



**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
Tuesday, May 10, 2022 8:00 AM
Immediately Following Planning Commission**

A G E N D A

- I. **Meeting Call to Order**
- II. **Roll Call of BOA Members**
- III. **Minutes:** April 26, 2022
- IV. **Conflicts of Interest**
- V. **Action Items:**
 - A. Adoption of Resolution 3, Series 2022, A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF WINTER PARK ADOPTING FINDINGS OF FACT RELATED TO THE APPROVAL OF A VARIANCE TO INCREASE THE MAXIMUM STRUCTURE HEIGHT FOR LOT 2 AND LOT 3, BLOCK 11, OF WINTER PARK VILLAGE
 - B. Adoption of Resolution 4, Series 2022, A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF WINTER PARK ADOPTING FINDINGS OF FACT RELATED TO THE DENIAL OF A VARIANCE TO INCREASE THE DWELLING UNIT DENSITY FOR 78581 HIGHWAY 40
 - C. Adoption of Resolution 5, Series 2022, A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF WINTER PARK ADOPTING FINDINGS OF FACT RELATED TO THE DENIAL OF A VARIANCE TO INCREASE THE MAXIMUM BUILDING HEIGHT FOR 78581 HIGHWAY 40

If members of the public wish to attend the meeting digitally the link is below. The meeting will continue in person regardless of technical difficulties with Zoom.

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Public Hearing Process

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**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
Tuesday, April 26, 2022 8:00 AM
Immediately Following Planning Commission**

MINUTE

- I. **Meeting Call to Order.** The Board of Adjustment meeting starts at 10:15 am
- II. **Roll Call of BOA Members.** Roll Call indicated present Chairman Brad Holzwarth, BOA Members Mike Devlin (Alternate), Angela Sandstrom, Roger Kish and Dave Barker. Community Development Director James Shockey and Town Planner Hugh Bell are also present. Director Shockey and Town Planner Hugh Bell are also present.
- III. **Minutes:** March 22, 2022. BOA Member Barker makes a motion to approve the minutes. BOA Member Sandstrom seconds. The minutes are approved 5, 0.
- IV. **Conflicts of Interest.** No one comes forward.
- V. **Action Items:**
 - A. PUBLIC HEARING – Lot 2 and Lot 3, Block 11, Winter Park Village – 137 Fir Drive – Building Height

Town Planner Bell begins his presentation. Town Planner Bell reads the main points regarding this Variance request for the mid-point. Planner Bell indicates that the Staff received public comments: one in favor and one against. Then, Planner Bell mentions the highlights related to this request. This information has been included in the electronic packet sent to the BOA Members. The Staff has not found proven hardship and suggests the applicant can reduce the ceiling height or think about an alternate design. However, is the BOA decision to approve or deny the Building Height Variance Request.

Mr. Lianne Smith from Fir Haus, LLC and Jamie Smith from Cabin Creek Carpentry, Ltd. come forward. Mr. Smith says that the height of the building was discussed with Director Shockey. The applicants give their arguments for this variance to be granted. They mention how adjacent properties have been granted variances in the past. They also mention the extra cost that they will incur if the variance is denied.

The BOA and the applicants discuss lowering the roof height. The applicants mention that they have discussed this with their architect. The BOA asks when the application was first received. Planner Bell says that it was received in February 2022.

The applicants says that they can reduce the height through grading. The applicants also mention an adjacent house that encroaches.

There are no comments from the public.

The BOA asks about the variances that have been granted to the surrounding properties and have a conversation about the guidelines for this type of variances request. Planner Bell gives a short background about previous variances granted. The BOA has a short conversation about previous variance requests in the surrounding area. The applicant, Ms. Smith brings some information about this and presents it to the

BOA. The BOA asks about the configuration of the roof. The BOA and the Staff discuss how to reduce the height by extending it artificially. The BOA also discuss how the three criteria can be met by the applicant. They discuss the financial cost as a burden to the owner which is not regularly considered but it might be in this case since it is an unusual circumstance. The BOA has a conversation about how the three criteria can be applicable to this variance request specially for criteria number one.

