



BOARD OF ADJUSTMENT/APPEALS REGULAR MEETING

February 23, 2023 - 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 Town Board.

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

B. CONSENT CALENDAR

1. Approval of the January 26, 2023 Board of Adjustment/Appeals Regular Meeting Minutes - K. Cinnamon, Deputy Town Clerk

C. BOARD ACTION

1. Public Hearing – Variance from Municipal Code Section 16-1-70(b) for 303 E Chestnut pertaining to the minimum side setbacks in the RMU-1 (Residential Mixed Use-One) Zone District, and a Variance from Municipal Code Section 16-1-20(a) pertaining to setbacks for accessory buildings. Shelby Singleton, Owner/Applicant.

- Quasi-judicial
- Mark Price, Planner I

2. Variance from Municipal Code Section 16-1-70(b) for 303 E Chestnut pertaining to the minimum side setbacks in the RMU-1 (Residential Mixed Use-One) Zone District, and a Variance from Municipal Code Section 16-1-20(a) pertaining to setbacks for accessory buildings. Shelby Singleton, Owner/Applicant.

- Quasi-judicial
- Mark Price, Planner I

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: February 23, 2023
To: Board of Adjustment/Appeals Members
From:
Re: Approval of the January 26, 2023 Board of Adjustment/Appeals Regular Meeting Minutes - K. Cinnamon, Deputy Town Clerk
Item #: B.1.

Background / Discussion:

Financial Impact:

Relationship to Strategic Plan:

Recommendation:

CC:

Attachments:

1. 01.26.23 Board of Adjustment Appeals Regular Meeting Draft Minutes



Board of Adjustment/Appeals Regular Meeting

January 26, 2023 - 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
Carlin Malone, Chief Planner
Mark Price, Planner I
Scott Ballstadt, Director of Planning
Kim Emil, Interim Town Attorney
Kaitlyn Cinnamon, Deputy Town Clerk

2. Election of Officers

Chairman Horner opened the meeting for any nominations.

Chairman Horner nominated Stacey Shea for the position of Chair. Member Shea accepted the nomination to be Chair of the Board of Adjustment & Appeals.

Board of Adjustment/Appeals Board Member Horner moved to accept Stacey Shae as Chair, 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.

Member Gelvin nominated Member Threewitt for the position of Vice Chairman. Threewitt accepted the nomination to be Vice Chairman of the Board of Adjustment & Appeals.

Board of Adjustment/Appeals Board Member Gelvin moved to accept Don Threewitt as Vice Chairman, Board of Adjustment/Appeals Board Member Horner 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.

Member Penfold accepted to continue his position as Secretary.

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

Board of Adjustment/Appeals Board Member Horner moved to approve the consent calendar as presented, Board of Adjustment/Appeals Board Member Gelvin 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. Public Invited to be Heard

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

Board of Adjustment/Appeals Board Member Horner moved to close the public hearing, Board of Adjustment/Appeals Board Member Gelvin 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.

B. CONSENT CALENDAR

1. Approval of the October 27, 2022 Board of Adjustment/Appeals Regular Meeting Minutes - K. Cinnamon, Deputy Town Clerk

Board of Adjustment/Appeals Board Member Horner 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.

2. Approval of the December 15, 2022 Board of Adjustment/Appeals Special Meeting Minutes - K. Cinnamon, Deputy Town Clerk

Board of Adjustment/Appeals Board Member Threewitt moved to approve the consent calendar as presented, Board of Adjustment/Appeals Board Member Horner 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 from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the Limited Industrial (LI) zone district – Brett Buchholtz, Buchholtz Engineering LLC (Owner/Applicant); Bob Choate, Coan, Payton & Payne, LLC (Owner’s Representative).

Brett Buckholtz of Buckholtz Engineering LLC is requesting a variance from ***Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the Limited Industrial (LI) zone district***. This variance request is to allow for a setback of less than 40-feet from the Highland Meadows Parkway public right-of-way for a proposed parking lot.

The proposed Plasma Processing site is zoned Limited Industrial (LI), and is located at 7300 Greendale Road (Lot 4, Block 5, Highlands Industrial Park Subdivision), at the northeast corner of Highland Meadows Parkway and Greendale Road. Adjacent uses and zoning are as follows:

North: Centennial Leasing Auto Sales (LI Zoning);
East: existing Plasma Process Group, Inc. (LI Zoning);
South: Crossroads Self Storage (HI Zoning);
West: Highland Meadows Parkway; Pinkees Rod Shop and Mash Lab Brewing (LI Zoning)

Plasma Process Group, Inc. was established in 2003, to support a broad spectrum of optical thin film and semi-conductor manufacturers in keeping their ion beam equipment maintained. Due to substantial growth in their services along with the manufacturing of equipment and packages, the company relocated to their current facility in 2011 which allowed them to not only grow the business, but also their employee base. (Plasma Process currently has 16 employees.) As the business has continued to grow over the last ten years, so have the plans to expand, which included acquisition of the adjacent property to the west in 2017.

The subject property is of a similar size and configuration as the current facilities, and the initial plan was to incorporate a new building similarly configured as the existing and to include additional parking to alleviate current parking congestion along Greendale Road.

