



**CITY OF WHEAT RIDGE  
PLANNING DIVISION STAFF REPORT**

**TO:** Board of Adjustment                      **DATE:** October 24, 2019

**CASE MANAGER:** Stephanie Stevens, AICP, Senior Planner

**CASE NO. & NAME:** WA-19-06 / King of Wings

**ACTION REQUESTED:** Approval of a 100% variance to Section 26-625 to allow an accessory building in the front yard on property located at 7741 W. 44<sup>th</sup> Avenue and zoned Commercial-One (C-1)

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**LOCATION OF REQUEST:** 7741 W. 44<sup>th</sup> Avenue

**APPLICANT (S):** Evan Pierce

**OWNER (S):** Roger Loecher

**APPROXIMATE AREA:** 18,686 Square Feet (0.43 Acres)

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**PRESENT ZONING:** Commercial-One (C-1)

**PRESENT LAND USE:** Multi-Tenant Commercial

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**ENTER INTO RECORD:**

- (X) CASE FILE & PACKET MATERIALS
- (X) ZONING ORDINANCE

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**Location Map**



Site

## **JURISDICTION:**

All notification and posting requirements have been met; therefore, there is jurisdiction to hear this case.

### **I. REQUEST**

The applicant is requesting approval of a 100% variance to Section 26-625 in order to allow an accessory building in the front yard on property located at 7741 W. 44<sup>th</sup> Avenue and zoned Commercial-One (C-1). Section 26-625 allows accessory buildings in side or rear yards only, and not between the primary structure and public street.

Section 26-115.C (Variances and Waivers) of the Wheat Ridge City Code empowers the Board of Adjustment to hold public hearings to hear and decide only upon applications for variances from the strict application of the zoning district development standards that are in excess of fifty (50) percent of the standard.

### **II. CASE ANALYSIS**

The variance is being proposed in order to allow a new restaurant tenant, King of Wings, LLC, to construct an accessory structure in the front yard, on the south side of the property between the existing building and W. 44<sup>th</sup> Avenue, which would house a food prep kitchen. The tenant recently signed on to lease the southern 1,551 square feet of the 4,525-square-foot building.

The existing multi-tenant commercial building sits on an 18,686-square-foot parcel at the northeast corner of W. 44<sup>th</sup> Avenue and Yarrow Street (see *Exhibit 1*). The commercial building was originally constructed in 1980 per the Jefferson County Assessor. The property is zoned C-1, as are the properties immediately to the west. The property is also surrounded by properties zoned Residential-Two (R-2) to the north, and Mixed Use - Commercial (MU-C) to the east and south (see *Exhibit 2*). Land uses in the vicinity primarily include commercial businesses along W. 44<sup>th</sup> Avenue, with medium density residential housing to the north.

The purpose of the C-1 zone district is to provide for areas with a wide range of commercial land uses which include office, general business, retail sales and service establishments. The multi-tenant building currently contains a housekeeping service, spa service, and tattoo parlor. The King of Wings restaurant with a micro-brewery and tap room is the newest tenant in the building. Current and proposed uses are consistent with C-1 zoning.

In addition to being within the C-1 zone district, the subject property is within the Traditional overlay zone which requires that certain design and development standards shall apply in accordance with the Architectural and Site Design Manual (ASDM). Pursuant to the ASDM, the Traditional overlay applies to those portions of the City where a vibrant, walkable environment is most important. Traditional areas are envisioned to have an attractive, pedestrian-friendly environment. This overlay has the strictest build-to requirements to encourage a consistent street edge where buildings line the sidewalk and parking areas are located behind or beside the building. The ASDM also regulates to design of commercial buildings in general, to ensure significant interest, level of detail, and human scale. The existing building precedes the establishment of the City's overlay zones and the ASDM, but any new buildings or substantial additions are required to comply.

King of Wings has been a chicken wing food truck serving primarily at brewery tap rooms for over four years in the metro area, and they are now investing in a brick and mortar restaurant at this permanent location at 7741 W. 44<sup>th</sup> Avenue. The applicant’s intent is to bring in a new local dining option to Wheat Ridge that has a “tap room/food truck” atmosphere. The tenant space they will occupy is the southernmost space in the building, adjacent to W. 44<sup>th</sup> Avenue. It will contain the main kitchen preparation area in the rear and a micro-brewery with tap room out front. Restaurant seating areas are provided inside the building and on the outdoor patio that exists on the south side of the building (see *Exhibit 4*).

The applicant’s proposal is to install a 160-square-foot accessory structure adjacent to the patio, which would act as their permanent “food truck” and house a kitchen prep space where food would be cooked and served from the service window. A majority of the food preparation would occur internal to the building each morning, then be brought out to the accessory building for final cooking and servicing during business hours. The tenant space was most recently used as a fireplace supply store in 2016, and reuse of the existing building has created some obstacles and limitations in terms of supporting a full kitchen and the shared micro-brewery/restaurant use, which is why the accessory structure is proposed. The applicant has indicated that the existing roof is not able to support kitchen HVAC equipment, and would require substantial structural reinforcement in order to accommodate a full kitchen and its equipment. A building addition was also considered, but due to existing conditions and site constraints, it could only be located in the front portion of the building which caused issues with disrupting the flow of the restaurant and seating area. As a corner lot and due to the existing configuration of the building and parking area, the only feasible location for the accessory structure to exist is within the front yard.

