



**TOWN OF WINTER PARK  
BOARD OF ADJUSTMENT  
Wednesday, December 16, 2020 8:00AM  
Online Meeting (instructions below)**

**A G E N D A**

- I. Meeting Call to Order.
- II. Roll Call of BOA Members.
- III. Minutes for Review: December 8, 2020
- IV. Conflicts of Interest.
- V. Action Items:
  - A. Consideration of Resolution 8, Series 2020, a resolution denying a variance to allow front and side yard setback encroachment of a hot tub and roof structure for Unit 1, Cedar Creek Townhomes.

**Online Meeting Log-In Instructions – See next page**

### **Computer Log-In Instructions**

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Passcode: 742862

### **Phone Log-In Instructions**

Dial In Numbers

US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 929 436 2866 or +1 301 715 8592  
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Webinar ID: 830 3089 3201

Passcode: 742862

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### **Public Hearing Process**

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**TOWN OF WINTER PARK  
BOARD OF ADJUSTMENT  
Tuesday, December 8, 2020 8:00AM  
following the Planning Commission**

**MINUTE**

- I. The meeting was called to order at 10:05 am.
- II. Roll Call indicated present BOA Chairman Brad Holzwarth, BOA Members Doug Robbins, George Stevens, Jonathan Larson (alternate), Roger Kish, Community Development Director James Shockey and Town Planner Hugh Bell are also present. BOA Member Dave Barker is absent and BOA Member Jonathan Larson is the alternate.
- III. Minutes for Review: July 14, 2020. BOA Member Robbins makes a motion to approve the minute. BOA Member Stevens seconds. The BOA minute is approved 5, 0.
- IV. Conflicts of interest. None comes forward.
- V. Action Items:
  - A. 126 Cedar Drive – Front and Side Yard Setback Encroachment

Planner Hugh Bell starts his presentation. He points out the that updated packet is on the Winter Park website. Then, he reads the main points about this variance request.

The applicants have recently made a property improvement including a hot tub and installed a small roof covering the tub on the front (west) side of the home. The applicants choose this location due to no availability on the sides or back of their property. There are two small balconies on the property that are not retrofitted for the weight of a hot tub making them unsafe. They decided to put the temporary structure in the current location. The structure needs proper footing in order to hold the weight of the snow regardless of its intent to be temporary. Two of the footings are buried into the front setback.

The applicants are asking the variance to be granted since:

- They consider the structure to be temporary.
- The Town can still access the easement when necessary.
- The structure is merely slightly into the setback which is used as a parking space.
- This creates no undue burden on any neighboring residence.

The applicants also argue that adjacent neighbors have given their approval. They believe the proposed style and structure of the temporary structure is in step with the existing neighborhood and the proposed project would be an improvement to the neighborhood and result in an overall increase in property value and tax base created by improvement.

Planner Bell reads the Town Code requirements that apply to this particular case. Notification letters were sent to the surrounding neighbors and some comments were received as well. Planner Bell also mentions that a Stop Order was issued by the Building Department in September 2020 since there was not a Building Permit issued. Planner Bell points out that building coverage is still in compliance. Finally, Planner Bell reads

the three criteria in that must be met in order to grant the variance.

BOA Member Stevens asks if the setbacks would be an issue if hot tub did not have a roof over it. Planner Bell says that there would be an encroachment anyway. BOA Member Stevens asks is there is a snow storage plan for this variance. Planner Bell replies that snow storage is not included in the site plan. Director Shockey adds that that area is not designated as snow storage according to the final plat.

Planner Bell clarifies that the roof covering the hot tub cannot project over three feet beyond the setbacks. The applicant might be allowed to encroach but not in the way it is set up currently.