In 2021, the Town implemented Land Use Code revisions, which included a provision of an increased parking setback to the public right-of-way. **This was instituted to reduce the amount of front yard parking visible from the public right of way with the goal of having an ‘architecture forward’ appearance along street frontages.**

Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) speaks to options for parking at commercial/industrial locations in an effort to de-emphasize the importance placed on automobiles, allow for a more pedestrian friendly opportunity, and bring building architecture to a more prominent site location.

For most undeveloped lots, the new Code requirement has been a successful provision. However, in some existing developments that were approved prior to this requirement, the previously platted lot sizes, shapes and configurations have presented problems for strict compliance. In an effort to alleviate some of the constraints that might be brought about by this requirement in existing developments, Staff has compromised by looking at the lot development parameters of existing developed adjacent properties and supporting those parameters for adjacent developments, with the goal of ***creating continuity along street frontages.***

In this situation, the Advanced Roofing building (at the northern most limit of the industrial park) has a 25-foot parking setback, Centennial Leasing (immediately to the north) has a 26-foot parking setback, and Crossroads Self Storage (to the south) has a 30-foot building setback.

Municipal Code Section 16-1-140 (Limited Industrial (LI) District Zoning states;

- (a) Purpose. The purpose of the LI zone district is to:
 - (1) Establish and preserve areas for a variety of low to moderate intensity industrial

and commercial uses including manufacturing, and warehousing distribution with limited outdoor storage.

(2) 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.

(3) Promote economic vitality.

Additionally, the Municipal Code outlines Lot Development Standards for that District – as shown in the table below. This Variance Request is specifically addressing parking lot setbacks, which are different from the building setbacks. Note, however, that the proposal will need to comply with all building setbacks and other lot development standards as well.

The adjacent existing developed Plasma Process site has been built with the ultimate goal of expanding to the west parcel and is in a challenging position of needing to address the current lot development standards in a potentially creative way. While Staff understands the challenge that this site brings, the focus remains on ensuring that development continues to occur in a manner consistent with not only the Municipal Code, but the Comprehensive Plan which promotes ‘architecture forward’ design, the Transportation Plan which has established Highland Meadows Parkway as a Major Collector, and the Open Space and Trails Plan which has established an off-road 10-foot recreation trail along the east side of Highland Meadows Parkway.

All of these plans contribute to the notion of bringing architecture to the street front and creating separation between the trail and the private parking lot.

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, as the property was purchased with the intent to mirror the existing building and include employee parking. The revised setbacks found in the current Code were not anticipated at that time. Additionally, because the two properties belong to the same business and function, the two buildings need to stay close together for the success of the business and expansion.

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

The narrow width of the subject property causes a hardship with regard to meeting the current Code setback requirements. The building and parking lot layout would not be nearly as usable without approval of the variance.

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

The intent of this section of the Code is to de-emphasize the importance placed on automobiles, allow for a more pedestrian friendly opportunity and bring building architecture to a more prominent site location. By granting an alternate setback of 26-feet, the purpose behind the regulation is maintained.

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

Granting a variance for a 26-foot setback will keep this property's streetscape in alignment with existing developed properties along the east side of Highland Meadows Parkway, and create a unified streetscape.

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

The proposed 26-foot setback variance will not present any health, safety and welfare concerns.

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

In an effort to alleviate the constraint that the current Code has posed on this lot, Staff supported a reduction in setback to 26-feet, which will put this property in alignment with existing development along the streetscape. This administrative effort was done in order to minimize procedural processes and assist the applicant in moving forward with the project.

(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 or exceptions to the building code.

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

Existing conditions, along with Code revisions that came into play after the lot was created are driving the request for the variance.

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

A 26-foot setback will expand the development opportunities while still meeting the intent of the Code.

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 a variance for a 26-foot setback will complement the existing streetscape and while meeting the intent of Table 15-5-10(a)

- *whether unnecessary hardship exists*

Staff has determined that a variance for a 26-foot setback is a compromise to an existing site condition that was created through no fault of Plasma Process.

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

Staff has determined that a variance for a 26-foot setback has no negative impacts and will assist Plasma Process in expanding their operations in a safe and efficient

- *the impacts to the neighborhood character.*

Staff has determined that a variance for a 26-setback will positively impact the neighborhood character by producing a consistent streetscape for the length of the Limited Industrial zone district along Highland Meadows Parkway.

Notification

November 15, 2022 public hearing notice posted on Town of Windsor website

November 16, 2022 development sign posted on the subject property.

November 16, 2022 public hearing notice sent to surrounding property owners.

November 18, 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

Chair Shae opened the meeting for public questions or comments, to which there was none.

The applicants, Bob Chaote and Brett Buchholtz, presented to the Board.

Conversation between the Board, staff, and applicant ensued.

Board of Adjustment/Appeals Board Member Gelvin moved to close the Public Hearing, Board of Adjustment/Appeals Board Member Penfold 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.

2. Variance from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the Limited Industrial (LI) zone district – Brett Buchholtz, Buchholtz Engineering LLC (Owner/Applicant); Bob Choate, Coan, Payton & Payne, LLC (Owner's Representative)

Please refer to the previous item for background / discussion information.

Board of Adjustment/Appeals Board Member Penfold moved to approve the Variance from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed, Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the Limited Industrial (LI) zone district, Board of Adjustment/Appeals Board Member Horner seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, James Penfold, Jeffrey Gelvin; Nays - Danny Horner, Stacey Shea; Motion Failed.

