



**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
Tuesday, March 26, 2019 8:00 AM
following the Planning Commission**

A G E N D A

- I. Meeting Call to Order
- II. Roll Call of BOA Members
- III. Approval of Minutes from January 22, 2019
- IV. Conflicts of Interest
- V. NEW BUSINESS:
 - A. Variance Request – 76 Idlewild Lane



**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
Tuesday, January 22, 2019 8:00 AM
following the Planning Commission**

Minutes

- I. The meeting was called to order at 10:11am.
- II. Roll Call indicated present: Brad Holzwarth, Doug Robbins, Mike Davlin, Roger Kish, and Dave Barker.
- III. No minutes available for review.
- IV. Conflicts of Interest -No comments received.
- V. NEW BUSINESS:

A. Election of Chairman and Vice Chairman (yearly)

Commissioner Davlin moved to nominate Brad Holzwarth as Chairman and Commissioner Robbins seconded.

Commissioner Robbins moved to nominate Mike Davlin as Vice-Chairman and Commissioner Barker seconded.

Both motions carried 5-0.

B. Variance Request – 309 Vasquez Road

Planner Owen presented the Staff Report as follows:

The Applicant for this application is Paul F Dalton, P.E., President – Paramount Engineering, Inc. and he is requesting to change the setback minimum requirements for the rear minimum setback, adjoining the existing Union Pacific Railroad from the minimum 20' setback as shown on his attached proposed variance site plan.

The applicant has stated that the reasoning for this variance is due to the irregular size of the property, the proximity to the Railroad, and an existing drainage easement located along Vasquez Road, restricting the building envelopes to adequately place the proposed two duplexes.

Applicable Town Code:

7-5A-3: LOT AREA REQUIREMENTS:

D. Minimum Yard Requirements: Except as provided for in section 7-3-7 of this title, minimum yard requirements in an R-C zone shall be:

The minimum yard requirements for residential uses shall be:

1. There shall be a front yard setback of at least twenty five feet (25') from any street right of way for both principal and accessory structures.
2. There shall be a rear yard setback of at least twenty feet (20') for principal structures and of at least ten feet (10') for accessory structures.
3. There shall be a side yard setback of at least five feet (5') and three feet (3') shall be added to each required side yard for each story above the first story of any building. The side yard on the street side of each corner lot shall not be less than fifteen feet (15'). (Ord. 317, Series of 2002)

Criteria to Grant Variance (Town Code § 7-8):

7-8-1B: No variance shall be granted unless the board of adjustment finds, based on evidence, that:

1. The property in question cannot yield a reasonable return in use or service if permitted to be used only under the conditions allowed by the regulations for the municipality.
2. The plight of the owner is due to unusual circumstances.
3. The variation, if granted, will not alter the essential character of the locality.

7-8-1C: For the purpose of implementing the above rules, the Board shall also, in making its determination whether there are practical difficulties or particular hardships, take into consideration the extent to which the following facts favorable to the applicant have been established by the evidence:

1. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to the other property within the same zoning classification.
3. The purpose of the variation is not based primarily upon a desire to make more money out of the property.
4. The alleged difficulty or hardship has not been created by any person presently having an interest in the property.
5. The granting of the variation would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
6. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood.

This variance request has had proper public notification pursuant to Section 7-8-3 of the Town Code. A Public Notice was published in the Sky-Hi Daily News on December 20, 2018 and again on January 3, 2019 (due to a change in site plan requiring re-notice) providing notification of the meeting and requesting comments. Mailings were sent to property owners within 300 feet of the property and the property posted on December 14, and on December 31, 2018 due to the re-notice.

Two letters of comment were received after the packet was sent to the Board. These letters are presented as a table setting to each Board Member. One letter is from Randolph S. Atwater which is in favor of the variance and one is from Linda Behlen which is against the variance.

Staff Comments:

The applicant is proposing to reduce the rear setback of 20' to 7.94' at the smallest point, and 17.25 at the

largest as seen in the proposed site plan attached to this staff report. The applicant is intending to move the building envelope closer (but still on their property) to the Union Pacific Railroad than code allows rather than reduce setbacks adjacent to either the road or their northern neighbor.

