

**TOWN OF WINTER PARK  
BOARD OF ADJUSTMENT**

**May 24, 2016**

**MINUTES**

- I. Meeting called to order at 8:55 AM after the Planning Commission Meeting
- II. Roll Call indicated present: Dick Norman, Mike Davlin, Doug Robbins, Roger Kish, and Brad Holzwarth.
- III. Approval of Minutes – Minutes from February 23, 2016 were not available
- IV. Conflicts of Interest: None were heard.
- V. New Business
  - A. Front Setback Request
    - Lot 11, Block 3, Winter Park Village, Evan and Michelle Christenson

Community Development Director Shockey presented his staff report.

“The Christenson's lot has a very irregular shape and is in a low area of the Old Town neighborhood. To achieve the needs for their family requires that we maximize all space on the lot. The design they have developed meets all of their needs as a family, but would require some variance from existing code for their outdoor living space.

Their lot is located directly south of the old ski exchange building and is in a triangle shape as Cedar Drive turns. The north portion of their lot is a low spot in the sub-division and would be difficult to turn into any type of yard for their kids. The current house plan has all of the house structure within the building envelope. With limited yard space, they are planning on their deck as their main outdoor living space. To achieve a size that would meet their desired needs would require extending their deck 5'-0" into the front lot set-back. The deck would be 10'-0" from their property line on the front of the lot (street side) only. With the three foot exception in Town Zoning for decks, this will require a variance of 2'-0" past that exception”.

“Front property line request - As stated the main reason for this portion of the request is to achieve the outdoor living space needed for their family given the lay of the land of their triangle lot in a low area of Old Town. The request still allows ten feet of clearance from their lot line to the deck structure. The deck is on the main level, so would be only ten feet above grade and would not interfere with any view or traffic flow on Cedar Drive. The deck across the front of the house is also a design element in that it breaks up the height of the structure”. The attached application with additional reasoning was reviewed.

Applicable Town Code:

Section 7-4C-3D – Minimum Yard Requirements:

D. Minimum Yard Requirements: Except as provided for in section 7-3-7 of this title, minimum yard requirements in the R-2-O district shall be:

1. There shall be a front yard setback of at least fifteen feet (15') from any street right of way for both principal and accessory structures.
2. There shall be a rear yard setback of at least ten feet (10') for both principal and accessory structures.

Exception: With proper sediment and erosion control in compliance with the town's standards and specifications for design and construction, any new structure located on a lot within blocks 1-2, Winter Park Village shall have a minimum water quality setback of fifteen feet (15') from the Fraser River, measured from the approximate high water mark of the river embankment.

3. There shall be a side yard setback of at least five feet (5') for both principal and accessory structures. The side yard on the street side of each corner lot shall not be less than fifteen feet (15').
4. Parking is permitted within the front setback. Driveways are permitted within five feet (5') of the side yard property line. (Ord. 317, Series of 2002)

Criteria to Grant Variance (Town Code sections 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 the 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 April 28, 2016 providing notification of the meeting and requesting comments. Mailings were sent to property owners within 300 feet of the property on April 22, 2016 and the property was posted on May 9, 2016. No comments were received.

The owner is requesting a variance to the front setback for a deck encroachment. The Commission was ask to review the attached site plan and aerial photo prior to reviewing the request to help them visualize the information below.

Section 7-4C-3D of the Town Code states “There shall be a front yard setback of at least fifteen feet (15') from any street right of way for both principal and accessory structures” in the R-2-O Zone District. The applicant is requesting to build a deck five feet into the front yard setback.

This property is located in Winter Park Village Subdivision, a subdivision that was platted in 1959, 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. A number of variances were being issued for this subdivision due to the limited lot size. In 2002, the Town rezoned the subdivision to R2-O, a special zone district just for Old Town. The purpose of the district is stated in the zoning code as – *“The town recognizes the Old Town (Winter Park village subdivision) area was platted before the town was incorporated, hence the area has smaller lots than what would be acceptable under town standards for R-2 zoning. Therefore, the R-2-O zone district was established especially for this area of Old Town to accommodate constraints imposed by small lots in order to protect and/ or develop a residential neighborhood for permanent residents, seasonal employees and visitors. Areas so designated shall be in conformance with the aims and objectives of the master plan of the town.”* The R2-O Zone District reduced the front, side and rear setback and also increased the building coverage permitted on a lot (compared to R-2).

Per Section 7-3-7 of the Zoning Code, the applicant could encroach three feet into the setback with a deck as a use-by-right – §7-3-7 D. *Unenclosed porches, decks, terraces, spas or pools without roofs may project not over three feet (3') into the required front and side yards, and not over one-half (1/2) the distance of the required rear yard.* The applicant has stated that with limited yard space, they are planning on their deck as their main outdoor living space. To achieve a size that would meet their desired needs would require extending their deck 5'-0" into the front lot set-back. The deck would be 10'-0" from their property line on the front of the lot (street side) only. With the three foot exception in Town Zoning for decks, this will require a variance of 2'-0" past that exception.

The applicant has stated that the lot has a very irregular shape and is in a low area of the Old Town neighborhood. They feel the particular physical surroundings, of the property 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.

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.

The applicant has provided reasoning why the variance should be granted. The applicant has stated that the lot has a very irregular shape and is in a low area of the Old Town neighborhood. They feel the particular physical surroundings, of the property 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. The applicant has shown that there is a return in use of the property, a home can be constructed on the lot and a deck can be built, just not to the size they desire. There are unusual circumstances with this lot, as they are unusually small but the Town has attempted to provide relief to these properties with the creation of the R2-O Zone District.

David Dresen was present representing the property owner.

After discussion with the applicant, Board Member Kish and Board Member Davlin moved to approve the variance request with the following condition.

- When the house goes to design review there needs to be a variation in the front deck so that it is not just one long straight deck.

And approved for the following reasons:

- The variation, if granted, will not alter the essential character of the locality
- 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.

Motion carried: 5-0

There being no further business, upon a previously adopted motion the meeting was adjourned at 9:10 AM.