

SUMMARY MINUTES OF BOARD OF ADJUSTMENT ACTION HELD June 11, 2019

CALL TO ORDER – 6:15 P.M.

ROLL CALL OF MEMBERS – Those Present: Kathy Drulard Vice-Chariman, Russ Rizzo Secretary, Barbara Coffman, Alan Albrandt,, Richard Derryberry.

It was moved by Mr. Albrandt to excuse Ms. Kapushion and Mr. Aljinovich from the meeting.

The following votes were cast on the motion:

Those voting Yes: Albrandt, Drulard, Rizzo, Coffman, Derryberry

Those absent: Tom Aljinovich and Meredith Kapushion

The motion carried.

ALSO PRESENT: Emily Grogg, Ass't. City Attorney; Linda Hoover, Sr. Planner; Jonathan Moore, Planner I; Jean Petramala, Recording Secretary.

APPROVAL OF MINUTES FOR May 28, 2019 – The minutes for May 28, 2019 stand approved as printed.

EXPLANATION OF PROCEDURES OF THE BOARD - CHAIRPERSON

PUBLIC HEARINGS –

VAR2019-0006 Eugene Elliott II, 8705 W. 51st Avenue

The public hearing was opened.

The affidavit of mailing and posting log were made a part of the permanent record. The fees were paid

Mr. Elliott stated he intends to build an accessory dwelling unit in the form of a tiny house without wheels on a concrete pad. He said that it will reside to the rear of the property and will have a large deck surrounding the property along with a shed. He explained that his property is only 80 feet wide and with a 30 foot setback requirement that comes with an A-1 zoning. He is asking for a setback of 10 feet that is compliant with an R-I zoning.

Ms. Drulard asked if there was anyone wishing to speak for or against the case.

Mr. Moore said that there is a lot of history tied to this property and that staff is prepared to answer questions in depth pertaining to the staff report. He also stated that due to the continuance of this case from the last meeting there were some minor changes to the original staff report.

Ms. Drulard closed the public input portion of the hearing and welcomed questions from the Board to Staff.

Ms. Petramala asked that the email sent from Tracy Kohm, 8725 W. 51st Ave., speaking in favor of the project be made part of the record.

BOARD OF ADJUSTMENT

June 11, 2019

Mr. Albrandt asked if four structures on a lot are allowed in other zoning districts.

Mr. Moore replied that the LDC generally allows one primary structure and three accessory structures with the only exceptions generally located in industrial or heavy commercial properties. He said that in all residential zones maximum is three accessory structures.

Mr. Albrandt asked staff if with what Mr. Elliott is proposing would he still be in compliance with lot coverage.

Mr. Moore replied yes.

Mr. Albrandt asked the applicant why he could not build long rather than wide as suggested in the staff report.

Mr. Elliott said building that way would basically dissect the property and there is a large mature tree that is preventing the suggested placement.

Mr. Albrandt suggested tearing down both sheds rather than just the one shed and this would be in compliance with the rest of the City's restrictions. Mr. Albrandt said that he was having an issue with allowing more accessory structures when no one else in the City is allowed to do so.

Mr. Elliott said that he was unaware that there was a limit on the number of allowed structures and due to the tiny home he is asking for additional units for storage purposes. The design of the structure was drafted prior to being informed of the limit of accessory structures and he is willing to compromise on that aspect.

Mr. Albrandt said he did not want to start precedence or allowance of four structures.

Mr. Derryberry asked the applicant to indicate from the figure shown what structures are staying and which will be removed.

Mr. Elliott stated all sheds were there prior to purchasing the property. He believes the number of sheds is due to the lack of closets inside the property. He explained to the Board which ones would stay and which would be removed. Mr. Elliott said he is willing to compromise on the number of structures.

Ms. Drulard asked Mr. Elliott if there was a basement in the primary structure.

Mr. Elliott said there was not.

Ms. Coffman asked staff if in the A-1 zoning are the allowances different if it residential or commercial.

Mr. Moore said yes. The A-1 allows a handful of uses primarily as an agricultural uses such as farms, nurseries, greenhouses, etc. and there are also residential uses. He said that how the property is treated is based on the use and there are different setbacks for each. The common factor is the minimum requirement of five acres is required otherwise it does vary.

Mr. Rizzo asked if the applicant has viewed the staff report.

BOARD OF ADJUSTMENT

June 11, 2019

Mr. Elliott said no.

Mr. Rizzo asked if the applicant was aware that there are going to be changes to LDC as indicated in the staff report.

Mr. Elliott said yes, he had spoken with Staff when trying to get permitted for this project about the changes to Land Development Code.

Mr. asked Mr. Elliott what his reaction to what the changes were.

Mr. Elliott replied that if that is the direction that the City would be going, in a year, when the changes were to be adopted can he build now and then be compliant with the Code. Mr. Elliott thought that this was a quicker and cheaper alternative than having to wait for the new code to take effect.

Mr. Rizzo asked Mr. Elliott why he could not build as staff had recommended. He asked Mr. Elliott where the mature tree was located on the image displayed and if the tree was located dead center of the property. He asked Mr. Moore to clarify.

Mr. Moore indicated where the tree was located.

Mr. Rizzo asked Mr. Moore if a mature tree would be considered a special circumstance.

Mr. Moore said he could not make that judgment and that the Board has had other cases where they considered the presence of mature trees. He further explained that with new developments there are requirements to replace existing trees if they are removed but with existing developments there are no requirements.

Mr. Rizzo asked if the applicant had planted the tree.

Mr. Elliott said that it was existing when he purchased the property.

Mr. Rizzo said that Mr. Elliot had mentioned proposing something that would comply with the new Land Development Code and if staff could speak to that.

Mr. Moore said as part of the staff report that if approved by the Board that there be a condition that if the new LDC allows the setbacks at the requested distance the variance would no longer be necessary. He explained that the rational for that is all updates are currently in draft form so staff cannot speak to what the new regulations would be at this time but it seems to be going in the direction of what is proposed.

Mr. Derryberry asked the applicant what is the living space of the new dwelling.

Mr. Elliott said it will be 400 square feet, 10 by 40.

Mr. Derryberry said that he was sympathetic to the applicants desire to not dissect the property. He asked the applicant to explain why he cannot place the new dwelling as recommended by the staff report.

BOARD OF ADJUSTMENT

June 11, 2019

Mr. Elliott said that he would have to do some measuring to ensure that it was possible. He believes that the proposal from staff would create an awkward orientation of the front door. He was trying to build the dwelling in what would be the most natural layout. Mr. Elliott said that the neighboring property does have a large garage not shown in the picture that sits about ten feet from the property line and there is a creek between that. He is willing to do some measurements and see if he can comply with that.

Mr. Derryberry explained to Mr. Elliott that the Board's job is to approve the least variation from the LDC and that is the reasoning behind all of their questions.

Mr. Elliott said that he appreciated that.

Mr. Albrandt asked what prevents the placement of the building from west to south. He wanted to place the dwelling farthest away from his neighbors' properties. He believes moving it the south would diminish the usefulness and practicality of the unit.

Mr. Albrandt said that there is a shed placed very close to the property line. He stated that he could remove that shed and split the difference to fifteen feet. He further stated that the purpose of setbacks is not crowd the property line. It is understood that the applicant has a narrow lot that is not square and it does present some issues however five feet is not much of a difference.

Mr. Elliott replied another contributing factor would be that it would intrude on the existing fence and he would have to walk around to access that dwelling.

Mr. Albrandt said that you could tear that out; with any remodel there is some demolition and rearranging to accommodate the changes.

Mr. Elliott replied he was willing to do that.

The public hearing was closed.

Mr. Derryberry said of the two variances he did not hear of hardship that would allow an increase in the number of accessory statements. He also said that he can understand the difficulty to meet setbacks given how narrow his lot is and only have 20 feet of buildable space. He would like to hear from the rest of the Board. Mr. Derryberry also understands that the applicant is willing to compromise.

Mr. Albrandt agreed with Mr. Derryberry. He will be denying the additional accessory structures. Mr. Albrandt said that for the setbacks he can agree to a compromise of 15 feet rather than 10 feet due to the narrow lot and it does create some practical difficulty.

Mr. Elliott asked if he meant from 15 feet from each property line.

Mr. Albrandt said yes.

Ms. Coffman said that there would need to be some negotiation from the requested 10 feet to 15 feet.

Ms. Drulard reopened the public hearing.

BOARD OF ADJUSTMENT

June 11, 2019

Ms. Coffman said that this was plausible if there was some rearranging.

Mr. Elliott said that he could accommodate that and he is willing to remove the second request.

Mr. Rizzo said he believes there are special circumstances due to how narrow the lot is and that there is some practical difficulty due to that. He also said the applicant has been reasonable about the number of accessory structures.

There being no one else wishing to speak, the public input portion of the hearing was closed.

MOTION:

It was moved by Mr. Albrandt that VAR2019-0005, Eugene Elliott, 8705 W. 51st Avenue, to reduce the minimum and rear setbacks to 15 feet for an accessory structure to a single-family dwelling use in the A-1 zone district, when Section 6.2.1 of the LDC requires a minimum side and rear setbacks of 30 feet, be approved.

This motion is based on Findings No. 1 through 8 on Page 12 of the staff report.

As to Finding No. 1, the special circumstance is allowing the setback to be changed due to it being a narrow lot and would create difficulty to build on.

The following votes were cast on the motion:

Those voting Yes: Coffman, Rizzo, Albrandt, Drulard, Derryberry

Those absent: Aljinovich and Kapushion

The motion carried.

MOTION:

It was moved by Mr. Albrandt that VAR2019-0005, Eugene Elliott, 8705 W. 51st Avenue, to increase the number of accessory structures to four, when Section 5.3.2(D)(1) of the LDC limits the number of accessory structures to three be denied.

This motion is based on Findings No. 1 through 8 on Page 12 of the staff report.

As to Finding No. 1, the special circumstance is there is no special circumstance when everyone else in the City is limited to three.

The following votes were cast on the motion:

Those voting Yes: Coffman, Rizzo, Albrandt, Drulard, Derryberry

Those absent: Aljinovich and Kapushion

The motion carried.

VAR2019-0006 David Echter, 8945 W. 52nd Avenue

Mr. Derryberry wanted to add to the record that he does work with applicant's brother and that this would not affect his ability to remain impartial.

Mr. Rizzo said that he appreciates all that small business do for the City of Arvada and that he equally remain impartial with the case to be heard.

BOARD OF ADJUSTMENT

June 11, 2019

The public hearing was opened.

The affidavit of mailing and posting log were made a permanent part of the record. The fees were paid.

Mr. Echter said he is requesting additional greenhouses to be allowed on his property. He explained the necessity of this do to his expanding business and overcrowding of current space. He said that closure of other businesses has created more demand for his products and necessitates a demand to increase production. He explained that the entire grow operation is done on site and they have had to move parts of the operation to outdoors and weather has been an issue. He said that additional structures would allow an increase in production. He also said that once they are ready to transplant they take plants across the street and once transplanted they are taken pack to their original location. He said that crossing the street has also created difficulty. His plan is to keep everything in one location to eliminate time lost on account of transportation. He wants to move the operation indoors rather than storing outdoors to avoid loss of product that can be a factor as a consequence of theft and weather that can cause damage.

Mr. Moore wanted to point out that in the staff report there are dual numbers because the number at the time when the BOA case was held was 1996-A-8 however when the City adopted online record accounting the case number is 1996-BOA-008.

Mr. Derryberry asked that the applicant to describe his land structure and the difficulty of the sloping property.

Mr. Echter replied that to the north side of the property there are two irrigation ditches that cause the slope. Mr. Etcher said they cannot build over the irrigation ditches and the fire marshall has limits on the size that does require a sprinkler system. He said that it was not cost efficient to combine all twelve greenhouses to one and the existing green houses were inexpensive to construct. He also said that they require different temperatures required at each stage of the growing process.

Mr. Derryberry said that he was going to ask why there are twelve structures rather than the one. He then asked if there are any other reasons why one structure would not be more practical.

Mr. Echter replied that in addition to those reasons there are snow loads that create an issue. With the current design the snow just falls right off. He said if they were to use one structure it only goes to the one gutter it will need to support a much higher snow load.

Mr. Derryberry asked if during the nursery growing process plants have to be separated into different structures.

Mr. Echter said yes it helps to separate them rather than isolate them to one house. He went on to say that there spray regulations that are difficult to work around and have reentry period of 12 to 24 hours. He said it does not make sense to close off an entire building that no one can access during that period.

BOARD OF ADJUSTMENT

June 11, 2019

Mr. Derryberry said the reason behind his questions is that when looking at the Land Code would assume you only have once accessory structure. He said that he understands the impracticality of only having the one in the nursery business due to fire laws, snow loads, cost factors and pesticide control.

Mr. Echter added that another factor would be temperature regimes because the assortment of plants and flowers that are grown and require different temperatures.

Mr. Moore wanted to clarify that the lot is unique in that it is a greenhouse operation with an existing residence granted by a previous Board of Adjustment case and that all structures on the lot are considered primary structures which is how the variance is written.

Mr. Albrandt asked if granted would the new structures meet setback and lot coverage requirements.

Mr. Moore said it would and the only modification would be an increase in the number.

Mr. Albrandt asked if all structures were on the same level.

Mr. Echter said they were.

Mr. Albrandt said the reasoning behind his question is he wanted to know if due to the grading they would not be able to construct one building.

There being no one else wishing to speak, the public input portion of the hearing was closed.

DISCUSSION OF MOTION:

Mr. Albrandt said he would be supporting this because the intent was met.

Mr. Rizzo said this has already been discussed by previous boards and the only change is the number of structures increasing from 13 to 15.

Ms. Coffman said that she wanted to reiterate that there is no request for setbacks and cannot find a reason to not to support this.

Mr. Derryberry agreed to that. He said that there is a special condition on the lot due to the primary residence being 25 feet higher and the two ditches.

Ms. Drulard added she does see the need for additional structures and perhaps more parking.

MOTION:

It was moved by Mr. Rizzo that VAR2019-0006, David Echter, 8945 W. 52nd Avenue, a variance to permit 15 greenhouse house structures on the lot when variance 1996-A-8 permits 12 greenhouse structures on the lot in addition to the existing single-family house and the associated accessory structure, be approved.

This motion is based on Findings No. 1 through 8 on Page 12 of the staff report.

BOARD OF ADJUSTMENT

June 11, 2019

As to Finding No. 1, the special circumstance includes the lot is sloped and the drainage that runs through it. The practical difficulty being he is trying to expand his business while conforming to other requirements of the lot.

The following votes were cast on the motion:

Those voting Yes: Albrandt, Rizzo, Coffman, Drulard, Derryberry

Those absent: Tom Aljinovich and Meredith Kapushion

The motion carried.

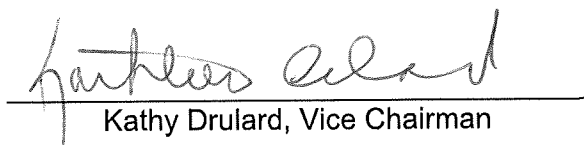
OTHER ITEMS –

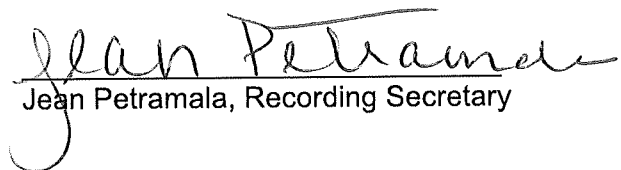
NEXT MEETINGS - June 25, 2019

ADJOURNED – 7:25 pm



Russ Rizzo, Secretary



Kathy Drulard, Vice Chairman

Jean Petramala, Recording Secretary