



City of Castle Pines, Colorado Minutes

Planning Commission/
Board of Adjustment

Members

Seth Katz, Chair
Lisa Glynn
David Goode
Dick Lichtenheld
Deborah Mulvey
David C. Necker
Don Tosby

REGULAR MEETING OF THE PLANNING COMMISSION & BOARD OF ADJUSTMENT
Douglas County Library, 360 Village Square Lane, Castle Pines, CO 80108
Thursday, December 7, 2017
6:00 PM

1. ROLL CALL

The regular meeting of the Planning Commission and Board of Adjustment (BOA) of the City of Castle Pines, Colorado, was called to order by Commissioner Katz at 6:00 p.m.

Those present were: Commissioner Seth Katz
Commissioner David Goode
Commissioner Lisa Glynn
Commissioner Dick Lichtenheld
Commissioner Deborah Mulvey
Commissioner David Necker

Also present with the Commission:

Community Development Director, Sam Bishop
City Clerk, Sharon Washington
City Attorney, Linda Michow

Those absent were: Commissioner Don Tosby

2. APPROVAL OF AGENDA

Motion: A motion was made by Commissioner Necker to Approve the December 7, 2017 Board of Adjustment and Planning Commission Agenda as presented. Commissioner Mulvey seconded. Motion approved by unanimous consent: 6-0

3. DISCLOSURE OF CONFLICTS OF INTEREST AS TO ANY ITEM ON THE AGENDA

- There were no disclosures of conflicts submitted to the City Clerk's Office prior to the meeting.
- Commissioner Necker disclosed that he had a brief conversation with David McEntire about the house during the construction. Secondly, Commissioner Necker was appointed to the Castle Pines North Metropolitan District Board. In response to Member Mulvey's inquiry, Member Necker stated that any issues concerning the District during the hearing would not affect his decision on the application.

4. CONVENUE BOARD OF ADJUSTMENT PLANNING COMMISSION

a. Public Hearing: Variance Request Case No. VA17-001/McEntire

Commissioner Katz opened the Public Hearing at 6:05 p.m. Community Development Director Bishop presented Variance Request Case No. VA17-001/McEntire to the BOA and public.

Community Development Director Bishop gave an overview of the Public Hearing. The Board of Adjustment is comprised of 7 members appointed by the elected body. The purpose of the Board is to grant relief from the provisions of the Zoning Ordinance and to consider appeals to administrative decisions. The Board does not set new policy and applies the law to the facts gathered at the hearing to arrive at a decision. The decision usually involves one property and the decision is not effective citywide. The role of the Board is to consider a request to encroach into the rear setback. The concurring vote of a majority of the Board shall be necessary to decide in favor of the applicant.

The owner of the property is Paradox 1 LLC and the applicant is David McEntire. The property is located at 5732 Amber Ridge Drive in the Amber Ridge Subdivision. The residence was built in 2016 and finished in 2017 and was issued a Temporary Certificate of Occupancy (TCO). The TCO has expired and no Certificate of Occupancy has been issued. The applicant, David McEntire is requesting a variance from the Romar West Planned Development, 1st Amendment, to allow a deck to encroach 7 feet and 8 inches into the 20 foot rear yard setback and to allow a trellis to encroach 9 feet and 8 inches into the 20 foot rear yard setback. The deck and trellis exist and were constructed without a permit. The deck measures 63 feet wide by 9 feet and 8 inches deep. The trellis measures 63 feet wide by 11 feet and 8 inches deep.

The City issued a building permit in March of 2016 for the construction of the new single family residential unit. The house was designed, reviewed and approved to meet the required front, side and rear yard setbacks. Nearing completion it was reported that the applicant had built a deck and trellis on the rear of the house. Upon further investigation, a trellis feature was shown on select sheets in the building permit plans. No deck was shown in the building permit plans. The applicant contends that the City issued the building permit which shows the trellis feature on select sheets; therefore the City should honor that approval. Initially Staff was willing to honor the oversight. The issued building permit showed the trellis at 48 feet wide. After further investigation, the trellis was enlarged and built to 63 feet wide. The building permit did not correctly depict the trellis feature. This inaccuracy created confusion leading to the permit being issued in error. The deck was not contemplated or permitted through the building permit process. The permit identified a Patio at the rear of the structure. Patios are exempt from setback requirements.

The Board may grant relief from certain provisions of a Planned Development and the Zoning Ordinance when the strict application of a zoning requirement would cause a peculiar and exceptional practical difficulties or exceptional and undue hardship for the property owner. It is the applicant's responsibility to demonstrate how all of the variance approval criteria have been met. Staff does not offer a formal recommendation; however, Staff has provided an analysis of the criteria to assist the Board in considering the application.

Community Development Director Bishop reviewed the approval criteria and staff analysis. Mr. Bishop stated the Board must consider the application in the context of each approval criteria based on the evidence and testimony presented at the Public Hearing. At the conclusion of the Public Hearing, the Board may approve, conditionally approve, table or deny the variance request based on the evidence presented.

The applicant, David McEntire presented his variance request to the BOA. Mr. McEntire stated he received plans approval March 9, 2016 and the building permit was issued March 30, 2016. The Temporary Certificate of Occupancy was issued to allow him to occupy the house. There were two items on the TCO that needed to be completed, the rear deck and the landscaping. Mr. McEntire noted after everything was completed, he was informed there was an issue. Mr. McEntire reviewed the variance approval criteria and justification.

Donald Eby, Robinson & Henry, P.C. gave a PowerPoint presentation to the BOA. Mr. Eby's presentation covered pictures of the pergola and views from the property. Mr. Eby compared other cases to Mr. McEntire's case. Mr. Eby requested the variance application be granted because Mr. McEntire has made every effort to work within the rules. He stated the setback protects no one and that denying the application does create a safety hazard to the McEntire family and guests.

Staff, the Applicant, and Mr. Eby answered questions from the BOA. Chairman Katz opened the Public Comment section of the meeting at 7:42 p.m.

Kelly Maguire, Ventana Amber Ridge HOA Board President, 12471 Ventana Mesa Circle, addressed the BOA on behalf of the HOA. The HOA's decision is consistent and unanimous on this matter. The Architectural Review Committee (ARC) received the application from the McEntire's on January 20, 2016. Upon review from the ARC, the application was approved with restrictions. The applicant had agreed with the 10 foot utility easement and was adjusting the patio structure to meet the 20 foot setback for the rear property line along Daniels Park. Therefore the approval is contingent upon the applicant meeting those requirements. The McEntire's never submitted any additional ARC requests related to their deck pergola structure. In September 2016, the HOA was notified that the McEntire built the deck pergola structure that encroaches into the 20 foot rear setback which was in direct violation of the approval that was given to them. On November 28, 2017, the HOA sent a letter to the McEntire's stating that the deck pergola structure was not in accordance with what the ARC approval with restrictions letter and therefore will need to be removed within 30 days. HOA has had several neighbors inquire about the structure. The HOA opposes the granting of the variance application. The HOA feels the only solution is to remove the structure to be in compliance with the HOA and the City.

Mary Sislow, 5885 Amber Ridge Drive, spoke in opposition to the variance application.

The Public Comment section closed at 7:49 p.m. City Attorney Michow clarified the role of the Board of Adjustment.

Motion: A motion was made by Commissioner Mulvey that case number VA17-001 for property located at 5732 Amber Ridge Drive, to allow an existing deck measuring approximately 63 feet in width to encroach 7 feet and 8 inches into the required 20 foot rear year setback and to allow an existing trellis measuring approximately 63 feet in width to encroach 9 feet and 8 inches into the required 20 foot rear yard setback, be denied based on the following findings of fact:

1. The Board finds that the proposed variance request does not meet all of the approval criteria set forth in Section 2603 of the Castle Pines Zoning Ordinance, as analyzed by staff and set forth in the staff report dated December 7, 2017, and specifically including the following criteria:
 - a) **The subject property was properly and timely posted in accordance with this Section;** *The subject property was properly posted.*
 - b) **By reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the property, the strict application of the Zoning Ordinances and regulations would result in peculiar and undue practical difficulties for, or peculiar and unnecessary hardship on, the property owner;** *There are not exceptional topographic conditions or other extraordinary conditions of the property that would result in a peculiar and undue practical difficulty or hardship on the property owner since the topography of the property allows for another remedy and the property owner could have rectified it in another manner.*
 - c) **The variance, if granted, will not adversely affect the adjacent property or neighborhood;** *The variance, if granted, would adversely affect the adjacent property and neighborhood because of the pergola structure, the vertical encroachment and the objections of the community and HOA.*
 - d) **The variance, if granted, will not substantially or permanently impair the appropriate use or development of the adjacent property;** *This is not a factor.*
 - e) **The variance, if granted, will not be contrary to the purpose of the City's Comprehensive Plan;** *The City's Comprehensive Plan contemplates compliance with the City's Planning and Zoning Commission's role as well as the Code. This includes the setbacks that have been referenced in the hearing.*

- f) **The variance, if granted, is the minimal variance that will afford the relief with the least modification possible of the Zoning Ordinances and regulations; *The relief can be made without reference to a variance. There could have been compliance without a variance.***
- g) **Any circumstances justifying a variance were not created by the owner of the property and are not due to or the result of general conditions in the zone district in which the property is located; *There are such conditions in the zoned district in which the property is located that is the guy wire and the water line. The applicant could have corrected the situation and chose against doing so.***
- h) **Development or use of the property for which the variance is sought, if limited by a literal enforcement of the provisions of this Zoning Ordinance and regulations, cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district; *The Board finds that there likely will not be a drop in value of the property in having compliance with the setback and denial of the variance since there will be ample view, space and safety.***
- i) **The variance will not alter the essential character of the district in which the property is located for which the variance is sought; *The view is altered from either side of the property.***
- j) **The variance will not adversely affect the public health, safety or welfare; *The variance as requested and the design proposed is less safe when noncompliant.***
- k) **All concerns raised by the Community Development Department or other City departments or referral agencies have been adequately addressed; *The concerns raised by Staff have been noted and have not all been adequately addressed by the applicant.***

- 2. The applicant shall be required to remove the deck and trellis encroachment no later than February 1, 2018.

Commissioner Goode seconded the motion. Motion approved by unanimous consent: 6-0

The Board of Adjustment recessed at 8:42 p.m.

The Board reconvened as the Planning Commission at 8:55 p.m.

5. PLANNING COMMISSION – Discussion Items

a. Approval of the October 26, 2017 Planning Commission Meeting Minutes

Motion: A motion was made by Commissioner Glynn to approve the October 26, 2017 Planning Commission Meeting Minutes as presented. Commissioner Lichtenheld seconded. Motion approved by unanimous consent: 6-0

b. Public Meeting – Lagae Ranch Filing No. 1, 2nd Amendment, Lot 235-A; Site Improvement Plan, Case No. SP17-001

Commissioner Katz opened the Public Meeting at 8:56 p.m. Community Development Director Bishop made a PowerPoint Presentation on Lagae Ranch Filing No. 1, 2nd Amendment, Lot 235-A Site Improvement Plan, Case No. SP17-001. The Applicant, RICK Engineering Company, requests approval of a Site Improvement Plan (SIP) to develop 116 attached single family residential units within Planning Area 6 of the Lagae Ranch Planned Development, 1st Amendment. The SIP application includes a site plan, landscaping plan, lighting exhibit and architectural elevations. In addition to the 116 single family attached residential units, the subdivision will contain an additional 29 single family detached residential units for a total of 145 dwelling units with a resulting density of 5.2 dwelling units per acre. The 29 single family detached residential units are not subject to review or additional approvals and are therefore not included in the SIP application. The applicant is

processing a Subdivision Plat (replat) to support the design and implementation of the proposed in the SIP. Replat applications are only considered by City Council. The Replat is consistent with the SIP. Mr. Bishop reviewed Site Data, SFA Development Standards and Design Characteristics.

Lagae Ranch Planned Development was approved in 2008; amended in 2017 to allow for Attached and Detached Single Family Residential Land Uses in PA6. Lagae Ranch Planned Development is 249 acres in size. The Lagae Ranch PD allows for a variety of land uses ranging from mixed use, commercial, community uses, schools, parks, single family residential (attached and detached), multifamily residential and open space. The review of Site Improvement Plan applications are subject to the approval standards set forth in Section 27- Site Improvement Plan of the City of Castle Pines Zoning Ordinance. Staff recommends approval subject to the 6 conditions found on page 8 of the Staff Report dated December 1, 2017.

Tom Clark, Ventana Capital, Inc. and Rob Fitch, Rick Engineering provided additional information on the Lagae Ranch Planned Development. The applicant addressed questions from the Commissioners.

Motion: A motion was made by Commissioner Katz to approve the Lagae Ranch Filing No. 1, 2nd Amendment, Lot 235-A Site Improvement Plan, Case No. SP17-001, based on the analysis and findings set forth in the Staff Report dated December 1, 2017 and subject to the following conditions of approval:

1. The Applicant shall pay ALL fees and costs incurred by the City and its consultants, in the review and processing of the Site Improvement Plan application prior to final approval; and
2. The Applicant shall resolve any minor technical changes to the Site Improvement Plan as directed by Staff prior to final approval; and
3. The Applicant shall provide an executed "Requirements for Release of C.O." or "Requirements for Final Inspections" form, as determined by staff planner prior to final approval of the Site Improvement Plan; and
4. The Applicant shall provide the required (and executed) Site Improvement Plan Improvement Agreement (SIPIA) with cost estimates prior to final approval of the SIP; and
5. The Applicant shall provide a "Treasurer's Certificate of Taxes Due" indicating no past due taxes prior to final approval; and
6. The Site Improvement Plan is conditioned upon City Council approval of the Lagae Ranch Filing No. 1, Second Amendment, final plat and recordation of the same; and
7. The applicant shall move the pedestrian trail to the east as discussed in the meeting with Planning and Zoning on December 7, 2017; and
8. All front facing elements shall be enhanced as opposed to basic.

Commissioner Lichtenheld seconded. After discussion about visitor parking on the site an amended motion was made.

Motion: A motion was made by Commissioner Necker to amend the original motion to add the following condition:

9. The applicant add 12 additional visitor parking spaces to the SIP.

Commissioner Lichtenheld seconded the motion. Motion failed by a 2 to 4 vote. Those voting nay were Commissioners Katz, Goode, Glynn, and Mulvey.

Commissioner Katz called for a vote on the first motion. The first motion was approved by unanimous consent: 6-0

6. DIRECTOR UPDATE

a. Community Development Update

Community Development Director Bishop reported at the January 25, 2018 Planning Commission Meeting, the Commissioners will elect a new chair and co-chair and take care of any other housekeeping items. The Commissioners will also receive a draft of the Design Guidelines.

7. FUTURE AGENDA ITEMS*

- a. History of the Business District and how to fix it
- b. Background on some of the undeveloped parcels in the City
- c. Planning Topics: Smart Growth, Land Use Law & Case Studies, Subdivision, Growth Management Techniques, Density, Transfer of Development Rights, Sprawl, Urban Design, Design Guidelines.
- d. Other Suggestions

There was no discussion on the above items.

8. ADJOURNMENT

Motion: A motion was made by Commissioner Goode to adjourn the meeting. Commissioner Lichtenheld seconded. Motion approved by unanimous consent: 6-0

The meeting was adjourned at 10:44 p.m.

RESPECTFULLY SUBMITTED:


Sharon Washington, CMC, City Clerk

APPROVED:


Seth Katz, Chair