

**STEAMBOAT SPRINGS BOARD OF ADJUSTMENT MEETING MINUTES
NOVEMBER 20, 2008**

The regular meeting of the Steamboat Springs Board of Adjustment Public Hearing was called to order at approximately 6:00 p.m., on Thursday, November 20, 2008, in Citizens' Meeting Room, Centennial Hall, 124 10th Street, Steamboat Springs, Colorado.

Board members in attendance were Chairman James Moylan, David Levine, Tom Effinger, and Ryan Spaustat.

Absent: Rick Pighini and alternates Bryan Alkema and Warren Harner.

Staff members present were Planning Services Manager John Eastman, City Planner Seth Lorson, and Staff Assistant Tami Heskett.

APPROVAL OF MINUTES

Approval of minutes was postponed.

PUBLIC COMMENTS

None.

Original Addition to Steamboat Springs, Block 7, Lots 7 & 8 #VAR-08-08 A Sign Variance to allow for a projecting sign (hanging, cloth “open” sign) that is less than 8 feet in height above the sidewalk.

Discussion on this agenda item began at approximately 6:10 p.m.

STAFF PRESENTATION

Seth Lorson –

Standing in for Jason Peasley. This is a variance to our sign code. There is a sign that is hanging 3 feet above the ground as opposed to what the code says where it’s supposed to be 8 feet above the ground. It’s an open sign made out of cloth that extends 54” out from the wall as opposed to 40”. The purpose for this variance is to go around the landscaping that protrudes out from the building.

Board Member Moylan –

What is the staff’s recommendation on this?

Seth Lorson –

We are recommending approval on this variance.

APPLICANT PRESENTATION

Melinda Miller –

We are on 8th street. We’ve been there for 11 years. About 8 years ago we hung a banner out and with that we got a lot more sales than normal. By having signs out where people can see them our sales have gone up tremendously. The business across the street was not granted an open sign and so was opposed to us having our open signage. We are now requesting this signage in order to keep up with our sales so we won’t go out of business. This was brought up by Barb Wheeler that we should apply for a variance.

Board Member Moylan –

Does Barb Wheeler work for the City?

Melinda Miller –

Yes, she works for the City and is the Code Enforcer.

Ashley Edinberg –

Barb Wheeler had to enforce sign rules across the street from us. They had all kinds of illegal signage and were told to take their signage down and that’s when they became opposed to us having our signage.

Melinda Miller –

Someone could literally run into one of our banners and never harm themselves or the banner.

Tom Effinger –

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It's the same one correct?

Melinda Miller –
Yes.

Tom Effinger –
How many people have gotten tangled up in this banner?

Melinda Miller –
None.

Ashley Edinberg –
The trees are in planters and our sign hangs over these planters so it's not in the pedestrian right of way.

Seth Lorson –
He mentioned about the pictures of the signage in the staff report. Staff finds that it meets all of the criteria for approval.

BOARD QUESTIONS

David Levine –
At the start of your presentation you said that there's some unique streetscape that you had to go around. Can you elaborate on that?

Seth Lorson –
If you look at exhibit 1 you will see the trees and the planters that are attached to the wall and how they extend out from there. That is the unique streetscape.

David Levine –
That is where the 54" versus the 40" comes in to play, correct?

Seth Lorson –
Correct.

John Eastman –
There are some schematics on that on pg 4-7 and 4-8.

FINAL APPLICANT COMMENTS

PUBLIC COMMENT

BOARD DELIBERATION

David Levine –
When I drove by this building it did not offend me in any way. The only issue I would have is if the City came to me and said if you allow this then everyone will

all want this. If you start making exceptions to the rule, but this one does not bother me at all. It doesn't bother me and I'm fine with this.

Tom Effinger –
 I'm the same way. Under a special circumstance I'm fine with this. I don't have a problem with this either.

