



Board of Adjustment/Appeals Regular Meeting

October 27, 2022 - 7:00 PM

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

Present: Chairman Horner
Vice-Chair Stacey Shea
Don Threewitt
James Penfold
Jeffery Gelvin

Patrick Miller- Absent
Shawn Wherry- Absent

Also Present: David Eisenbraun, Senior Planner
Kimberly Lambrecht, Planner II
Karen Frawley, Town Clerk
Kaitlyn Cinnamon, Deputy Town Clerk

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

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

B. CONSENT CALENDAR

1. Approval of the June 23, 2022 Board of Adjustment/Appeals Regular Meeting Minutes - K. Frawley, Town Clerk

2. Approval of the August 25, 2022 Board of Adjustment/Appeals Regular Meeting Minutes - K. Frawley, Town Clerk

Board of Adjustment/Appeals Board Member Shea moved to approve the consent calendar as presented, Board of Adjustment/Appeals Board Member Threewitt seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Danny Horner, Stacey Shea, James Penfold, Jeffrey Gelvin; Nays - None; Motion Passed.

C. BOARD ACTION

1. Public Hearing – Variance for 2145 7th Street from Municipal Code Section 15-5-10 (Pavement Setback) pertaining to vehicular access requirements – American Eagle Distributing CO, Owner – Jerry Helgeson, Derek Patterson, TST, applicant/representative.

The request is for a variance from Municipal Code Section 15-5-10 pertaining to vehicular access. Specifically, it is seeking relief from "Parking areas and drive aisles shall be setback a minimum of 40' from public right-of-way."

Based upon the existing shape of the parcel, the lot would be undevelopable due to the inability to generate a functioning site plan within the restricted area of the usable lot. The lot will be unable to meet parking requirements, drive through stacking queue lengths, or a general layout with functioning traffic movements.

Additionally, this variance is strictly pertaining to the offset distance of a private drive aisle and public right of way within the confines of the private lot. A variance of this offset will not be detrimental to the adjacent private lots. There is a private drive isle that separates this property from the adjacent property to the south. The property to the south is planned for a gas station, and there will still be reasonable screening/buffering between the properties.

Ultimately, due to low speeds of the pertaining drive aisles with berming and screening walls between the aisles, it is believed that the granting of the variance will not impact public health, safety, or welfare by inducing traffic or any other related incidents. There are also no waivers or alternative compliance standards applicable for this situation.

The Variance has been postponed to the December 15, 2022, Board of Adjustment/Appeals Special Meeting.

2. Variance for 2145 7th Street from Municipal Code Section 15-5-10 (Pavement Setback) pertaining to vehicular access requirements – American Eagle Distributing CO, Owner – Jerry Helgeson, Derek Patterson, TST, applicant/representative.

See public hearing item.

The Variance has been postponed to the December 15, 2022, Board of Adjustment/Appeals Special Meeting.

3. Public Hearing – Variance from Municipal Code Table 16-1-140 (b) (HI District Lot Development Standards) pertaining to the rear yard setback in the Heavy Industrial Zone; and Table 15-3-30(b)(8)(C) (Zone Boundary Bufferyard Standards) pertaining to the bufferyard landscape requirements - Universal Forest Products (15 Walnut Street) – Universal Forest Products, Rich Buitenhuis (Owner/Applicant)

Chairman Horner opened the public hearing.

Universal Forest Products (UFP) is requesting a variance from **Municipal Code Table 16-1-140 (b) (HI District Lot Development Standards)** pertaining to the rear yard setback in the Heavy Industrial Zone District, and **Table 15-3-30(b)(8)(C) (Zone Boundary Bufferyard Standards)** pertaining to the bufferyard landscape requirements. These variance requests are:

- To allow for a setback less than the 200-foot rear yard setback requirement of the Heavy Industrial Zone District adjacent to a residential use or zone.
- To eliminate the requirement for bufferyard landscaping on heavy industrial uses adjacent to residential zones or uses

The Universal Forest Products Windsor Site is located to the south and west of the intersection of Walnut Street and State Highway 257, at 15 Walnut Street.

Adjacent Properties:

North: Walnut Street and Great Western Railroad line (HI Zoning), and Lakeview Cemetery (ROL Zoning)

East: SH 257, unincorporated Weld County property with rail lines crossing the property.

