

RECORD OF PROCEEDINGS

Minutes of the
Board of Adjustment and Appeals of the City of Cherry Hills Village, Colorado
Held on Thursday, February 7, 2013 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Chair Love 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: Chair Suzy Love, Vice Chair Jamie Seitz, Board Member Earl Hoellen, Board Member Susan Struna, and Board Member Kerry Sullivan.

Present at the meeting were the following staff members: Robert Zuccaro, Community Development Director; Linda Michow, City Attorney; and Emily Kropf, Community Development Clerk.

Mayor Doug Tisdale was present.

Absent was Councilor and alternate Board Member Mark Griffin.

Mayor Tisdale stated that he would like to commend and thank the members of the Board for their public service. He continued that all positions on the City Council, Boards and Commissions are voluntary, and that the individuals who donate their time should be thanked for their contribution. He added that all members of the Board are welcome and encouraged to attend City Council meetings.

The Board thanked Mayor Tisdale who then left the meeting.

APPROVAL OF MINUTES

Vice Chair Seitz made a motion, which was seconded by Board Member Sullivan, to accept the November 3, 2011 minutes as written.

The motion passed unanimously.

AGENDA ITEMS

Request by the Estate of Bill Hewitt and Trust of Bettie Ruth Hewitt for Approval of Variances to Municipal Code Sections 16-6-30(c) and (e) to Allow a Setback Encroachment of Six Feet, Seven Inches into the Required 40-Foot Rear-Yard Setback and Allow an Extension into the Required Bulk Plane for the R-2 Zone District in order to Construct an Addition to the Residence at 7 Cherry Hills Drive

Mr. Zuccaro stated that staff is presenting a request for a variance to Municipal Code Sections 16-6-30(c) and (e) to allow an encroachment of six feet, seven inches into the 40-foot rear-yard setback and allow an extension into the bulk plane. The variance is being requested in order to build an approximately 594 square-foot addition at the northwest corner of the existing home. There is an existing covered patio and deck where the addition is proposed to be located.

Mr. Zuccaro said that the approval criteria and staff's findings are outlined in Table 1 of staff's memorandum. Based on these findings, staff recommends denial of the request.

Staff found that there are feasible design alternatives to build an addition that would not require the requested variance and that the applicants will have reasonable use of the land and home without the requested variance. For instance, the proposed addition can be relocated to the south or west of the existing home. Additionally, the existing home is 6,000 square feet, and an adequate building envelope currently exists. The applicant has provided several letters in support of the application from neighbors.

Board Member Sullivan asked how many criteria must be met to grant the variance.

Mr. Zuccaro replied that all nine criteria must be met.

Board Member Sullivan asked if there have been any exceptions previously granted.

Mr. Zuccaro responded that the Municipal Code does not allow exceptions if all nine criteria have not been met.

Board Member Sullivan stated that the applicant has only met six of the required nine criteria.

Mr. Zuccaro said that the applicant only meets six of the criteria per staff's recommendation.

Chair Love asked how the existing patio and fountain meet the required rear-yard setback.

Mr. Zuccaro replied that the patio meets the required rear-yard setback for accessory structures. The fountain is a landscaping element and does not have a required setback. Primary structures in the R-2 zone district must meet the 40-foot rear-yard setback and accessory structures and patios must meet the required 25-foot rear-yard setback.

Chair Love asked if the corner of the proposed addition will also encroach into the bulk plane.

Mr. Zuccaro responded yes. He continued that any setback variance will result in a bulk plane encroachment.

Chair Love stated that the public hearing was open.

Matt Dillman, 6400 S. Fiddlers Green Circle, stated that he represents the owners of 7 Cherry Hills Drive, Richard and Christy Andrews, the personal representatives of the Estate of Bill Hewitt and Trust of Bettie Ruth Hewitt. The proposed work includes a modest variance request in which the addition will encroach into the rear-yard setback by six feet, seven inches and will be located on top of an existing concrete patio. Neighbors were notified of the project and have submitted letters in support of the application. The variance is necessary due to the unique configuration of the lot and layout of the house. Without the addition, the owners will not be able to use the property in the same way that other owners are able to.

