

**STEAMBOAT SPRINGS BOARD OF ADJUSTMENT MEETING MINUTES
JANUARY 15, 2009**

The regular meeting of the Steamboat Springs Board of Adjustment Public Hearing was called to order at approximately 6:00 p.m., on Thursday, January 15, 2009, in Rooms 113 & 114, Centennial Hall, 124 10th Street, Steamboat Springs, Colorado.

Board members in attendance were Chairman James Moylan, David Levine, Rick Pighini and alternates Bryan Alkema and Warren Harner. Absent: Tom Effinger, and Ryan Spaustat

Staff members present were Planning Services Manager John Eastman, City Planner Seth Lorson and Staff Assistant Tami Heskett.

PUBLIC COMMENTS

None.

Village Green Highlands Lot 7 #VAR-08-10 Variance for a setback encroachment for a front (6" setback for accessory structure and retaining wall; 10' setback for primary structure) and side (6" setback for retaining wall).

Discussion on this agenda item began at approximately 6:05 p.m.

STAFF PRESENTATION

Seth Lorson –

Applicant is requesting a variance on 1285 Buckskin Dr. for a front and side setback variance. The accessory structure as proposed is a garage coming into the setback within 6" of the front setback. That has been slightly adjusted. It's been brought to our attention that the eave overhang comes to within 6" of the property line. The wall of the structure actually comes to within 2 ½ feet of the property line. It will be a little bit less of a variance than what they were originally asking for. They have registered with us as a legal nonconforming structure. On the side setback they are coming to within 6" with the retaining wall, which as it exists now exceeds out of their property line and into the right of way and onto the adjacent property owner's property. Their proposal is to take that out of the right of way and the adjacent property and put within 6" of their property, which would still encroach on the setback.

Board Member Pighini –

What you're talking about is this car, garage, or shed. That's what's over the property line right now?

Bill Hale –

Yes, we're going to remove that. He showed the board members where it's planned to be replaced.

Seth Lorson –

Applicant has applied for a revocable permit to allow that to be in the public right of way. Staff finds that the application does meet all of the criteria for approval.

In the first bullet point of the memo what we wanted to add to the first condition of approval is that at the time of building permit or grading and fill permit, because that's the permit that you will have to get when dealing with a retaining wall. The second bullet point is that we received a public comment about a concern about the blank wall on the garage on the south side. We made a suggestion of putting a window in on that side of the garage. The 3rd bullet point is the overhang over the garage, which is within 6" of the property line, which in the code in section 23-132 the overhangs are allowed within 3' of the setback on an overhang or eave. We can measure that as 2 ½ feet from the property line as opposed to 6" from the property line.

Bill Hale –

Is it the wall or is it the fitting that you're measuring?

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John Eastman –
We're measuring from the face of the wall.

Bill Hale –
What you're saying is that you can put an eave within 3', so your eave could go within 3' of the setback?

John Eastman –
No, you can put in up to 3' of eave. You can encroach within a setback up to 3' with an eave. To us 3' of eave doesn't exist.

Seth Lorson –
The variance is changing from 24 ½' to 22 ½'. The final bullet point is that they have legalized the nonconforming structure, which is the accessory building that comes into the setback and into the right of way and the principle structure, which is 10' away. Those existed back in 1977 before our code change.

Board Member Moylan –
Board Member Harner has now joined us. The entire board is now here except for Board Members Effinger and Spaustat. Effinger has a conflict with this particular property.

Bill Hale –
When you say add windows to the south side, we do have some windows shown. He showed some windows that were already on the diagrams.

Seth Lorson –
That is not a staff condition. I'm just expressing that to the board and the applicant that it was a public comment.

Board Member Levine –
I'm a little bit confused about the retaining wall. It sounds like they may or may not remove the retaining wall. They are still deciding on that?

Seth Lorson –
The application is to remove the retaining wall. That is one of the conditions of approval that they need to get consent from the adjacent property owner before they do any work on that retaining wall, because it does encroach into that property. The reason why we are getting a revocable permit now is because it has been brought to our attention and there's always a chance that this won't go forward and they will still be in the public right of way.