ANALYSIS OF APPROVAL CRITERIA

Sec. 26-226 Variances

(a) General variances. The board of adjustment may grant variances to this article consistent with the following guidelines:

Staff Analysis

	Variance Request
<p style="text-align: center;">Guidelines Sec. 26-226(a)</p> <p><i>1) It is the responsibility of the board of adjustment to approve signage which is informative, creative and aesthetically acceptable and which contributes to the common welfare and needs of local residents, businesses and guests alike.</i></p>	<p>A projecting sign that is 40 inches above grade and extends 54 inches from the building face.</p> <p>The hanging cloth sign is an aesthetically acceptable signs which contribute to the common welfare and needs of the local residents, businesses, and guests alike. The sign is intended to draw customers to the retail establishment located off of Lincoln Avenue. The sign has been designed to minimize impacts to pedestrians by being constructed of a soft material and easily removable when the business is closed. The proposal also maintains a minimum of 8 feet of unobstructed sidewalk for the entire length of the business frontage.</p>
<p><i>2) Signs should be limited to the fewest number reasonable necessary to accomplish the purpose for which they are intended.</i></p>	<p>Not applicable</p>
<p><i>3) Signs should be sized with consideration of the purpose of the sign, the distance from which it must be viewed, the size of other signs in the vicinity, the amount of total sign area related to the same use and the speed of passing vehicles. Consideration should also be given to the size of the building upon which the sign is placed and the size of the building site as it relates to the proportion of the sign.</i></p>	<p>This sign is within the allowable sign area for the building and is designed to relate to the speed of passing vehicles and pedestrians. The placement of the sign could be altered to minimize the amount of variance proposed; however the effectiveness of the sign may be diminished if the sign location were adjusted. The scope of the variance should be directly related to the purpose of the sign and the physical constraints of the streetscape.</p>

Guidelines Sec. 26-226(a)	Variance Request
<p><i>4) Excessively tall signs should be avoided to prevent visual obstruction of the natural scenery surrounding the city. Factors to be considered include: the topography of the site, location of the sign on the site, and the sign's relationship to pedestrian and vehicular circulation from which the sign is viewed.</i></p>	<p>Not applicable.</p>
<p><i>5) The board of adjustment should consider unique and geographic characteristics of the property and of the district in which the property lies.</i></p>	<p>The proposed sign is located on a side street that has limited visibility from Lincoln Avenue. The streetscape to which this sign is associated does not accommodate a conforming sign due to the visual impairment of the aspen trees projecting from the building.</p>
<p><i>6) Projecting signs should not substantially obscure any part of another sign relating to another use.</i></p>	<p>The proposed sign will not obscure any other signs. This retail establishment is adjacent to the alley and is the only projecting sign on that side of the street.</p>
<p><i>7) Artificial illumination should be no brighter than necessary to accomplish the purpose for which the sign is intended. It should be a goal to avoid illumination which penetrates residential areas or may hinder the vision of drivers of motor vehicles passing by.</i></p>	<p>Not applicable.</p>
<p><i>8.) Variances should not be granted which would allow any business use an unfair advertising advantage over any other business use.</i></p>	<p>The proposed variance will allow for signage that will attract patrons from Lincoln Avenue to this retail establishment. The nature of the streetscape on this side of 8th Street creates a unique circumstance that is not shared by other businesses in the downtown area, particularly the side streets. This variance would not create an unfair advertising advantage over any other business use.</p>

RECOMMENDED MOTION

Staff finds that the request meets the requirements of Section 26-226(a) of the Steamboat Springs Community Development Code for a sign variance.

Condition of Approval:

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1. The applicant must obtain a revocable permit from the City of Steamboat Springs Public Works Department prior to issuance of the sign permit.
2. The sign shall only be displayed during normal hours of operations for the retail establishment.

MOTION

Board Member Levine moved to approve the recommended motion with the two conditions for Original Addition to Steamboat Springs, Block 7, Lots 7 & 8 #VAR-08-08 and Board Member Effinger seconded the motion.

VOTE

Vote: 4-0

Voting for approval: Effinger, Levine, Spaustat, Moylan.

Absent: Pighini, Alkema and Harner

Discussion on this agenda item ended at approximately 6:22 pm.

Ski Trails Subdivision, Filing 3, Block 3, Lot 7 #VAR-08-07 Variance for a deck to encroach five feet into the front setback.

Discussion on this agenda item began at approximately 6:12 p.m.

Disclosure:

Board Member Effinger –

I must step down since I am the actual surveyor on this project. I am also in financial dealings with the applicant.

