

**TOWN OF WINTER PARK  
BOARD OF ADJUSTMENT**

**June 6, 2016**

**MINUTES**

- I. Meeting called to order at 10:38 AM after the Planning Commission Meeting
- II. Roll Call indicated present: Dick Norman, Mike Davlin, Doug Robbins, Roger Kish, and Brad Holzwarth.
- III. Board Member Robbins moved, and Board Member Davin seconded a motion to approve the minutes of February 23, 2016, and May 24, 2016. Motion carried: 5-0
- IV. Conflicts of Interest: None were heard.
- V. New Business
  - A. Side and Rear Setback Request
    - Lot 5, Block 1, Hideaway Pines Subdivision – 95 Pine Cone Lane

Community Development Director Shockey presented his staff report.

The variance was being requested to add a garage to the existing house. The reasons were given in an attached application.

Item 1 - Detailed Description of Variance Request:

Ben and Elena would like to add an attached garage to their existing residence. Due to the uphill grade of their lot and the location of the existing house, there is limited space for this addition. They have reduced the size of their proposed garage to a one car garage to try to minimize the need for a variance. With no variance, a one car garage simply does not fit in the attached garage configuration.

We have looked at three options for the garage -their rough location is noted on the attached option plan. Option #1 is the single car attached option they would like. This option can utilize their existing main entry and allows for a flat driveway approach at the garage.

Option #2 would be for a detached two car garage in front of the existing house. This option would require regrading of the driveway for proper grade access to the garage and the cut required would result in the need to relocate exiting water and gas line service. As the floor level of the garage would be thirteen feet below the floor level of the house, this would also create the need for exterior steps to access the house main entry which is not desirable in winter months.

Option #3 would be to build a two car tandem garage extending towards the street from the proposed garage location. This option would also require the same 3' variance to create the space needed to work with the existing structure. This option would require remodeling the existing residence to move the entry to the front of the house, which would likely result in the loss of a bedroom. This option would also not allow for a flat approach to the garage door due to the steep grade on the existing driveway. The entry to the garage would be on a 10% grade.

Item 2- Reasons Why the Variance Should be Granted:

Ben and Elena have reduced the footprint in option #I as much as possible to create a one car garage that works with their existing residence and driveway conditions. There really is no other cost effective solution that works for their needs.

All views for the neighbors to each side are primarily to the east (towards the divide), which is away from the location that this garage would be placed. The height of the garage is much lower than the current residence, so it will not impede sunlight to any adjacent structures any more than the current house does. As there is only an open space and a street behind them, the garage does not affect any views for neighbors to the west.

Since the variance is for three feet, this will still leave seven feet on the side of their garage to access the back of their house- there would be no need to cross property lines to access their lot from that side of the garage.

We have reviewed snow removal with their maintenance company and they will be able to clear the driveway with all snow piles staying on their property.

It is Ben and Elena's hope that this project would have a minimal impact to the neighborhood, but a large impact to the function of their house.

Applicable Town Code:

Section 7-4A-3D – Minimum Yard 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 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 May 19, 2016 providing notification of the meeting and requesting comments. Mailings were sent to property owners within 300 feet of the property on May 11, 2016 and the property was posted on May 19, 2016. Two comments were received.

James Brosious – Mr. Brosious lives in close proximity to the property and after reviewing the submittal package, has no concerns with granting the variance request.

Linda & Gary Behlen – 105 Pine Cone Lane – The Behlen's are located directly north of the property. They are opposed to the variance for several reasons outlined in their letter. They are concerned with snow storage, drainage, overhangs and if that large of a garage is really required. They also layout other concerns and address why the variance should not be granted based on the Town Code criteria.

The applicant requested a variance to the rear yard setback and side yard setback for the construction of an attached one car garage. The proposed garage would be located on the north side of the house where an existing driveway and parking area is located. The garage would encroach 7' 10" into the required rear yard setback and 4' (3' foundation/1' eave) into the required side yard setback.

The applicant provided three options for the garage and explained in detail why the location proposed in the variance is the best option (Option #1). The neighbor most directly affected by the variance has concerns with snow being pushed onto their property, drainage potentially going on their property and the precedent this variance could set for the neighborhood.

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 topography of the site necessitates the need to locate the garage on the north side of the property. It should be noted that the property has created a reasonable return in use as a structure has been built on the lot and a garage could be located within the required setback although it may not be ideal for the applicant.

If a variance is granted, staff will also need to grant a variance to the driveway setback. The Standards and Specifications for Design and Construction require driveways be located seven feet from the side setback. The driveway would be located within six feet of the property line.

David Dresen, Snow Mountain Builders was present. He talked about the steepness of the driveway. He stated he talked to the neighbor to the north. His opinion of the snow storage is to add a few aspens and landscape and make the drainage not go on to the adjacent property as it does now.

Greg Bahlen was present to represent his parents, who owns the house to the north. He was concerned about the drainage and that setbacks are in place for a reason.

Ben Lawton, owner and applicant for the variance request stated that a majority of the water is coming from the house above them and goes around the retaining wall. He had talked with a plow company and they told him they could remove the snow.

Guy Kirouac, 151 Pine Cone Lane, stated his opinion is it would help increase the value of the homes and to place the garage in front he thought a lot of trees would have to be taken down.

Discussion was held by the Board.

Board Member Davlin and Board Member Holzwarth moved to approve the variance request.

The variance is approved for the following reasons:

- The variation, if granted, will not alter the essential character of the locality
- 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: 3-2

Board of Adjustment regulations state for a variance to pass it must have 4 of the 5 Board members vote in favor. So motion did not pass for the variance.

There being no further business, upon a previously adopted motion the meeting was adjourned at 11:16 AM.