



**BOARD OF ADJUSTMENT
Minutes of Meeting
March 22, 2018**

1. CALL MEETING TO ORDER

The meeting was called to order by Acting Chair Bell at 7:00 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29th Avenue, Wheat Ridge, Colorado.

2. ROLL CALL

Board Members Present: Janet Bell
Dan Bradford
David Kuntz
Betty Jo Page
Larry Richmond

Alternates Present: Rocco Germano
Michael Griffeth

Board Members Absent: Thomas Abbott
Sally Banghart
Paul Hovland

Staff Members Present: Gerald Dahl, City Attorney
Meredith Reckert, Senior Planner
Scott Cutler, Planner I
Tammy Odean, Recording Secretary

3. PLEDGE OF ALLEGIANCE

4. PUBLIC FORUM

No one wished to speak at this time.

5. PUBLIC HEARING

A. Case No. WA-18-04:

The case was presented by Scott Cutler. He entered the contents of the case file and packet materials, the zoning ordinance and the digital presentation into the record. He stated all appropriate notification and posting requirements have been met and advised the board there was jurisdiction to hear the case. He reviewed the presentation and staff report.

The applicant is requesting approval of a 14-foot (93.3%) variance to the 15-foot minimum side yard setback. The purpose of this variance is to allow for the construction of a carport. The variance request would result in a 1-foot side yard setback, but the proposed carport would meet all other development standards including height and maximum size for the zone district.

Member GRIFFITH asked if the other accessory structures are included in the maximum building coverage for the property.

Mr. Cutler confirmed they are all included.

Member KUNTZ asked if the RV in the picture is going to be placed in the carport.

**Kenneth W. Penn, Applicant
4675 Parfet Street, Wheat Ridge**

Mr. Penn said that is exactly why he wants to build the carport, for RV storage.

Member BRADFORD asked if Mr. Penn is aware that the building department might have other fire related requirements because the structure will be close to the property line.

Mr. Penn said he was not aware of that, but the carport will be metal so he will talk with the building department.

Member KUNTZ asked if there were any easements on the property.

Mr. Cutler said there were none shown on the Improvement Location Certificate.

Mr. Dahl explained the voting process for the Board Members. Because there are 7 members present, a super majority of 6 votes is needed to approve a variance per the Board of Adjustment bylaws and Section 2-53 of the City's Code of Laws. Further, if six votes for a variance are not obtained on a motion to grant, the variance is denied and a resolution of denial is automatically entered. A motion to deny a variance need pass only by a majority of quorum present in order to be adopted, and in that case a resolution of denial is entered.

Upon a motion by Member KUNTZ and seconded by Member PAGE, the following motion was made:

WHEREAS, application Case No. WA-18-04 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 be granted without detriment to the public welfare and without substantially impairing the intent and purpose of the regulations governing the City of Wheat Ridge;

NOW, THEREFORE BE IT RESOLVED that Board of Adjustment application Case No. WA-18-04 be, and hereby is, APPROVED

TYPE OF VARIANCE: Request for approval of a 14-foot (93.3%) variance from the required 15-foot side setback for accessory buildings in the Agricultural-One (A-1) zone district.

FOR THE FOLLOWING REASONS:

- 1. The variance would not alter the essential character of the neighborhood.**
- 2. The applicant is proposing a substantial investment in the property with this application which would not be possible without the variance.**
- 3. The alleged hardship has not been created by any person presently having an interest in the property.**
- 4. The request would not be detrimental to the public welfare.**
- 5. The request is consistent with the existing conditions in the surrounding area, as a majority of the properties in the area contain primary or accessory structures that encroach into the required side yard setbacks for the A-1 zone district.**

WITH THE FOLLOWING CONDITIONS:

- 1. The design and architecture of the proposed carport shall be consistent with representations depicted in the application materials, subject to staff review and approval through review of a building permit, and subject to a final zoning inspection.**

Motion carried 7-0.

B. Case Nos. WA-18-05 and WA-18-06:

The case was presented by Meredith Reckert. 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 had been met and advised the board there was jurisdiction to hear the case. She reviewed the presentation and staff report.