Board of Adjustment/Appeals Board Member Penfold moved to conditionally approve the Variance from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed, Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the Limited Industrial (LI) zone district, Board of Adjustment/Appeals Board Member Horner seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, James Penfold; Nays - Danny Horner, Jeffrey Gelvin; Motion Failed.

3. Public Hearing – Variance for 1275 Main Street, from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the General Commercial (GC) zone district – Adam Meier, (Owner/Applicant); Luke Seeber, Baseline (Owner's 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 difficult to develop in an efficient manner 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, stacking queue lengths, or a general layout with functioning traffic movements.

Additionally, this variance is strictly pertaining to the offset distance of a private parking area, 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.

Board of Adjustment/Appeals Board Member Horner moved to open the Public Hearing, Board of Adjustment/Appeals Board Member Penfold 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.

Chair Shea opened the meeting for public questions or comments, to which there was none.

Discussion between the Board and staff ensued.

Board of Adjustment/Appeals Board Member Threewitt moved to close the Public Hearing, Board of Adjustment/Appeals Board Member Horner 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 for 1275 Main Street, from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the General Commercial (GC) zone district – Adam Meier, (Owner/Applicant); Luke Seeber, Baseline (Owner's Representative)

Please see public hearing item.

Board of Adjustment/Appeals Board Member Threewitt moved to approve the Variance for 1275 Main Street, from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access, Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the General Commercial (GC) zone district, Board of Adjustment/Appeals Board Member Penfold 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.

5. Public Hearing – Variance for 2145 7th Street, from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the Residential Mixed Use (RMU-1) zone district – Jerry Helgesen, (Owner/Applicant); Derek Patterson, TST, Inc.(Owner's 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 challenging to develop 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.

Chair Shea recused herself for the associated Variance.

David Eisenbraun, Senior Planner, stated that with Chair Shea being excused, for the Variance to pass, all four Board Members would need to be in favor.

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

6. Variance for 2145 7th Street, from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the Residential Mixed Use (RMU-1) zone district – Jerry Helgesen, (Owner/Applicant); Derek Patterson, TST, Inc.(Owner's Representative)

Please see public hearing item.

Board of Adjustment/Appeals Board Member Horner moved to approve the Variance for 2145 7th Street, from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the Residential Mixed Use (RMU-1) zone district, Board of Adjustment/Appeals Board Member Gelvin seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Danny Horner, James Penfold, Jeffrey Gelvin; Nays - None; Motion Passed.

7. Public Hearing - Variance for the property of 23 Main Street from Municipal Code Section 16-1-70(b) pertaining to the minimum single family residential lot size requirement of 6,000 square feet in the RMU-1 (Residential Mixed Use-One) Zone District - Melina Nolte, Owner/Applicant

The owner of the property of 23 Main Street, Melina Nolte, is requesting a variance from Municipal Code Section 16-1-70(b), RMU-1 District Lot Development Standards, pertaining to the minimum single family dwelling lot size requirement of 6,000 s.f. to accommodate a non-conforming property under this lot size threshold. Additionally, this

variance request will allow the property owner to process a minor subdivision to create a legally subdivided lot, as a past property owner transferred a portion of an adjacent lot without processing through the Town's subdivision process. Approval of the variance will allow a buildable lot size, the ability to be legally subdivided and allow for future permitting and occupancy of a single-family residential home. A timeline of events and additional background is included in the presentation.

Municipal Code Section 16-1-70(b) (RMU-1 District Lot Development Standards):
Single Family Dwelling: Minimum Size 6,000 square feet

- The applicant is requesting a reduced lot size to allow a proposed lot of approximately 3,443 s.f.
- The proposed lot size is consistent with the original platted lots of the Town of Windsor Subdivision from 1883.

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;**

Staff comment: The minimum single-family residential lot size in the RMU-1 zone district is 6,000 sq. ft. Original lot sizes, per 1883 Town of Windsor Subdivision Original Plat, were less than the minimum square footage allowed by Town Codes over the past several decades. Relief from the variance will be of no substantial detriment to the public good and will not substantially impair the intent and purpose of the Comprehensive Plan and this Code. The variance, if granted, will not alter the essential character of the surrounding neighborhood.

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

Staff comment: The property cannot be occupied or developed without variance approval.

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

Staff comment: The intent of the Code is to establish a minimum required lot size for single-family residential lots within the RMU-1 Zoning District; however, it impedes legal non-conforming lots established prior to ordinance passing. Approval of the proposed variance would allow the property to be legally subdivided and correct a non-conforming condition.

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

Staff Comment: Many lots within the RMU-1 Zoning District specified in the site zoning map have lot sizes less than 6,000 s.f. The proposed lot size is generally consistent with adjacent properties, the block, and the neighborhood. Additionally, the variance would help alleviate a non-conforming condition. Currently, the structure on the property is uninhabitable. Neither the structure, nor the lot, is developable until the variance for the reduced lot size is granted and a minor subdivision is approved.

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

Staff comment: The proposed variance and the future minor subdivision for this lot will not be detrimental to public health, safety, or welfare, and aligns with primary use regulations per zoning district.

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

Staff comment: The approval of a Major Variance is the only applicable process. This lot is undevelopable without approval of the variance and a minor subdivision.

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

Staff comment: The application does not seek any accommodations to the building code. Future development/construction of the lot will incorporate and abide by building code regulations.