There was some discussion regarding how the board was run based off of if you need all 3 to approve or just the majority of who was present to approve an application. It was clarified that you only need the majority of those present to approve the application. The applicant agreed to move forward with the application.

STAFF PRESENTATION

Seth Lorson –

This is a variance to a front setback of 15 feet as opposed to the 20-foot setback as required by the RN-1 low-density district. Staff finds that this variance is not consistent with the criteria for approval. He pointed out that it is stated on pg 3-2 of the staff report. It is a second story deck on the outside of a duplex and it is proposed to be an access to the second story as the primary entrance as opposed to going upstairs inside the building from the garage. Staff does not find that they meet the criteria for approval.

APPLICANT PRESENTATION

James Henry –

He gave a brief background of this project. It was decided that we would put a retaining wall towards the back of the property where nobody would see it. We would then put in a City specification driveway, which we do meet all of the criteria for except for the 20-foot negative grade coming up to a positive grade. If we would have met this criteria then in order to avoid the drainage lines we would have had to go back 20 feet and the driveway would have been way back in the lot and the grades would have been 10 feet higher than what was allowed. Our discussions with Janet Ruby was to keep the flow lines where they were and we could consider that the low point of the driveway. Take the balance of the 25 feet at 4% and then come up at a City maximum of 10%. We were able to make that grade work at 9%.

David Levine –

I went by the house today and it seemed like a flat drive in to the job site.

James Henry –

There is a vertical rise, which is from the edge of the pavement. The driveway does meet the codes. We could have put a retaining wall in the front and lifted the house up some, but to me a deck would be more appropriate. The deck that we're proposing is a 5-foot deck. It is outside of the 20-foot setback. From the

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edge of our duplex to the asphalt is 55 feet and with the proposed 5 foot deck that would bring us down to 50 feet. Yes, we could have done something different. The hardship is somewhat self-imposed. He gave some examples of other houses in the area that had setback issues. All of the houses in the area had uniqueness with their variances since they all have them. Having a 5-foot deck is a lot less obtrusive than having a retaining wall in order to get into this house. We could have moved this house back further, but that would mean that much more material and that much more dump trucks coming in and out. We designed this house to fit into the original house footprint. There is only about 300 cubic feet within the setback variance that is being proposed. Most people won't be able to distinguish from 50 feet to 55 feet. Coming up the street you almost have to be in front of the house to see the deck, but coming down the street because you have elevation you do have a longer view but not a tremendous amount of view of the deck. The house down the street can't see this deck. The house above can't see the deck since the house blocks it's view. This deck would be the minimum amount of impact to the neighbors.

Seth Lorson –

Judging this variance request just on the criteria for approval staff does not find that it meets that. This is self-imposed hardship and the property does function without the variance. Under criteria 10 it does state that a variance granted under special circumstances shall not be binding grounds for granting a variance.

BOARD QUESTIONS

Board Member Moylan –

When you talk about the self-imposed hardship you stated in the staff report that the design alterations could accommodate the setbacks. James Henry stated that if it were a design alteration then it would raise the height of the home, is that correct?

Seth Lorson –

No, I do believe that with the square footage that there is room for alterations to accommodate the setbacks. The lot is easily large enough to accommodate the setbacks even with an 11,000 square foot duplex. The request for the deck is for additional access. I do believe that request could happen with variations through a design without asking for a variance.

Board Member Moylan –

I'm not asking for architectural suggestions. You said that alterations could accommodate the setbacks. Would alterations potentially change the height of the structure?

Seth Lorson –

Not that I know of.

Board Member Moylan –

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James Henry's comments were that they looked at these other approaches to the design of this home and to be within the code would have made it higher and more obtrusive than their solution here.

Seth Lorson –

They've already maxed out the height for the zone district.

James Henry –

No we haven't. We can go higher. We have already lowered the building 3 feet from what the original slab was. If I would have put a retaining wall in the right of way then I could have lifted this house up considerably.

David Levine –

I saw a copy of the building permit and I also drove by this site. I'm surprised that we didn't see this prior to the issuance of the building permit. Is this an alteration to the design?

Seth Lorson –

Yes, the deck wasn't part of the building permit. This isn't an after the fact variance.

