

**BOARD OF ADJUSTMENT
PUBLIC HEARING
MINUTES**

January 6, 2009

7:00 PM

Members Present:

Julia Burroughs, Chairman
Cathy Young
Michael Carollo
Alan Beshany
Gene Kohls
Sharon Montague
Heidi Snyder

Staff Present:

Becky Clark, Director, Community Planning & Development
Gail Spencer, Administrative Manager
Andrea Thompson, Associate Planner
Joyce Wayman, Secretary to the Board

A quorum being present the meeting was called to order.

Case Number: VM-08-002
Location: 7650 West 2nd Avenue
Applicant: Glen Gidley

Mr. Glen Gidley, applicant, stated that he is requesting relief from two setback requirements due to the extensive floodway on the property. Mr. Gidley said that the first request is to allow for a 5-foot side setback from the west property line, and the second request is for an 18-foot front setback measured from the edge of asphalt.

Andrea Thompson, Project Manager, entered the case into the record. Andrea also read into the record a letter from the adjacent property owner, Dale and Marcia Drage. They stated that they were in favor of the request.

Ms. Thompson stated that the property located at 7650 West 2nd Avenue is zoned for Large Lot Residential District (1-R) and is Block B, Lot 16 of the Devinney Place subdivision plat. The property is 100-feet wide by 318-feet deep, totaling 31,800 square feet in size. The property has 100-feet of frontage along West 2nd Avenue. It is vacant land, with mature trees and native grasses throughout the property. The majority of the property is within the floodway except for a small area approximately 560 square feet in size in the northwest portion of the property.

Ms. Thompson read into the record the Analysis of Issues from her staff report:

ANALYSIS OF ISSUES:

The Lakewood Zoning Ordinance allows the Board of Adjustment to grant a variance from the application of the standards set forth in Section 17-4-3 of the Zoning Ordinance when the requested variance meets each of the following criteria.

- 1. By reason of exceptional narrowness, shallowness or shape of a specific piece of property on the date this section takes affect or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of the regulation would result in a peculiar and undue practical difficulties for, or peculiar or unnecessary hardship on, the owner of the property;**

The property's zoning dictates the required setbacks, which are provided in Article 5 of the Lakewood Zoning Ordinance. The 1-R Zone District side and rear setbacks are 15-feet from the property line. The front setback is 28-feet from the edge of asphalt when no sidewalk is present, as is the situation for the subject property.

When applying the standard 1-R setbacks to the subject property assuming no constraints, there would be 19,320 square feet of buildable area. With the floodway, there would be area for a rectangular building envelope of approximately 16-ft x 35-ft, or 560 square feet of buildable area. Because the majority of the property is within the floodway, and no building, structure or fill is allowed within the floodway, this information demonstrates the exceptional narrowness of the buildable area and extraordinary situation on the property preventing development of 97% of the buildable area. With the relief of the setbacks as requested, a rectangular building envelope of approximately 26-ft x 45-ft would be available, totaling 1,170 square feet of buildable area.

This information is visually illustrated in Attachments 3-5. Attachment 3 is a Plot Plan showing buildable area if no floodplain or floodway were present. Attachment 4 is a Plot Plan showing buildable area with floodplain, floodway and 1-R setbacks. Attachment 5 is a Plot Plan showing buildable area with floodplain, floodway and requested setbacks.

Side Setback Analysis: Without a variance, there is an area approximately 16-foot wide for a building footprint from the floodway limit to the 15-foot side setback. With the requested 5-foot side setback, there would be a 26-foot wide area for a building footprint.

Front Setback Analysis: Without a variance, there is only an approximately 35-foot deep area for a building footprint from the floodway limit to the 28-foot front setback. With the requested 18-foot front setback, there would be a 45-foot deep area for a building footprint.

- 2. The variance, if granted, will observe the spirit of the Lakewood Zoning Ordinance, and secure the public safety and welfare, and achieve substantial justice;**

There will be no negative impact to the public safety and welfare by granting the variance because there will be no impacts to the surrounding properties, including the property to the west. There will be no change to the floodplain or floodway and no change to the permitted use, height or density to the site.

Side Setback Analysis: The requested 5-foot side setback is a reasonable request as it is the standard side setback for single-family units in the 2-R and 3-R districts. The requested 5-foot setback would still provide an adequate buffer distance to the adjacent residential property to the west and not negatively impact the adjacent property owners. Granting a variance for the requested setbacks would provide substantial justice in allowing the property a more practical size area to construct a small single-family home on the lot.

Front Setback Analysis: The requested 18-foot front setback would provide adequate buffer distance to the street and would not have any negative impact on the public safety or welfare. Granting a variance for the requested setbacks would provide substantial justice in allowing the property a more practical size area to construct a small single-family home on the lot.

3. The variance, if granted, will not adversely affect the adjacent properties and the surrounding neighborhood;

Side Setback Analysis: There would be no adverse impacts to the adjacent properties and to the surrounding neighborhood by granting the requested side setback variance that would provide the relief needed to construct a small single-family home. The requested 5-foot setback still provides a buffer distance to the adjacent residential properties that is consistent with the 2-R and 3-R zone district side setbacks for a single-family home. There would be little impact to the traffic in the area with the addition of a single-family home.

Front Setback Analysis: There would be no adverse impacts to the adjacent properties and to the surrounding neighborhood by granting the requested variance that would provide the relief needed to construct a single-family home. The front setback still allows adequate room to buffer the home from the street. Additionally, since the majority of the property is within the floodway, most of the land would remain unchanged since no structures are permitted in the floodway, including fences.

4. The variance, if granted, will not substantially or permanently impair the appropriate use or development of the adjacent properties;

Side Setback Analysis: With a 5-foot side setback variance, there would still be a separation and reasonable setback distance to the single-family residence to the west. Additionally, the home on the property to the west is separated from the property line by a driveway, creating an even greater buffer area. Furthermore, a 5-foot side setback is reasonable and fair since the 1-R district only requires a 5-foot side setback for a detached structure up to 1,800 square feet, and the building footprint if the variance is granted could be a maximum of 1,200 square feet.

Front Setback Analysis: There would be no substantial or permanent impairment of use or development of the adjacent properties. To the north, east and south are retail, office, restaurant and auto repair uses. There would be no negative implications to the subject property or adjacent properties' building code conformance and no nuisance to these properties. The floodway limits any development on the majority of the east and south side of the property, therefore there would be no change on the majority of the property or impact to the adjacent properties.

5. The variance, as requested, is the minimum variance request that will afford relief;

Side Setback Analysis: The requested variance would provide the minimum relief needed in order to develop the property for the zone district's designated use of a single-family house. The requested side setback would provide for an additional 10-feet of house width making it a more feasible size home to construct and occupy. Any greater setback than 5-feet would quickly decrease the buildable area and the feasibility to construct a feasible house.

Front Setback Analysis: The requested variance would provide the minimum relief needed in order to develop the property for the zone district's designated use of a single-family house. The requested front setback would provide for an additional 10-feet of house depth making it a more feasible size home to construct and occupy.

NOTIFICATION AND POSTING:

Notice of the Public Hearing to the fee owners of the property within 300-feet of the subject property was made in accordance with the requirements of the rules of the Board of Adjustment. The property was also posted with a sign for 10 days prior to the scheduled Public Hearing. Case referrals were also sent to the utility companies and fire district that serves the property and there were no concerns from the agencies.

STAFF RECOMMENDATION:

Based upon the information and materials provided in the staff report, the City of Lakewood staff recommends that the Board find that:

- a. The Board of Adjustment finds that the notification and posting requirements as stated above for NOTIFICATION AND POSTING have been met; and
- b. No objections were filed with the City of Lakewood; and
- c. The Board of Adjustment has adopted the findings listed in items (a) thru (e) above in the ANALYSIS OF ISSUES;

Ms. Thompson requested that based upon the information and materials provided in the staff report and presentation to the Board of Adjustment, that the Board of Adjustment approve VM-08-002:

AND

That the Major Variance request, case number VM-08-002, is granted to allow for a 5-foot side setback from the west property line and a 18-foot front setback from the edge of asphalt be **APPROVED** with the following conditions:

1. A survey signed by a registered surveyor in the State of Colorado that shows the floodplain and floodway limits will be required at the time of building permit for a single-family house.
2. The Board of Adjustment Motion is recorded at Jefferson County Clerk and Recorder's Office for this property at the expense of the applicant.

PUBLIC COMMENT WAS CLOSED.

Board of Adjustment discussion.

ALAN BESHANY made a motion in case **VM-08-002** for the property located at **7650 West 2nd Avenue** adopting a resolution granting a variance from Section 17-5-9(5) of the Lakewood Zoning Ordinance to allow for a 5-foot side setback from the west property line, and an 18-foot front setback from the edge of asphalt. The reasons for the variances are detailed in the Staff Report and are:

- a. By reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property as demonstrated by the extensive floodway covering the majority of the property, the strict application of the regulation would result in a peculiar and undue practical difficulties for, or peculiar or unnecessary hardship on, the owner of the property by reducing the buildable area by 97%; and
- b. The variance will observe the spirit of the Lakewood Zoning Ordinance, and secure the public safety and welfare, and achieve substantial justice; and
- c. The variance will not adversely affect the adjacent properties and the surrounding neighborhood; and
- d. The variance will not substantially or permanently impair the appropriate use or development of the adjacent properties; and
- e. The variance is the minimum variance request that will afford relief.

Citing the Board's authority in Section 17-4-3 of the City of Lakewood, Colorado Zoning Ordinance, the testimony given this evening and these findings of fact, move that the application be approved with the following conditions:

- a. A survey signed by a registered surveyor in the State of Colorado that shows the floodplain and floodway limits will be required at the time of building permit for a single-family house, and the survey will come in at the time of the building permit;
- b. The Board of Adjustment Motion is recorded at Jefferson County Clerk and Recorder's Office within 30 days after the appeal process is over for this property at the expense of the applicant.

MICHAEL CAROLLO seconded the motion.

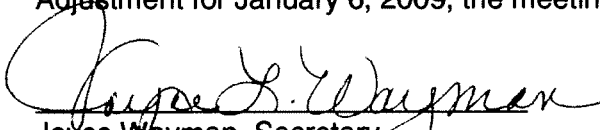
MOTION PASSED UNANIMOUSLY BY A VOTE OF 7-0 (BESHANY, CAROLLO, CATHY YOUNG, SHARON MONTAGUE, HEIDI SNYDER, GENE KOHLS, JULIA BURROUHS, VOTING AYE).

OTHER BUSINESS:

Motion to approve Minutes

Motion was made by Michael Carollo to approve the Minutes for the February 20, 2007 Board of Adjustment public hearing. Alan Beshany seconded the motion. Motion carried by a vote of 7-0.

There being no further business to come before the City of Lakewood Board Of Adjustment for January 6, 2009, the meeting was adjourned at 7:55 p.m.


Joyce Wayman, Secretary
City of Lakewood Board of Adjustment