BOA Member Kish makes a motion to grant the variance request based on the compliance of the three criteria. BOA Member Barker seconds. The motion to approve the variance is approved 4, 1 by a super majority.

B. PUBLIC HEARING continued from March 22, 2022: Metes and bounds parcel, 78581 US Highway 40 – Accommodation Unit Density

Town Planner Bell begins his presentation by mentioning what was discussed in the previous meeting. Town Planner Bell points out that this item is tied to item C in the agenda so, Planner Bell combines both Staff reports. Planner Bell shows on the screen the main points for both items including the mention of some public comments received. Planner Bell then describes in more detail some aspects related to this variance request such as parking spaces and building height. This information was sent to the BOA Members in the electronic packet. There is also mention of how the BOA has approved similar variances in the past. It is indicated that the Staff prior recommendation for denial still stands. Since no pro forma was provided, Staff lacks evidence demonstrating the need for the DU increase. Afterwards, Planner Bell goes over the Staff recommendations and the sample motions for denial and approval. However, is the BOA decision to approve or deny the request.

The BOA would like to see the examples of the similar variances that have been granted in the past. Planner Bell mentions some of them such as the buildings north of Fireside Market.

The applicant Mr. Mike Jameson, part of the ownership group, comes forward. Mr. Jameson says they have some material regarding this variance requests. He mentions how they have addressed this type of situation in the past by making some modifications. Mr. Jameson shows some images to explain this better to the BOA. Mr. Casey Culbertson, also part of the applicants team, comes forward and goes more into detail about the elevations and the grading so they can be in compliance. Ms. Sudha Tokala, the owner of the property, also comes forward and talks about the numbers related to the building height. The applicants use the project information sheet to illustrate those numbers better to the BOA. Planner Bell shows the elevations to the BOA and the public to study these measurements better.

The BOA and the Staff discuss this and they also comment on the setbacks a little more. The BOA and the Staff go over the zoning requirements in relation to the height of this particular project. They also go over how previous projects have been granted the variance according to their particular circumstances.

The public comment period is now open.

Mr. David Treece, the owner of the Best Western Alpenglow Hotel located on 78641 US Highway 40, comes forward. Mr. Treece points out that the developer has the right to build on the property, but they also need to be in compliance with the height requirements that Town has established. Mr. Treece is concerned about the height of the building on the back of the property. If this height variance is granted, the views from his hotel will be negatively affected. Finally, Mr. Treece says that a brand name hotel should not dictate what the Town of Winter Park can or cannot do in its jurisdiction.

Mr. Edward F. Raegner, the owner of the building that contains the Strip and Tail restaurant located at 78529 US Hwy 40, comes forward. Mr. Raegner's main concern is about the building blocking the views. He is asking the BOA to please take this into consideration.

The public comment period is now closed.

Director Shockey informs the BOA that there was an error in the packet and the staff report for the building height was not included. He wants to make sure the members of the BOA and the public have enough time to review the full contents of both variances requests and he points out that the BOA does not need to table this item. The BOA agrees on having a conversation since the topic is being discussed as opposed to tabling this item. The BOA members have been advised not to anticipate what is coming up on the UDC in any of their decision making process. The anticipated date to adopt the UDC is May 17th, 2022 and enforceable on May 22nd, 2022. The BOA says that if and when the UDC is adopted, there is no need for a variance to go forward with this project as it concerns density.

Mr. Jameson comes forward one more time and talks about how the measurements are being calculated from their part. He also mentions the interior ceiling height. Mr. Jameson says that they have worked on breaking up the massing of the building but they recognized that there is more work to be done. Ms. Tokala adds that there will be a loss of view regardless of the height of the building anyway. She also mentions how the setbacks and the topography of the lot influence their arguments to propose their building height. Ms. Tokala argues that the BOA has granted similar variances to other projects. Ms. Tokala then talks about the density and how they are planning on what will be adopted soon. She also mentions ornamental elements on the buildings. Then, Ms. Tokala mentions some of the amenities, such as the pool, to make it family friendly.