The applicant is requesting approval of two requests 1.) request for approval of an 18-foot (56.25%) variance allowing the height of a billboard structure to be raised to 50 feet from the 32-foot maximum height allowance, and 2.) request for approval of a 15-foot (50%) variance allowing for a 15-foot side yard setback from the 30-foot minimum side yard setback adjacent to a street or right-of-way. The purpose of these variances is to allow for the construction of a billboard.

Member GERMANO asked what the status is for the funding of the Kipling/I-70 interchange reconstruction project.

Ms. Reckert said the City is still in the process of acquiring funding by CDOT and the City of Wheat Ridge. Once funding is available, the project will commence.

Member KUNTZ asked why City Council does not want to see billboards any higher than the 32-foot height limit.

Ms. Reckert explained that, among other things, City Council is concerned about aesthetics and visual clutter.

Member GRIFFETH thanked Ms. Reckert for her presentation and asked about reciprocity with CDOT and asked whether staff asked CDOT for their opinion on the billboard or if staff was required to talk to CDOT about their opinion.

Ms. Reckert said staff chose to get their opinion.

Member GRIFFETH asked about the letter from CDOT which was signed by Nancy Terry and asked if she is qualified to address this matter.

Member KUNTZ interjected and said he has worked with her in the past and she is very knowledgeable on the subject and is one of CDOT's senior managers and looks out for CDOT's best interests on the state's highways.

Member GRIFFETH asked if CDOT intends to take more land than what is shown on the ROW for the Kipling/I-70 project.

Ms. Reckert said yes and the property owner will be compensated for that.

Member GRIFFETH also asked if there are any projections on what the City will receive in taxes if the billboard is installed.

Ms. Reckert and Mr. Dahl agreed that would be a question for the applicant.

With regard to landscape and signage improvements at the interchange, Member GRIFFETH stated he didn't understand why the City spent a lot of money on landscaping in ROW but are going to restrict someone from building a billboard. He also wondered why the City Attorney is present at the meeting tonight.

Mr. Dahl said he is present at the meeting tonight at the request by staff which is common on more complex cases. He has defended other billboard cases and is here to make sure the record is correct and that the decision is defensible.

Member GRIFFETH then asked about the cap of 16 billboards in the City of Wheat Ridge and wanted to know how many applied for this vacancy.

Ms. Reckert said 2 applied for the vacancy and that there are very strict requirements on where these billboards can be placed.

Member RICHMOND asked about Exhibit 6 of the applicant's submittal package, on page 8 showing an arrow to the top of the guard rail and the caption saying the elevated road way is 25 feet in height. He would like to know if it is the roadway or the guardrail.

Ms. Reckert clarified that this exhibit is from the applicant so they need to answer the question.

The applicant then had an opportunity to make their presentation. They handed out an additional exhibit.

**Scott Andel, Civic Signs, Ltd., Applicant
6669 Serena, Castle Pines**

Mr. Andel gave a brief presentation and went through the information included in the agenda packet. He said the I-70 overpass is 25 feet in height to answer Member RICHMOND's question.

Member GRIFFETH asked Mr. Andel if he knew whether the application was going to be presented to CDOT and if there was a chance to respond to the CDOT letter.

Mr. Andel said no but they met with CDOT a few days ago and added that the aesthetic issue was new to them. Ultimately, both the City and CDOT need to approve the request for construction.

Member GRIFFETH wondered about the cost of the flag study and Mr. Andel replied that said it cost a couple thousand dollars in addition to surveys.

Member PAGE asked if there is any other location on the site for a billboard.

Mr. Andel said no because he doesn't want to encroach on the other buildings.

Member PAGE asked about the east side of the property.

**Bob Micsak, Civic Signs, Ltd., Applicant
617 S. Corona Street**

Mr. Micsak said that pursuant to the CDOT letter, it was indicated they would have no objection to the billboard being installed on the east side of the property and would support a 10'-15' setback in that location. Ms. Reckert clarified that the billboard needs to meet the rear setback requirement which is based on the height of the sign. A 25' rear setback is required but a reduction of that setback cannot be granted at this meeting because it was not advertised as a variance.

Member GRIFFETH asked about the possibility of the City of Wheat Ridge having advertising on the billboard and if this could be a condition of approval and being a guarantee.

Mr. Micsak said that could be a consideration and the “City of Wheat Ridge” would appear on the sign at all times with the upgraded sign.