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

Staff comment: The need for the variance was not created by the current property owner. A previous owner created the non-conforming condition, and the property was conveyed

to the current owner as an occupiable building (see background). Approval of the variance and a minor subdivision will alleviate this hardship.

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

Staff comment: The variance would only allow the least deviation from the minimum lot size requirement for RMU-1 zone district, for a lot that pre-dates current size requirements.

Staff has analyzed:

- whether special site-specific conditions exist that warrant the proposed lot size.

Staff has determined that the proposed lot size is consistent with the surrounding properties, due to the original plat for the Town of Windsor.

- whether unnecessary hardship exists.

The property, in its current state, does not allow for occupancy or any redevelopment/development of the site, due to the unnecessary hardship of the determined lot size requirement for RMU-1.

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

Staff has determined that the proposed lot will pique public interest, and not impact safety or public welfare. The proposed lot will be consistent with the adjacent lots, block, and neighborhood.

- the impact on the neighborhood character.

Staff has determined that the proposed lot will not impact the adjoining properties nor its adjacent neighbors.

- Additional Variance Applications will be necessary for future development of lot; structure size, open space requirements, etc.

Notification:

- November 14, 2022 - public hearing notice published on the Town of Windsor Website.
- November 14, 2022 - development under review sign posted on the subject property.
- November 16, 2022 - public hearing notice sent to surrounding property owners.

- November 18, 2022 - public hearing notice published in the paper.

Chair Shea returned to the meeting.

Board of Adjustment/Appeals Board Member Horner moved to open the Public Hearing, 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.

Applicant Melina Nolte spoke to the Board regarding her concerns.

Chair Shea opened the meeting for public questions or comments, to which there was none.

Board of Adjustment/Appeals Board Member Horner moved to close the Public Hearing, Board of Adjustment/Appeals Board Member Gelvin 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.

8. Variance for the property of 23 Main Street from Municipal Code Section 16-1-70(b) pertaining to the minimum single family residential lot size requirement of 6,000 square feet in the RMU-1 (Residential Mixed Use-One) Zone District - Melina Nolte, Owner/Applicant

Please refer to public hearing item.

Board of Adjustment/Appeals Board Member Threewitt moved to approve the Variance for the property of 23 Main Street from Municipal Code Section 16-1-70(b) pertaining to the minimum single family residential lot size requirement of 6,000 square feet in the RMU-1 (Residential Mixed Use-One) Zone District, Board of Adjustment/Appeals Board Member Horner 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.

9. Public Hearing - Variance for Development Entrance Sign for the Tacincala/Prairie Song Subdivision - Variance from Municipal Code Section 15-17-60(a) monument-type base, Section 15-17-70(j) pole-mounted signs prohibited, and Section 15-17-110(e) development entrance sign criteria - Pat McMeekin, Prairie Song Development, LLC, applicant; and Wendi Cudmore, Hartford Homes, applicant representative.

The applicant, Pat McMeekin, is requesting a variance from Municipal Code Section 15-17-60(a) monument-type base, Section 15-17-70(j) pole-mounted signs prohibited, and Section 15-17-110(e) development entrance sign criteria for a development entrance sign located along and west of State Highway 257, south of Weld County Road 72 and north of the WCR 70 alignment. The development includes approximately 786 acres and is zoned RMU-1, SF-1, and PUD (Planned Unit Development).

Specifically, the variance requests relief from the following three sections of the Municipal Code pertaining to signs:

1. Section 15-17-60(a) pertaining to freestanding, ground-mounted signs: *such signs shall be constructed with a monument-type base consisting of materials that are complementary and compatible with the architectural elements of the project.*

2. Section 15-17-70(j) pertaining to pole-mounted signs: *pole-mounted signs are prohibited.*
3. Section 15-17-110(e) pertaining to development entrance signs: *maximum height shall not exceed 10 feet, and maximum sign area 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.*

Granting a variance from the aforementioned code sections will allow the property owner to construct a unique sign that is not monumented, supported by poles, and is taller and greater in area than what the Municipal Code permits.

Municipal Code Section 15-17-60(a) pertaining to freestanding, ground-mounted signs: **Freestanding, ground-mounted signs shall be constructed with a monument-type base consisting of materials that are complementary and compatible with the architectural elements of the project. The width and length of such base shall be at least as wide and long as the bottom edge of the sign area.**

- The applicant is requesting to forego a monumented base for the purpose of mounting the sign directly to 5 concrete foundations, with six 6" round steel pole supports. The purpose of this approach is to preserve the focus of the artwork surrounding the sign.

Municipal Code Section 15-17-70(j) pertaining to pole-mounted sign:
- Pole-mounted signs are prohibited.

- The applicant is requesting to forego a monumented base for the purpose of mounting the sign directly to 5 concrete foundations, with six 6" round steel pole supports. Again, the purpose of this approach is to maintain the focus of the artwork surrounding the sign.