Mr. Andrews said that he would like to improve the appearance of the existing home with the proposed addition, which is modest in terms of square footage. Alternative designs were considered but ultimately the location of the proposed addition was found to be the best solution.

Robin Adams, 2406 W. 32nd Avenue, stated that he is the architect for the project and believes that the proposed work meets the required variance criteria. The property has an unusual shape, which makes compliance with the rear-yard setback difficult. Additionally, the community living space in the existing home is small. There are several properties in

the area that have a different zoning classification. For instance, there is a property to the south that is zoned R-3, which requires a 25-foot rear-yard setback. Eight letters were sent to neighbors requesting support for the proposed work. Five were returned to the applicant in support of the project.

Board Member Struna asked if the applicant received a response from the owners of 21 Cherry Hills Drive.

Mr. Adams responded that the owners of 21 Cherry Hills Drive did not respond to the letter.

Board Member Sullivan asked what design alternatives have been explored.

Mr. Andrews replied that if the covered patio was moved to the other side of the residence the garage would have to be relocated.

Board Member Sullivan asked why the portion of the addition that encroaches into the setback cannot be removed from the scope of work.

Board Member Seitz suggested that Mr. Adams continue with his presentation in order to demonstrate why the proposed location was selected.

Mr. Adams said that it makes sense to locate the covered porch on the existing patio. The square footage of the existing home does not meet the goals of the homeowners, and the shape of the lot is not ideal. The variance request seems like a fair compromise to resolve these issues. The proposed work accommodates the homeowners and results in a minimal encroachment. It is also important to achieve the golden rectangle of design, which the addition has been designed to do. Mr. Adams presented several photographs of the proposed location and said that the addition will not be visible to other properties.

Board Member Hoellen stated that the applicant has explained why the proposed location is the optimal solution but has not explored other design alternatives.

Beatrice Taplin, 11 Cherry Hills Drive, stated that she previously served on the Board and is in support of the variance. She continued that the proposed work will not impact other property owners, and the requested variance will uphold the standards of the community.

Mr. Dillman said that the addition will only encroach into the setback three feet, 11 inches. The encroachment is six feet, seven inches if measured from the overhang. He added that he believes that the applicant has met all nine approval criteria and would like to address each requirement. First, the applicant will suffer an exceptional and unnecessary hardship. Due to the elongated triangular shape of the lot, the home is in close proximity to the rear property line. Other property owners have been able to build all-season rooms, which the applicant cannot do without a variance. Second, there are no design alternatives or alternative locations. The only location that makes sense architecturally is the one being proposed. Third, enforcement of the provisions deprives the applicant of rights enjoyed by others. Mr. Dillman continued that he disagrees with staff and does not believe that there are design alternatives and therefore the applicant cannot build an addition that other owners are able to.

Mr. Dillman continued that the fourth criterion states that the need for the variance does not result from intentional or negligent actions, which staff found to be affirmative. Fifth, reasonable protections are afforded to adjacent properties, which staff also found to be affirmative. Sixth, the variance will not cause an undesirable change to the character of the neighborhood, which staff found to be affirmative. Mr. Dillman added that the property to the north will be shielded by existing landscaping. Seventh, the variance is the minimum

variance that will make possible the reasonable use of land. A smaller addition will not meet the goals of the homeowners. Eighth, the reasons set forth by the applicant justify the granting of the variance. The requested variance is not an issue of inconvenience or aesthetics. Ninth, the granting of the variance will observe the spirit of the Code, secure public safety and welfare and ensure that substantial justice is done. Mr. Dillman said that the approval criteria have been met and granting of the variance can be justified.

Board Member Struna asked why the overhang extends further than necessary.

Mr. Adams responded that it extends further to protect the windows from snow and rain. It will also provide some shade control.

Board Member Hoellen stated that there are two design alternatives. The first is to reduce the size of the addition. The second is to create a rectangle rather than a square.

Mr. Adams replied that regular angles do not make sense from an architectural standpoint.

Board Member Hoellen said that there is an optimal solution and a useable solution, which should at least be considered.

Board Member Struna asked why there were different zoning classifications for several properties in the neighborhood.

Mr. Zuccaro responded that there is a history of differential zoning. The neighborhood was originally zoned R-3, but following a subdivision residents asked the City to rezone several properties to preserve the low density of the area.

Board Member Struna stated that she does not think that the differential zoning is fair to the applicant.

Mr. Zuccaro said that the shape of the lot is a unique circumstance, but it is also a 2-½ acre lot with a larger building envelope.

Chair Love asked why the property is zoned R-2.

Mr. Zuccaro said that the zoning is not based on lot area but is based on what City Council has designated for the property.

Chair Love asked what the procedure is to rezone the lot.

Mr. Zuccaro said the criteria can be difficult to meet.

Board Member Sullivan stated that he does not think that the Board can grant the variance as all nine approval criteria have not been met. He suggested that the applicant redesign the addition.

Mr. Andrews responded that the addition cannot be reduced due to the need for the additional square footage.

Mr. Dillman said that he believes that the approval criteria have been met, and the Board has justification for granting the variance.

Vice Chair Seitz stated that he would like to commend the applicant for presenting a thoughtful and articulate request. He continued that the applicant is seeking to violate the zoning ordinance in a respectful manner in order to improve the property. There is no

compelling evidence that granting the variance will negatively impact other property owners. He added that he would like to make a motion to approve the variance request.

Chair Love stated that the public hearing is closed.

Board Member Hoellen asked if the Board is in agreement with staff's recommendation.

Vice Chair Seitz replied that he does not agree.

City Attorney Michow stated that the Board's role is not to determine if staff's findings are correct. She continued that the Board's role is to determine if the approval criteria have been met based on the evidence and testimony presented at the hearing.

Board Member Struna said that redesigning the addition does not seem to be a feasible alternative. She added that she does not think that the 40-foot rear-yard setback is fair.

Board Member Hoellen replied that rezoning the property might be a more proper remedy than a variance.

Vice Chair Seitz said that the role of the Board is not to enforce the Municipal Code but to grant exceptions to it.

Board Member Sullivan stated that the Board was more inclined to grant the previous variance request because staff recommended approval. He asked what was different between the two variance requests.

Mr. Zuccaro responded that he recalled that the previous request reviewed by the Board at their last meeting involved a double frontage setback, which can be restrictive.

Vice Chair Seitz asked if the motion to approve the variance request stands.

Chair Love asked Vice Chair Seitz to make a formal motion.

Vice Chair Seitz made a motion to approve the request by the Estate of Bill Hewitt and Trust of Bettie Ruth Hewitt for approval of variances to Municipal Code Section 16-6-30(c) and (e) to allow an encroachment of six feet, seven inches into the 40-foot rear-yard setback and allow an extension into the bulk plane for the R-2 zone district in order to build an approximately 594 square foot addition to the existing home at 7 Cherry Hills Drive. The Board finds that the proposed variance meets the approval criteria as proposed by the applicant.

Board Member Struna seconded the motion.

Chair Love, Vice Chair Seitz, Board Member Struna and Board Member Sullivan voted in favor of the motion.

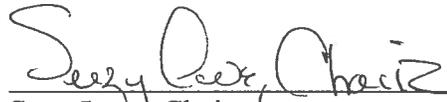
Board Member Hoellen voted against the motion.

The motion passed with four votes in favor and one against.

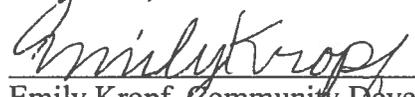
ADJOURNMENT

The meeting was adjourned at 7:55 p.m.

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Suzy Love, Chair



Emily Kropf, Community Development Clerk