Mr. GRIFFETH asked if this billboard will be an LED sign, and approximately how much the billboard will cost.

Mr. Micsak said no, it will be static vinyl wrap screen because the City does not allow LED billboards. He added the billboard will cost approximately \$75,000 plus more depending on the design and soil testing.

Member BELL is curious about the CDOT plans and suggested that erection of the billboard could be delayed until the Kipling/I-70 interchange is complete.

Mr. Micsak indicated that there are contractual obligations with the land owner and that the City has tight timelines for the permitting process. A building permit needs to be submitted by April 8th or 9th.

Mr. Dahl explained the City has strict time frames that Civic Signs needs to meet and that is why they can’t step back and wait.

In response to a previous comment from Mr. Griffeth, Ms. Reckert explained that the money invested into the landscaping in the ROW is not a “throw away” project. The City of Wheat Ridge “welcome” sign can be disassembled and moved to a different location.

Mr. GERMANO told the Applicant they had a compelling presentation and the applicant has swayed his decision and thinks the 32-foot billboard height limit is too restrictive. With regards to the setback, he expressed that this is a unique parcel and if CDOT constructs the interchange project, the applicant has been forewarned and the billboard will have to come down. He then asked about the change in ownership of the land owner and if that will have any effect on the billboard.

Mr. Micsak said there is an easement on the property which is separate from the building and the sign can stand separate from the building.

Member KUNTZ clarified that CDOT will pay to move the sign if need be, not the owner. He commented that the elected City officials have declined to modify the City’s restrictive billboard height. He continued that this is a city wide issue and the billboard regulations affect all in the City not just in this small area. He would like to see the interchange rebuilt.

**Tom Helgeson, Kipling Land, LLC
4890 Kipling Street, property owner,**

Mr. Helgeson said he bought the land in 2003 and is in favor of the billboard.

Member GRIFFETH asked the owner if he knows how much he will pay the City in taxes from the revenue from the billboard.

Mr. Helgeson said he is not sure.

Mr. Micsak noted that there will be an increase in the valuation of the property.

Member Page asked why the applicant could not choose a different location in the City for the billboard.

Mr. Micsak said there is no other location that meets both the city and state requirements for a billboard.

Member GRIFFETH stated he is in support of the sign and height and can be swayed on not supporting the setback.

Member PAGE said she will not support the proposal and agrees with Member KUNTZ' concerns about the height, the concern of final elevation and for traffic safety. She fears the erection of the billboard will inhibit the Kipling/I-70 interchange project.

Member BELL stated she will not be supporting the applicant for a number of reasons, and that she agrees with Member KUNTZ.

Mr. Dahl stated the Board must take two separate votes – one on each application. On each application if the motion is to approve, it requires six votes in order to grant the variance; if the motion is to deny, it must pass by four votes (a majority of members present).

Upon a motion by Member PAGE and seconded by Member KUNTZ, the following motion was made:

Case No. WA-18-05

WHEREAS, application Case No. WA-18-05, a request for approval of a 15' setback variance, 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 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 the City of Wheat Ridge; and

NOW, THEREFORE BE IT RESOLVED that Board of Adjustment application Case No. WA-18-05 be, and hereby is, DENIED

TYPE OF VARIANCE: Request for approval of a 15-foot (50%) variance from the 30-foot minimum side yard setback adjacent to a street/right-of-way for property located in the Restricted Commercial (RC) zone district.

FOR THE FOLLOWING REASONS:

- 1. The side setback variance is inconsistent with the long-term vision for the I-70/Kipling interchange.**
- 2. The subject property would continue to yield a reasonable return in use and function as an office building if the variance were denied.**
- 3. The billboard can still be built if the setback variance were denied.**
- 4. Granting of the variance will negatively affect the I-70 /Kipling interchange reconstruction project.**
- 5. CDOT objects to the variance.**

Motion failed 3-4, with Members BELL, GERMANO, BRADFORD and GRIFFETH voting no.

Member KUNZ questioned Member BELL's vote based on her testimony as not in favor of the variance.

Mr. Dahl requested the Recording Secretary clear the board and have the Board vote again on the motion; Dahl stated that a yes (green) vote is to deny and a no (red) vote is to grant.

