



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 McGuiness; 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 McGuiness; 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 McGuiness seconded the motion. Roll call on the vote resulted as follows; Yeas - Stacey Shea, Jeremy Benintende, Hunter Rivera, Barry McGuiness; 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 McGuiness; 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 modulators 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 modulators 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 modulators, nor will the modulators 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 modulators 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.

A handwritten signature in black ink, appearing to be 'Laura Richardson', written over a horizontal line.

Laura Richardson, Assistant Town Clerk