The applicants, Nicole and William Gibbard come forward. They would like to have a hot tub in their property that is structurally safe. They decided that the balconies/decks are not structurally safe to install the hot tub on any on them and because of the size of the lot. That is why they decided to install the hot tub where it is located right now. They also installed the roof to make the hot tub to look in harmony with the main dwelling and keep the snow off it. The roof it is not attached to the principal structure. They believe they took into account the design of the neighborhood in general. They have consulted with their neighbors and the construction company. They were told by the construction company that a building permit or a variance request was not necessary because of the small size of the structure. It seems that their contractor did not have a lot of experience dealing with permits or variance requests. Mr. Gibbard adds that they do not intend to install walls surrounding the hot tub.

BOA Member Robbins wants to make sure that this structure will be temporary and if the applicants are planning on re-structuring the deck in order to move the hot tub there. Mrs. Gibbard replies that that is not the intent. They would prefer to keep the structure where it is as long as it does not create safety or easement concerns. The deck is not retrofitted nor stable enough to install a hot tub on it.

BOA Member Stevens asks what the hot tub sits on. The applicants reply that it is on gravel.

Chairman Holzwarth asks if the structure affects the next-door property. Mrs. Gibbard replies it does not. Then Chairman Holzwarth asks about open space for snow storage (Exhibit A). Mrs. Gibbard says that she doesn't know for sure. Director Shockey explains on the site plan how the snow storage was proposed. It is on an open common space.

Public comments period is open. Mr. Peter Papazian comes forward. He is a lot owner and a longtime resident. According to Mr. Papazian the setbacks have been decreased for snow storage. This structure is encroaching on the setback affecting the snow storage. Mr. Papazian believes that the Gibbards should have applied for a building permit and follow the requirements before installing this structure which, in the long term, would have saved time and money to his neighbors. Based on that he thinks they need to remove this structure as soon as possible and re-engineer the deck if they still want to have a hot tub in their property. In conclusion, Mr. Papazian is against granting variance.

Mr. Dan Hackett comes forward. He lives in 120 Cedar Drive. Contrary to what the applicants have stated, Mr. Hackett has not given approval to install this structure. If the BOA decides to grant variance to the structure, he will request at least to be moved 3 feet from the side setback. This would allow ample room for the roof of the structure to be still within the applicants' property line potential landscaping.

Mr. John Biard comes forward. He and his wife live in 136 Cedar Drive, Unit 2. He would like to make some corrections about the snow storage. Both driveways (gravel) have been plowed and they are being used for parking. Mr. Biard believes there is not enough snow storage area.

Ms. Abby Robertson comes forward. She lives at 19 Linden Rd. She believes that snow removal will not be an issue. She does not think this small structure will affect the neighborhood in a negative way.

Mr. Peter Papazian is given the opportunity to speak again. According to him, people are trying to minimize the snow storage issue. He owns a vacant lot where he is planning on building in the future and people have been storing snow in his property without his authorization. He believes that people say they are going to do things properly but they do not. He really feels that this structure needs to be removed and cannot be located in any other setbacks. If the applicants want a hot tub, they need to install in their house or a covered porch.

Ms. Heather Vieth comes forward. She lives at 17 Linden Rd. She states that she is in favor of granting the variance request and adds that she understands why the applicants want to have a hot tub in their property. According to Ms. Vieth, the Gibbards would have the same amenities as other neighbors in the area and the house would look the same.

Mr. Doug Olson comes forward. He lives at 16 Linden Rd (71 Balsam Dr.). He looks at the site plan and believes that on the side the structure goes only 1 foot. He thinks that, regarding snow storage, it is the Town who is moving the snow in Mr. Papazian's property from the main street. He believes that this structure is cosmetically acceptable and it does not cause any hazard or damage. In conclusion, he is in favor of granting the variance.

The public comment period is closed.

BOA Robbins believes that the snow storage is an issue outside of the variance they are looking at. He thinks that the location where the hot tub is located right now, would be a good place to store snow. BOA Member Robbins thinks that the only criteria that has been met to grant a variance is: the structure does not alter the character of the neighborhood and he does not think that the unusual circumstances criteria is met. BOA Members Larson and Kish agree and adds they have a very limited scope of how they can view the criteria and the does not believe all criteria have been met. BOA Member Kish adds that the hot tub could project in 3 feet but not the structure above it. Planner Bell confirms that last statement.