Municipal Code Section 15-17-110(e) pertaining to development entrance signs: **Development entrance signs shall be considered to be any freestanding, wall-mounted sign or sign which is constructed on a monument base intended to identify a large-scale residential subdivision.**

- The applicant is requesting a variance for allowed height and area.
- The sign would be 12' at its tallest section, 2' higher than Code allows.
- The maximum sign area of development entrance signs which are located adjacent to arterial or major collector streets...in no event shall the total sign area of any development entrance sign exceed two hundred (200) square feet in area.
 1. (34'-11 1/4" x 12') Proposed 419.25 sq ft.
- The sign area shall be calculated as the entire area within a continuous rectangular box drawn with straight lines at perpendicular angles to encompass the entire

perimeter of the extreme limits of the background, frame or cabinet encompassing the background material.

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;

Applicant Response: Proposed is a high-quality design element that is raising the bar for the community. Permitting this signage further allows the developer to meet their promises of bringing high-quality, well thought-out, master planned neighborhood to the overall Town of Windsor Community. With Prairie Song being a multiphase, large-scale project, extra detail is required to make it successful, we believe signage is a creative way to provide detail and architectural interest to the community.

Staff comment: The proposed sign, while it does challenge the Municipal Code, is artistically designed with unique facets that are minimalistic but representative of the uniqueness of the subdivision. The Code requirement of a monument base and prohibition of pole-mounted signs is primarily intended to increase quality and reduce sign height and clutter typically found in commercial corridors. The Municipal Code does not adequately address entry features and neighborhood identification for large-scale, master-planned community developments such as Tacincala (Prairie Song), which encompasses approximately 765 acres and will eventually include over 2,300 dwelling units, and a community park and other residential amenities. Additionally, the sign will be located on a major roadway and the proposed scale of the sign is compatible with the context of the location. Strict application of the standards would not allow the scale or design of the neighborhood identification sign proposal. Furthermore, the neighborhood identification sign does not include advertising, which makes it unique in contrast to commercial signage.

Relief from the variance will be of no substantial detriment to the public good and will not substantially impair the intent and purpose of the Comprehensive Plan and this Code. The variance, if granted, will not alter the essential character of the surrounding neighborhood.

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

Applicant Response: From the beginning of the entitlements process for Prairie Song, Hartford Homes has demonstrated a design for a new master planned community that raises the bar for living in this area. They want to develop a legacy project that future residents will be proud to live in, while simultaneously integrating with the greater Windsor community. All details are being considered from providing attractive, useful amenity and open space areas to a signage program that carries these ideas forward. The applicant can think of no better way to demonstrate this desire than to make the focal point of the community a special element that foretells a bit of what Prairie Song is and will be to the residents, future residents, and guests alike.

Staff Comment: The applicant could derive beneficial use of the property without the proposed sign. However, the design aligns with the overall artistic theme, which is consistent with master-planned communities of this size. The proposal allows reasonable benefit of the property for the purpose of creating a unique community identity and way-finding entry feature that does not have commercial advertising.

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

Applicant Response: As previously noted, we believe we are meeting the purpose and intent of the sign code. This variance request does not seek to permit a low-quality sign but rather allow a creative piece of signage which is without precedent.

Staff Comment: The intent of the Code is to limit excess and obstruction of view, with safety at the forefront. The proposal is consistent with the purpose and intent.

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

Applicant Response: We do not believe there will be any detrimental impacts to properties in the surrounding area. The signage's size and location will integrate into the overall design aesthetic for the community. All lighting, which is typically the most offensive part of a sign's design, is backlit and minimized to only a few key areas of the overall design feature, the community's name and the logo.

Staff Comment: The proposed design exceeds Code limits of area and height. However, the design of the sign aligns with the scale of the master-planned community and location with reference to its proximity to State Highway 257. The proposed sign does not obscure view or create a billboard type obstruction to surrounding property owners to the east.

Granting the variance will not be detrimental to adjacent properties or the surrounding area and will provide the neighborhood with unique identification.

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

Applicant Response: This request is not detrimental to public health, safety, or welfare of the Windsor community.

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

Applicant Response: Per discussions with Town of Windsor Staff, the variance request process is the proper method to achieve approval of the signage, as proposed.

Staff Comment: The variance process is the proper method to achieve the approval of the proposed signage. A similar large-scale development (Raindance Subdivision) addressed entry feature/neighborhood identification signage through a PUD (Planned Unit Development) rezone with signage design. The Tacincala (Prairie Song) PUD does not include design standards for signage.

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

Applicant Response: Granting this variance will not create a building code, fire code, or other safety hazard for the residents of Prairie Song or the residents of Windsor.

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

Applicant Response: The variance being requested will allow for creative and high-quality enhancements for the Prairie Song community. The development of Prairie Song itself has not created a self-imposed hardship that requires us to seek relief from, rather the desire for unique, high-quality design has driven this request.

Staff Comment: While unique, the variance request is self-imposed based on design. The Code, however, does not accommodate large-scale development/neighborhood identification entry features such as the request.

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

Applicant Response: This request will allow only exactly what we are seeking to develop at Prairie Song. Complete construction details have been included with this variance request that detail the full plans for this signage request.

Staff Comment: With consideration to the three (3) code sections for which this sign exceeds or is non-compliant, the least deviation from standard is difficult to determine.

Staff has analyzed:

- whether special site-specific conditions exist that warrant the proposed sign.

-Staff has determined that the proposed sign aligns with the scale of the master-planned community and provides a unique neighborhood identification, consistent with the theme of the Tacincala (Prairie Song) community.

- whether unnecessary hardship exists.

-Staff has determined that the request is consistent with the uniqueness of the master-planned community, and strict application of the Municipal Code would prevent unique large-scale community identification signage such as this.