South: Great Western Railroad line (HI Zoning), Chimney Park Townhomes (MF Zoning) and auto body business (LI Zoning)

West: Amalgamated Sugar Company (HI Zoning) and Chimney Park (ROL Zoning)

The **Universal Forest Products Windsor** site was established in 1985, specifically located along State Highway 257 and the Great Western Railroad Line, to provide the UFP site with easy access onto SH 257 for truck transport, and a rail spur that continues to be used. The property was annexed to the Town of Windsor in 1996, as part of the Universal Forest Products Annexation. This location has continued to grow, with the addition of several production and storage buildings to the site over the years. The site both treats and stores lumber to be distributed throughout the region.

The initial office building, serving as the Windsor corporate office, was built in 1985, with the second office building added in 2000.

A key component to the Windsor plant operations is the treatment of lumber. Currently, the timber treatment building is outdated, with aging below grade tanks and piping that are inaccessible for repairs. With this configuration, there is no room for expansion internal to the existing building. This component of the overall production building is located approximately 85-95-feet from the south property line (specific building location will be finalized at time of development of construction drawings). This is generally in alignment with the southernmost line of the existing treatment building. Beyond that is the Great Western Railroad which separates the project site from the adjacent Chimney Park Townhomes. This railroad right-of-way is approximately 30-feet wide.

Due to its outdated design, the treatment plant cannot be taken offline to update the facilities. The only option for updating the treatment operation is to construct a new standalone structure near the existing building so that the operation can stay active. This new building will house new chemical storage tanks required for the treatment process.

All appropriate reviews and permits by and from SAFEbuilt and Windsor Severance Fire Rescue will be required before this project comes online.

The adjacent Chimney Park Townhomes were approved in 2018. Construction was completed in 2021. The standalone oversize garage structures located along the north property line were included in an effort to provide a visual and noise buffer from the Burlington Northern Railroad tracks and UFP site, which again, had been operating on their site for over 35 years.

Municipal Code Section 16-1-140 (Heavy Industrial (HI) District Zoning states;

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

- (1) Establish and preserve areas suitable for heavy industrial use, including those that might impact surrounding neighborhoods and businesses.
- (2) Ensure appropriate separation from neighborhoods and businesses which may be negatively impacted by heavy industrial uses.

- (3) Minimize potential conflicts between heavy truck traffic and passenger vehicle, bicycle, and pedestrian traffic by providing convenient access to rail corridors, arterial roadways and state highways.
- (4) Promote economic vitality.

Additionally, the Municipal Code outlines **Lot Development Standards** for that District. This Variance Request specifically addresses the rear yard setback adjacent to a residential use or zone, which is set at 200-feet.

The UFP site was well under way when the residential zoned property was developed. Measures were taken on the Chimney Park site to minimize the impacts of the UFP site and the railroad to the residences. The addition of standalone garages is the primary mitigation method.

Municipal Code Section 15-3-30(b)(8)(c)

- c. Bufferyard Required. Bufferyards shall be provided in the following situations:
 1. Along zone boundaries as listed in **Table 15-3-30(b)(8)(C)** when the zone district boundary line follows the property line of the parcel proposed for development and when the adjacent property is not separated from the parcel proposed for development by an easement, right-of-way, or permanent open space that is at least fifty (50) feet in width, such as a public street, creek, trail, utility easement, or resource protection area.

Due to the nature of the lumber distribution business, the need for a significant site area to store lumber and maneuver trucks through the site is significant. The UFP site uses all available areas for these. Additionally, the offsite railroad line and onsite railroad spur are limiting the ability to create and maintain a landscape bufferyard as directed by the Municipal Code. Again, the site has been operating without a bufferyard for over 35 years. Because of the railroad line, and the construction of residential garages to serve as a buffer, the need for a landscape buffer is negligible. And due to these circumstances, the ability to maintain such a buffer is severely hindered.

