



Board of Adjustment/Appeals Regular Meeting

March 23, 2023 - 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 7:19 p.m.

1. Roll Call

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

Also Present: David Eisenbraun, Senior Planner
Mark Price, Planner 1
Kaitlyn Cinnamon, Deputy Town Clerk

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 presented, Board of Adjustment/Appeals Board Member Penfold seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, James Penfold, Jeffrey Gelvin; 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.

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 February 23, 2023 Board of Adjustment/Appeals Regular Meeting Minutes - K. Cinnamon, Deputy Town Clerk

Board of Adjustment/Appeals Board Member Penfold 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, Stacey Shea, James Penfold, Jeffrey Gelvin; Nays - None; Motion Passed.

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.

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 an 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.

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.

Board Member Gelvin excused himself in regard to this particular item.

Board of Adjustment/Appeals Board Member Threewitt 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, Stacey Shea, James Penfold; Nays - None.

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

Board of Adjustment/Appeals Board Member Threewitt moved to continue the Public Hearing and Variance for 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 to the next scheduled meeting, Board of Adjustment/Appeals Board Member Penfold seconded the motion. Roll call on the vote resulted as follows; Yeas - Don Threewitt, Stacey Shea, James Penfold; Nays - None.

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.

See public hearing item.

3. Public Hearing - Variance from Sign Setbacks and Offsets for 721 Main Street - Municipal Code Section 15-17-50(e) sign spacing requirements within Central Business District zone district West Town Center Subarea. Matt Everhart, applicant. Justin and Deb Morrison, Owners.

The owners of the subject property, Justin and Deb Morrison, are requesting a variance from Municipal Code Section 15-17-50(e) to allow a freestanding sign to be located on property, within the 100-foot spacing requirement between signs. A timeline of events and additional background is included in the presentation.

Municipal Code Section 15-17-50(e) sign setbacks and offsets:

- Distance separation. Distance separation between freestanding signs shall be measured along the street frontages adjacent to the subject monument signs.
- Distance between freestanding monument signs located on different street frontages shall be measured along the street frontage to the point of intersection of both street frontages.
- Freestanding signs shall be separated by at least one hundred (100) feet.

Background:

- 721 Main Street (Lot 14, Block 1 Bowman's Addition) was converted to a commercial property in October of 2015.
- As part of the Central Business District criteria, for a former residence to be converted to commercial property, the Town requires an administrative site plan process be executed and approved, and a verified active business license with certificate of occupancy.
- 729 Main Street has an established/approved sign on the property.

- The original lots platted per Bowman's Addition recorded in 1903 with Weld County, established lots with dimensions of 50' by 190'.
- The intent of the Municipal Code 100-foot sign spacing requirement is to limit the clustering signage, however, this creates undue hardship for lots that were platted with street frontages of 50' or less, typically in the Downtown and Old Town Corridor Areas and primarily properties within the Central Business District.

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: Due to the narrowness of the lot and that neighboring properties already have existing monument style signs, these conditions exclude this commercial property from being allowed a monument sign. With this restriction there is no location on the property where the business owner would be allowed to have a monument style sign, thus creating a competitive disadvantage and undue hardship.

-Staff comment: The intent of the Municipal Code is to decrease sign clustering between commercial properties. The 100-foot spacing requirement does not account for unique situations such as those found in the Central Business District or in older parts of town where the original platted lots exist from plats recorded in the early 1900's. The Town Code restricts commercial properties within the Central Business District, where many properties have had to apply for variances for sign spacing similar to this situation. The Town Code in this case has created undue hardship for properties within the CBD.

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

Applicant: To derive full beneficial use of the property, a monument sign would create essential advertising and provide customers with wayfinding and location identification in order to safely maneuver in traffic to the property location.

-Staff comment: Staff concurs, the submittal accounts for traffic safety and meets the requirements of freestanding signs within the Central Business District and the West Town Center subarea.

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

Applicant: The proposed sign maintains the character of the commercial properties located along Main Street in the Central Business District, and is consistent with sizing, appearance, and materials used already existing along the corridor.

-Staff comment: Staff concurs.

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

Applicant: The surrounding area consists of businesses and commercial properties of like character; most have monument signs that align with what is being proposed.

-Staff Comment: Many adjacent properties have had to submit variances for approval for similar situations such as this. A variance is the proper process for approval until the sign code can be updated to address unique situations along the downtown corridor. The variance will not be detrimental to adjacent properties.

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

Applicant: The sign will be located outside of any sight triangle, will be setback from the sidewalk per the Code requirement, and only serves to aid the public in wayfinding to access the business location.

-Staff Comment: Staff is working directly with the applicant and owners to ensure all Municipal Code requirements are being met for the submittal. No detrimental impacts have been identified currently.

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

Applicant: Planning staff has indicated that a formal variance application is the only process for relief.

-Staff comment: Staff concurs, and is also evaluating potential updates to the Municipal Code regarding signage, so as to eliminate future variance requirements for unique areas such as the Central Business District.

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

Applicant: The proposed monument sign will not be illuminated and will be separated from the primary structure. There is no perceived safety hazard, fire or building code violations.

-Staff comment: Staff concurs.

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

Applicant: The hardship is imposed by the Town Code and its spacing requirements for monument signs.

-Staff comment: The current Municipal Code sign spacing requirement of 100' imposes undue hardship for businesses located in the Central Business District, where lots were platted with dimensions of 50' or less from the early 1900's.

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

Applicant: The proposed sign meets all other criteria for approval, except for the spacing requirement and the undue hardship due to the Town Code.

-Staff comment: The variance is the least deviation from the standard that will provide relief pertaining to the spacing requirement for freestanding signs within the CB Zone District. If the BOA grants approval of the variance, all other building code and sign code requirements shall be met before any permit is issued.

Staff has analyzed:

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

-Staff has determined that the proposed sign will align with existing signage along Main Street and that the lot width established per the Bowman's Addition, along with the Town Code spacing requirements have created undue hardship for the property owner.

- whether unnecessary hardship exists.

-Undue hardship exists and is not self-imposed by the property owner or business.

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

-Staff has determined that the proposed sign will have no negative impacts and will aid in wayfinding for the business.

- the impacts to the character of surrounding properties.

-Staff has determined that the proposed sign will have no negative impacts to the character of the surrounding properties.

Notification:

- March 2, 2023 - public hearing notice published on the Town of Windsor Website.
- March 6, 2023 - development under review sign posted on the subject property.
- March 7, 2023 - public hearing notice sent to surrounding property owners.
- March 8, 2023 - public hearing notice published in the paper.

Board Member Gelvin returned to the meeting.

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

Discussion ensued between the Board, staff, and applicant.

Board of Adjustment/Appeals Board Member Threewitt 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, Stacey Shea, James Penfold, Jeffrey Gelvin; Nays - None; Motion Passed.

4. Variance from Municipal Code Section 15-17-50(e) for 721 Main Street pertaining to the minimum freestanding sign spacing setbacks for commercial properties within the Central Business District (CBD) Zone District. Matt Everhart, applicant. Justin and Deb Morrison, Owners.

See Public Hearing item.

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

D. COMMUNICATIONS

1. Communications from Board of Adjustments/Appeals

None

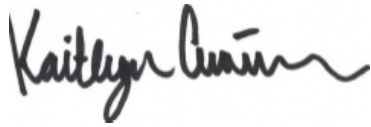
2. Communications from Staff

Deputy Town Clerk, Kaitlyn Cinnamon, spoke to the Board regarding open positions within the Board of Adjustments and Appeals.

Senior Planner, David Eisenbraun, spoke to the Board regarding the Town of Windsor's Comprehensive Plan Events to take place the week of April 3, 2023.

E. ADJOURN

Upon a motion duly made, the meeting was adjourned at 7:48 p.m.

A handwritten signature in black ink, reading "Kaitlyn Cinnamon". The signature is written in a cursive, flowing style with a prominent initial "K" and a long, sweeping underline.

Kaitlyn Cinnamon, Deputy Town Clerk