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

-Staff has determined that the proposed sign is set back far enough from intersection and is minimally obtrusive.

- the impacts to the neighborhood character.

-Staff has determined that the proposed sign will align with the character of the master-planned community.

Notification:

- November 21, 2022 - public hearing notice published on the Town of Windsor Website.
- November 22, 2022 - development under review sign posted on the subject property.
- November 22, 2022 - public hearing notice sent to surrounding property owners.
- November 25, 2022 - public hearing notice published in the paper.

Board of Adjustment/Appeals Board Member Horner moved to open the Public Hearing, Board of Adjustment/Appeals Board Member Gelvin 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.

Chair Shea opened the meeting for public questions or comments, to which there was none.

Applicant Brock Reimer and Hartford Homes presented to the Board. Vice Chair Threewitt asked questions to staff and conversation between staff and board ensued.

Board of Adjustment/Appeals Board Member Horner moved to close the Public Hearing, Board of Adjustment/Appeals Board Member Gelvin 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.

10. Variance for Development Entrance Sign for the Tacincala/Prairie Song Subdivision - Variance from Municipal Code Section 15-17-60(a) monument-type base, Section 15-17-70(j) pole-mounted signs prohibited, and Section 15-17-110(e) development entrance sign criteria - Pat McMeekin, Prairie Song Development, LLC, applicant; and Wendi Cudmore, Hartford Homes, applicant representative

Please see public hearing materials.

Board of Adjustment/Appeals Board Member Horner moved to approve the Variance for Development Entrance Sign for the Tacincala/Prairie Song Subdivision - Variance from Municipal Code Section 15-17-60(a) monument-type base, Section 15-17-70(j) pole-mounted signs prohibited, and Section 15-17-110(e) development entrance sign criteria, Board of Adjustment/Appeals Board Member Gelvin seconded the motion. Roll call on the vote resulted as follows; Yeas - Stacey Shea; Nays - Don Threewitt, Danny Horner, James Penfold, Jeffrey Gelvin; Motion Failed.

11. Public Hearing – Variance for 365 E Main Street, from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the General Commercial (GC) zone district – VIA Real Estate, LLC, (Owner/Applicant); Tez Hawkins, Baseline (Owner's 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 difficult to develop in an efficient manner 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, stacking queue lengths, or a general layout with functioning traffic movements.

Additionally, this variance is strictly pertaining to the offset distance of a private parking area, 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 public right-of-way. There will still be reasonable screening/buffering between the public right-of-way and this drive aisle through the use of landscaping and opaque fencing.

Ultimately, due unique nature of the parcel shape and screening walls between the aisle and street, 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. Chair Shea opened the meeting for public questions or comments, to which there was none.

Discussion ensued between the Board.

Board of Adjustment/Appeals Board Member Horner moved to close the Public Hearing, 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.

12. Variance for 365 E Main Street, from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the General Commercial (GC) zone district – VIA Real Estate, LLC, (Owner/Applicant); Tez Hawkins, Baseline (Owner's Representative)

Please see public hearing item.

Board of Adjustment/Appeals Board Member Horner moved to approve the Variance for 365 E Main Street, from Section 15-5-10(a), Table 15-5-10(a): Vehicle Access Standards, Dispersed Parking (A.1) of the Municipal Code pertaining to a reduced setback for parking areas and drive aisles along public right-of-way in the General Commercial (GC) zone district, Board of Adjustment/Appeals Board Member Penfold 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

Scott Ballstadt, Director of Planning, thanked Danny Horner for his many years on the Board of Adjustment/ Appeals. The Board, staff, and attendees gave a round of applause.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 9:37 p.m.

Kaitlyn Cinnamon, Deputy Town Clerk



MEMORANDUM

Date: February 23, 2023
To: Board of Adjustment/Appeals Members
From: Mark Price, Planner 1
Re: Public Hearing – Variance from Municipal Code Section 16-1-70(b) for 303 E Chestnut pertaining to the minimum side setbacks in the RMU-1 (Residential Mixed Use-One) Zone District, and a Variance from Municipal Code Section 16-1-20(a) pertaining to setbacks for accessory buildings. Shelby Singleton, Owner/Applicant.
Item #: C.1.

Background / Discussion:

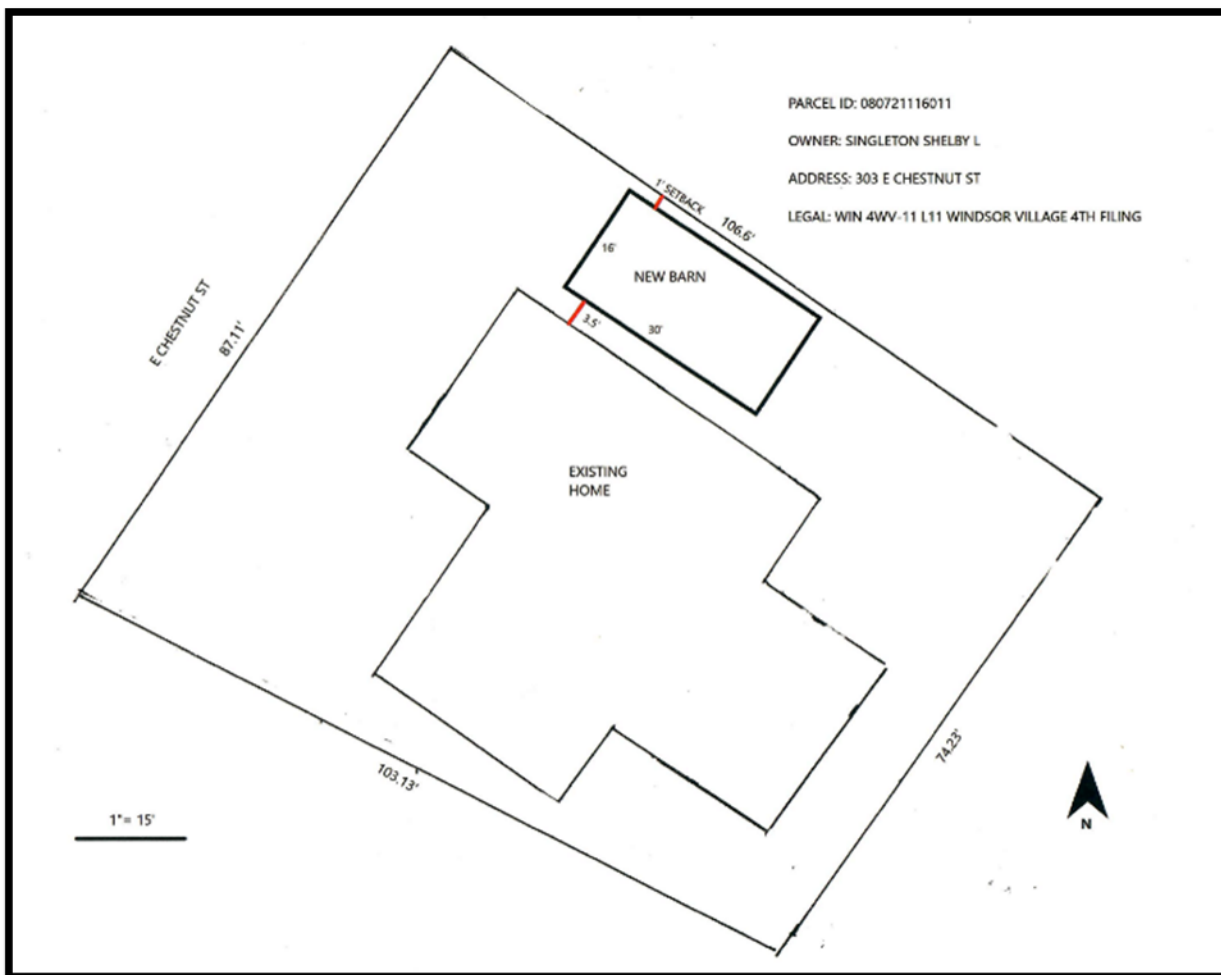
The owner of the subject property, Shelby Singleton, is requesting a variance from Municipal Code Section 16-1-70(b) to reduce the required five-foot (5') side yard setback from property line for a single family dwelling, to one foot (1'), and a variance from Municipal Code Section 16-1-20(a) to reduce the required five-foot (5') accessory building (over 120 square feet in size) setback 5 feet (5') from property line to one foot (1'). Additionally, this variance request will allow the property owner to construct a handicap accessible garage/storage area for the needs of a double-amputee tenant. Approval of the variance will allow an accessory building to be built within one (1) foot of the property line, adjacent to a single-family residential home, in the Residential Mixed Use One (RMU-1) zone district. A timeline of events and additional background is included in the presentation.

Municipal Code Section 16-1-70(b) (RMU-1 District Setbacks):

- Single Family Dwelling: Minimum side setback of 5 feet.
- The applicant is requesting a reduced setback to allow a proposed accessory building to be within 1 foot (1') of the property line.
- The proposed accessory building (Greater than 120 square feet) will provide ample, handicap accessible vehicle parking as well as storage.

Background:

- 303 E Chestnut was formerly modified to be and assisted living facility by previous owners.
- Current owners purchased home in 2017 due to its accessibility.
- The garage space was converted into living space with a bedroom and accessible bathroom for roll-in wheelchair access by previous owners.
- In its current state, the home is fully handicap accessible with ramps and railings installed for accessibility throughout.
- Has fire suppression installed.



1/9/23

To whom it may concern,

We (Jenni & David Adams) are
 ok with any and all construction & building
 at our neighbor's house at 303 E Chestnut St.
 If you have any concerns please call me
 at (970) 388-1324. Thank you.

Jenni Adams

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;

Applicant: The home was modified, by previous owners, to be an assisted living facility and is fully handicap accessible. The accessible nature of this home was the contributing factor to the purchase, with the former garage space converted to livable space for a double amputee in a wheelchair who is currently residing in the home. To attach a garage to the house would eliminate the only the livable space for the individual and would compromise the existing fire suppression system.

-Staff comment: The modification of the home, by the previous owner, created undue hardship for the current owners. While accessibility is paramount, the conversion of the garage space into livable space has generated an accessible, suitable living space; however, to the detriment of vehicle/mobility limitations and storage on property. Additionally, attaching a garage or accessory building to the home's living area is not permitted per building code and would eliminate the living space and accessible bathroom for the resident, generating financial hardship for the owner to modify the home.