In order to accommodate the proposed accessory structure on site, specifically in the front yard, the applicant is requesting approval of a 100% variance to Section 26-625, regulations applicable to accessory building and structures, which states that, “Accessory buildings shall only be located in the side or rear yard.” The accessory structure meets the intent of the Traditional overlay zone by creating a pedestrian-oriented environment and activation of the street, but conflicts with standards applicable to accessory buildings and structures per Section 26-625. Despite its small size and because of the proposed location, the accessory structure is proposed to meet the architectural requirements that would apply to a primary structure, including material variation, transparency, and a varied roofline (see *Exhibit 4*).

#### *Public Comment*

As of the date of this staff report, October 16, 2019, the City has not received letters from surrounding property owners. If letters arrive between the delivery of this staff report and the Board of Adjustment hearing, they will be entered into the record and provided to the Board members during the hearing.

### **III. VARIANCE CRITERIA**

In order to approve a variance, the Board of Adjustment must determine that the majority of the “criteria for review” listed in Section 26-115.C.4 of the City Code have been met. The applicant has also provided an additional narrative letter (see *Exhibit 3*). Staff provides the following review and analysis of the variance criteria.

- 1. The property in question would not yield a reasonable return in use, service or income if permitted to be used only under the conditions allowed by regulation for the district in which it is located.**

If the requests were denied, the property would continue to yield a reasonable return in use. The property would continue to function as a multi-tenant commercial building, regardless of the outcome of the variance request. However, the tenant space is currently core and shell which would require any new tenant to provide plumbing, mechanical, and electric as appropriate to meet current Building Code standards.

Staff finds this criterion has not been met.

**2. The variance would not alter the essential character of the locality.**

The proposed design is not expected to alter the essential character of the locality. The restaurant and micro-brewery with tap room use is allowed and consistent with the current C-1 zoning. The outdoor patio is existing, and adding an accessory structure adjacent to the patio is not anticipated to alter the character. Having food serviced primarily from the accessory structure will activate the space and the street more so than the patio would alone, which is in line with the intent of the Traditional overlay zone as well as other City-adopted plans such as the Neighborhood Revitalization Strategy (NRS). The NRS specifically calls for an improved presence along the W. 44<sup>th</sup> Avenue corridor, a desire for “third places”, and the need for more local dining options.

Staff finds this criterion has been met.

**3. The applicant is proposing a substantial investment in the property with this application, which would not be possible without the variance.**

The applicant will be investing \$150,000 in the building located at 7741 W. 44<sup>th</sup> Avenue. This investment meets historical thresholds for what constitutes a substantial investment. The business itself would also contribute to the local economy.

Staff finds this criterion has been met.

**4. The particular physical surrounding, shape or topographical condition of the specific property involved results in a particular and unique hardship (upon the owner) as distinguished from a mere inconvenience if the strict letter of the regulations were carried out.**

The layout of the existing building and parking prevents any expansion anywhere except along the south side. The subject site is a corner lot with two street frontages, and there is no other alternative location on the lot that is viable to accommodate an accessory structure (see *Exhibit 4*). Additionally, the structural integrity of the existing roof does not support kitchen HVAC equipment, and would require reinforcement in order to accommodate a full kitchen. The existing conditions, physical surrounding, and shape of the property involved results in a unique hardship upon the owner. The applicant contends that without the accessory structure, they will not have the ability to sell food during all open hours, which would significantly impair the viability and spirit of the concept.

Staff finds this criterion has been met.

**5. The alleged difficulty or hardship has not been created by any person presently having an interest in the property.**

The current owner neither platted the lot nor constructed the original building in its current location or orientation, but an accessory structure would not be necessary for other businesses to fully operate at this location. Thus, the applicant is creating the alleged hardship.

Staff finds this criterion has not been met.

**6. The granting of the variance would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located, by, among other things, substantially or permanently impairing the appropriate use or development of adjacent property, impairing the adequate supply of light and air to adjacent property, substantially increasing the congestion in public streets or increasing the danger of fire or endangering the public safety, or substantially diminishing or impairing property values within the neighborhood.**

The request to allow an accessory structure would not be detrimental to public welfare and would not be injurious to neighboring property or improvements. It would not hinder or impair the development of the adjacent properties. The adequate supply of air and light would not be compromised as a result of this request.

The request would not increase the congestion in the streets, nor would it cause an obstruction to motorists on the adjacent streets. The addition would not impede the sight distance triangle and would not increase the danger of fire.

It is unlikely that the request would diminish property values in the neighborhood.

The accessory structure likely would not change the number of restaurant patrons, but it would activate the street and allow for pedestrian passerby's to be serviced on the sidewalk along W. 44<sup>th</sup> Avenue. City plans call for an activated and aesthetically pleasing street presence along W. 44<sup>th</sup> Avenue (see analysis of Criteria 2 above). The structure is not anticipated to change the number of vehicles coming to the site. If the restaurant and micro-brewery are successful, there is potential that the overall use would have a positive impact on surrounding property values.

Staff finds this criterion has been met.

**7. The unusual circumstances or conditions necessitating the variance request are present in the neighborhood and are not unique to the property.**

The unusual circumstances or conditions necessitating the variance request are unique to the property only. Based on the aerial imagery of the neighborhood (*Exhibit I*), surrounding properties have sufficient-sized lots to accommodate surrounding businesses.

Staff finds that this criterion has not been met.

**8. Granting of the variance would result in a reasonable accommodation of a person with disabilities.**

While the granting of the variance to allow an accessory structure in the front yard would be considered advantageous for those with accessibilities, this criteria is not considered applicable to the subject request. Accessibility requirements for the main building have already been met.

Staff finds this criterion is not applicable.

**9. The application is in substantial compliance with the applicable standards set forth in the *Architectural and Site Design Manual*.**

The accessory structure meets all applicable standards set forth in the ASDM for primary commercial buildings related to façade design, materials, transparency, and screening of mechanicals. The accessory structure is proposed to be 20-feet long by 8-feet wide, with the narrowest portion located along W. 44<sup>th</sup> Avenue. The height of the structure varies, and includes portions that are 8-feet and 11-feet tall at maximum. The taller portion is most present along the east and south façade, and create a chimney effect to conceal the rooftop mechanical equipment. The building facade is made up of brick and wood paneling, with a metal canopy that provides interest and emphasizes the service window features. Service windows provide transparency to meet requirements. See Elevations in *Exhibit 5*.

The accessory structure also meets the intent of the Traditional overlay zone as set forth in the ASDM. It provides for increased pedestrian connectivity to support walkability, thoughtfully placed entries to enhance the pedestrian experience, and building placement oriented along the street to promote an interesting and pedestrian-friendly street environment.

Staff finds this criterion has been met.

**IV. STAFF CONCLUSIONS AND RECOMMENDATIONS**

Having found the application in compliance with the majority of the review criteria, staff recommends APPROVAL of a 100% variance to Section 26-625 in order to allow an accessory building in the front yard on property located at 7741 W. 44<sup>th</sup> Avenue and zoned Commercial-One (C-1). Staff has found that there are unique circumstances attributed to this request that would warrant approval of a variance. Therefore, staff recommends approval for the following reasons:

1. The variance would not to alter the essential character of the neighborhood.
2. The applicant is proposing a substantial investment in the property.
3. The existing conditions, physical surrounding, and shape of the property involved present a particular and unique hardship.
4. The request would not be detrimental to public welfare.
5. The application complies with applicable standards set forth in the Architectural and Site Design Manual.

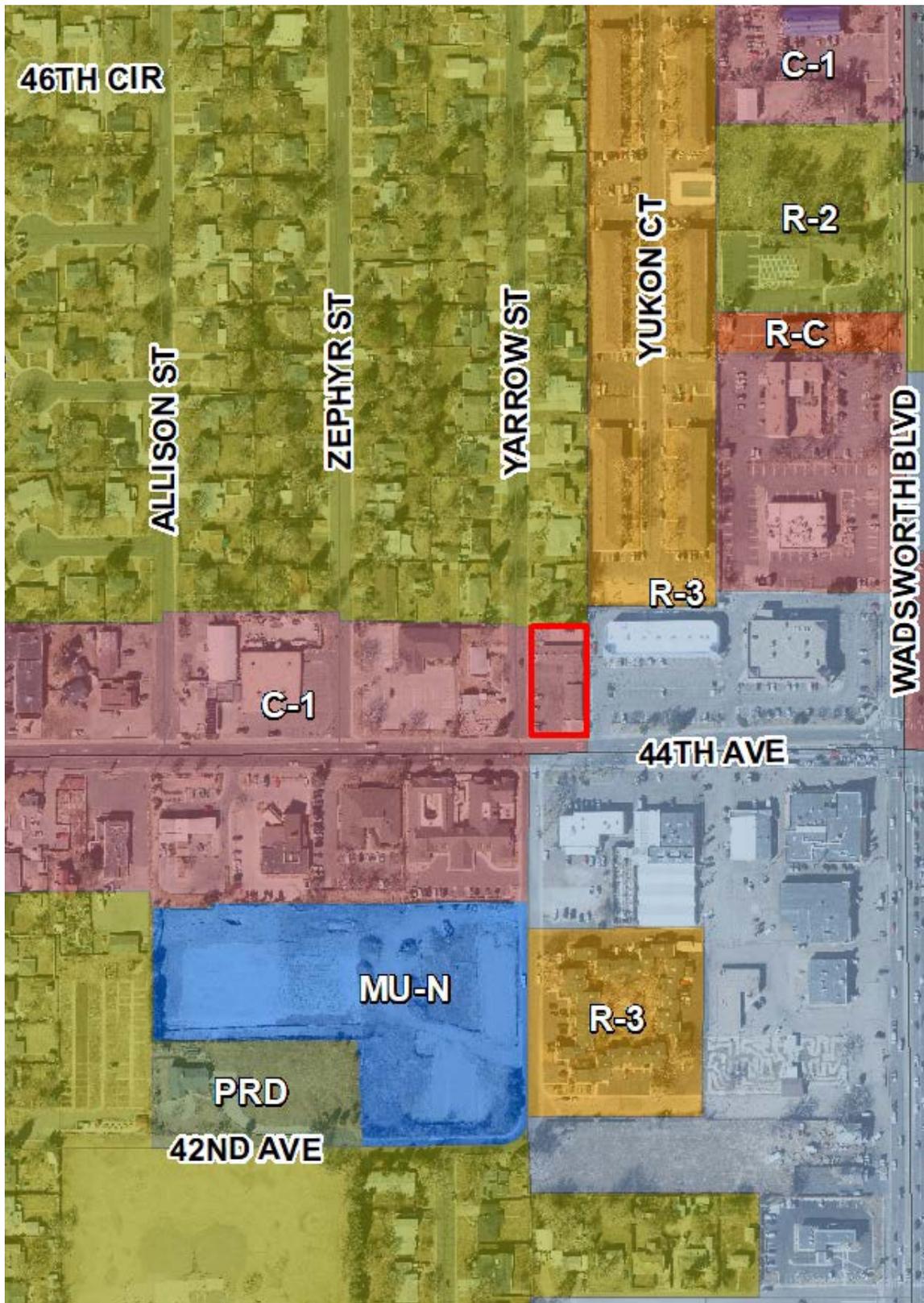
With the following condition:

