



Town of Pagosa Springs
Planning Commission, Board of Adjustments & Design Review Board
Regular Scheduled Meeting Minutes

May 26, 2015

Town Hall, Council Chambers, 551 Hot Springs Boulevard, Pagosa Springs, Colorado 81147

- I. **Call to Order / Roll Call:** Commission Chair Ron Maez called the meeting to order at 5:30 PM. Commissioners Peter Adams, Kathie Lattin and Heidi Martinez were present. Alternate Members Cameron Parker and Natalie Woodruff were absent. Also present were Planning Director James Dickhoff, Associate Planner Margaret Gallegos, Lucas Martinez, Annette & Leonard Candeleria, Eddie Archuleta, and Dan Lynch.
- II. **Announcements:** None.
- III. **Approval of Minutes:** May 12, 2015 meeting minutes were deferred until the next regular meeting to allow the Commission time to review.
- IV. **Public Comment:** None received.
- V. **Board of Adjustments:** None.
- VI. **Planning Commission:** None
- VII. **Design Review Board:**
- A. **Variance Application requesting reduction of minimum front yard setback at 141 S 8th Street (Public Hearing / Quasi-Judicial Matter):** Planning Director Dickhoff reported that the Town has received an application requesting a variance to the front yard setback requirements at 141 S. 8th Street. The Applicant, Annette Candeleria, has submitted a variance application requesting a front yard setback of 2.5 feet, to accommodate a new addition to the front of the residential house and new roof over an existing exterior attached deck. The applicant is also constructing an addition to the west side of the existing house, which requires no special approvals. The current house is on two city lots. All of the proposed work requires an administrative reviewed lot consolidation application, since the existing house and proposed additions cross the existing common property line between the two lots.
- Subject property zoning: Mixed Use Residential (MU-R). and the required Front Yard Setback: 20 feet from property line to furthest protruding portion of the structure, the roof fascia board in this instance.
- The current request from the applicant is two-fold:
- 1) Seek front yard setback variance to allow building a roof over the existing attached deck. This would result in the roof fascia board being 2.5 feet from the front property line.
 - 2) Seek a front yard setback variance to allow building a NEW residential home addition that would result in a front yard setback to the roof fascia board being 2.5 feet from the front property line.



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After a “stop work order” was posted on the property, after construction had started, for failure to apply for a building permit, the applicant was asked to consider re-designing the building plans to take advantage of the western portion of the property or they could submit a variance application, though staff recommended the first option. The Town Building department did issue a foundation permit for the west addition that is not involved in this variance decision item.

Future S. 8th Street improvements will be considered by Town Council for construction in 2016 or 2017. The improvements may include widening of the 8th Street improvements, which may result in the sidewalk being 2.5 feet from the roof eave, necessitating the need for roof mounted snow anchors to prevent snow and ice from falling onto the sidewalk and pedestrians. In addition, a gutter system would be necessary to prevent roof water drainage running into and over the sidewalk.

Property owners Annette Candelaria and Lucas Martinez noted that the house was built in 1970 in its existing location because there was a second home on the east side of the existing home, which has since been removed. The owners were aware of the 8th Street expansion and noted that it was understandable. The home will be redesigned – to extend the kitchen to the east into the new proposed addition. The owners noted that the existing roof would be removed and replaced with a new roof that would be squared-off with a single ridge, pitched roof – removing the front gable and valleys. The owners noted that their request for a covered porch was to address safety issues and negate or reduce the work involved with removing the snow. In closing, the owners commented that the rear/west addition is 20’ x 46’ – the new roof will be built so that it is centered over the existing home and new front and rear additions.

The Commissioners discussed the variance application with the owners – it was suggested that the new roof’s ridge line be turned so that it runs East to West rather than North to South, should the owners want to mitigate snow sheeting and drainage issues in the front yard. It was also suggested that the owner modify their front entry so that it faces San Juan Alley to address snow and ice issues on the existing deck/front entry.

Dickhoff noted that the Land Use and Development Code (LUDC) section 2.4.11 outlines the Variance application process and approval criteria as follows: 2.4.11. VARIANCES, A. Purpose - The Board of Adjustment shall hear and decide all requests for a variance from the requirements of this Land Use Code, unless otherwise provided in this Section. The variance process is intended to provide limited relief from the requirements of this Land Use Code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Land Use Code. **It is not intended that variances be granted to (1) allow a use in a zone district where it is not permitted by this Land Use Code; or (2) merely remove inconveniences or financial burdens that the requirements of this Land Use Code may impose on property owners in general. Rather, it is intended to provide limited relief where the requirements of**



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this Land Use Code render the land difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested. State and/or federal laws or requirements may not be varied by the Town.

The applicant has submitted the following and the Planning Director has determined the submitted LUDC application for variance meets the application submittal requirements:

- ~ Completed Land use Application.
- ~ Land Use application fees of \$300, received.
- ~ Agreement of payment of fees has been signed.
- ~ Evidence of good title, received.
- ~ Surrounding and interested property ownership report, received.
(Town staff will process the envelopes for neighborhood mailed notifications).
- ~ General Development information, request for variance.

LUDC section 2.4.11 reviews the variance application submittal and processing requirements.

LUDC 2.4.11.C, Step 7: Town Holds Public Hearing:

- a. The Board of Adjustment shall hold a public hearing on the proposed variance. In considering the application, the Board shall review the application materials, the Staff Report, the applicable approval criteria below, and all testimony and evidence received at the public hearing.
- b. After conducting the public hearing, the Board of Adjustment (BOA) may approve, approve with conditions, or deny the requested variance. Any approval, approval with conditions, or denial shall be accompanied by written findings of fact that the variance meets or does not meet each of the criteria set forth in below, stating the reasons for such findings.
- c. The applicant has the burden of proving the necessary facts to warrant favorable action by the BOA.

Below are the TEN (10) approval criteria, all of which are required to be met for considering approving a variance application. STAFF has provided comments on each approval criteria are after each of the following approval criteria.

LUDC section 2.4.11.C.2.a. Approval Criteria: The Board of Adjustment may approve a variance only upon finding that **ALL** of the criteria below have been met.

(i) There are unique physical circumstances or conditions, such as size, irregularity, narrowness or shall owners of lot, location, surroundings, or exceptional topographical or other physical conditions peculiar to the affected property;



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Staff Comments: The physical conditions on the lot are fairly typical in nature, in that, many older homes/structures, are set within the current setback, and along S. 8th Street and in south Pagosa, many homes are closer to the front yard property line than is currently allowed. The current home sits on two city lots which are flat with no topography constraints. STAFF finds the applicant is not consistent with this approval criteria item:

(ii) The unusual circumstances or conditions do not exist throughout the neighborhood or district in which the property is located;

Staff Comments: There are many similar instances where houses encroach into the front yard setback along S. 8th Street. The front yard setback is currently defined as 20 feet in the MU-R district.

(iii) Such physical circumstances or conditions were not created by the applicant or any previous owner of the property;

Staff Comments: Though the physical circumstances were not created by the applicant, the applicant did determine that adding to the east side (front) of the house was their preference instead of expanding further west onto the undeveloped portion of the flat lots. The current set back encroachment condition may have been compliant at the time the house was constructed; however, the Town's building department has no records showing the town issued a building permit for the deck.

(iv) Because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this Land Use and Development Code because such conformance with the Code would deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;

Staff Comments: The current residential home sits on two city lots and is positioned to the front (8th Street side) portion of the two lots, which are flat in nature. Variances of this nature are not typical in this neighborhood (or any neighborhood), thus conforming to the LUDC does not deprive the applicant such privileges enjoyed by other property of the same classification in the same zone district. The applicant does have enough land on the remaining portion of the lot, to the west of the current structure, to accommodate the addition proposed to the east (front) of the current home. Staff finds the variance application is not consistent with this approval criteria item.

(v) The variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property; and



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Staff Comments: If the variance is granted, it sets a precedent along S. 8th Street and in South Pagosa regarding allowing building within the front setback, even when there is available building space that is consistent with the intent of the LUDC. Future variances granted under the same consideration may result in residential homes being built 2.5 feet from the front property line. Although, an argument could be made for allowing the deck to be roofed, the east residential building addition would not be consistent with this approval criteria item. In addition, if the deck roof is allowed to encroach into the setback, a restriction should be considered prohibiting the future renovation of the deck, walling it in as interior space.

(vi) The variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the provisions of this Land Use and Development Code that are in question.

Staff Comments: Staff Comments believes variance request for the roof over the existing deck may meet the general purpose of relief as stated in the LUDC 2.4.11.A, Purpose, however, the proposed new east addition to the house is not consistent with LUDC 2.4.11.A.

(vii) No variance shall be granted that violates the intent of this Land Use and Development Code or its amendments. No variance may make any changes in the terms of this Land Use and Development Code provided the restriction in this subsection shall not affect the authority to grant variances pursuant to this Section 2.4.10.

Staff Comments: Staff believes variance request for the roof over the existing deck may meet the general purpose of relief as stated in the LUDC 2.4.11.A, Purpose, however, the proposed new east addition to the house is not consistent with LUDC 2.4.11.A.

(viii) No variance shall be granted from any written conditions attached by another decision-making Body to the approval of a conditional use permit, subdivision plat, or site plan.

Staff Comments: Staff finds the application meets this approval criteria item. There are no conditions attached by another decision making body that the applicant is seeking a variance from.

(ix) No variance shall be granted if the conditions or circumstances affecting the applicant's property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations.



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Staff Comments: Staff believes that the roof over the deck may meet the eligibility requirements for a variance, however, the east residential home addition is not consistent with this approval criteria item, finding the conditions on the subject property are very general and recurrent in nature. The LUDC has set front yard setbacks for the typical lot, such as the typical subject property which is common throughout the Mixed Use Residential district.

(x) No variance may authorize a use other than those permitted in the district for which the variance is sought; also, an application or request for a variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which zoning request for any parcel of property or portion thereof has not been finally acted upon by both the Planning Commission and by the Town Council.

Staff Comments: Staff finds the applicant meets this approval criteria item. The applicants proposed residential use is consistent with the LUDC. No application for change in zoning is proposed.

Dickhoff reported that, in addition, staff finds the application is not consistent with the LUDC stated purpose of variances: 2.4.11.A Purposevariances are intended to provide limited relief where the requirements of this Land Use Code render the land difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested.

Also, STAFF recommends that if considering approving a roof over the deck, then please consider a condition of approval restricting a future renovation enclosing the deck as interior space. In addition, STAFF recommends considering a condition of approval that requires protection of sidewalk and pedestrians if the 8th Street improvement project would occur, installing a public sidewalk 2.5 feet from the roof eave or within a distance that would be within the setback.

Public Notices and Comments: Public notification is required for the public hearing agenda item and was provided as follows:

- 1) Public notice was posted on the subject property on May 11, 2015.
- 2) Public notice was posted at Town Hall on May 11, 2015.
- 3) Public notice was published in the Pagosa Springs Sun newspaper on May 7, 2015.
- 4) Public noticed was mailed to property owners within 300 feet of the subject property on May 11, 2015.

Staff has received two public comments regarding this variance request:

- 1) One property owner called and provided verbal comments that "he would like the same consideration to build 2.5 feet from his front property line. He thought there appeared to be



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plenty of room on the west portion of the lots to build the desired residential home addition". This individual also provided the attached written public comments.

- 2) Another property owner provided verbal comments that "building that close to the property line seemed unreasonable given the amount of vacant land to the west of the structure."

Public Comments were received during the meeting from Mr. Lynch and Mr. Archuleta – both community members encouraged the Board to approve the request based on aesthetic value and that the proposed variance would not encroach into the front setback any further than the existing neighboring library.

It noted that the approval for the existing deck permit and/or variance were note located in the Town's files. In addition the roof over the deck becomes a permanent structure, in its current condition the deck is an accessory structure. The Board of Adjustments considered the application materials, the staff report, the applicable approval criteria (outlined above), and all testimony and evidence received at the public hearing, for considering a final determination regarding the variance application. Consensus of the Board was that the approval criteria were not met to allow for the variance request.

Motion by Member Adams, seconded by Member Lattin, and motion carried (with Maez opposed) to DENY the front yard setback variance application for the subject property located at 141 S. 8th Street.

VIII. Public Comment: None received.

IX. Reports and Comments:

A. Planning Commission – No report or comments.

B. Planning Department Report –Planning Department Director Dickhoff provided the following written Department Report:

At the May 21st Town Council Meeting, Town Council will consider the second reading of ordinance 825, adopting regulations for Marijuana Establishments to operate within the town limits. He noted that the Town Council meeting agendas and minutes are available upon request and available on line at: TownOfPagosaSprings.com > Government tab > Town Council tab > select category. The next TC Meeting is on May 21st at p.m., proceeded with a ribbon cutting celebration at 4:30pm at the new 6th Street pedestrian bridge.

Historic Preservation Board (HPB): The Next HPB meeting is on June 10, 2015 at 5:15 pm in Town Hall. On May 14th, the HPB presented two awards for completion of Exterior Alteration Certificates and successful repurposing of historic structures, one to Riff Raff Brewing at 274 Pagosa Street and one for Bryson Richardson for the renovation of the Devore House at 480 Lewis Street. On May 19th, the HPB held a work session at the historic pioneers' cemetery, Located at 10th Street and notable upcoming



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events include: June 3rd Public discussion regarding the 8 part documentary series "the West" which the HPB coordinated the showing of for 8 consecutive Tuesdays at the liberty theater. Dickhoff noted that the Historic Preservation Board meeting agendas and minutes are available upon request and available on line at: TownOfPagosaSprings.com > Government tab > Historic Preservation Board tab > select category.

Piedra Street Vacation: Staff will seek direction from Town Council on June 2nd regarding proceeding with considering vacating the remaining un-vacated portion of Piedra Street between Block 50 and Block 43, without an official applicant. If directed do so, the item will come back to the Planning Commission for a recommendation for Town Councils consideration.

200 Block Pagosa Street Sidewalk Improvement Project: The sidewalk project is moving forward. The recent rainy weather has delayed some progress.

Downtown Hometown Grocery Market and Pedestrian Path: Hometown Market is locating a grocery store at the former downtown City Market location!! The store owner anticipates loan closing by the end of May with store opening by mid July 2015!

The planning director had recently completed negotiations for establishing a pedestrian/no motorized easement along the highway frontage of this property and the Citizens Bank property to the east, for delineating a pedestrian route along the Highway side of the paved parking lot. The Pedestrian Path infrastructure will be installed by the Town's street department, providing a pedestrian connection between S. 8th Street and S. 7th Street.

Piedra Street 2015 Repaving project: Town Council has awarded the project to Hart Construction with construction commencing the first week of June 2015. Completion is expected by the end of August 2015. The project will include a sidewalk along the north side of the street, which will provide pedestrian sidewalk connectivity to the Elementary School's path along the east side of their fields, providing a safe route to school. The School has indicated the public use of this trail is acceptable.

Cobblestone Townhome Project and Yamaguchi Lane: The Cobblestone Townhome project located on the Yamaguchi Drive is still progressing. Inspection for accepting the one-way Yamaguchi Drive is expected to be requested very soon.

Wal-Mart: Wal-Mart has opened for business under a 90 day Temporary Certificate of Occupancy (TCO). The Alpha Drive and Aspen Village Drive public road improvements will be inspected in the near future, for compliance with the Development Improvement Agreement. There are few items Wal-Mart will need to complete within the 90 day TCO period, and staff has identified such items with Wal-Mart and their contractor. 1) Competition of on-site landscaping, 2) Landscaping to screen the loading dock from view, 3) Resolution based on Appeals process described below, 4) and a few other minor items. PLEASE NOTE: Wal-Mart has submitted an Appeals Notice, requesting the Board of Adjustments (Planning Commission Members) consider reviewing the Planning Directors determination of the Parking Lot Lights not complying with the Town's LUDC. IT IS VERY IMPORTANT THAT Board of Adjustment (BOA) members (Planning Commission), do not discuss this issue with ANYONE, as this



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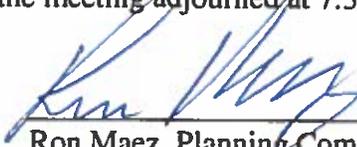
may come before the BOA for a public Appeals Hearing. Any discussions outside of the public hearing will jeopardize the appeals process.

East Phase of Town to Pagosa Lakes Commuter Trail: The final trail easement donation was recently received and submitted to CDOT for consideration. CDOT has requested some revisions to the documents submitted, which our third party uniform act specialist is working on for resubmittal. It is expected that we will receive notice to proceed with advertising for construction bids by the end of June 2015. This will allow the installation of the sidewalk along 10th Street during summer school break and remaining trail connection between 10th and 8th Streets during this construction season.

West Phase of Town to Pagosa Lakes Commuter Trail: We have recently received approval from CDOT to begin our trail easement acquisitions. Staff has contacted all three property owners who have indicated interest in donating the requested trail easements. We hope to receive final formalized donations by the end of May. Also, the Planning Director was recently successful in negotiating a \$45,000 donation from Wal-Mart to this trail segment. The donation has been received and has been applied to this trail phase. The current engineers estimate for the 3600 lineal foot trail is \$535,735 for asphalt and \$641,190 for concrete.

C. Upcoming Scheduled Town Meetings: A meeting schedule was provided to the Commissioners that included meetings, through July 2015, for the Planning Commission, Historic Preservation, Town Council and Parks and Recreation.

X. Adjournment - Upon motion duly made, the meeting adjourned at 7:30 PM.



Ron Maez, Planning Commission Chair