Board Member Levine –
How big is this retaining wall?

Bill Hale –

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It's about 10-12' tall. It is currently failing and it will need to be replaced within the next 2 years.

Seth Lorson –
He showed a photograph of the retaining wall.

Bill Hale –
He explained how he came up with the 10-12' calculation for the retaining wall.

Board Member Moylan –
I noticed in your staff report that you have a number of conditions that are preceding to the variance actually going through. Can you articulate those for the record?

Seth Lorson –
The conditions of approval were put together through City Works and the Planning Department. The first condition of approval says that at the time of the building permit or grading and fill permit that the applicant must submit engineered design/details for retaining/foundation wall, which provides support to the driveway. No structural component of the wall will be permitted in the right of way or dedicated easements. A plan for constructing the wall, while maintaining temporary road and soil stability should also be presented or substituted with a soils report verifying the stability for these soils to remain stable during construction.

The second condition of approval is that they have to obtain a revocable permit for the overhang intrusions into the right of way/snowmelt encroachment on separate zone prior to building permit approval.

Bill Hale –
That doesn't apply if I'm correct since we don't have any overhangs into the right of way.

John Eastman –
Are you proposing a snowmelt system that would encroach into the right of way?
That's how that is reading to me.

Bill Hale –
No. There were no snowmelt systems in any of the drawings.

Seth Lorson –
I think that this is an outgrowth from this roof overhang and since I was asking for 0.5 that the roof would extend beyond that and I was accounting for that. I think that's where that came from.

John Eastman –

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It reads like standard building permit details. Did you have a specific discussion about that one?

Seth Lorson –
No, I didn't.

John Eastman –
I think that if you substitute "any" for the "then", you're fine.

Seth Lorson –
If there were any overhang issues then we would need a revocable permit for that as well.

John Eastman –
This is standard building permit language and can probably go away.

Seth Lorson –
Condition 3 the following items to be identified for each phase on the building permit are considered critical improvements and must be constructed prior issuance of any TCO or CO; they cannot be bonded:

- Public drainage improvements
- Access drive, driveway, and parking areas
- Storm water quality features. (Vegetation must be established prior to CO when required as part of the feature design.)

The last couple is from the Planning Department. 4) The applicant must remove this wall from the public utility easement and not reconstruct it within the easement, vacate the easement, or enter into a license agreement with the City. If the applicant wishes to vacate the easement or enter into a license agreement, then they must do so prior to building permit application and approval.

5) The existing retaining wall is partially placed in the adjacent lot (Lot 6). Consent for proposed work (especially demolition) from the owners of Lot 6 is required prior to building permit application and approval.

We could add the language that grading and fill is a type of permit. So we could add that as well to the conditions of approval.

Michael J.K. Olsen –
Are you saying that on condition 4 we need to replat the property and show that when the retaining wall extends into the utility easement and vacate that portion of the utility easement to allow the retaining wall to extend to the property line?

Board Member Harner –
The 10' from the property line is the utility easement?

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Bill Hale –
Correct.

Board Member Harner –
I just got on the tail end of this discussion and I didn't quite understand what was going on. The variance that is being requested is 3' from the property line?

Seth Lorson –
It's about 2 ½ feet. The memo that I handed out addresses the concerns that we had earlier. The wall is about 2 ½ feet from the property line.

Board Member Harner –
The overhang will extend how far?

Bill Hale –
We were estimating 2'.

Board Member Harner –
To me it seemed ambiguous that you were asking for the retaining wall. I understand that. I didn't understand why the structure according to the diagram involves parking 3-4' from the property line.

Michael J.K. Olsen –
I was interpreting the roof overhang, but they were calling it the face of the wall instead.

Board Member Harner –
I believe that code says up to 3', correct?

Seth Lorson –
Correct.

APPLICANT PRESENTATION

Michael Olsen –
If you ever get the opportunity to go up there you'll see that the whole hillside is steep. There is a reason why the house was built in the setback and the shed was built in the right of way. We believe that our proposal will solve a lot of issues and help to create better long-term use for the property.