1. The design of the accessory structure shall be consistent with the representations depicted in the application materials, subject to staff review and approval through review of a building permit.

# EXHIBIT 1: AERIAL



# EXHIBIT 2: ZONING MAP



# **EXHIBIT 3: APPLICANT'S NARRATIVE**

(See Attached)

To: The City of Wheat Ridge Development Staff

From: King of Wings, llc

Re: Requesting 100% Variance to Section 26-625.D.a.iii

Date: 10/1/2019

Thank you for considering our request for a 100% variance to Section 26-625.D.1.a.iii, which states that, "Accessory buildings shall only be located in the side or rear yard. Accessory buildings may not be located in side yards that abut a public right-of-way."

We feel that we meet a majority of the criteria required for this variance. Enclosed are a list of the criteria and our suggestions for why we feel we meet them.

Sincerely,

The King of Wings Team,

A handwritten signature in blue ink, appearing to be a cursive script, likely representing the King of Wings Team.

Evan, Edward and Jerred

My name is Evan Pierce and I am an owner of King of Wings. King of Wings has been a chicken wing food truck serving at primarily brewery tap rooms for over 4 years. It has always been a dream to transition from our food truck to a permanent location. We see a lot of potential for our business in Wheat Ridge and are excited to have chosen it as a place to set down roots. We believe King of Wings is a perfect fit with the Wheat Ridge Neighborhood Revitalization Strategy. Residents have expressed a desire for better local dining options and more attractive commercial districts along the major corridors. King of Wings would fit both of these criteria perfectly and 44th Ave between Wadsworth and Youngsfield is one of the top three priority areas. We would like to bring in a “tap room/food truck” atmosphere, pairing these styles that have become so popular.

We would like to install an accessory structure adjacent to the patio that is built out inside like a food truck as our permanent “food truck”. The kitchen area in the rear of the tap room space will act as a food prep space. We believe based on the success of similar concepts that there is an inherent charm in the food truck/tap room pairing. Due to the newness of the concept we have run into a few code barriers. The code was not necessarily written with anything like this concept in mind so we are realizing our only option to get by our last code barrier is to pursue a variance. We hope that the board will find we meet the criteria for a variance. We believe that we meet 7 of the criteria, do not meet 1 of the criteria, and 1 of the criteria is not applicable.

Below are our responses to the 9 criteria:

*Criteria “a” The property **would not yield a reasonable return** in use, service or income under the current conditions.*

The property would not yield a reasonable return in use, service or income under the current conditions because it currently contains no plumbing, HVAC, or electric. Our Tenant Improvements will be adding all these items. At just under 1600 sqft, a full commercial kitchen takes up too much of the available space. With the kitchen outside, we can much better maintain the atmosphere that has made us so successful, and maximize the space we have simultaneously.

*Criteria “b” The variance **would not alter the essential character** of the locality.*

The variance would not alter the essential character of the locality. The variance would allow for minimum alteration of the character of the building. The alternative of a permanent addition would alter the essential character of the locality. We believe the variance would allow for the character of the locality to be improved, and not essentially altered. We believe the street side presence of the accessory structure would add appeal, charm, and walkability to the area.