This parcel is not being proposed for subdivision at any time in the foreseeable future. The applicant intends to own all four dwelling units (two duplexes) on the property and not sell them individually.

Staff Recommendation:

Staff does not provide a recommendation for variance requests. The Board of Adjustment must prove that a hardship is applicable and must establish findings of fact as related to the particular difficulties of the site.

The applicant, Paul Dalton presented a brief explanation of how the site was planned and why it needed the variance in order to not move the drainage.

Discussion was held:

- Setbacks are put in place for a reason and the railroad is just as much of a land owner as any individual person. Don't want to set a precedence.
- This is a unique property with a unique plat.
- Originally the road was a driveway under the original plat. The road designation will need to be investigated to be sure it is considered a true road.
- The code indicates that zoning does not entitle any property to its max density allowed. It is simply the limit of density, not a promise to reach that limit.
- The lot could only be divided into two duplexes, no smaller due to the minimum 50' lot size.
- The Board felt that they could not find a reason that this request met the first requirement that: "The property in question cannot yield a reasonable return in use or service if permitted to be used only under the conditions allowed by the regulations for the municipality."
- Staff indicated that the plat allowed for movement of the drainage with Town approval and encouraged the applicant to look at the plat for this option.

Board member Davlin and Board member Robbins moved to deny the variance request.

The variance was denied because the applicant could not show that it met the first code requirement for granting a variance:

- The property in question cannot yield a reasonable return in use or service if permitted to be used only under the conditions allowed by the regulations for the municipality.

Motion Carried: 5-0.

There being no further business, upon a previously adopted motion, the meeting was adjourned at 10:46 am.



MEMO

TO Board of Adjustment
FROM Mara Owen, Planner
THRU James Shockey, Community Development Director
DATE March 26, 2019
RE Setback Variance Request – 76 Idlewild Lane

Applicant: Kelly Haverhals and Shanna Lalley

Description of Variance Request:

“We are applying for a variance so we can build a one-car garage. We currently do not have a garage. In order to get a garage on our lot we need to go into the side and rear setback of the property. The adjoining neighbor has a sauna, hot tub, and shed that sit within their setbacks (and along our property line). Our garage would mimic the current configuration and would give us and them some privacy.”

Applicable Town Code:

7-4A-3: LOT AREA REQUIREMENTS:

D. Minimum Yard Requirements: Except as provided for in section 7-3-7 of this title, minimum yard requirements in an R-1 zone shall be:

1. There shall be a front yard setback of at least twenty five feet (25') for any principal use and accessory structure.
2. **There shall be a rear yard setback of at least twenty feet (20') for any principal use and accessory structure.**
3. **There shall be a side yard setback of at least ten feet (10') for any principal use and accessory structure.**
4. The side yard on the street side of each corner lot shall not be less than fifteen feet (15'). (Ord. 317, Series of 2002)

Criteria to Grant Variance (Town Code § 7-8):

7-8-1B: No variance shall be granted unless the board of adjustment finds, based on evidence, that:

1. The property in question cannot yield a reasonable return in use or service if permitted to be used only under the conditions allowed by the regulations for the municipality.
2. The plight of the owner is due to unusual circumstances.
3. The variation, if granted, will not alter the essential character of the locality.

7-8-1C: For the purpose of implementing the above rules, the Board shall also, in making its determination whether there are practical difficulties or particular hardships, take into consideration the extent to which the following facts favorable to the applicant have been established by the evidence:

1. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.
2. The conditions upon which the petition for a variance is based would not be applicable, generally, to the other property within the same zoning classification.
3. The purpose of the variation is not based primarily upon a desire to make more money out of the property.
4. The alleged difficulty or hardship has not been created by any person presently having an interest in the property.
5. The granting of the variation would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
6. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood.

Public Notification:

This variance request has had proper public notification pursuant to Section 7-8-3 of the Town Code. A Public Notice was published in the Sky-Hi Daily News on February 28, 2019 providing notification of the meeting and requesting comments. Mailings were sent to property owners within 300 feet of the property and the property posted on March 11, 2019.

No comments have been received.