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) *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; The proposed new building will be located next to a building that was built many years ago and is already deemed to be within the setback area. The landscape bufferyard required by the Code cannot be reasonably achieved as there is an existing active rail spur in the bufferyard area.*
- (2) *The applicant cannot derive beneficial use of the property without the variance. The existing treating building is within the buffer zone and requires the variance to comply with site development standards. The landscape buffer cannot be achieved with the loss of the active rail spur and storage space.*
- (3) *The purpose and intent behind the regulation would be maintained by granting the variance; The intent of the Code is to separate residential and industrial uses. UFP has operated the property in a consistent and harmonious manner prior to and after the establishment of the residential property*
- (4) *Granting the variance will not be detrimental to any adjacent properties or the surrounding area; The uses in the setback and bufferyard remain the same, with the new treatment building. No new noise or dust producing equipment will be added with the*

proposed plan.

(5) *Granting the variance will not be detrimental to public health, safety, or welfare. **The proposed project does not change the operations currently permitted and in place on the site.***

(6) *Adequate relief cannot be reasonably obtained through a different procedure, such as a waiver or alternative compliance standards, if applicable; **The new building cannot reasonably be built anywhere else on the site, as its purpose is to replace an existing system that has infrastructure already in place.***

(7) *Granting the variance will not create a building or fire code violation or other safety hazard; **No safety hazards are created by this proposal. The application does not seek any accommodations to the building code.***

(8) *The need for the variance is not created by a self-imposed hardship; **existing conditions are driving the request for the variance.***

(9) *A variance shall allow only the least deviation from the standard that will afford relief; **UFP is not seeking to infringe on the buffer zone more than it already does.***

Staff has analyzed 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 the design and location of the proposed treatment building is consistent with the current site development and does not create any additional impacts to surrounding properties that haven't currently existed for many years.

- *whether unnecessary hardship exists*

Staff has determined that granting the variance will assist UFP in seamlessly continuing their operations without a work stoppage for construction of the new facility.

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

Staff has determined that granting the variance will assist UFP in continuing their operations in a safe and efficient manner.

- *the impacts to the neighborhood character.*

Staff has determined that the design of the proposed new treatment building will have minimal negative impacts to the neighborhood character, as the design / architecture is consistent with existing industrial buildings on site; has a setback that is consistent with other buildings on the site, and is adequately buffered to the existing residential by fencing and oversized garages on the residential site.

Notifications

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

- October 11, 2022 - public hearing notice posted on Town of Windsor website
- October 11, 2022 - development sign posted on the subject property.
- October 12, 2022 - public hearing notice sent to surrounding property owners.
- October 14, 2022 - public hearing notice published in the paper.

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

Discussion ensued between the Commissioners and staff.

Chairman Horner opened the meeting for public questions or comments.

Scott Stall 250 E Chestnut #3, Windsor addressed the Commission regarding whether the new process will add additional noise, emissions or affect property values.

The applicant addressed the Commission regarding the variance is only related to the one structure.

Board of Adjustment/Appeals Board Member Gelvin moved to close the public hearing. Board of Adjustment/Appeals Board Member Shea seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Danny Horner, Stacey Shea, James Penfold, Jeffrey Gelvin; Nays - None; Motion Passed.

4. Variance from Municipal Code Table 16-1-140 (b) (HI District Lot Development Standards) pertaining to the rear yard setback in the Heavy Industrial Zone; and Table 15-3-30(b)(8)(C) (Zone Boundary Bufferyard Standards) pertaining to the bufferyard landscape requirements - Universal Forest Products (15 Walnut Street) – Universal Forest Products, Rich Buitenhuis (Owner/Applicant)

Please refer to previous agenda item for background information.

Board of Adjustment/Appeals Board Member Threewitt moved to approve Variance from Municipal Code Table 16-1-140 (b) (HI District Lot Development Standards), Board of Adjustment/Appeals Board Member Shea seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Danny Horner, Stacey Shea, James Penfold, Jeffrey Gelvin; Nays - None; Motion Passed.

D. COMMUNICATIONS

1. Communications from Board of Adjustments/Appeals

None

2. Communications from Staff

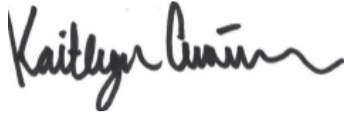
- a. Holiday Special Meeting

Special Meeting set for December 15, 2022

The November 24, 2022 and December 29, 2022 Board of Adjustment/Appeals Regular Meetings have been canceled due to holidays.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:36 p.m.

A handwritten signature in black ink, appearing to read "Kaitlyn Cinnamon", written in a cursive style.

Kaitlyn Cinnamon, Deputy Town Clerk