

Minutes of the Board of Adjustment and Appeals of the City of Cherry Hills Village held on  
Thursday, December 4, 2014 at 6:30 p.m.

At the Village Center

### **CALL TO ORDER**

Chair Sullivan called the meeting to order at 6:31 p.m.

### **ROLL CALL**

Present at the meeting were the following members of the Board of Adjustment and Appeals: Chair Kerry Sullivan, Councilor Mark Griffin, Board Member Earl Hoellen, Board Member Jennifer Allen and Board Member Bill Rapson.

Present at the meeting were the following staff members: Robert Zuccaro, Community Development Director, Deputy City Attorney Kathie Gukenberger and Cesarina Dancy, Community Development Clerk.

### **APPROVAL OF MINUTES**

Chair Sullivan made a motion, which was seconded by Board Member Rapson, to accept the September 4, 2014 minutes as written.

The motion passed unanimously.

### **AGENDA ITEMS**

- a. *A request by Nancy and Gordon Rockafellow of 4200 East Quincy Avenue for Variances from Municipal Code Sections 16-5-30 (c) and (e) to Allow an Addition and Remodel that Encroaches Approximately 21 Feet into 50-Foot North Side-Yard Setback, 3 Feet into the 50-Foot East Rear-yard Setback and Encroaches into the Bulk Plane for the R-1 Zone District.*

Mr. Zuccaro stated that Staff is presenting a request for approval of variances from Municipal Code Sections 16-5-30 (c) and (e) in order to rebuild and expand an existing two- car garage with living space above. He stated that the proposed addition encroaches approximately 21 feet into the 50-foot minimum side-yard setback on north side of the lot, 3-feet into the 50-foot minimum rear-yard setback on the east side of the lot and encroaches into the bulk plane on these sides. He stated that the second story is proposed to include a one-bedroom guesthouse connected to the existing main residence. He stated that the height of the addition is approximately 23 feet and 8 inches above the finished floor elevation.

Mr. Zuccaro stated that the applicant has designed the remodel so that it does not encroach any further into the setbacks than the existing garage.

Mr. Zuccaro stated that the applicant came before the BOAA in June of 2104 and their request was denied. He continued to say that this is a new application.

Mr. Zuccaro displayed a vicinity map of the property, indicating the location of the private road the property is located on as well as proximity to the Highline Canal. He stated that all adjacent

properties are zoned R-1, 2 ½ acre, and have 75-foot front yard setbacks and 50-foot side and rear setbacks.

Mr. Zuccaro stated that the applicant owns the portion of the Highline Canal which is on their property. He indicated that this is an unusual situation as the rest of the Canal within the City is owned by Denver Water.

Mr. Zuccaro displayed a graphic showing the current conditions on the property. He indicated that the red line showed the minimum setbacks.

Mr. Zuccaro explained how the bulk plane is measured, and indicated how the grading on the applicant's property makes the bulk plane even more restrictive.

Mr. Zuccaro stated that the applicants currently have an undersized two car garage and they are looking to build a two car garage and renovate the upstairs living space. He continued to say that the June application was for a three car garage.

Chair Sullivan asked what the dotted blue line on the graphic indicated.

Mr. Zuccaro replied that it showed the location of the current breezeway between the house and existing garage.

Mr. Zuccaro displayed an elevation of the proposed garage, indicating where the bulk plane would normally begin and where it begins on the applicant's property. He stated that the applicant was meeting the intent of the bulk plane with their proposal.

Mr. Zuccaro stated that the findings of Staff are located in Table 1 of the Staff memo. He continued to say that Staff was recommending approval of the variance request.

Mr. Zuccaro stated that there were revisions to the motions listed in the Staff memo. He stated that the revisions were [provided for the Board Members.

Board Member Hoellen asked if the proposed structure encroached more into the setbacks than the existing structure.

Mr. Zuccaro replied no.

Board Member Hoellen asked if the proposed structure encroached more into the bulk plane than the existing structure.

Mr. Zuccaro replied yes.

Board Member Hoellen asked if the living space above the garage was eliminated would the amount of encroachment into the bulk plane be reduced.

Mr. Zuccaro replied yes, and he indicated the part of the proposed structure which would encroach into both the setbacks and bulk plane on the graphic.

Board Member Hoellen stated that he was not sure this was the minimum amount of variance that was necessary.

Mr. Zuccaro replied that when all variance criteria were viewed together, Staff recommended approval. He continued to say that a similar property could easily build a second story addition.

He stated that because the applicants' bulk plane measurement starts at approximately 10 feet below grade, they have an unusual hardship.

Chair Sullivan asked the age of the existing garage.

Mr. Zuccaro stated the applicant could respond to that.

Board Member Allen asked if the difference of bulk plane encroachment percentage wise had been calculated for the existing second story versus the proposed second story.

Mr. Zuccaro stated that it had not been calculated, but possibly the architect for the applicant could answer.

Chair Sullivan asked if the structure was on a more typical position on the lot would a variance be needed.

Mr. Zuccaro replied no, that a variance would not be required as all zoning criteria would be met.

Councilor Griffin stated that the garage was built in 1916 and the home had an addition in 1985.

Gordon Rockafellow, of 4200 E. Quincy Avenue, stated that the main house was built in 1916, and he suspected the garage was constructed in the 1940s. He continued to say that they have reduced the original plan from a three car garage to a two car garage.

Mr. Rockafellow displayed a photo of the current garage. He indicated that it was a 1 ¾ size garage as opposed to a functional 2 car garage. He stated that the new proposal meets setbacks as some space was taken between the garage and the house as opposed to the original plan which encroached into the setbacks.

Mr. Rockafellow displayed a photo of the proposed garage and the Anderson garage. He indicated the distance between the two is 116 feet.

Mr. Rockafellow displayed the second floor living area floor plan. He stated that the new design has minimal living space for one person, as to not encroach into the bulk plane.

Mr. Rockafellow displayed a series of photos taken from the Highline Canal of his property.

Mr. Rockafellow stated that Denver Water has reviewed the plans and had no objections as long as the existing retaining walls were used.

Riddick Semple, architect for the applicant, stated that there was an increase of approximately 14 square feet in the new structure. He continued to say that when you counted the gables and dormers, it was an increase of approximately 20 square feet.

Board Member Allen made a motion, which was seconded by Board Member Hoellen, to approve the request by Nancy and Gordon Rockafellow for variances to Municipal Code Sections 16-5-30 (c) and (e) to allow an addition and remodel to the residence located at 4200 East Quincy Avenue as set forth in the application dated October 2014 and attached as Exhibit B to the December 4, 2014 staff memorandum. She stated that the Board finds that the application meets all of the approval criteria outlined in Municipal Code Section 16-3-50 (b) and that the Board hereby adopts the findings in table 1 of the December 4, 2014 staff memorandum.

The motion passed unanimously.

- b. Request by Jeff and Tina Schmitt of 4401 South Downing Street for Variances from Municipal Code Sections 16-5-30(C) and (E) to Allow Construction of a New Home on a Parcel with Nonconforming Lot Area that Encroaches Approximately 25 Feet into the 75-Foot East Front-Yard Setback, 25 Feet into the 50-Foot North Side-Yard Setback and 11 feet into the 50-Foot West Rear-Yard Setback and Encroaches into the Bulk Plane for the R-1 Zone District

Mr. Zuccaro stated that staff is presenting a request by Jeff and Tina Schmitt of 4401 South Downing Street for variances from Municipal Code Sections 16-5-30(C) and (E) to allow construction of a new home on a parcel with nonconforming lot area that encroaches approximately 25 feet into the 75-foot east front-yard setback, 25 feet into the 50-foot north side-yard setback and 11 feet into the 50-foot west rear-yard setback and encroaches into the bulk plane for the R-1 Zone District.

Mr. Zuccaro stated that this is a scrape of an existing house and a rebuild of a new home. He displayed a vicinity map showing the property and surrounding properties.

Mr. Zuccaro displayed a graphic which indicated what the lot would look like with the R-1 zoning setbacks applied. He indicated this would leave a very restrictive building envelope with only room for a home 33 feet in depth and 152 feet wide. He indicated this lot is the size of a lot typically found in the R-3 zone district. He continued to say that similar lots in the R-3 zone district are approximately 50-80 feet deep and 100-160 feet wide.

Mr. Zuccaro stated that if the zoning guidelines for the R-3 zone district were mimicked, the proposed construction would be within the setbacks.

Board Member Hoellen asked if there would be an encroachment if the R-3 zoning guidelines were applied.

Mr. Zuccaro replied no.

Mr. Zuccaro displayed elevations of the proposed structure, with the R-1 setbacks and bulk plane highlighted. He indicated that there was no encroachment in the south property boundary.

Mr. Zuccaro stated that the proposed structure was designed to meet the intent of both the setbacks and bulk plane criteria.

Board Member Rapson stated that there are many small lots in that area. He asked why City Council couldn't administratively approve application of R-3 zoning criteria to all of these lots.

Mr. Zuccaro replied similar lots could apply for a variance as well. He stated that the City Code previously had non-conforming provisions and in 2011 with the adoption of the bulk plane and floor area ratio guidelines, these were eliminated. He continued to say that spot zoning of properties throughout the City was not recommended.

Board Member Rapson asked what made a lot legal nonconforming.

Mr. Zuccaro replied that if a structure or property has been in existence since 1987, it is considered legally non-conforming.

Board Member Rapson asked if the property was nonconforming because of the footprint of the existing structure.

Mr. Zuccaro replied that it is the size of the lot which makes it nonconforming. He continued to say that having a lot size below 2.5 acres in the 2.5 acre zone district created the hardship which is a criterion that needs to be met in order to approve a variance.

Board Member Hoellen asked if all properties that were zoned R-1 but met the criteria of R-3 could they be zoned R-3 going forward.

Mr. Zuccaro replied that new zoning of properties is not recommended. He continued to say that each variance case is site specific.

Deputy City Attorney Gukenberger stated that a variance is being requested not a rezoning.

Board Member Rapson stated that City Council could apply the rule across the board to rezone nonconforming properties.

Mr. Zuccaro replied that a change in zoning is legislative. He continued to say that since there are so few nonconforming lots in the City, the City Council wants these situations to come to the Board for variances. He continued to say there are approximately 24 nonconforming lots out of the 2400 in the City.

Mr. Zuccaro states that a comment letter from the neighbor is on the dais for the Board Members.

Mr. Zuccaro stated that the staff analysis located in Table 1 of the staff memorandum outlines the analysis of the criteria. He continued to say that staff is recommending approval.

Board Member Allen asked for clarification of criteria 2 regarding FAR.

Mr. Zuccaro stated that the FAR in R-1 is .23 and in R-3 it is .25. He stated the applicant's calculations were an FAR of .114, but his calculations were .19. He continues to say that this FAR is still well below the maximum for either zone district.

Ed Venerable, contractor for the applicant, stated that when designing the house, he approached it based on a 1 acre site. He continued to say that all setbacks, bulk plane and FAR were met when using the 1 acre criteria.

Chair Sullivan asked how long the homeowners have lived in the property.

Mr. Venerable replied that they acquired the property in July 2014. He continued to say that they were not aware of the nonconforming status when they purchased the property.

Board Member Allen asked when the homeowner received the letter from the neighbor.

Mr. Venerable replied at 11:00 this morning.

Board Member Allen asked what the homeowner's reaction to the letter was.

Mr. Venerable replied that the property in question is currently a horse property and the future intent of the neighbor is unknown. He continued to say that the request of moving the house is not possible to still meet the setbacks. He stated that the homeowner would be open to reducing the front setback if requested. He stated that the request to provide more finishes on the rear of

the house is acceptable. He stated that the third request to provide additional screening would be met where reasonable but not to restrict the second story views of the homeowners.

Board Member Allen asked if the current home was in the setbacks.

Mr. Venerable replied that the current home is in violation of the setbacks on the east, west, and north sides.

Chair Sullivan asked Mr. Venerable to indicate on the vicinity map the property boundaries.

Board Member Sullivan asked if the fence on the adjacent property was the property boundary.

Mr. Zuccaro replied no.

Chair Sullivan asked why the neighbor waited until this week to review the plans.

Mr. Venerable replied that the letters were sent to all homeowners on November 19.

Chair Sullivan asked why the neighbor did not attend the meeting.

Mr. Zuccaro replied that he did not want to attend and that he only wanted to send a letter.

Judy McQuaid, of 4460 S. Downing Street, stated that she was in favor of the property being updated. She stated that she was not in favor of zoning rules changing. She stated that she would like any zoning changes to be minimal.

Board Member Hoellen stated that he was surprised that homeowners purchased property without knowing all the rules and standards associated with the property. He asked what City Council thinks about these issues.

Councilor Griffin stated that City Council feels that it is the responsibility of the buyer to do their due diligence. He continued to say that the burden was on the homeowner not City Council or BOAA.

Mr. Zuccaro stated that City Council has recommended that the nonconforming provisions are in existence. He stated that City Council wanted to make sure that residents would have the opportunity to come before the BOAA to get rulings on variances.

Board Member Rapson stated that applying R-3 zoning to an R-1 lot is a legislative issue.

Mr. Zuccaro stated that using R-3 criteria is only an example to illustrate what is possible on the lot, and was used as a starting point to assist the applicant in the process. He continued to say that the BOAA could determine the appropriate setbacks for the lot.

Board Member Rapson stated that there was not a hardship that it is simply a case of buyer beware.

Board Member Allen stated that the home would continue to deteriorate if no one was going to be allowed to improve it.

Councilor Griffin stated that the letter from the neighbor was a list of items to consider but that no demands were listed.

Mr. Zuccaro stated that the Board could approve the variance with conditions if they so choose.

Board Member Sullivan stated that he would like to discuss the concerns listed in the neighbor's letter. He stated that the first request asked for the applicant to shift the house 6 feet.

Mr. Zuccaro stated that the existing home is 25 ft. from the setback and the proposed home is 39 ft. 6 inches.

Board Member Allen stated that this is not a reasonable request.

Councilor Griffin stated that this would not be fair to the neighbor to the west.

Board Member Sullivan stated that the second request to add more detail to the garage was already agreed upon by the homeowners.

Board Member Hoellen stated that he did not understand the third request.

Mr. Zuccaro stated that the neighbor was thinking ahead to what his view would be if he ever developed a home in that location. He continued to say that the neighbor was concerned about a 50 ft. difference between front setbacks of the two properties.

Chair Sullivan asked the homeowner if they had had any conversations with the neighbor.

Tina Schmitt, of 4401 S. Downing St., stated that the neighbor lives 3 acres away and they have not had any discussions. She continued to say that they were open to making the neighbors happy. She stated they were not aware the lot was nonconforming, as it was incorrectly listed when they purchased it. She stated that the lot is completely screened by pine trees currently.

Board Member Rapson stated that the BOAA could postpone so that Mr. Zuccaro should further research the concerns of the neighbors, and could find out if City Council would change the zoning from R-1 to R-3.

Mr. Zuccaro replied that City Council has chosen to not have spot zoning. He also stated that variances are not precedent setting, each case is taken on an individual basis.

Board Member Hoellen stated that he was unsure if the amount of variance requested was the smallest amount needed.

Mr. Zuccaro stated that the BOAA could determine the both the setbacks and the width of the proposed structure. He continued to say that the BOAA could consider all the comments and information and use their judgment to make a decision. He continued to say that the BOAA could be very specific with staff as far as type of planting, number of trees, etc.

Board Member Rapson stated that the homeowners should have a legal agreement between themselves so the BOAA would not be responsible.

Mr. Venerable stated that the homeowner agrees to screen 75 feet from Radcliff, as well as to add more architectural detail to the garage.

Deputy City Attorney Gukenberger stated that staff is authorized to impose the conditions set forth by the BOAA.

Board Member Hoellen stated that a 4 car garage is not necessarily the minimum variance required. He continued to say that it is not in the R-3 zone district.

Board Member Rapson stated that it is not a hardship to have a 3 car garage.

Mr. Venerable stated that staff provided guidance as to how to proceed with designing the home. He continued to say that the proposed home is more restrictive than the current home and that it is even more restrictive than R-3 zoning. He stated that they used a rational starting point. He stated that a 4 car garage is larger than a 3 car garage but the overall impact was arbitrary.

Mr. Zuccaro stated that the criteria of having a reasonable use of land and structures have been applied to similar situations in the past. He continued to say that the applicants would need to have some sort of starting point from the BOAA in order to move forward.

Board Member Rapson made a motion, which was seconded by Chair Sullivan, to approve the requests by Jeff and Tina Schmitt of 4401 South Downing Street for approval of the requested variances from Municipal Code Sections 16-5-30(C) and (E) to allow construction of a new home on a parcel with nonconforming lot as set forth in the application dated November 10, 2014 and attached as exhibit B to the December 4, 2014 staff memorandum. He stated that the Board finds that the application meets all approval criteria outlined in Municipal Code Section 16-3-50(b) and hereby adopts the findings in the Table 1 of the December 4, 2014 staff memorandum.

The motion passed unanimously.

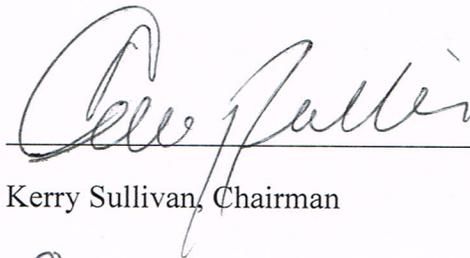
Chair Sullivan made a motion, which was seconded by Board Member Hoellen, to amend the prior motion to include a requirement of landscaping/trees be placed in the northwest corner of the property to screen the front 75 feet of the property.

The motion passed unanimously.

Councilor Griffin suggested that the homeowner touch base with their neighbor to let them know of their intent to comply.

### ADJOURNMENT

The meeting was adjourned at 8:39 p.m.



Kerry Sullivan, Chairman



Cesarina Dancy, Community Development Clerk