Staff Comments:

The applicant is requesting a variance to the rear yard setback and side yard setback for the construction of an attached single car garage and additional living space above that will tie into the second floor of the home. The proposed garage addition would be located on the west side of the house where an existing driveway and parking area connects to the side yard. The garage would encroach significantly into the 10' west side setback, and also into the 20' rear setback.

This property is located in the Idlewild Meadows Subdivision, a subdivision that was platted in the 1960's, prior to the Town's incorporation. The County's zoning regulations at that time allowed for smaller lot sizes and reduced setbacks compared to the Town's current zoning regulations.

As such, this lot and structure as it was originally platted and built does not conform to the R-1 Zone District requirements or to Town Standards; it does not meet the requirement of a minimum lot area of 9,000 square feet as the lot is only 7473.72 square feet, the structure currently encroaches 1.25 feet into the side setback on the east, parking is not permitted in the front or side setbacks, and all driveways should be a minimum of 7' from adjacent property and 15' from Town ROW which theirs is not.

There are unusual circumstances with this lot as well as all of the lots in the Idlewild Meadows Subdivision, as they are unusually small and the setbacks imposed by the Town after-the-fact limit the amount of buildable space. The property has created a reasonable return in use as a structure has been built on the lot but not without encroaching into the side yard setback (east side) when the structure was constructed under County regulations. The location of the proposed addition would have minimal effect on the overall character of the neighborhood as many homes in this subdivision encroach on the side, rear, and front setbacks and have been granted variances in the past to construct garages on their properties.

Staff Recommendation:

Staff does not provide a recommendation for variance requests. The Board of Adjustment must prove that a hardship is applicable and must establish findings of fact as related to the particular difficulties of the site. The hardship must be determined using one of the following criteria:

1. The property in question cannot yield a reasonable return in use or service if permitted to be used only under the conditions allowed by the regulations for the municipality.
2. The plight of the owner is due to unusual circumstances.
3. The variation, if granted, will not alter the essential character of the locality.



VARIANCE APPLICATION FORM

Date: 02 / 12 / 2019

Applicant Name: Kelly Haverhals & Shanna Lalley

Mailing Address: PO Box 1682

Phone Number: 303-210-5241

E-mail Address: shanna@rewinterpark.com

Applicant is the: [X] Property Owner

[] Other:

Street address of property for which variance is requested: 76 Idlewild Lane, Winter Park

Legal description of property: Lot 9, Idlewild Meadows

Detailed description of the variance requested and an explanation of why the applicant believes the variance should be granted (please attach additional sheets if necessary):

We are applying for a variance so we can build a one-car attached garage. We currently do not have a garage.

We would like to build it two stories tall so that it can be tied in with our second story and it will provide additional living space.

In order to get a garage on our lot we need to go into the side and rear setback of the property. The adjoining neighbor has a sauna, hot tub and shed that sit within their set backs (and along our property line). Our garage would mimic the current configuration and would give us & them some privacy.

Indicate which conditions listed below relate to the property for which variance is requested.

Please note, the Board of Adjustment cannot grant a variance unless it finds, based on evidence, that ALL the following conditions exist.

- [X] The property in question cannot yield a reasonable return in use or service if permitted to be used only under the conditions allowed by the regulations for the municipality*
[X] The plight of the owner is due to unusual circumstances*
[X] The variation, if granted, will not alter the essential character of the locality*

*For each condition checked above, applicant must provide adequate supporting evidence with this application.

Please indicate which of the following facts favorable to your application apply to this request:

- [X] The particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out*
[X] The conditions upon which the petition for a variance is based would not be applicable, generally, to the other property within the same zoning classification*
[X] The purpose of the variation is not based primarily upon a desire to make more money out of the property*
[X] The alleged difficulty or hardship has not been created by any person presently having an interest in the property*
[X] The granting of the variation would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located*
[X] The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion in the public streets or increase the danger of fire or endanger the public safety or substantially diminish or impair property values within the neighborhood*