Michelle Hale –
We are the only neighbors without a garage. Our cars are visible from the street and I think that it would be beneficial if our cars were not visible from the street.

BOARD QUESTIONS

Board Member Levine –
How much space from edge of Buckskin to the garage doors is left?

Michael Olsen –
We're estimating 18-20'.

FINAL APPLICANT COMMENTS

None

PUBLIC COMMENT

None

BOARD DELIBERATION

Board Member Alkema –

We have found that not having a garage in this climate is a hardship.

Board Member Harner –

Previously today I spoke with staff regarding the variance and request relative to the building. Our department could have enforced what they had agreed to in the case of passage. That has been taken care of. Removing vehicles from the street is a very positive aspect for the environment and snow removal. I think that this as defined in the diagrams will increase the value of the house and will create better public access through the road area.

Board Member Pighini –

We see situations like this a lot. There are little pieces of property that could have been better served to go into the setbacks so they could utilize their property just as equally as everybody else. When you drive up to this property it looks difficult. I do agree with fixing a retaining wall that's falling apart. I think that's something that should be done. I'm looking at this project if it's to the benefit of everybody.

Board Member Moylan –

I read the report and my impression of the two proposed variances would improve the property. Get rid of the shed and put a garage there and fix the retaining wall. It seems to me that we can expedite this by observing or noting that the request for the variance meets all of the criteria for approval for us to grant the variance. The criteria includes: legal use; equal enjoyment; hardship; hardship not self-imposed; injury to adjoining property mitigated; minimum relief; increase in nonconformity; special circumstances; consistent with CDC, policies and plans; previous variance. I think that all of these meet the criteria.

Board Member Alkema –

I would like to make a note of no negative comments by any of the adjoining property owners.

Michael Olsen –

On your motion I would like to request that item 2 on the conditions of approval as well as the language that goes with it as well as for 5. The distance of the variance be changed from 6" to 2 ½ '.

Board Member Moylan –
Minutes will reflect the changes that we just discussed.

Seth Lorson –
That's agreeable to staff. All of the conditions that we discussed should be included in the motion.

Michael Olsen –
I request that you delete condition 2.

Board Member Moylan –
That's what we're going to do.

ANALYSIS OF APPROVAL CRITERIA

CDC - Section 26-70 (d): *Criteria for review and approval.* Variances may be approved when it is determined from evidence at the public hearing that the variance is consistent with the purposes of this section and that all of the following criteria or alternative criteria in subsection (e) or alternative criteria for floodplain development permit variances in section 26-164 or alternative criteria for sign variances in article IX have been met:

(1) *Legal use.* The property and the use of such property for which the variance is requested is in full compliance with all requirements of the zone district in which the property is located, or there is a legal nonconforming structure or lot, or there is a conforming structure housing a legal nonconforming use. No variance may be granted which would permit or expand any unlawful use of property.

Staff Analysis: Consistent. Single family dwelling-unit is a use by right in the RE-2 zone district.

(2) *Equal enjoyment.* The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zoning district in which the subject property is located.

Staff Analysis: Consistent. The proposed addition is not inconsistent with the neighborhood character nor does it alter the use of the property. As this is an application for a setback variance for a structure, it does not constitute a "special privilege inconsistent with the limitation upon **use...**" (Emphasis added)

(3) *Hardship.* The special circumstances of the subject property make the strict enforcement of the provisions of this CDC an unnecessary hardship to the property owner.

Staff Analysis: Consistent. Staff finds that the applicant's request is consistent with the criterion due to the steepness of the slope on the lot and the placement of the existing

house. The existing accessory structure already encroaches into the setback as a non-conforming structure that can be legalized by an administrative application. A driveway of unusable slope would be created by placing the garage outside of the setback because there is not enough space along the front property line and the house's location to create the necessary meandering drive to achieve a proper slope.

(4) *Hardship not self-imposed.* The special circumstances of the subject property are not the result of the actions of the applicant.

Staff Analysis: Consistent. As noted above, the "special circumstances" of the subject property is the severe slope of the lot and the placement of the house, which was built in 1985.