BOA Member Stevens agrees with what the other BOA Member have said.

BOA Member Robbins thinks that there is potential that the hot tub could be within the setbacks given two things: 1) The hot tub did not have the cover and 2) the hot tub could be smaller and be anchored closer to the over porch he sees on the pictures. He thinks that there is potential for the issue to be solved.

Mrs. Gibbard believes that the cover makes the hot tub look nicer. If they need to remove, they can do so. Mr. Gibbard believes that there is some room in lot B for snow storage.

Mr. Gibbard interjects and adds that the reason for requesting this variance is that the lot is small. Considered usual circumstances.

BOA Member Robbins states that the variance application have met only criteria number 2 and 3 but not the first one. He states that the BOA needs to support all and each one of the criteria. BOA Member Kish sates that he does not agree that the variance request has met criteria number 2.

BOA Member Larson makes a motion to deny the variance request. BOA Member Stevens seconds. BOA Chairman Holzwarth states that the BOA needs a super majority to deny or pass the variance request. The motion to deny the variance request is approved 5, 0.

BOA Member Robbins makes a motion to adjourn the BOA Meeting. BOA Member Kish seconds.

Upon a previously adopted motion, the BOA meeting is adjourned at 10:50 am with a vote of 5, 0.

TOWN OF WINTER PARK  
BOARD OF ADJUSTMENT  
RESOLUTION NO. 8  
SERIES OF 2020

A RESOLUTION DENYING A VARIANCE TO ALLOW FRONT AND SIDE YARD SETBACK ENCROACHMENT OF A HOT TUB AND ROOF STRUCTURE FOR UNIT 1, CEDAR CREEK TOWNHOMES, RECORDED AT RECEPTION NO. 2006-005624

WHEREAS, pursuant to Winter Park Town Code (the "Code") § 7-8-1, the Board of Adjustment is authorized to grant variances from the requirements of Title 7 of the Winter Park Town Code (the "Code") according to certain criteria and requirements;

WHEREAS, pursuant to the Code § 7-4C-3, 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, and there shall be a side yard setback of at least five feet (5') for both principal and accessory structures;

WHEREAS, pursuant to the Code § 7-3-7 there are restrictions as to the size and location of projecting and overhanging structures in yards;

WHEREAS, on October 16, 2020, Nicole and Bill Gibbard (the "Applicant"), as the owners of the real property described as Unit 1, Cedar Creek Townhomes (Reception No. 2006-005624) (the "Property"), filed an application for a variance to allow a recently constructed roof structure and hot tub to encroach into the front and side yard setbacks by approximately 9'-0" and 4'-1", respectively (the "Application");

WHEREAS, on December 8, 2020, the Board of Adjustment held a properly-noticed public hearing on the Application; and

WHEREAS, after considering the Application, the recommendation from Town staff and public comment, if any, the Board of Adjustment finds and determines as provided below.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment as follows:

1. Findings. The Board of Adjustment hereby finds and determines that the Application fails to meet the following criteria set forth § 7-8-1(B) and (C) of the Code that would justify a variance:

- a. The Property can yield a reasonable return in use or service when used only under the conditions already allowed by the Town;
- b. The plight of the owner is not due to unusual circumstances;
- c. The variance, if granted, will alter the essential character of the locality;
- d. The need for the requested variance has been created by the owners of the Property; and
- e. The granting of the variance would be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the Property is located.

2. Decision. Based on the foregoing findings, the Board of Adjustment hereby **denies** the variance requested by the Application.

3. Compliance. Applicant shall remove the roof structure and relocate the hot tub so as to be in full compliance with the Code within 30 days of the date of this Resolution.

PASSED, ADOPTED, AND APPROVED this 16<sup>th</sup> day of December 2020.

BOARD OF ADJUSTMENT

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Brad Holzwarth, Chair

ATTEST:

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Danielle Jardee, Town Clerk