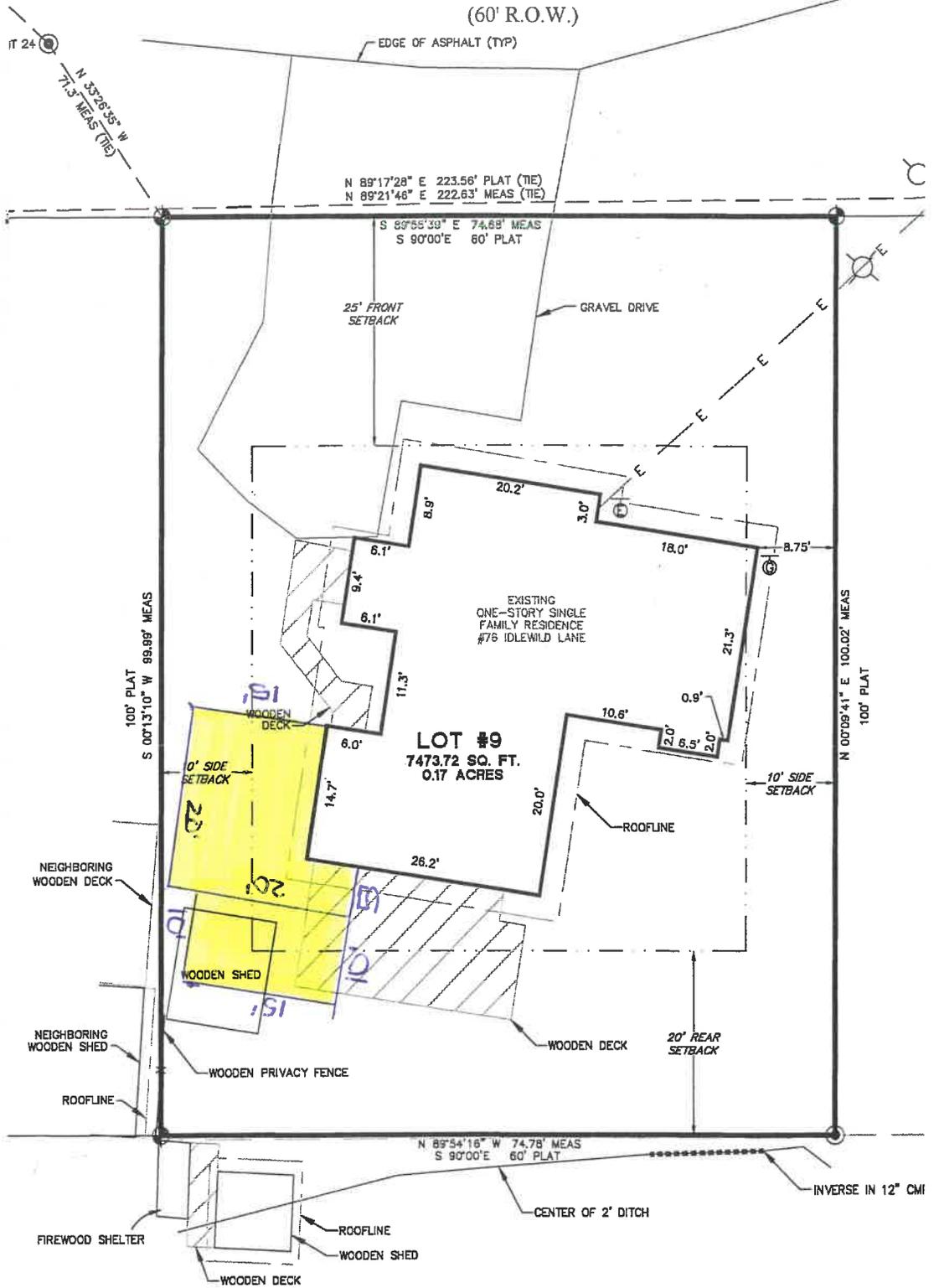
*For each condition checked above, applicant must provide adequate supporting evidence with this application.

Applicant Signature: Shanna Lalley

Please submit all materials electronically to permits@wpgov.com

Date Received: 2/13 \$250 Fee Received: yes Received By: Mara Dean

IDLEWILD LANE
(60' R.O.W.)



N 89°17'28" E 223.56' PLAT (TIE)
N 89°21'46" E 222.63' MEAS (TIE)

S 89°55'33" E 74.68' MEAS
S 90°00'E 60' PLAT

25' FRONT
SETRBACK

GRAVEL DRIVE

LOT #9
7473.72 SQ. FT.
0.17 ACRES

0' SIDE
SETRBACK

10' SIDE
SETRBACK

ROOFLINE

WOODEN DECK

20' REAR
SETRBACK

WOODEN PRIVACY FENCE

CENTER OF 2' DITCH

INVERSE IN 12" CMI

FIREWOOD SHELTER

ROOFLINE

WOODEN SHED

WOODEN DECK

100' PLAT
S 00°13'10" W 99.89' MEAS

N 00°09'41" E 100.02' MEAS
100' PLAT

N 33°28'35" W
71.5' MEAS (TIE)

EDGE OF ASPHALT (TYP)





Idlewild Ln

76 Idlewild Ln



Ad #: 0000387310-01

Customer: TOWN OF WINTER PARK,

Your account number is: 1095749

**PROOF OF PUBLICATION
MIDDLE PARK TIMES
STATE OF COLORADO
COUNTY OF GRAND**

I, Meg Boyer, do solemnly swear that I am Publisher of the MIDDLE PARK TIMES, that the same weekly newspaper printed, in whole or in part and published in the County of Grand, State of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterruptedly in said County of Grand for a period of more than fifty-two consecutive weeks next prior to the first publication of the annexed legal notice or advertisement; that said newspaper has been admitted to the United States mails as a periodical under the provisions of the Act of March 3, 1879, or any amendments thereof, and that said newspaper is a weekly newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado.

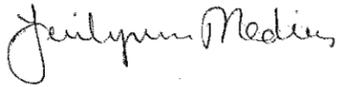
That the annexed legal notice or advertisement was published in the regular and entire issue of every number of said weekly newspaper for the period of 1 insertion; and that the first publication of said notice was in the issue of said newspaper dated 2/28/2019 and that the last publication of said notice was dated 2/28/2019 in the issue of said newspaper.

In witness whereof, I have here unto set my hand this day, 3/5/2019.



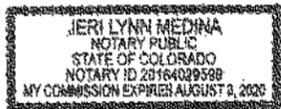
Meg Boyer, Publisher

Subscribed and sworn to before me, a notary public in and for the County of Grand, State of Colorado this day 3/5/2019.



Jerilynn Medina, Notary Public

My Commission Expires: August 3, 2020



**PUBLIC NOTICE
TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
SETBACK VARIANCE REQUEST**

Applicant / Owner:
Kelly Haverhals & Shanna Lalley
Mailing Address: PO Box 1682

Street Address of Properties for Which the Variance Is Requested: 76 Idlewild Lane, Winter Park

Legal Description of Properties for Which the Variance Is Requested: Lot 9, Idlewild Meadows

Owner's Detailed Description of Request: "We are applying for a variance so we can build a one-car garage. We currently do not have a garage. In order to get a garage on our lot we need to go into the side and rear setback of the property. The adjoining neighbor has a sauna, hot tub, and shed that sit within their setbacks (and along our property line). Our garage would mimic the current configuration and would give us and them some privacy."

Applicable Provisions of the Town Code:
Section 7-4A-3 of the Town Code states- "There shall be a rear yard setback of at least twenty feet (20') for any principal use and accessory structure." and "There shall be a side yard setback of at least 10' for any principal use and accessory structure." The Board of Adjustment will review this case and render a decision under Section 7-8-1 of the Town Code.

Property Posted On: March 1, 2019

A Public Meeting at Winter Park's Town Hall, 50 Vasquez Road, is scheduled for:

Tuesday, March 26, 2019 at 8:00 A.M.
immediately following the Planning Commission meeting

Members of the public wishing to make comment regarding the variance request may do so at the scheduled meeting, or write to Mara Owen, Planner, Town of Winter Park, P.O. Box 3327, Winter Park, CO 80482, or mowen@wpgov.com.

Published in the Middle Park Times February 28, 2019 0000387310