*Criteria “c” The applicant is proposing a **substantial investment** in the property with this application, which **would not be possible** without the variance.*

We will be investing \$150,000 in a ground up build-out of the location at 7741 W 44th Ave. The project hinges on the variance because it is the only way we would feasibly be able to serve our food during all open hours. A food truck (not permanent) would only be allowed to

operate 4 hours daily. Without the variance, we would have to operate a truck 4 hours per day which will limit sales. This would in turn reduce sales tax revenue for the city. King of Wings has won Best Wings in Denver A-list and Best Food Truck in Denver Westword and has a widespread customer base from serving city-wide for over four years that would bring in new excitement and revenue into Wheat Ridge.

*Criteria "d" The particular **physical** surrounding, shape or topographical condition of the specific property results in a particular and **unique hardship** (upon the owner) as **distinguished from a mere inconvenience***

The current structural integrity of the roof does not support kitchen HVAC equipment. Due to the awkward and limited size of the property, the only location for the accessory structure that meets all setback requirements and other code regulations is directly adjacent to the patio on the east side, between the building and the street. This is not just a mere inconvenience because due to the nature of the property there is no alternate location which is viable. Not having the accessory structure would significantly impact our ability to sell food during all open hours and affect the viability and spirit of the concept.

*Criteria "e" **If there is a particular or unique hardship, the alleged difficulty or hardship has not been created by any person presently having an interest in the property.***

The unique hardship has not been created by anyone presently having an interest in the property. The age of the structure and topographical condition of the property are intrinsic to the building and not of the control or creation by any party involved.

*Criteria "f" **The granting of the variance would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood***

True, in fact granting of the variance would result in beneficial improvements to the neighborhood. It would fit the desire for added walkability, local dining options, and overall appeal of the 44th Ave corridor.

*Criteria "g" **The unusual circumstances or conditions necessitating the variance request are present in the neighborhood and are not unique to the property***

We do not meet this criteria.

*Criteria "h" **Granting of the variance would result in a reasonable accommodation of a person with disabilities***

We feel this is Not Applicable. If anything, people with disabilities might find the variance would result in a more spacious environment to be in and navigate, both inside and outside.

*Criteria "i" The application is in substantial compliance with the applicable standards set forth in the Architectural and Site Design Manual.*

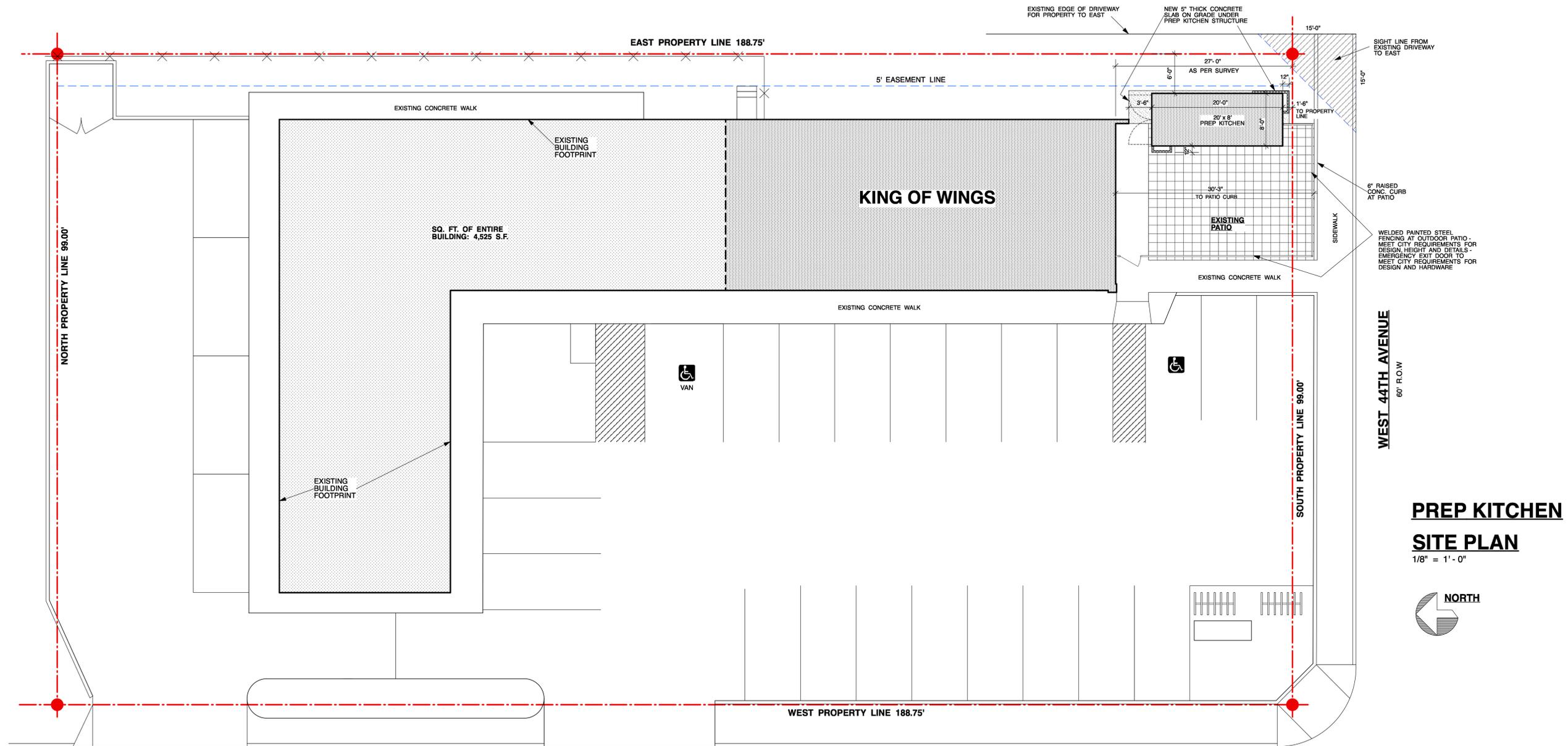
We feel our engineered plans are in compliance with all the applicable standards set forth in the Architectural and Site Design Manual. Our architect is revising the drawings based on the latest comments and we are open to making additional changes if necessary to become in compliance.