The BOA discusses the density and they are leaning towards waiting until the UDC is adopted; there is no reason to grant a density variance when the upcoming UDC will be adopted in less than a month. For BOA Member Kish 55 ft. is more than enough since there is no evidence that supports anything more than 55 ft. BOA Member Davlin agrees with BOA Member Kish's argument. The BOA members discuss how granting a 15 ft. height variance might trigger this type of variances request way more often from other applicants. From what the BOA Members have seen so far, the upcoming UDC does not plan to make drastic changes for height on the main street for any particular reason. The BOA does not see the need to undo years of planning to accommodate an individual applicant or their tenant. The BOA then discuss the three criteria in order to deny or grant the variances for this applicant. The BOA has not found new information that might support the applicant's arguments in favor of granting the variance.

Since this item is related to the item C in the agenda, the BOA is moving to item C now.

BOA Member Barker makes a motion to deny this density variance request based on the lack of compliance of the three criteria: the applicant has not provided evidence that support their arguments about not being able to get reasonable return, there are not unusual circumstances and the variance, if granted will affect the essential character of the locality since there are no existing buildings with the density the applicant proposes. BOA Member Davlin seconds. The motion to deny the density variance is approved 5, 0.

- C. PUBLIC HEARING continued from March 22, 2022: Metes and bounds parcel, 78581 US Highway 40 – Building Height

Since this item is related to the item B in the agenda, the BOA has had a conversation about it above.

BOA Member Barker makes a motion to deny this height variance request based on the lack of compliance of the three criteria: the applicant has not provided evidence that support their arguments about not being able to get reasonable return, there are not unusual circumstances and the variance, if granted will affect the essential character of the locality. BOA Member Davlin seconds. The motion to deny the height variance is approved 5, 0.

Upon a previously adopted motion, the BOA Meeting is adjourned at 11:26 am.

**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
RESOLUTION NO. 3
SERIES OF 2022**

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF
WINTER PARK ADOPTING FINDINGS OF FACT RELATED TO THE
APPROVAL OF A VARIANCE TO INCREASE THE MAXIMUM STRUCTURE
HEIGHT FOR LOT 2 AND LOT 3, BLOCK 11, OF WINTER PARK VILLAGE**

WHEREAS, pursuant to the 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 Code;

WHEREAS, § 7-4C-4 of the Code states that no dwelling or structure in the R-2-O zone district shall exceed 35 feet in height;

WHEREAS, on March 29, 2022, Firhaus, LLC (the "Applicant"), as the owner of the real property more particularly described in **Exhibit A** (the "Property"), filed an application for a variance to exceed the maximum permitted structure height in the R-2-O zone district by approximately 10.5 inches for a total structure height of 35 feet and 10.5 inches (the "Application");

WHEREAS, on April 26, 2022, the Board of Adjustment held a properly noticed public hearing on the Application; and

WHEREAS, after considering the Application, presentations by Town staff and the Applicant, and public comment, the Board of Adjustment approved the Application and hereby adopts the following findings of fact in support of such approval.

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 meets the applicable criteria set forth in §§ 7-8-1(B) and (C) of the Code, more particularly:
 - a. The variance, if granted, will not alter the essential character of the Town or the neighborhood in which the Property is located because there are projects which have similar height adjacent to this Property.
 - b. The difficulty or hardship alleged in the Application has not been created by any person presently having an interest in the Property because the hardship arose from the fact that the architect that drafted the plans is deceased and there is no ability to access the information to revise the plans.
 - c. The granting of the variance would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the Property is located because the overall height conforms with § 7-3-17 of the Code

2. Decision. Based on the foregoing findings, the Board of Adjustment hereby **approves** the variance, as requested in the Application, subject to the following conditions:

- a. A building permit for construction of the structure described in the Application shall be issued on or before April 26, 2023. If a building permit is not issued within such time, the variance granted herein shall automatically terminate without further action of the Board of Adjustment.
- b. Neither this Resolution nor the variance granted herein creates any vested rights under statute or common law.
- c. This Resolution shall be recorded in the records of the Grand County Clerk and Recorder within 30 days of approval.

PASSED, ADOPTED, AND APPROVED this 10th day of May 2022.

BOARD OF ADJUSTMENT

Brad Holzwarth, Chair

ATTEST:

Danielle Jardee, Town Clerk

Exhibit A

Legal Description of Property

Lot 2 and Lot 3, Block 11, Winter Park Village Subdivision

**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
RESOLUTION NO. 4
SERIES OF 2022**

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF
WINTER PARK ADOPTING FINDINGS OF FACT RELATED TO THE DENIAL
OF A VARIANCE TO INCREASE THE DWELLING UNIT DENSITY FOR 78581
HIGHWAY 40**

WHEREAS, pursuant to the 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 Code;

WHEREAS, pursuant to § 7-5B-3 of the Code, the maximum dwelling unit density is twenty-eight (28) units per gross acre in the D-C zone district;

WHEREAS, on April 14, 2022, Winter Park FBIT, LLC, Sudha Tokala, and Mike Jameson (the "Applicants"), as the owners of certain real property more particularly described in **Exhibit A** (the "Property"), filed an application for a variance to increase the dwelling unit density from twenty-eight (28) units per gross acre to thirty-two (32) units per gross acre (the "Application");

WHEREAS, on April 26, 2022, the Board of Adjustment held a properly-noticed public hearing on the Application; and

WHEREAS, after considering the Application, presentations by Town staff and the Applicant, and public comment, the Board of Adjustment denied the Application and hereby adopts the following findings of fact in support of such denial.

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

1. Findings. The Board of Adjustment hereby finds and determines that the Application fails to meet the criteria set forth in § 7-8-1(B) of the Code that would justify a variance, more particularly:
 - a. Applicants did not provide evidence to demonstrate that the Property cannot yield a reasonable return in use or service by adhering to the Dwelling Unit ("DU") density limit in the Code. No pro forma was provided. Applicants did not support the initial or reduced DU/acre proposal with any evidence demonstrating that either amount would create a reasonable return that was otherwise not possible through the strict application of the Code. No evidence was presented to demonstrate that the Code requirements for density created an unreasonable return in use or service; and
 - b. Applicants did not demonstrate an unusual circumstance preventing the development from adhering to the DU density requirements in the Code. Applicants cite to the fact that the proposed Unified Development Code (the "UDC") is proposing to modify the permitted amount of DU/acre in the D-C zone district. However, such a proposal is just that. It is not a standard relevant to the requirements to which this Application

must adhere or a standard at all, it is a proposal irrelevant to the Application and does not create an unusual circumstance. The Code states the applicable requirements, and the Applicant did not demonstrate evidence as to why this development could not adhere to those requirements.

2. Decision. The Board of Adjustment hereby adopts the foregoing findings of fact in its **denial** of the variance requested in the Application.

PASSED, ADOPTED, AND APPROVED this 10th day of May 2022.

BOARD OF ADJUSTMENT

Brad Holzwarth, Chair

ATTEST:

Danielle Jardee, Town Clerk

Exhibit A
Legal Description of Property

A tract of land located in the NE1/4NW1/4 and the NW1/4NE1/4 of Section 33, Township 1 South, Range 75 West of the 6th P.M., more particularly described as follows:

Beginning at the Northeast corner of the tract, said corner being identical with the N1/4 corner of said Section 33, Township 1 South, Range 75 West of the 6th P.M., thence along the North line of said Section 33, S 89°48' W for a distance of 502.3 feet, more or less, to the intersection with the East right-of-way line of U.S. Highway No. 40; thence S 71°31' E for a distance of 300 feet; thence N 89°48' E for a distance of 436.0 feet; thence N 04°44' W for a distance of 287.45 feet more or less to the point of beginning.

County of Grand, State of Colorado

**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
RESOLUTION NO. 5
SERIES OF 2022**

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF
WINTER PARK ADOPTING FINDINGS OF FACT RELATED TO THE DENIAL
OF A VARIANCE TO INCREASE THE MAXIMUM BUILDING HEIGHT FOR
78581 HIGHWAY 40**

WHEREAS, pursuant to the 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 Code;

WHEREAS, pursuant to § 7-5B-4 of the Code, there shall be a maximum height of 55 feet for all structures in the D-C zone district;

WHEREAS, on January 12, 2022, Winter Park FBTT, LLC, Sudha Tokala, and Mike Jameson (the "Applicants"), as the owners of the real property more particularly described in **Exhibit A** (the "Property"), filed an application for a variance to allow a new structure to exceed the 55 feet maximum height limit by approximately 18 feet for a total height of 73 feet (the "Application");

WHEREAS, on April 26, 2022, the Board of Adjustment held a properly-noticed public hearing on the Application; and

WHEREAS, after considering the Application, presentations by Town staff and the Applicant, and public comment, the Board of Adjustment denied the Application and hereby adopts the following findings of fact in support of such denial.

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 criteria set forth in § 7-8-1(B) of the Code that would justify a variance, more particularly:

- a. Applicants did not provide evidence to demonstrate that the Property cannot yield a reasonable return in use or service by adhering to the height limit. Applicants attributed the need for the height variance to the desire to have a two-story parking garage and to the 14-foot-and-4-inch grade change between the sidewalk to the rear buildable portion of the lot. However, the Applicant did not demonstrate how the 14-foot-and-4-inch grade change from the sidewalk to the rear buildable portion of the lot justifies an 18-foot increase in the maximum building height for the entire structure. Additionally, the Applicant did not provide evidence demonstrating why the building could not be designed at a lower height while still allowing for a two-story parking garage. No evidence was presented to demonstrate that the Code requirements for height created an unreasonable return in use or service; and

- b. Applicants did not demonstrate an unusual circumstance preventing the building from adhering to the building height limitation. Any alleged difficulty or hardship comes from the Applicants own creation because the proposed design condenses a five-story building on the edges of a lot, while not utilizing a portion of the space above the east edge of the building as presented in the BOA application. The Applicant did not demonstrate evidence of a unusual circumstance to justify why this development could not adhere to the Code requirements for building height.
- c. Applicants did not provide evidence to demonstrate that the application would not alter the essential character of the locality. The downtown consists of three- and four-story structures with a maximum height of 55 feet while the applicants design is five stories and nearly 70 feet essential altering the character of the downtown.

2. Decision. The Board of Adjustment hereby adopts the foregoing findings of fact in its **denial** of the variance requested in the Application.

PASSED, ADOPTED, AND APPROVED this 10th day of May 2022.

BOARD OF ADJUSTMENT

Brad Holzwarth, Chair

ATTEST:

Danielle Jardee, Town Clerk

Exhibit A
Legal Description of Property

A tract of land located in the NE1/4NW1/4 and the NW1/4NE1/4 of Section 33, Township 1 South, Range 75 West of the 6th P.M., more particularly described as follows:

Beginning at the Northeast corner of the tract, said corner being identical with the N1/4 corner of said Section 33, Township 1 South, Range 75 West of the 6th P.M., thence along the North line of said Section 33, S 89°48' W for a distance of 502.3 feet, more or less, to the intersection with the East right-of-way line of U.S. Highway No. 40; thence S 71°31' E for a distance of 300 feet; thence N 89°48' E for a distance of 436.0 feet; thence N 04°44' W for a distance of 287.45 feet more or less to the point of beginning.

County of Grand, State of Colorado