James Henry –

Theoretically even if this were a one-story house we would still have to ask for the same variance to get to that second story. The size of the house is immaterial. Yes you can do an alternate design. I can always do an alternate design on any lot that meets all of the criteria without having to do a variance. The question is whether it meets the owner's wishes or not.

Seth Lorson –

The owner is requesting this variance.

James Henry –

He gave some examples of houses that he worked on and was able to meet all criteria without a variance.

Ryan Spaustat –

How far out of skew did they put Ski Trail Lane here?

James Henry –

He showed on the overhead where the road was and whether or not it was in the right of way.

Board Member Levine –

I'm assuming that the neighbors were notified?

James Henry –

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Yes, they were.

Board Member Levine –
Have you had any conversations with them?

James Henry –
I believe that one of the partners had a conversation with one of the neighbors in the next lot down in trying to cut this hill out so they could see better, which is something that we don't wish to do anyways. I don't believe that any of the other neighbors have said anything.

Board Member Levine –
Were there any specific design measures that you took to limit the impacts?

James Henry –
To limit the impacts on the deck or the whole house?

Board Member Levine –
To limit the impacts to the surrounding property owners. Were there any alterations to the deck that you looked at?

James Henry –
A lot of it was to get an access from the main level of this house rather than coming into the house from the garage. By leaving these hills in where we had to make the cut to make the grade work limits the impacts to the surrounding properties.

Seth Lorson –
The overall height for the zone district is 40' and the house does max out that height.

James Henry –
We have lowered the house from its original grade. If we had used the original grade then the house would have been higher and not taller and still meet all of the criteria. We could have gone up, but chose to go down since that is less of an impact on the adjacent property owners.

PUBLIC COMMENT

None

BOARD DELIBERATION

Board Member Levine –
What I looked at this at first I thought that this was another Ski Trail Lane one and what a mess that whole neighborhood is. Let them do what they want up there. This house looks the closest to code than anything that I've seen up there so far. On the downhill side we've been moving these people up the hill right into

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their setback as close as we can get to limit the impact there. On the other side we need to move them away from the wall. He's gaining 30' of a right of way before you even get to your 20' setback?

James Henry –

Close to that because the road is all the way to the far side.

Board Member Levine –

I think that there is 30' to play with there. Ski Trail Lane will never move over there. This house will look like it's at the proper setback from the road. We're talking about property lines where they shouldn't be drawn in the first place. I think that as you drive by this house it will look like it has more than a 20' setback and look legal. I think that the uphill side of Ski Trail Lane needs to benefit just like the downhill side has.

Board Member Spaustat –

One of the things that gives me a little bit of heart burn is that I don't feel that the process is allowing the various City departments to comment on and review the projects, which probably happened since this is a revision being requested after the fact. One of the arguments that you're making is the driveway design meeting criteria set forth by Public Works. That wasn't presented. They may have come to a different conclusion had this been presented initially. They may have asked you to look at other alternatives out there at that time. Planning may have expressed to Public Works that we don't feel that this deck meets the criteria can they look at other driveway alternatives? Since this is happening after the fact, that process wasn't allowed to happen. The hardship that it's not self imposed, on an 11,000 square foot duplex, I find it hard to approve something when they could have taken 500 square feet out of the house and maybe done a covered walkway or something like that in the elevation. Again that process wasn't allowed to happen, because it wasn't presented before the building permit.

James Henry –

Taking 500 feet out of this house wouldn't have made a bit of difference since the house is back as far as it can go.

Ryan Spaustat –

Could you have pushed those stairs over the 5 feet and then add a covered walkway on the first or second floor and pulled that interior wall back 5 ft? Was that a design that was considered? If the hardship was not self-imposed I think I'm having difficulty finding that your application is consistent with that.

Board Member Moylan –

Looking strictly at the code, which we should look at and looking at the criteria within the code and in order for us to grant a variance all criteria must be satisfied. Given the fact that this deck seems to be an after thought that came up

from the owner and whether you were able to persuade the owner that this had to conform with the code and the owner said to go along with it anyway. I'm not persuaded that this project isn't self-imposed and that there is a hardship. These are the reasons why I would vote against this proposal.

