



**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
Tuesday, July 10, 2018 8:00 AM**

Minutes

- I. Meeting Call to Order at 8:00am
- II. Roll Call indicated present: Brad Holzwarth, Dave Barker, Mike Davlin, Doug Robbins, and Roger Kish. George Stevens and Jonathan Larson as alternates.
- III. No minutes available for approval.
- IV. Conflicts of Interest none heard
- V. NEW BUSINESS:
 - A. Height Variance – 122 & 134 Fir Drive

Planner Owen presented the staff report.

The applicants for this case are Michael and Kristina Ziehler.

Description of Variance Request:

“All 42’ overall height requirements are in compliance with the Town Code. We are requesting a 35’ mid-roof height variance at the northeast (downhill left) corners of the units. Mid-roof heights vary from 36’ 91/4” to 38’ 8”3/16 from existing grade.

Owner’s Reasons Why the Variance Should Be Granted:

“The finished grades will not exceed the 35’ mid-roof height requirement. Due to the steep existing grades and relatively high sewer elevations (hardships) we are unable to satisfy the 35’ mid-roof height requirements at the northeast corners. Most of the mid-roof height requirements are well under the town code limits. All of the overall building heights are in conformance with the Town code limits. Due to existing sewer elevations, lowering the buildings are not a good option. Due to the foundation needing to be about 12” above street grading, lowering the buildings could create drainage issues. By stepping the buildings downhill per Town code would actually allow the front portion of the units to be taller. Elevations shown on sheet A5 (from existing grade) are as follows:

Front:

Mid- Roof: 21’- 613/16” to 29’-93/8” (All in conformance)

Overall: 24’-107/16” to 33’-015/16” (All in conformance)

Back:

Mid- Roof: 31’-013/16” to 38’-813/16” (Uphill in conformance, downhill not)

Overall: 34’-47/16” to 41’-113/4” (All in conformance)

Applicable Town Code: Section 7-3-17 Building Heights:

It is the responsibility of the property owner to design a structure that will fit the natural or existing contours of a site. No excessive fill or excavation will be permitted to create an exaggerated building site to enhance view corridors, etc. When calculating building height in residential zone districts

applicants must adhere to the following principals:

- A building with a pitched or hipped roof shall not exceed thirty five feet (35') when measured to the midpoint of the pitched or hipped roof. The highest point of a pitched or hipped roof shall not exceed forty two feet (42'). (See figure 1 of this section.) (Ord. 423, Series of 2009)
- On sloped building sites, structures should step up the hillside. The overall height of a terraced or stepped structure shall not exceed fifty five feet (55') measured from the elevation of the lowest point of an exposed foundation at finished grade or preconstruction elevation whichever is greater to the highest point of a roof elevation. (See figure 2 of this section.) (Ord. 423, Series of 2009)

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 June 21, 2018 providing notification of the meeting and requesting comments. Mailings were sent to property owners within 300 feet of the property and the property posted June 11, 2018. No comments were received prior to the Staff Report being posted.

One email was received on Sunday July 8, 2018 from Nancy Olson who also lives on Fir Drive. This comment is against the development arguing that this is not just one home it is four large units, the project can be re-designed easily to fit within the code requirements, and that it is an over 10% increase. This email was printed and presented as a table setting for the board.

Staff Comments:

The applicant is requesting a variance from the Town Code on Building Height which requires buildings not to exceed both the overall height maximum of forty two feet (42'), and the midpoint height maximum of thirty five feet (35'). The two structures proposed on these two lots currently both exceed the midpoint height maximum of thirty five feet (35') which is measured from preconstruction elevation to the midpoint of the pitched roof. The applicant was not aware of the requirement to meet both the overall height and the midpoint heights when designing the buildings. If the applicant were willing to re-design the structures, there is a stipulation in the code that allows for more height (up to 55' overall) to encourage builders on sloped areas to "step" or "terrace" their structures up the hillside in order to help preserve the slope itself and create structures that fit the natural or existing contours of a site without excessive fill or excavation. Otherwise, these buildings would need a height variance in order to proceed as currently designed since they do not meet the midpoint height requirement.

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.

Applicants and property owners Mike and Christine Ziehler were present and gave a presentation of the request.

The applicant stated that their lots had unusual topographical conditions, doesn't change the feel of the neighborhood and that the hardship is not from money making.

Applicant showed on the site plan that the overall height is within the 42' requirement overall, and for most of the building is within the 35' requirement. From street the height will be perceived as only 2 story.

So does not look over bearing, not as much of an impact as existing townhomes that are already built in subdivision, trees in rear will help buffer the building plus additional trees that will be added.

No public comment

Discussion was held by the board

Board member Davlin and Board member Roger moved to approve the variance request.

The variance is approved for the following reasons:

- The plight of the owner is due to unusual circumstances.
- 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

B. Planning Commission / Board of Adjustment Training by Hoffmann, Parker, Wilson & Carberry, P.C

- There are two more trainings coming up including:
 - DOLA on July 18
 - Training session with Town Council on August 21