Member BELL stated "I meant to support staff's recommendation which was to deny."

Vote taken again.

Motion carries 4-3 with Members BRADFORD, GERMANO and GRIFFETH voting against; therefore, the variance was denied.

Case No. WA-18-06

Upon a motion by Member KUNTZ and seconded by Member PAGE, the following motion was made:

WHEREAS, application Case No. WA-18-06, a request for approval of a height variance, 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 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 the City of Wheat Ridge; and

NOW, THEREFORE BE IT RESOLVED that Board of Adjustment application Case No. WA-18-06 be, and hereby is, DENIED

TYPE OF VARIANCE: Approval of an 18-foot (56.25%) variance to the maximum height of 32 feet for a billboard resulting in a 50-foot tall billboard in the Restricted Commercial (RC) zone district.

FOR THE FOLLOWING REASONS:

- 1. The height variance is inconsistent with the long-term vision for the I-70/Kipling interchange.**
- 2. The subject property would continue to yield a reasonable return in use and function as an office building if the variance were denied.**
- 3. The variance would alter the essential character of the locality.**
- 4. During the review of sign code and billboard regulations, City policy makers have chosen not to extend the maximum height for billboards.**

Motion failed 2-5 with BRADFORD, GERMANO, GRIFFETH, PAGE and RICHMOND voting against. Therefore, the motion failed to pass.

Mr. Dahl stated that because the motion to deny failed, the Board had yet to take a final action on the case, and that a motion to approve was in order.

Upon a motion by Member Griffeth and seconded by Member GERMANO, the following motion was made:

WHEREAS, application Case No. WA-18-06 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 be granted without detriment to the public welfare and without substantially impairing the intent and purpose of the regulations governing the City of Wheat Ridge; and

NOW, THEREFORE BE IT RESOLVED that Board of Adjustment application Case No. WA-18-06 be, and hereby is, APPROVED

TYPE OF VARIANCE: Approval of an 18-foot (56.25%) variance to the maximum height of 32 feet for a billboard resulting in a 50-foot tall billboard in the Restricted Commercial (RC) zone district.

FOR THE FOLLOWING REASONS:

- 1. The height variance is inconsistent with the long-term vision for the I-70/Kipling interchange, however there should be an exception considering other factors.**

2. The subject property would continue to yield a reasonable return in use and function as an office building if the variance were approved.
3. The variance would not alter the essential character of the locality.
4. During the review of sign code and billboard regulations, City policy makers have chosen not to extend the maximum height for billboards, however the Board of Adjustment feels this is an exception to the policy.

WITH THE FOLLOWING CONDITIONS:

1. The sign be in substantial compliance with documents that have been submitted.
2. The City of Wheat Ridge has guaranteed advertising to be determined at a different meeting.

Mr. Dahl stated if a member wished to grant the variance, vote yes (green button); if the member wished to deny the variance, vote no (red button). By the requirements of Code of Laws and the BOA Bylaws, a motion to grant a variance must pass by 6 votes (of 7 members present), and if not, a resolution of denial is automatically entered.

The motion failed 4-3 with KUNTZ, BELL and RICHMOND voting against. Under Code 2-53 and the Board of Adjustment bylaws, this action denied the variance application.

6. CLOSE PUBLIC HEARING

Acting Chair Bell closed the public hearing.

7. OLD BUSINESS

7. NEW BUSINESS

A. Approval of Minutes – December 14, 2017

It was moved by Member KUNTZ and seconded by Member GRIFFETH to approve the minutes as written. The motion passed 5-0-2 with Board Members GERMANO and PAGE abstaining.

B. Resolution 01-2018: Establishing a designated public place for posting of meeting notices as required by the Colorado Open Meetings Law.

It was moved by Member GRIFFETH and seconded by Member GERMANO to approve Resolution 01-2018 establishing a designate public place for posting of meeting notices as required by the Colorado Open Meetings Law. The motion passed 7-0.

Member PAGE asked about Lily Griego's seat and Ms. Odean said that Member Richmond has been sworn into her vacated seat.

Member Bell asked about better hearing devices for meeting.

8. ADJOURNMENT

Acting Chair Bell adjourned the meeting at 9:26 p.m.



Sally Banghart, Chair



Tammy Odean, Recording Secretary