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

Applicant: Without the approval of the variance allowing for a 1' setback from property line, a garage would be limited to 9' wide, making it unusable space which would create difficulties for a non-ambulatory individual to enter or exit an accessible vehicle.

-Staff comment: Accessibility will be limited with current vehicle parking and storage located in the driveway and along the street.

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

Applicant: Overall, with the garage addition, all other lot requirements will be maintained.

-Staff comment: The intent of the Code is to establish a 5' minimum setback between residence/accessory buildings and the property line for single-family residential lots within the RMU-1 Zoning District. The proposed variance would allow for the owner to construct an accessory building within 1' of the property line for the purposes of accessibility for a non-ambulatory person. All other lot requirements would be maintained.

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

surrounding area;

Applicant: The neighbor to the east 305 E Chestnut (neighbor potentially impacted by accessory building) has written a letter in support of the accessory building with consideration to the proximity to their property.

-Staff Comment: The Adam's family at 305 E Chestnut would be directly impacted by the building but have shown support of the construction and building.

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

Applicant: Granting the variance will not be detrimental to public health, safety or welfare and will in fact, benefit the neighborhood by removing clutter (parked cars and storage items) from the property, thus creating a more appealing environment.

-Staff Comment: Staff has addressed potential issues, primarily focused on fire safety, which have been addressed by Safebuilt staff during concept review application.

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

Applicant: No other procedure is known that can provide adequate relief due to the existing layout of the home and lot.

-Staff comment: Staff agrees, the alternative (attached garage) would displace the current resident's living quarters creating additional hardship, and is prohibited by building code.

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

Applicant: Russ Weber of SAFEbuilt, reviewed the initial concept review application and determined that the east wall of the building will need to be constructed with a 1-hour fire rating. The garage will have no overhangs and will maintain setbacks as determined in the proposed design.

-Staff comment: Russ Weber with SAFEbuilt determined the viability of the proposed and provided the applicant with required safety information pertaining to the proposed plans.

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

Applicant: The house was modified by the previous owners. Purchased by the current owners in 2017 because of the need for accessible wheelchair accommodations. The previous owner converted the previous attached garage into bedrooms and a large wheelchair accessible bathroom which are necessary for the non-ambulatory resident. The lack of garage was not of concern at the time, as the benefits of the accessibility of the house are immense and maximize the quality of living for the individual. The garage will allow for the individual to enter and exit his vehicle during inclement weather, keeping in mind that in the future a van with a lift or other adaptive equipment may be necessary.

-Staff comment: The current owners purchased the property to the benefit of the previous owner's

modifications and suitable to the needs of the non-ambulatory individual currently residing there. The greater needs for accessibility far outweighed the need for a garage, but the surrounding property and driveway have become the storage location. Staff concurs that the hardship is not self-imposed.

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

Applicant: A garage of sixteen feet wide, detached from the home, is what the owners consider to be the narrowest width possible to allow for the use accessibility vehicles and access.

-Staff comment: The minimum setback for side yard is the only deviation for the proposed variance. Allowing for an accessory building to be built with a 1' setback would provide the relief necessary for a detached garage with full accessibility for wheelchair access.

Staff has analyzed:

- whether special site-specific conditions exist that warrant the proposed accessory building.

-Staff has determined that the previous owner modified the house for accessibility while simultaneously creating hardship for any further modifications of the home and premises.

- whether unnecessary hardship exists.

-The conversion of the garage to livable space, by prior owners, has created hardship for future/current tenants, especially those with handicap accessibility needs, as it relates to external mobility around the property, outside of the occupiable space.

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

-Staff has determined that the inspection and approval from SAFEbuilt will be detrimental to the safety and welfare of the property and adjacent neighbors.

- the impacts to the neighborhood character.

-Staff has determined that the proposed accessory building will help to declutter the street front and temporary tent garage currently deployed in the driveway.

Financial Impact:

Relationship to Strategic Plan:

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 Municipal Code Table 16-1-170 (b) Lot Development Standards pertaining to the minimum setbacks for side yards and a variance from Municipal Code Section 16-1-20 Accessory building setbacks in the Residential Mixed Use One (RMU-1) zone district; and; based upon the aforesaid findings of fact, all Staff and BOA conditions being addressed, and the applicant obtaining approval of 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 unanimous decision of four “yes” votes required to approve the variance request.

CC:

Attachments:



MEMORANDUM

Date: February 23, 2023
To: Board of Adjustment/Appeals Members
From: Mark Price, Planner 1
Re: Variance from Municipal Code Section 16-1-70(b) for 303 E Chestnut pertaining to the minimum side setbacks in the RMU-1 (Residential Mixed Use-One) Zone District, and a Variance from Municipal Code Section 16-1-20(a) pertaining to setbacks for accessory buildings. Shelby Singleton, Owner/Applicant.
Item #: C.2.

Background / Discussion:

See public hearing item.

Financial Impact:

Relationship to Strategic Plan:

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 Municipal Code Table 16-1-170 (b) Lot Development Standards pertaining to the minimum setbacks for side yards and a variance from Municipal Code Section 16-1-20 Accessory building setbacks in the Residential Mixed Use One (RMU-1) zone district; and; based upon the aforesaid findings of fact, all Staff and BOA conditions being addressed, and the applicant obtaining approval of 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 unanimous decision of four "yes" votes required to approve the variance request.

CC:

Attachments: