



BOARD OF ADJUSTMENT

Minutes of Meeting

January 22, 2015

1. CALL MEETING TO ORDER

The meeting was called to order by Chair ABBOTT at 7:01 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29th Avenue, Wheat Ridge, Colorado.

2. ROLL CALL

Board Members Present: Sally Banghart
Janet Bell
Paul Hovland
David Kuntz
Betty Jo Page
Thomas Abbott

Alternates Present: Dan Bradford
Michael Griffeth

Board Members Absent: Lily Griego

Staff Members Present: Sara White, Planner II
Meredith Reckert, Sr. Planner
Kim Waggoner, Recording Secretary

3. PUBLIC FORUM

No one wished to speak at this time.

4. PUBLIC HEARING

- A. Case No. WA-14-16:** An application filed by James and Georganne Zeiger for approval of an 8.6% lot coverage variance and a 10-foot side setback variance (100%) from the 10-foot standard resulting in 38.6% lot coverage and a 0-foot side setback for an existing attached carport.

The case was presented by Sara White. She entered the contents of the case file and packet materials, the zoning ordinance and the digital presentation into the record. She stated all appropriate notification and posting requirements have been met and advised the board there was jurisdiction to hear the case. She provided copies of

additional letters of support that were received after the staff report had been completed and delivered to the Board Members. She reviewed the digital presentation.

Chair ABBOTT asked if the names from the letters of support were cross referenced with the petition. Ms. White replied no.

Board Member KUNTZ inquired how the City received the complaint. Ms. White stated the city received an anonymous verbal complaint and the applicant came to the Planning/Zoning office after being notified by the subdivision's Homeowners Association (HOA).

Included in the BOA packet was an attachment marked as Exhibit 7 which is the applicant's response to the variance evaluation criteria. In regard to Exhibit 7, the applicant stated it was the intent of the builder to provide additional RV parking adjacent to the garage, Chair ABBOTT asked if this was approved by the developer or the City. Ms. White replied the City code allows storage of two recreational vehicles on private property. They may be stored within the side yard with no setback requirements. There are rear yard setback requirements. RV parking is permitted but the existing structure was not approved by the City. The RV parking provisions are city-wide; there were no additional RV parking provisions as part of the subject subdivision.

Board Member BANGHART asked if the parking pad counted as building coverage. Ms. White replied the pad does not count toward the building coverage. It does apply when it a roof is added to the structure.

Board Member GRIFFETH inquired how many situations like this exist in the City. Ms. White replied the City does not have an official count. Ms. Reckert stated it is frequently seen with storage sheds as they do not require a permit if they are less than 120 square feet in size.

Board Member GRIFFETH asked what the applicant would need to do if the variance is approved. Ms. White replied the applicant would need to submit engineered plans to the building department for a building permit. Ms. Reckert stated the fees may be doubled since the structure was built prior to submitting plans.

Board Member BANGHART queried if the variance would still be heard by the Board of Adjustment if a permit was issued. Ms. White stated a variance would need to be approved by the BOA before a building permit could be issued as the applicant is requesting a 100% variance, greater than what is allowed to be approved administratively.

Board Member KUNTZ inquired if precedence is being set if the Board of Adjustment approves the variance. Ms. White stated the Board reviews cases based on the individual merits of each case, so there would be no precedence established.

Chair ABBOTT directed the members to state any unique attributes (if any are found) in the motion.

Chair ABBOTT asked if the subdivision has an HOA and if so, does it require input for the structure. Ms. White replied there is an HOA. They sent a letter to the applicant asking the applicant to legalize the structure with the City.

Board Member BANGHART stated the developer was thinking ahead when the pad was designated for parking. She asked if the City has considered protective coverings in weather hazard areas. Ms. Reckert stated the property was rezoned and subdivided in 1988. Because the property is zoned R-1A, there was no planned development approval which specifically identified this area for RV parking. Staff has interpreted that the pad was meant for an auxiliary space, not necessarily RV parking.

Board Member KUNTZ stated the property to the north has a large side yard. He asked if they submitted a letter of support. Ms. White stated the structure is not in the neighbor's side yard and it doesn't prevent the neighbor from building something in that area. They did not submit a letter of support.

James Zeiger

3932 Simms St.

Mr. Zeiger stated the house and concrete pad were built in 1991 with the intent that the pad be for utility vehicle parking. He purchased the property in 2004 because of the additional parking due to the concrete pad. He didn't know a permit was needed for the carport structure. They have experienced a lot of harsh weather. He previously rented a storage unit to protect his vehicles. He erected the structure due to the economic impact to the vehicles and the storage costs.

Chair ABBOTT stated the Board does not have the power to change the code nor does staff look for code violations. The City relies on input from citizens.

Mr. Zeiger stated the lots in the subdivision are small and have no room for vehicle storage.

Board Member PAGE referred to one of the letters of support which stated Ms. Zeiger was previously on the HOA Board. She should have been aware of the HOA rules and regulation.

Mr. Zeiger stated he did not submit plans to the Architectural Committee for review. He said the HOA has no problems with the aesthetics. They would like the structure to be permitted with a building permit.

Board Member PAGE asked Mr. Zeiger how long after the structure was erected did he receive the letter from the HOA and if he submitted any plans to the Architectural Committee. He replied perhaps 30, 45 but not more than 60. He has not submitted any documents to the Architectural Committee.

Board Member HOVLAND stated a professional contractor would have encouraged a building permit. Mr. Zeiger stated a friend built it.

Board Member KUNTZ asked if the rear property owner can see the structure and asked if there are any side yard easements. Mr. Zeiger stated there is a 10-foot setback on the rear for fire code. Ms. Reckert stated most residential subdivisions have a 10-foot front and 5-foot side easement for utilities. There are probably no utilities in the easements on the property.

Board Member KUNTZ inquired about the downspouts on the structure that seem to be pointed north, directing runoff to the neighbor's yard. He asked if there was a drainage swale. Mr. Zeiger stated the roof is tilted to the west for the specific purpose of guiding the water to the front concrete and not to the rear or the sides.

In response to a question from Board Member KUNTZ, Mr. Zeiger stated all the residents on Simms Street signed the petition with the exception of one.

Board Member KUNTZ asked if the structure is insured. Mr. Zeiger replied it is his intent to have the insurance replace if it is damaged by a hail storm.

Sandra Henderson

4052 Simms St.

Ms. Henderson stated she drives by the structure daily and does not notice it. She has no qualms with it; it is acceptable to the neighbors and the HOA.

Susan Wood

3936 Simms St.

Ms. Wood lives on the property to the north. She stated the structure is fully visible as it is adjacent to her yard. The Zeigers don't see the structure as it is on the side of the garage. She voiced her concerns about noise, setback expectations and concurred with the staff recommendations. She asked the Board to deny the request. She entered in the record Exhibit B, some photos of the structure from her property.

Board Member HOVLAND asked if the structure is more obtrusive than looking at a vehicle. Ms. Wood stated it is equally obtrusive as an RV is not a permanent structure.

Board Member PAGE asked if the structure was new and if it previously had an awning. Ms. Wood stated the carport was added this summer.

Joe Meigs

3936 Simms St.

Mr. Meigs stated the structure is very visible from his property. It is above the fence line and dominates the area. He stated he was at one time the President of the HOA and it is a known fact that a review process is in place. Any changes are required to

be reviewed by the Architectural Committee. He stated there was no communication from the Zeigers about the structure.

He entered in the record Exhibit C, a letter from the HOA which stated, "The structure must be approved by the committee."

Board Member PAGE asked how long it took to build the structure. Mr. Meigs replied two days.

In response to a question from Board Member PAGE, Mr. Meigs stated the HOA called the City shortly after the structure was built.

Board Member GRIFFETH asked if there was any communication about the structure from the Zeigers prior to it being built. Mr. Meigs stated no.

There was some discussion about metal structures. Metal siding is not allowed but a metal roof would.

Board Member BELL stated the HOA process was not followed and the applicant did not get a building permit. The issue is the structure not the parking pad.

Board Member GRIFFETH inquired about the referenced RV parking in Exhibit 7. Ms. White stated there is no documentation. That is the applicant's interpretation. The plans show a paved pad. Ms. Reckert stated the property was platted in 1986 and construction began in 1988. Generally a plat does not include use restrictions. The pad was probably intended for an auxiliary parking space. There are no provisions for special RV parking.

Board Member KUNTZ asked if HOA covenants are recorded. Ms. Reckert stated most new neighborhoods do have HOA covenants that are recorded with Jefferson County Clerk and Recorder's Office. Most typically they address maintenance of common elements such as detention ponds and streetscape landscaping in the right-of-way.

Chair ABBOTT stated the focus of the hearing is the structure not the concrete pad.

Board Member BELL stated the structure was built without a permit.

Ms. White stated the side setbacks and lot coverage are the focus of the hearing.

Ann Greenfield

3805 Simms St.

Ms. Greenfield is the current HOA President. She stated the HOA has decided to not make a decision before the City as they didn't know what the process entails and did not want to come to any conclusions. The HOA board has not discussed this since

July and has no opinion. She is unaware of the mentioned petition. If the BOA approves the request the Architectural Committee will negotiate with the Zeigers.

Board Member KUNTZ inquired about the applicants' Exhibit 7, Criteria 3 which states the structure is acceptable to the HOA. He asked if that is a misrepresentation. Ms. Greenfield stated yes.

Mr. Zeiger stated he is comfortable with HOA discussions about aesthetics. He stated he submitted information to the HOA and was not aware of the next step with the HOA. He stated the structure was expensive to build.

Upon a motion by Board Member HOVLAND and second by Board Member BELL, the following motion was stated:

WHEREAS, application Case No. WA-14-16 was not eligible for administrative review; and

WHEREAS, the property has been posted the fifteen days required by law and in recognition that there were no protests registered against it; and

WHEREAS the relief applied for may not be granted without detriment to the public welfare and without substantially impairing the intent and purpose of the regulations governing and City of Wheat Ridge

NOW, THEREFORE BE IT RESOLVED that Board of Adjustment application Case No. WA-14- 16 be, and hereby is DENIED.

TYPE OF VARIANCE: An 8.6% lot coverage variance and a 10-foot side setback variance (100%) from the 10-foot standard resulting in 38.6% lot coverage and a 0-foot side setback for an existing attached carport.

FOR THE FOLLOWING REASONS:

- 1. The property would continue to yield a reasonable return in use without the variance.**
- 2. The investment allowed by the variances would not be substantial.**
- 3. The physical surrounding and situation of the property result in an inconvenience, but not a hardship.**
- 4. The alleged hardship was created by a person presently having interest in the property.**

WITH THE FOLLOWING CONDITIONS:

- 1. The structure be removed within 30 days.**

Motion was approved by a vote of 8-0.

5. **CLOSE PUBLIC HEARING**

Chair ABBOTT closed the public hearing.

6. **OLD BUSINESS**

7. **NEW BUSINESS**

A. Approval of Minutes – September 25, 2014

It was moved by Board Member HOVLAND and seconded by Board Member PAGE to approve the minutes as written. The motion passed 5-0-3 with Members BANGHART, GRIFFETH AND BRADFORD abstaining.

B. Resolution 01-2015

It was moved by Board Member PAGE and seconded by Board Member BANGHART to approve Resolution 01-2015, A Resolution Designating a Public Place for Posting of Notices of Public Meetings.

Motion approved 8-0

C. Ms. Reckert stated the Chair and Vice Chair will be elected in March after appointments are made in February. There is an opening in District I.

D. Chair ABBOTT asked about the status of Dye Enterprises. Ms. Reckert stated she had not performed an inspection but will do so soon.

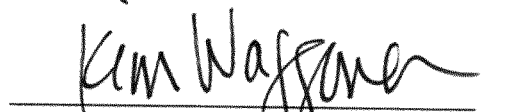
E. Board Member BELL stated Bob Howard an original City Council member recently passed away.

F. Ms. Reckert thanked Alternate Members GRIFFETH and BRADFORD for participating in the meeting.

7. **ADJOURNMENT**

Chair ABBOTT adjourned the meeting at 8:45 p.m.


Thomas Abbott, Chair


Kim Waggoner, Recording Secretary