

Minutes of the  
Board of Adjustment and Appeals of the City of Cherry Hills Village, Colorado  
Held on Thursday, November 3, 2011 at 6:30 p.m.  
At the Village Center

**CALL TO ORDER**

Chairman Hoellen called the meeting to order at 6:30 p.m.

**ROLL CALL**

Present at the meeting were the following members of the Board of Adjustment and Appeals: Chairman Earl Hoellen, Vice Chair Suzy Love, Board Member Jamie Seitz, Board Member Susan Struna, Board Member Kerry Sullivan and Councilor Mark Griffin.

Also present at the meeting were the following staff members: Robert Zuccaro, Community Development Director; David Foster, Deputy City Attorney; and Emily Kropf, Community Development Clerk.

**ELECTION OF CHAIR AND VICE CHAIR**

Chairman Hoellen stated that he would accept nominations for Chair and Vice Chair of the Board.

Board Member Sullivan made a motion, which was seconded by Chairman Hoellen, to elect Vice Chair Love as Chair.

The motion passed unanimously.

Board Member Hoellen made a motion, which was seconded by Board Member Struna, to elect Board Member Seitz as Vice Chair.

The motion passed unanimously.

**APPROVAL OF MINUTES**

Board Member Hoellen made a motion, which was seconded by Board Member Struna, to accept the January 6, 2011 minutes as written.

The motion passed unanimously.

**AGENDA ITEMS**

*Holly F. Martino – 1013 East Belleview Avenue – Request for a Variance to Sec. 16-7-30(d) of the Municipal Code to Allow Storage Shed that Encroaches Seven Feet and Three Inches into the Required 25-Foot Side-Yard Setback and Exceeds the Maximum Number of Accessory Structures for the R-3 Zone District*

Board Member Sullivan stated that due to his personal relationship with the applicant, he felt that he should not participate in the matter.

Mr. Foster responded that Councilor Griffin will be voting in Board Member Sullivan's place. He continued that five Board members will vote, and the applicant needs the approval of at least four in order to be granted a variance.

Mr. Zuccaro stated that the applicant had not received the memo detailing staff's findings. He asked if the applicant would like to postpone the hearing in order to have time to review the memo.

The applicant's husband, Tom Martino, stated that he was fine continuing the hearing.

Mr. Zuccaro stated that the applicant has requested a variance to allow an encroachment of 7 feet and 3 inches into the 25-foot side-yard setback and to allow a fourth accessory structure in order to construct a 12-foot by 8-foot (approximately 96 sq. ft.) storage shed on the west side of the property. The subject property is zoned R-3, 1-Acre Residential District and is located in the Cherry Hills Ranches Subdivision.

Mr. Zuccaro stated that the minimum front-yard setback for the property is 50 feet and the minimum rear and side-yard setbacks are 25 feet, and the maximum number of accessory structures is three. The storage shed was partially constructed on site and is located in the northwest corner of the lot. The applicant has stated that the shed is to be used for storage of landscaping equipment, toys and bicycles and that the home's garages are used to store vehicles. The applicant was issued a "stop work order" in April by the City's code enforcement officer for constructing the shed in the side-yard setback. The construction of the shed does not require a building permit because it is less than 120 square feet, but it still has to meet the setback for the property.

Mr. Zuccaro stated that the applicant has provided a letter from Kyle and Lucy Conklin, residents of 1011 E. Belleview Avenue, expressing support for the applicant's request to leave the shed in its current location.

Mr. Zuccaro stated that based on a review of the approval criteria submitted by the applicant, staff recommends denial of the requested variance. While staff does not find that the shed would cause an undesirable change to the neighborhood considering its small size and location, there are several criteria that have not been met. Staff finds that the applicant can make reasonable use of his property in its current condition without encroaching into the setback.

Board Member Hoellen asked if the requested variance is for an encroachment into the setback, as well as a fourth accessory structure.

Mr. Zuccaro responded yes. He stated that the variance would be for two allowances.

Board Member Hoellen asked if the concrete pad already existed.

Mr. Zuccaro responded that it was constructed as part of the driveway.

Board Member Struna asked if the shed could be attached to the house.

Mr. Zuccaro responded yes. He continued that the shed could be attached to the house with a trellis or breezeway and would not require a variance for a fourth accessory structure, but there would still be the issue of the setback encroachment.

Board Member Struna asked if the shed could be pushed back at all.

Mr. Zuccaro responded that the shed could be moved, but the applicant has stated that the topography of the lot would not allow relocation of the shed outside of the setback. Mr. Zuccaro added that the shed could theoretically be attached to the back of the garage if the area was regraded. If the shed was attached at this location, it would not encroach into the setback or be considered an accessory structure.

Board Member Struna asked if there is an existing concrete pad at this location.

Mr. Zuccaro responded no.

Board Member Struna asked if it would be convenient for the applicant's use to have the shed located behind the garage.

Mr. Zuccaro responded that he did not know.

Chair Love asked if the shed was left in its current location but was attached to the west side of the garage if it would still encroach into the setback.

Mr. Zuccaro responded yes.

Chair Love stated that she drove past the site but was unable to see the proposed location of the shed.

Mr. Zuccaro stated that there is a drainage swale towards the back of the lot where the grade starts to drop off.

The applicant, Holly Martino, stated that her husband, Tom Martino, will be addressing the Board.

Mr. Martino stated he did not know that the placement of the shed would be an issue because it is portable and had been discussed with neighbors prior to construction. He had also agreed to move the shed if a future neighbor ever opposed its placement. Mr. Martino added that he would have preferred to attach the shed to the garage but thought that it would still encroach into the setback. He stated that he also did not know that a firepit was considered an accessory structure.

Mr. Martino continued that he placed the shed in the only area that he thought would work, and he would not have requested a variance if he had known about the setback standards and accessory restrictions prior to the shed's construction. Mr. Martino concluded that the shed had been built in order to house a number of items that had been placed against the side of the house and thought that a shed would be beneficial to the neighborhood. He added that the shed would be built to match the primary structure, as well.

Councilor Griffin stated that according to the improvement location certificate provided by the applicant, it appears that there is a 25 foot utility easement on the northwest side of the property, which would still leave 10 feet in which the shed could be placed. He asked why the shed cannot be placed on the north side of the garage.

Mr. Martino responded that he thought he would not be allowed to alter the existing drainage in that area. He continued that it would be possible to backfill that area and place the shed on top.

Councilor Griffin stated that this seems like a simple solution.

Board Member Struna asked why the shed cannot be placed on the east side of the lot.

Mr. Martino responded that the shed would then be right against the setback.

Board Member Struna asked why the shed cannot be placed towards the middle of the lot towards the rear.

Mr. Martino responded that the area described is a walkway that leads to the children's playground.

Chair Love asked if there were any other questions for the applicant. She then declared the hearing closed.

Board Member Hoellen stated that he agrees with Councilor Griffin that there is a reasonable solution, which involves moving the shed to the area behind the garage.

Vice Chair Seitz asked if the applicant were to move the shed to this area if a foundation or concrete slab would be required.

Mr. Zuccaro responded that there is a steep slope that would require backfilling and possibly a retaining wall. He continued that the City Engineer could look at the area and evaluate the potential impact on drainage.

Vice Chair Seitz asked if the foundation would connect the shed to the garage.

Mr. Zuccaro responded that if the applicant wanted to connect the shed to the garage, a roof could also be used. He would have to discuss the issue with the City Building Inspector.

Chair Love stated that she would entertain a motion.

Board Member Hoellen moved to adopt staff's recommended motion as stated in the staff report denying the applicant's request for a variance to allow an encroachment into the side-yard setback and to allow a fourth accessory structure.

Councilor Griffin seconded the motion.

All Board Members were in favor of the motion.

*Ellen M. Armstrong – 23 Sedgwick Drive – Request for a Variance to Sec. 16-6-30(c) and (e) to Allow an Increase in the Height of an Existing Structure that Encroaches Approximately 31 Feet into the Required 40-Foot Rear-Yard Setback and into the Required Bulk Plane for the R-2 Zone District*

Mr. Zuccaro stated that the applicant has requested a variance to allow an encroachment of 31 Feet into the required 40-foot rear-yard setback and into the required bulk plane for the R-2 zone district. The applicant proposes to remodel an existing swimming pool room into a master bedroom and guest bedroom. The swimming pool room currently encroaches into the setback, which was approved by the Board of Adjustment and Appeals (BOAA) in 1983.

Mr. Zuccaro continued that the bulk plane might be a new term for some members of the Board. City Council adopted the Bulk Plane and Floor Area Ratio (FAR) ordinance, which went into effect on September 26, 2011. The adopted ordinance was not addressed with the previous applicant because the request had been submitted prior to the adoption of the regulation.

Mr. Zuccaro stated that a traditional building envelope is created by going straight up to the maximum height allowed at the front, side and rear-yard setback. The bulk plane creates more of an angled setback. The purpose of the bulk plane is to allow traditional homes that have larger massing at the front of the lot and create a disincentive for long walls along the side of the lot.

Mr. Zuccaro stated that the applicant's proposed remodel is in the same footprint as the existing structure. The building height will be raised from 16 feet, 1 inch to 19 feet, 10 inches so that the floor level and ceiling can be raised to match the rest of the house. The enclosed pool wing is slightly lower than the rest of the house and the ceiling dips as low as 7 feet. Because the proposal includes an enlargement of the previously approved structure, a new variance is required.

Mr. Zuccaro continued that the applicant's lot also has two frontages to the same road, resulting in the more restrictive front setback being applied to two sides of the lot. This creates an unusual circumstance on the lot where the building envelope is smaller than on other lots in the neighborhood.

Mr. Zuccaro concluded that based on a review of the approval criteria submitted by the applicant, staff recommends approval of the requested variance. He added that the applicant has received letter of approval for the proposed remodel from the Devonshire Homeowners Association, as well as from surrounding neighbors.

Board Member Sullivan asked if the existing pool has a base that is 2 feet lower than the rest of the home.

Mr. Zuccaro responded that the decking or floor surrounding the pool is 2 feet lower.

Board Member Sullivan asked how much is being added on top.

Mr. Zuccaro responded that the walls will be a uniform 10 feet from the raised floor.

Vice Chair Seitz asked if a new variance was required due to a modification to the previously approved variance.

Mr. Zuccaro responded yes. He continued that a new variance would be required even if the footprint of the building remained the same.

Board Member Hoellen asked if a previous matter regarding an existing foundation would be relevant to the hearing.

Mr. Zuccaro responded that he was unsure how the applicant was planning on altering the foundation of the existing room. He added that it would not change the double frontage issue that the applicant faces. There is no alternative building site for the proposed remodel due to the fact that the applicant faces a 75 foot front-yard setback on two sides of the lot.

Mr. Joseph Bronesky, representative of Ellen and William Armstrong, wanted to add that there is a garage located on the east side of 25 Sedgwick Drive, which is closest to the existing pool room located on the applicant's property. In 1983 the resident of 25 Sedgwick Drive gave his approval for the variance because it did not negatively impact his property. The applicant is currently having drawings made for the proposed remodel. 3.9 feet is proposed to be added on top of the existing pool room in order to create a uniform height.

Board Member Sullivan asked if the dotted line in the upper corner of the drawings presented indicates the present appearance of the home.

Mr. Bronesky responded yes. He added that 16 feet and 1 inch is the peak of the home currently. The peak of the pool room is 16 feet, but it lowers down to 7 feet.

Chair Love asked if the proposed remodel would raise the peak of the pool room above the rest of the home.

Mr. Bronesky responded that the height of the pool room might be increased to 1 foot above the rest of the home, but the increase would not be visible from the front of the house.

Chair Love stated that after viewing the site she could not imagine being able to see the increase in height from the front of the home. She added that the site is well protected with trees and faces a garage on the adjacent lot.

Board Member Sullivan asked why the applicant did not know if the increase in height would exceed 1 foot.

Mr. Bronesky responded that the applicant was currently in the drawing stage. He continued that the applicant would like to keep the height of the home consistent and will consult with his architect.

Mr. Zuccaro stated that on the site plan the proposed elevation is 5477, and it appears that the addition will be one-foot less than the height of the existing building. He added that the approved elevation would have to be substantially similar to the proposed height when applying for the building permit.

Mr. Foster stated that the Board could grant the variance for a specific height and no higher. If the building plan does not meet the standards of the approved variance, the applicant would have to submit a new application.

Mr. Armstrong thanked the Board and staff. He asked that the Board take into consideration that the proposed variance would be helpful to he and his wife and hurtful to no one else. He added that there is only one neighbor that the remodel will affect, and that neighbor supports the remodel.

Chair Love thanked the applicant and closed the public hearing. She asked if the Board had any other questions or thoughts.

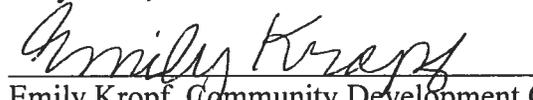
Vice Chair Seitz made a motion to approve the applicant's request for a variance to allow an increase in the height of an existing structure that encroaches into the setback and the bulk plane.

All Board Members were in favor of the motion.

### ADJOURNMENT

The meeting adjourned at 7:23 p.m.

  
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Suzy Love, Chair

  
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Emily Kropf, Community Development Clerk