

**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT**

February 23, 2016

MINUTES

- I. Meeting called to order at 8:00 AM
- II. Roll Call indicated present: Dick Norman, Mike Davlin, Doug Robbins, and Brad Holzwarth. Roger Kish was the alternate.
- III. Board Member Holzwarth moved, and Board Member Davin seconded a motion to approve the minutes of May 26, 2015, October 13, 2015, and December 8, 2015. Motion carried: 5-0
- IV. Conflicts of Interest: Chairman Norman stated he had been approached by the applicant and owners at Iron Horse but felt he could make an impartial decision. He did not discuss the item with either party.
- V. New Business
 - A. Height Variance Request

- Block E, Height Variance, Mark Unicume, 422 Iron Horse Way

Community Development Director Shockey presented his staff report.

The applicant requested a variance to allow maximum building height of 65'-0" due to hardships resulting from topography, configuration and wetland impact of subject site.

The owners reason for the approval of the variance is the new building will not adversely impact or diminish values of the adjacent property, and will not adversely impact the public welfare, and is consistent with existing adjacent uses and will minimize impact on the subject site

Section 7-5B-4B – Maximum Height for Buildings and Structures:

The maximum height for all buildings and structures permitted in the D-C district shall be fifty five feet (55') as defined in chapter 2 of this title.

Section 7-2-3 – Definitions

BUILDING HEIGHT: The vertical distance above a reference datum measured to the highest point of a flat roof or deck line of a mansard roof or the midpoint of the highest gable of a pitched or hipped roof. The reference datum shall be selected by the following, whichever yields a greater height of a building:

- A. The point of the lowest preconstruction elevation on any building face.
- B. The point of the lowest elevation of any building face.
- C. The elevation of the lowest point of an exposed foundation or wall.

D. If a site is disturbed after the adoption of this section, the owner of the property will have the burden of proving preconstruction elevation.

The height of a stepped or terraced building is the maximum height of any segment of the building using building height.

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 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 4, 2016 providing notification of the meeting and requesting comments. Mailings were sent to property owners within 300 feet of the property on February 5, 2016 and the property was posted February 8, 2016. One comment has been received from a surrounding neighbor.

Tama Funk – Iron Horse Condominiums – Ms. Funk owns three condominium units in Iron Horse Way. She objects to the height variance request based on a hardship not being provided by the applicant. She feels if the developer were to remove one floor or lower the overall height of each floor, then a variance would not be required.

The applicant is proposing a four story residential structure above a partially underground parking garage. They are requesting to exceed the 55' building height established for the

Destination Center District on the front side of the building where the parking garage entrance would be located. They are requesting a building height of 65' based on the building height definition that the Town has adopted. The definition states that the measurement shall be based on the preconstruction grade or finished grade whichever is more restrictive. The applicant is able to comply with the height requirements on each side of the building other than the front. This is because the grade has to be lowered nearly 10' to allow for the parking garage entrance.

An adjacent property owner stated that the building height could be met if the height between floors was reduced. Each ceiling will have a height of 10'-12' based on the drawing provided. If each ceiling height is reduced by 2', the height of the overall building is reduced to 57' which still exceeds the height limit. The applicant stated that the taller ceilings are required in today's residential market. People expect higher ceilings in a high-end residential unit.

The property where the proposed building is located is surrounded on two sides by Iron Horse Condominiums. Each of the Iron Horse buildings are five-stories tall and exceed the building height established for the zoning district. The applicant had Building D, directly north of their property measured to determine if their proposal was in line with what is currently present. The overall height of Building D is 63 feet tall. The property most affected by the potential development is Base Camp 9200, located directly south. Those townhomes are only three stories tall. There is a heavily wooded area with trees exceeding 60' between the proposed structure and Base Camp.

The applicant has provided additional reasoning for the height variance. They state that the site constraints (wetlands, steep slopes, etc...) force them to put the parking underground. In turn, this will have less of an impact on the surrounding environment and watershed.

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.

Community Development Director Shockey explained to the Board how the town measures the height of buildings. He stated that five more letters have been received since the packet went out; the letters were provided as table setting.

Brian Dornbush and Allen Carter were representing the applicant. Mark Unicume, representative for Block E, Inc. was also present. They explained the reasoning for the variance including steep slopes, high groundwater and the desire to limit encroachment into the site by constructing underground parking.

Discussion was held about the details of the building.

Tom Cummins, owner of a unit at Iron Horse was present to represent the HOA. He stated they are getting a lot of runoff during the spring from this property and they would like to see the water problems managed properly with this development. Chairman Norman reminded Mr. Cummins the Board was here for the height variance only today. Mr. Cummins stated they feel it is in the best interest of Iron Horse to be able to work with the developer to solve the water problems so they take no position on the height variance.

Jim Andriole, also an owner at Iron Horse was representing just his unit. He stated he had no issues with the variance

David Bromberg from Iron Horse was not in favor of the height variance because they are asking for an increase of over 20%.

Tom Bromberg from Iron Horse thinks it would be a great building; but not sure why the 3rd and 4th floor need to be so tall. He also thinks the owner needs to still work on site plan.

Board Member Kish moved and Board Member Davlin seconded to approve the requested variance to increase the building height to 65' with the following motion –

The variance request is hereby APPROVED to increase the building height to 65' measured from the entrance of the parking garage to the highest point of the building face. The remaining sides of the structure shall be built into the hillside to minimize the overall height of the structure.

The variance is approved for the following reasons:

1. The variation, if granted, will not alter the essential character of the locality (Section 7-8-1B).
2. 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 (Section 7-8-1-C).

Motion carried 5-0

There being no further business, upon a previously adopted motion the meeting was adjourned at 9:09 AM.