Standards	
Minimum Lot Area (square feet)	6,000
Maximum Lot Coverage	60%
Minimum Setbacks	
Front	20'
Side	5'
Rear	10'
Rear Abutting Alley	5'
Maximum Building Height	
Height	40'



329 Oak Street Variance Request

Town of Windsor Board of Adjustment – 12.5.2024

Analysis

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

- (1) *Where, special circumstances exist, that strict application of the standards adopted in this development code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the property owner...* **Strict application of the setback requirement would be challenging due to the existing constructed conditions that are due to the 1991 subdivision of the original lot which created 2 non-conforming lots.**
- (2) *The applicant cannot derive beneficial use of the property without the variance;* **The existing structure is 966 SF, with 2 small bedrooms and 1 bath. The current space constraints prevent an efficient layout for use of the property. Expanding the square footage to include a useable garage requires an addition to the south.**



329 Oak Street Variance Request

Town of Windsor Board of Adjustment – 12.5.2024

Analysis (cont.)

Municipal Code Section 14-2-150(c) (Major Variance) Review Criteria:

- (3) *The purpose and intent behind the regulation would be maintained by granting the variance:*
Because the property is a corner lot, there are visibility restrictions to the west and north. Therefore, **expanding to the south is the best option**. Additionally, the ratio of hardscape to open space is maintained.
- (4) *Granting the variance will not be detrimental to any adjacent properties or the surrounding area:*
The house to the south does not have windows on the north wall.... Granting the variance aligns with other properties in the neighborhood.
- (5) *Granting the variance will not be detrimental to public health, safety, or welfare.* **Building separations, building codes, and plumbing codes will be met. Expanding to the south will not impact traffic visibility at 4th & Oak.**



329 Oak Street Variance Request

Town of Windsor Board of Adjustment – 12.5.2024

Analysis (cont.)

Municipal Code Section 14-2-150(c) (Major Variance) Review Criteria:

- (6) *Adequate relief cannot be reasonably obtained through a different procedure, such as a waiver or alternative compliance standards, if applicable: Alternate designs have been explored, and ruled out. There are no waiver opportunities available for this situation.*
- (7) *Granting the variance will not create a building or fire code violation or other safety hazard: Safety hazards are not anticipated with this proposal. The application does not seek any exceptions to the building code.*
- (8) *The need for the variance is not created by a self-imposed hardship: This is due to the unique size of the property, the fact that it is a corner lot and the position of the existing building.*
- (9) *A variance shall allow only the least deviation from the standard that will afford relief: Based on existing site conditions, the addition has been placed to provide the least impacts to requirements of the Code, while still meeting the intent of the Code.*



329 Oak Street Variance Request

Town of Windsor Board of Adjustment – 12.5.2024



Analysis Summary

Staff has analyzed and found the following findings of fact, based on:

- *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*

Staff has determined that a variance for a **reduced rear setback for a home addition:**

- due to the 1991 subdivision of the original 8,830 SF lot, two (2) **non-conforming lots were created**, thus limiting opportunities for expansion of the existing home.
- existing built conditions on the site were not caused by the applicant's act or omission
- has no negative impacts and will allow the addition to create a livable home, that is built in a **safe and efficient** manner.
- Will positively impact the neighborhood character by producing a streetscape that is consistent with several homes / streetscapes in the vicinity.

Notifications

The following notifications for the public hearing were made in accordance with the Municipal Code:

- 11.14.2024 - development sign posted on the subject property
- 11.15.2024 - public hearing notice sent to surrounding property owners
- 11.17.2024- public hearing notice published in the paper
- 11.19.2024 - public hearing notice posted on Town of Windsor website



329 Oak Street Variance Request

Town of Windsor Board of Adjustment – 12.5.2024

Recommendation

Staff recommends approval of a variance to reduce the rear setback to 5-feet for the proposed addition to the existing home at 329 Oak Street.



329 Oak Street Variance Request

Town of Windsor Board of Adjustment – 12.5.2024

Recommendation

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

1. A motion to approve the request for a variance from **Section 16-1-40 – Single Family One (SF-1) Zone District, Table 16-1-40(b): SF-1 District Lot Development Standards** pertaining to a request for a reduced rear yard setback; based upon the aforesaid findings of fact, all Staff and BOA conditions being addressed, and the applicant obtaining the applicable 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.



329 Oak Street Variance Request

Town of Windsor Board of Adjustment – 12.5.2024

Record

Staff requests that the following be entered into the record:

- Variance application and supplemental materials
- Staff memorandum and supporting documents
- Testimony received during the public hearing
- Recommendation



329 Oak Street Variance Request

Town of Windsor Board of Adjustment – 12.5.2024



329 Oak Street Variance Request

Town of Windsor Board of Adjustment – 12.5.2024



MEMORANDUM

Date: December 5, 2024
To: Board of Adjustment/Appeals Members
From: Kimberly Lambrecht, Senior Planner
Re: Variance from Section 16-1-40, Table 16-1-40(b) – Single Family One Residential (SF-1) lot development standards pertaining to a reduced rear yard setback – Elizabeth Gonzales (Owner); Trevor Gonzales (Applicant).
Item #: C.2.

Background / Discussion:

Please refer to the previous agenda item for Background/Discussion information.

Financial Impact:

Relationship to Strategic Plan:

Recommendation:

Staff recommends approval of a variance to reduce the rear setback for the proposed addition to the existing home at 329 Oak Street.

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 16-1-40 – Single Family One (SF-1) Zone District, Table 16-1-40(b): SF-1 District Lot Development Standards pertaining to a request for a reduced rear yard setback; based upon the aforesaid findings of fact, all Staff and BOA conditions being addressed, and the applicant obtaining the applicable 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.

CC:

Scott Ballstadt, Director of Planning

Attachments: