

**MINUTES**  
**BOARD OF ZONING APPEALS**  
**January 12, 2016**

The Wyoming Board of Zoning Appeals met on January 12, 2016 at 6:00 p.m. in the Council Chambers at the City Building. Mr. Tom Mowry, Chairman, called the meeting to order at 6:00 p.m. Attendance was as follows:

**MEMBERS:**

Tom Mowry, Chair  
John Braun  
Jennifer Eismeier  
Charlie Jahnigen  
Robert Kearns

**OTHERS:**

Terry Vanderman, Community Development Director  
Megan Statt Blake, Assistant Community Development Director

**Approval of October 13, 2015 Meeting Minutes**

Mr. Jahnigen moved to approve the minutes as written. Mr. Braun seconded the motion. All voted yes, the motion carried.

**Welcome New Members**

Mr. Mowry welcomed the Board's new member, Mr. Robert Kearns. Mr. Kearns was appointed to fill the unexpired term of Mr. Desserich after he was appointed the City Council representative to the Board of Zoning Appeals. Following the ratification of Council Member appointments at the December City Council meeting, Mr. Desserich was reassigned to another Commission. Ms. Jennifer Eismeier was appointed as the City Council representative on the Board of Zoning Appeals. The Members welcomed Mr. Kearns and Ms. Eismeier.

**304 Worthington Avenue, Front yard Setback. Case #1-16.**

Mr. Vanderman provided the background for this case. An application was filed by Ms. Andrea L. McBride, Architect, on the behalf of the owners of the property. The owners are proposing to construct a three story addition on the north side of their residence which is located on the north east corner of Worthington and Burns Avenues. The home is located within the A, Single-Family Residence District and the setbacks are therefore prescribed by Section 1155.04 of the Code. As the home is situated on a corner lot, it must maintain a front yard setback on each street frontage. The proposed addition is intended to continue the existing front façade along Burns Avenue approximately maintaining the existing setback of 14.2'. Section 1155.04 (a) of the Code requires, among other things, that the

front yard setback may not be less than that of the homes on the adjoining properties. In this case, the front yard setback is determined by the adjacent home to the north of the subject property (414 Burns Avenue) which is 22.4'. As the proposed front setback is 8.2' less than that of the adjoining property, it was determined that the proposed addition fails to meet the minimum setback prescribed by Section 1155.04 (a) of the Code.

Mr. Braun questioned Mr. Vanderman that this home is located in the Historic District and if so, if it is required to be reviewed by the Historic Preservation Commission (HPC). Mr. Vanderman indicated that the property is in the Historic District however so long as less than 50 percent of the exterior walls or roof of the structure is not being removed or altered it does not need to be reviewed by the HPC. The amount of the envelope that is being disturbed by this project is under that threshold. Mr. Braun asked if Mr. Vanderman had received any comments from the neighbors. Mr. Vanderman indicated that he had not.

Mr. Jahnigen questioned if the actual line of the proposed addition is 14.2' away from the Burns Avenue frontage. Mr. Vanderman indicated that the specific dimension is not reflected on the survey and advised the appellant(s) to clarify. After a brief discussion it was clarified that the existing line of the home on the Burns Avenue frontage is 14.2' away from the property line.

Mr. Mowry asked Mr. Vanderman for clarification as to what the front setback would be if the lots on either side of the appellant's home were vacant. Mr. Vanderman explained that the front setback would be 35'. Mr. Mowry commented that the current front setback of 22.4' is less than the Code would allow today as it is likely, given the age of the homes, that they were constructed before the Zoning Code was in effect. It was noted that the home was constructed in 1886.

Ms. McBride introduced herself to the members and stated that the proposed addition will align with the existing line of the home on the Burns Avenue side. Mr. Jahnigen commented that the second floor is shown on the plans as being 16.5 feet from the Burns Avenue side.

Mr. Neil Patel, homeowner, addressed the members. He stated that the proposed addition will accommodate an additional bedroom and a bathroom. Currently, the home is a three bedroom home and the only area to expand the residence is to the north off of the back side of the home. He added that he understands that according to the Zoning Code he has two front yards and must meet the required setbacks. He stated that he is looking to expand off the rear of the existing home but that the addition would not be closer to the Burns Avenue setback than the plane of the existing home on that side. The existing home is not in compliance with the Zoning Code therefore regardless of where an addition could be placed on the home it would not be in compliance with the Code. Mr. Patel explained that initially he was considering seeking two variances with the second one relating to the overall height of the home as he was planning to add a third level to the home. However, in

order to simplify the process he decided to bring the height down in accordance with the Zoning Code. He stated that there are a few homes around his that are similar in construction. The home next door on Worthington Avenue completed a similar extension of the rear of the home. Although the design of the proposed addition would not be similar to his neighbors, they are in similar in the fact that the neighbor's addition is off the rear of the home as well.

Mr. Kearns questioned if there was available space on the existing top level of the home and if that space could be made into a third bedroom. Mr. Patel explained that the existing room on the top floor, because of its low ceiling height, is not the best space for a bedroom; it is currently being used as a playroom for his children. He further explained that the added space being proposed on the main level will become a laundry room and mud room.

Mr. Braun commented on the proposed deck railing on the top floor and he inquired as to the reason for it. Ms. McBride explained that each time she studied the roof line and tried to tie it back into the roofline of the house it became too overwhelming in the sense of its scale as it relates to the room and to the existing roofline. Mr. Patel added that the decks themselves will be there because of the interior design of the addition. However, he felt that this design was more visually appealing than adding the additional roof mass. Ms. McBride added that any version of a sloped roof did not look appealing; it looked like it was being graphed on. In her opinion adding the railing would make the home more Victorian in nature than a flat roof would.

Mr. Lionel Socol, 134 East Mills Avenue, addressed the Members on behalf of his daughter, Allison Bernstein, 310 Worthington Avenue. Mr. Socol explained that his daughter lives next door and could not attend the meeting. He stated that he is not in attendance to speak for or against the proposal. Rather, he is simply attending to obtain clarification and on understanding of the project as his daughter had not seen the proposed plans. Mr. Socol stated that he has lived in Wyoming since 1979. Mr. Socol asked for clarification with regard to the property setbacks and stated that he understands that corner lots have two front yards. He inquired what the other yards are then classified as. Ms. Statt Blake explained that on corner lots with two front yards the remaining yards become sides and there is no rear yard in terms of Zoning. The proposal from the side yard setback standpoint meets the Zoning Code requirements. Mr. Socol mentioned the Patel's detached garage and whether that is encroaching on the setback requirements as well. Ms. Statt Blake explained that detached garages are considered accessory structures and as such, have different setback requirements than additions. Mr. Socol stated that his daughter wanted to build her addition larger than it was but Mr. Vanderman explained to him what size of an addition the rear yard setback requirements would support.

Mr. Jahnigen commented that, in his opinion, the variance request is for a small addition that will align with the existing house. For the most part, the project improves the appearance of the property rather than adding on a large addition on this corner lot home. The upper floor decks are rare, however Mr. Jahnigen stated that he supports the design as it is in keeping with the architecture of the home.

Mr. Kearns asked if the proposed railing on the top floor will match the railing on the front porch or the railing that is on the current deck. Ms. McBride stated that the final design of the railings has not yet been determined however she intended to make them lighter in design so as not to be over-powering. Mr. Patel stated that his expectation is that if the railing design were to mimic one on the house, he would choose the railing on the front porch.

Mr. Braun stated that he was not concerned about the shape or design of the railing but rather that it is there at all. He asked if a flat roof was considered. He stated that he realizes the homeowners are working under the constraints of the Zoning Code with the two front yard setbacks on a corner lot however he commented that it appears the homeowners are trying to add additional features to a home that was not constructed for present day amenities. Mr. Braun reiterated that, in his opinion, the railings on the third floor look out of place. Mr. Braun asked the applicants if they considered utilizing the basement for additional living space. Mr. Patel stated that the basement has a stone foundation walls and the height of the ceiling is very low. The basement also houses the majority of the HVAC duct work.

Mr. Kearns commented that one representative of a neighbor attended the meeting. He asked the applicant's if they had shared the plans with any of the other neighbors. Mr. Patel stated that none of his neighbors expressed any negative comments. In fact most were in favor if it believing that the addition will raise their property values as a result. Mr. Patel stated that as his house is currently a three-bedroom home fewer than the neighbor's homes around him.