Thank you for taking the time to hear our point of view. We look forward to learning from you what we will need to do to get our plans approved so we can start building and get open.

Evan Pierce  
King of Wings

# **EXHIBIT 4: SITE PLAN AND ELEVATIONS**

(See Attached)



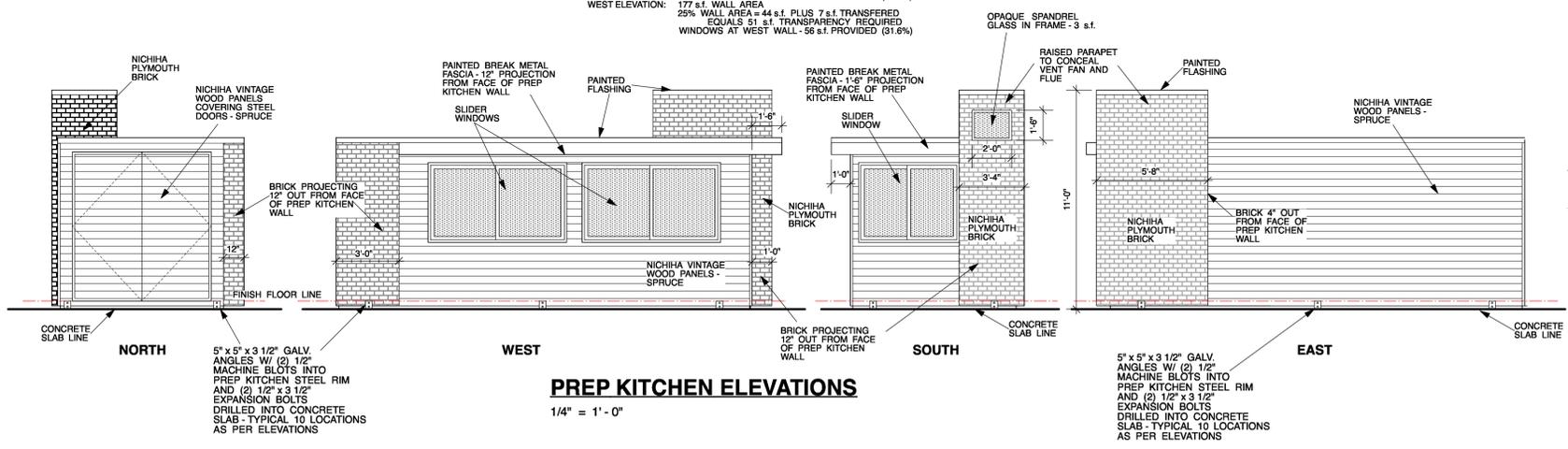
**PREP KITCHEN  
SITE PLAN**  
1/8" = 1'-0"



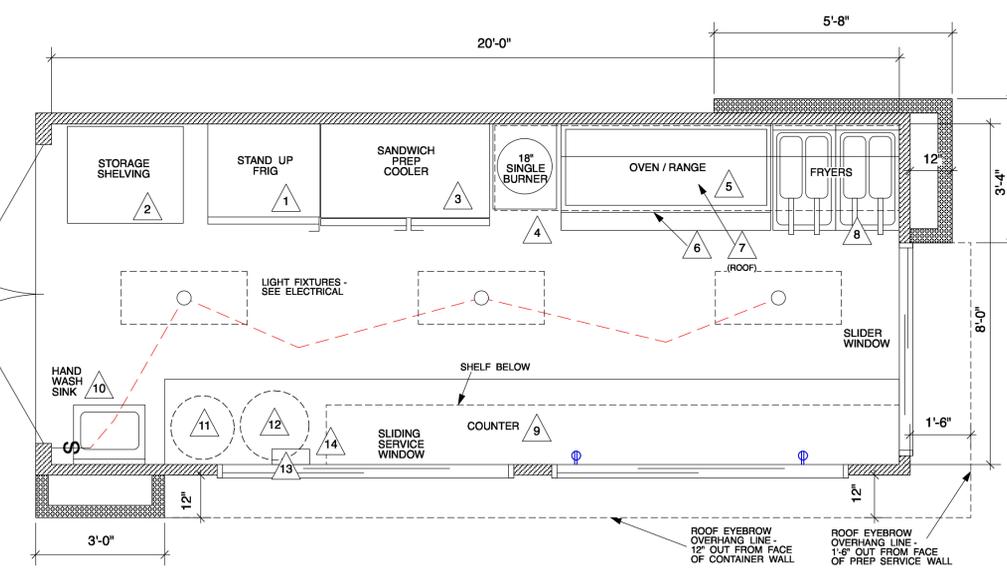
**GLAZING ANALYSIS: (BASED ON KITCHEN PREP USE NOT CLASSIFIED AS A RESTAURANT OR RETAIL)**

**SOUTH ELEVATION:** 73 s.f. WALL AREA (EXCLUDING PARAPET FOR HOOD)  
40% WALL AREA = 29 s.f. TRANSPARENCY REQUIRED  
30% WALL AREA = 22 s.f. MINIMUM TRANSPARENCY WITH 7 s.f. TRANSFERRED TO WEST SIDE  
WINDOW AT SOUTH WALL - 23 s.f. PROVIDED (31.5%)

**WEST ELEVATION:** 177 s.f. WALL AREA  
25% WALL AREA = 44 s.f. PLUS 7 s.f. TRANSFERRED EQUALS 51 s.f. TRANSPARENCY REQUIRED  
WINDOWS AT WEST WALL - 56 s.f. PROVIDED (31.6%)



**PREP KITCHEN ELEVATIONS**  
1/4" = 1'-0"



**PREP KITCHEN PLAN**  
1/2" = 1'-0"

**KING OF WINGS PREP KITCHEN**  
7741 WEST 44TH AVENUE  
WHEAT RIDGE, COLORADO

**MARK RUDNICKI ARCHITECTURE**  
mrarchitect@comcast.net  
rudnickiarchitect.blogspot.com  
cell 303-619-7434

**6062 SOUTH ABERDEEN STREET**  
LITTLETON, CO 80120  
PHONE 303-798-4596

**ISSUE #**  
#2 10/15/19  
VARIANCE SET

**A-1**

WHEAT RIDGE BOARD OF ADJUSTMENT  
CERTIFICATE OF RESOLUTION (TEMPLATE)

CASE NO: WA-19-06

APPLICANT NAME: Evan Pierce

LOCATION OF REQUEST: 7741 W. 44<sup>th</sup> Ave.

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WHEREAS, the application Case No. WA-19-06 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 / were no protests registered against it; and

WHEREAS the relief applied for may / 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

NOW, THEREFORE BE IT RESOLVED that Board of Adjustment application Case No. WA-19-06 be, and hereby is, ***APPROVED***.

TYPE OF VARIANCE:

Request for approval of a 100% variance to Section 26-625 to allow an accessory building in the front yard on property located at 7741 W. 44<sup>th</sup> Avenue and zoned Commercial-One (C-1).

FOR THE FOLLOWING REASONS:

1. The variance would not to alter the essential character of the neighborhood.
2. The applicant is proposing a substantial investment in the property.
3. The existing conditions, physical surrounding, and shape of the property involved present a particular and unique hardship.
4. The request would not be detrimental to public welfare.
5. The application complies with applicable standards set forth in the Architectural and Site Design Manual.

WITH THE FOLLOWING CONDITION:

1. The design of the accessory structure shall be consistent with the representations depicted in the application materials, subject to staff review and approval through review of a building permit.

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*Voting requirements for reference:*

Per City Code and BOA Bylaws, the following number of votes are required in order to grant any variance, waiver, temporary building or use permit, any interpretation or flood plain special exception permit or any matter requiring decision by the planning commission or the city council.

If a resolution or motion fails to receive the required number of votes in favor of the applicant, the action shall be deemed a denial, and a resolution denying the request shall be entered in the record.

Members Present	Votes Needed to Approve
8	6
7	6
6	5
5	4

All other actions require only a simple majority, including continuance of a case.



**BOARD OF ADJUSTMENT  
Minutes of Meeting  
April 25, 2019**

**1. CALL MEETING TO ORDER**

The meeting was called to order by Chair ABBOTT at 7:11 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

**2. ROLL CALL**

Board Members Present: Thomas Abbott  
Janet Bell  
Michael Griffeth  
Paul Hovland  
David Kuntz  
Larry Richmond  
Betty Jo Page

Alternates Present: Robert DeVries

Board Members Absent: Dan Bradford

Staff Members Present: Lauren Mikulak, Planning Manager  
Zareen Tasneem, Planner I  
Tammy Odean, Recording Secretary

**3. PUBLIC FORUM**

No one wished to speak at this time.

**4. PUBLIC HEARING**

**A. Case No. WA-19-01**

The case was presented by Zareen Tasneem. 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 reviewed the presentation and staff report.

The applicant is requesting approval of three requests: 1. Request for approval of a 5-foot (100%) variance from the 5-foot setback requirement for a deck; 2. Request for approval of a 2-foot 6-inch (50%) variance from the 5-foot side setback for an above ground pool; and 3. Request for approval of a 2-foot 2-inch (36.1%) variance from the maximum allowed fence height of 6 feet for a side yard fence to be constructed on property zoned Residential-One C (R-1C) located at 5575 West 35<sup>th</sup> Avenue.

Staff recommends approval of this variance. There are unique circumstances attributed to this request that warrant approval.

Member PAGE inquired why the property lines look off in the aerial views.

Ms. Mikulak explained these pictures are data from the County Assessor's office and are intended to show tax payer boundaries but not actual lot line locations. Ms. Tasneem added that Exhibit 3 shows where the property lines actually are.

Member DEVRIES asked how the height variance will stretch the entire 48 ft length of the fence.

Ms. Tasneem said the height will range from 6ft 9in in the front and gradually increase to 8ft 2in and will stay parallel to the deck.

Member BELL mentioned she had concerns about water runoff from the deck.

Ms. Mikulak said the building division will look at this concern.

Member HOVLAND inquired how the Board will vote on this case given three related requests.

Ms. Tasneem explained the 3 requests can be voted on separately or as 1 while specifying A, B and C.

Member RICHMOND asked if the weight of the pool was taken into consideration with regards to the sewer.

Ms. Mikulak mentioned there is an easement for the sewer and the pool was shifted to avoid the easement.

**Amy Coffey, applicant**  
**5575 W 35<sup>th</sup> Avenue, Wheat Ridge**

Ms. Coffey gave a brief history of the 20 years she has been in the house and explained her mother need lower impact exercise for her arthritis and a heated resistance pool is the best option for her. She explained the only option for this pool is on the west side of the house because the east side has a nice garden that she does not want to destroy. She also explained her plans are to move the sewer line closer to the house and install a double clean-out, this way it will not interfere with the pool. She also added the pool comes with a lid that locks.

Member KUNZ asked if a hole will be dug for the pool.

Ms. Coffey said the pool will be recessed a little bit and a hole will be dug for the concrete slab that the pool will sit on and a French drain. She mentioned the pool is to be 51 inches high.

The Members then discussed how to vote on the variances and agreed to vote on the 3 different variances under one motion.

**Upon a motion by Member HOVLAND and seconded by Member PAGE, the following motion was stated with friendly amendments from Members DEVRIES and ABBOTT:**

**WHEREAS, application Case No. WA-19-01 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 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-19-01 be, and hereby is, APPROVED**

**TYPE OF VARIANCE:**

**Request for approval of three variance on property located in the Residential-One C (R-1C) zone district:**

- **Request A: a five-foot (100%) variance from the five-foot side setback requirement for the deck, resulting in a 0-foot setback for the deck,**
- **Request B: a two-foot six-inch (50%) variance from the five-foot side setback for an above ground pool resulting in a two-foot six-inch setback, and**
- **Request C: a two-foot two-inch (36.1%) variance from the maximum allowed fence height of six-feet resulting in a privacy fence up to eight-foot two-inches in height. The eight-foot two-inches at the high point is due to a change of grade.**

**FOR THE FOLLOWING REASONS:**

- 1. The variance would not alter the essential character of the locality.**
- 2. The physical location of the home on the property and the topography both present a particular and unique hardship.**
- 3. The alleged difficulty or hardship has not been created by any person presently having an interest in the property.**

4. **The request would not be detrimental to public welfare.**
5. **The therapy pool provides a reasonable accommodation for treatment of arthritis.**
6. **The majority of the variance criteria have been met.**
7. **Any other location would be more detrimental to the locality of the pool and deck.**
8. **The height of the west side privacy fence should cause no negative impact to the property owner to the west as that house is a significant distance to the north of the proposed deck and pool.**

**WITH THE FOLLOWING CONDITIONS:**

1. **The design of the deck, pool, and fence shall be consistent with the representations depicted in the application materials, subject to staff review and approval through review of a building permit.**
2. **Drainage shall be addressed to pull drainage away from neighboring property.**
3. **Consideration for placement of the pool and its impact on the sewer line shall be addressed with a new cleanout and appropriate inspections.**

**Motion carried 8-0.**

**5. CLOSE PUBLIC HEARING**

Chair ABBOTT closed the public hearing.

**6. OLD BUSINESS**

**7. NEW BUSINESS**

- A. Approval of Minutes – December 13, 2018

**It was moved by Board Member PAGE and seconded by Board Member Thomas DEVRIES to approve the minutes as written.**

**The motion passed 6-0-2 with Board Member HOVLAND and GRIFFETH abstaining.**

- B. Resolution 01-2019: Establishing a designated public place for posting of meeting notices as required by the Colorado Open Meetings Law.

**It was moved by Board Member HOVLAND and seconded by Board Member DEVRIES to approve Resolution 01-2019 establishing a designate public place for posting of meeting notice as required by the Colorado open Meetings Law.**

**Motion passed 8-0.**

**8. ADJOURNMENT**

**Chair ABBOTT adjourned the meeting at 8:08 p.m.**

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**Thomas ABBOTT, Chair**

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**Tammy Odean, Recording Secretary**

DRAFT