(5) *Injury to adjoining property mitigated.* The variance will not permanently injure or adversely impact legal conforming uses of adjacent property; or the applicant has accurately assessed the impacts of the proposed variance and has agreed to mitigate those impacts. In making this determination the board shall begin with the assumption that variations from development standards create impacts on adjacent properties, and shall place the burden of proof on the applicant to show:

- a. Impacts to adjacent properties are presumed.
 - b. That there are no impacts, or that the impacts have been adequately mitigated.
- Unsupported opinions of impacts from surrounding property owners shall not be conclusive evidence of impacts.

Staff Analysis: Consistent. The proposed garage structure will be replacing a frame shed that exists in the exact same location and the proposed retaining wall will also replace an existing wall.

(6) *Minimum relief.* The requested variance is the least modification possible of the provision of the CDC that will afford relief to the applicant.

Staff Analysis: Consistent. The proposed garage is not excessive in size and is sited on the property in what appears to be the only logical place.

(7) *Increase in nonconformity.* When considering the amount of variance requested, an existing nonconformity will be considered part of the overall variance request. For example, an existing nonconforming structure encroaches five (5) feet into the setback, and the applicant would like to encroach an additional five (5) feet. The variance request is for a ten (10) feet encroachment into the required setback.

Staff Analysis: Consistent. Staff has reviewed and reported on the variance in accordance with this criteria and the existing non-conformity has not been accounted for in the variance request.

(8) *Special circumstances.* The variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zoning district in which the subject property is located.

Staff Analysis: Consistent. The property severely slopes and placing the garage outside the setback would create too steep of a driveway.

(9) *Consistent with CDC, policies and plans.* The variance is consistent with the purposes and intent of this CDC and purpose of the CDC and adopted land use policies or plans, as applicable. In granting any variance, appropriate conditions and safeguards may be prescribed to ensure that the purpose and intent of this title will not be violated.

Staff Analysis: Consistent. The variance request is consistent with the purpose and intent of the Community Development Code and the adopted land use policies and plans. The subject property with the proposed addition will continue to be consistent with lot size, building size, building height, and use as required by the RE-2 zone district. The utility easement will have to be vacated for the portions of the proposed development that encroach into it. If that cannot be achieved no building permit will be issued.

(10) *Previous variance.* Every piece of property is unique, so evidence that a variance was previously granted under similar circumstances shall not be considered binding grounds for granting a variance.

Staff Analysis: Consistent. Staff has not reviewed this Variance request with consideration of similar properties, the findings stand on the merit of the proposed project alone.

RECOMMENDED MOTION

Staff finds this variance request IS in compliance with the City of Steamboat Springs Community Development Code Section 26-70. See discussion above. Staff recommends approval of the proposed Variance with the following conditions:

1. At time of building permit must submit engineered design/details for retaining/foundation wall which provides support to the proposed driveway. No structural component of the wall will be permitted in the ROW or dedicated easements. A plan for constructing the wall, while maintaining temporary road and soil stability should also be presented or substituted with a soils report verifying the suitability for these soils to remain stable during construction.
2. Obtain a revocable permit for the overhang intrusions into the ROW/snowmelt encroachment on separate zone prior to building permit approval.
3. The following items to be identified for each phase on the building permit are considered critical improvements and must be constructed prior issuance of any TCO or CO; they cannot be bonded:
 - Public drainage improvements
 - Access drive, driveway, and parking areas
 - Storm water quality features. (Vegetation must be established prior to CO when required as part of the feature design.)
4. The applicant must remove this wall from the public utility easement and not reconstruct it within the easement, vacate the easement, or enter into a license agreement with the City. If the applicant wishes to vacate the easement or enter into a license agreement, then they must do so prior to building permit application and approval.

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5. The existing retaining wall is partially placed in the adjacent lot (Lot 6). Consent for proposed work (especially demolition) from the owners of Lot 6 is required prior to building permit application and approval.

MOTION

Board Member Pighini moved to approve the Village Green Highlands Lot 7 #VAR-08-10 variance request to reduce the front and side setbacks to accommodate a retaining wall, garage, and the existing non-conforming house on the property known as Village Green Highlands Lot 7 at 1285 Buckskin Drive with the following conditions. Board Member Harner seconded the motion.

1. At time of building, demolition, or grading and fill permit the applicant must submit engineered design/details for retaining/foundation wall which provides support to the proposed driveway. No structural component of the wall will be permitted in the ROW or dedicated easements. A plan for constructing the wall, while maintaining temporary road and soil stability should also be presented or substituted with a soils report verifying the suitability for these soils to remain stable during construction.
2. The following items to be identified for each phase on the building permit are considered critical improvements and must be constructed prior issuance of any TCO or CO; they cannot be bonded:
 - Public drainage improvements
 - Access drive, driveway, and parking areas
 - Storm water quality features. (Vegetation must be established prior to CO when required as part of the feature design.)
3. The applicant must remove this wall from the public utility easement and not reconstruct it within the easement, vacate the easement, or enter into a license agreement with the City. If the applicant wishes to vacate the easement or enter into a license agreement, then they must do so prior to building permit application and approval.
4. The existing retaining wall is partially placed in the adjacent lot (Lot 6). Consent for proposed work (especially demolition) from the owners of Lot 6 is required prior to building, demolition, or grading and fill permit application and approval.

VOTE

Vote: 5-0

Voting for approval: Levine, Pighini, Moylan, Alkema and Harner

Absent: Effinger and Spaustat

Discussion on this agenda item ended at approximately 6:34 pm.

APPROVAL OF MINUTES FOR 9/18/08

Changes:

Board Member Moylan –

Pg 4 first paragraph at top second sentence where it says ‘but if they wanted to bear the title’ change ‘bear’ to ‘clear’. Pg 6 first paragraph last sentence says ‘your discretion’ change ‘discretion’ to ‘decision’. Pg 14 under Board Member Harner’s last comment where it says ‘I would ask for a letter since that would be a legal bonding’ change ‘legal bonding’ to ‘legally binding’.

MOTION

A motion was made by Board Member Harner and seconded by Board Member Alkema to approve the minutes of the September 18, 2008 meeting as corrected.

VOTE

Vote: 3-0

Voting for approval: Moylan, Alkema and Harner

Absent: Effinger and Spaustat

Abstaining due to absence: Levine and Pighini

APPROVAL OF MINUTES FOR 11/20/08

Changes:

Seth Lorson –

Pg 8 under my second comment change ‘1100 square foot house’ to ‘11,000 square foot duplex’.

Board Member Levine –

Pg 11 under my first comment change the last word ‘is’ to ‘has’.

Board Member Moylan –

Pg 12 first paragraph at top first sentence the last word should be changed from ‘anyways’ to ‘anyway’. On that same pg under the recommended motion ‘not’ is in a different typeface. Is there a reason for that?

Seth Lorson –

In my staff report the word ‘not’ is in a different typeface to make it clearer, but it doesn’t matter.

Board Member Moylan –

If we could make that font the same as everything else so it all reads more clearly. Pg 13 under my comment first sentence change ‘up’ to ‘above’. In the same sentence the change ‘and they’ to ‘has them’ so it reads ‘the call of duty has them expect’. In the last sentence add the word ‘none the less’ to the beginning of the sentence. Pg 14 insert that James Henry returned to the meeting room to ask a question. Same pg under my third comment make another paragraph after the first sentence.

MOTION

A motion was made by Board Member Levine and seconded by Board Member Moylan to approve the minutes of the November 20, 2008 meeting as corrected.

VOTE

Vote: 2-0

Voting for approval: Levine and Moylan

Absent: Effinger, Spaustat

Abstaining due to absence: Pighini, Alkema and Harner

DIRECTOR'S REPORT

None.

ADJOURNMENT

Board Member Alkema moved to adjourn the meeting at approximately 6:45 pm. Board Member Pighini seconded the motion.

VOTE

Vote: 5-0

Voting for approval to adjourn: Levine, Pighini, Moylan, Alkema and Harner

Absent: Effinger and Spaustat