Ms. Eismeier asked for clarification as to the use of the third floor rooms. Ms. McBride stated that the goal was to add a bedroom and a bath on the third floor instead of an office as initially planned. However by the time a roof is added to a third floor that meets Zoning it would be too much roof space and would look out of place in the neighborhood. Ms. McBride reviewed with the Members several roof line options that were considered and dismissed before settling on the current proposal.

Ms. Eismeier asked the applicants if the third floor is currently used. Mrs. Avani Modi, homeowner, answered that her two-year old daughter sleeps on the third floor in a crib until her new bedroom is complete; the space is also used as an office and a play room.

Mr. Mowry stated that, in his opinion, a lot of thought was put in to the design of the addition taking in to account the Zoning Code and the improvement to the community. He appreciated the fact that the proposed addition would not further encroach towards the street and that the applicants are not asking for any additional encroachment as they are keeping in line with the original line of the house.

Mr. Jahnigen motioned to approve the request for variance as submitted. After the initial delay in receiving a second to the motion, further discussion was held. Mr. Kearns indicated that he is not in favor of the design of the addition on the third floor in particular the railing of the third floor. Ms. Eismeier stated that the design of the third floor is an issue for her as well. She stated that she appreciates the attention to the detail with respect to the architecture of this home. Mr. Jahnigen commented that the variance request is for a front yard setback and not a height requirement. Mr. Mowry commented that when the Board grants variances, each Member may have different views and historically this Board has not tried to design other people's homes; that is not their charge. However, as a community member, he believes that the design of the third floor stands out. Mr. Jahnigen stated that he is an architect and he tries not to judge or critique other architect's work. The Board is here to grant a variance for property line setbacks however he does look at windows, scaling, and proportions of exterior elements. He realizes that his task is to consider the setback of a structure from the property line. He looks favorably on this proposal because this proposed addition will align with the existing line of the home and he believes that it is a great improvement that should not harm the streetscape and overall feel of the neighborhood. Mr. Mowry advised the applicants that the motion can fail for a lack of a second. He commented that if this had been a parallel street and this home were not on the corner the applicant's would likely not be here before the Members asking for a variance. In order for a Member to mitigate adverse consequences of granting a variance, it is not out of bounds for the members to discuss architectural elements but the Members generally do not put themselves in the position of designing an addition. He indicated that if there are enough concerns expressed by the Members it is sometimes in the best interest of the applicants to consider revising their proposal based on the feedback they have heard and return with a revised proposal.

Mr. Kearns commented that he is generally in favor of the proposal and as a builder; he would want to put the proposal into CAD and explore different design alternatives. If the third floor turret was not included, he would likely be more in favor with the design of the addition. The Members discussed many other design options to consider that might or might not blend in with the other homes in the neighborhood and that might satisfy the needs of the applicant.

Ms. McBride commented that she can re-draw the plans with other options however she does not want the applicants to spend additional money to design something with little design direction. She further added that the third floor turret design was the result of a

series of design studies based on several factors. One factor is that a flat roof is not a Victorian design and would look more like a 1970s addition stuck to the back of a home. The roof pitches needed to be raised in order to match the existing design of the home. She tried to keep the addition looking like, as much as possible, an original design element of the homes so that the addition did not look like an addition.

After further discussion, Mr. Kearns seconded the motion to approve the variance request as submitted. By roll call vote, 4-1, with Mr. Braun voting no, the motion carried.

### **Miscellaneous**

There will be no February meeting.

Mr. Vanderman reported that the City Solicitor is recommending the Board make two procedural changes. She would like to see that witnesses or anyone providing comments (testimony) at the meetings be sworn in. Secondly, she would prefer that a motion be called and voted upon at the meeting following a hearing with regard to the findings of fact of the case approved at the meeting prior. The Members will have an opportunity to discuss these procedural changes before they go into effect.

### **Adjourn**

There being no further business before the Members, Mr. Braun motioned to adjourn the meeting. Mr. Jahnigen seconded the motion. All voted yes, the motion carried. The meeting adjourned at 7:25 p.m.

Respectfully submitted,

Debby Martin, Executive Assistant

Tom Mowry, Chairman