ANALYSIS OF APPROVAL CRITERIA

<i>CDC - Section 26-70 (d): A variance may be approved if the Board of Adjustment meets all of the following criteria:</i>					
Subsection		CONSISTENT			NOTES
		Yes	No	NA	
1)	Legal use	<input checked="" type="checkbox"/>			
2)	Equal enjoyment	<input checked="" type="checkbox"/>			
3)	Hardship		<input checked="" type="checkbox"/>		
4)	Hardship not self-imposed		<input checked="" type="checkbox"/>		
5)	Injury to adjoining property mitigated		<input checked="" type="checkbox"/>		
6)	Minimum relief	<input checked="" type="checkbox"/>			
7)	Increase in nonconformity			<input checked="" type="checkbox"/>	
8)	Special circumstances	<input checked="" type="checkbox"/>			
9)	Consistent with CDC, policies and plans	<input checked="" type="checkbox"/>			
10)	Previous variance				See discussion.
Staff Finding: Staff finds the application INCONSISTENT with the Criteria for Approval.					
.... (Detailed policy analysis is located in Section VII; Staff Findings and Conditions are in Section VIII)					

RECOMMENDED MOTION

Staff finds this variance request is *not* in compliance with the City of Steamboat Springs Community Development Code Section 26-70. See discussion above.

MOTION

Board Member Spaustat moved to deny Ski Trails Subdivision, Filing 3, Block 3, Lot 7 VAR-08-07 based on criteria 4 and Board Member Moylan seconded the motion.

DISCUSSION OF MOTION

Board Member Levine –

This road is a hardship and I understand that a lot of the building is there, but as far as I can tell they started with an existing building. Parts of that building are still there dictating the design of the building. They didn't start from a totally blank slate.

James Henry –

It is a new building. We just used the excavation from the original building to minimize traffic up and down the road.

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Board Member Levine –

That hill is still a hardship. The amount of excavation needed to excavate into a ski area and to setback further. What they could have done differently I don't know. I don't know how much of this deck is after the fact thinking, but I'm looking at that not as an after the fact variance. I'm trying to look at it, as a clear vision of this is how this project is going. If the building was already there and the owner after 3 years decides they want a deck what would you say then? I think that if you looked at it that way I don't think that it would be so offensive. Going back to the hardship I think that you would still use the steepness and the difficulty in excavating as the hardship.

Board Member Spaustat –

I think that by driving by that lot and looking at all of the other lots up there, there is probably some hardship. There could have been a case made on that, but that's why I specifically chose criteria 4. It is the case that they are coming back after the fact on this and that they are imposing this upon themselves.

Board Member Moylan –

After listening to James Henry's presentation I think that they've gone above and beyond the call of duty has them expect to be able to approach this project and I think that they've put a lot of respect into the letter of the code. None the less, I will have to be with Board Member Spaustat in that this hardship is self-imposed.

VOTE

Vote: 2-1

Voting for approval to deny: Spaustat and Moylan.

Against: Levine.

Stepped Down: Effinger.

Absent: Pighini, Alkema and Harner

Discussion on this agenda item ended at approximately 7:00 pm.

APPROVAL OF MINUTES

Changes:

Board Member Moylan –

Board Member Harner was here and was not reflected as being present. On page 2 under the applicant's presentation line 3-change 'council' to 'counsel'. On page 3 under my name in the middle of the page 'is your discretion to the variance' should be 'objection to the variance'. At the bottom of page 3 under my name line 2 'building retaining wall and' strike 'have' and put in 'at their expense'.

James Henry returned to the meeting room to ask a question from the denial of his project at the last meeting.

Board Member Moylan –

James Henry, you do know you have a right to appeal to City Council correct?

James Henry –

I want to point out that this building where the deck was going to go has 2 roof projections that stick out 4 feet. What we end up with is a deck that only goes out 1 foot and a roof that's there already.

Board Member Moylan –

I thank you for bringing that up, but we've already voted and will talk with staff after the meeting is over.

On page 4, 3rd line from top, change 'bear the title' to 'clear the title'.

MOTION

The September 18, 2008 minutes were tabled to the next meeting since not all of the members were present.

VOTE

Vote: Unanimous

DIRECTOR'S REPORT

Board Member Moylan –

Due to James Henry's reappearance with his comments does that change the staff's perspective?

John Eastman –

If that is the case then staff has made a mistake since projections are only allowed to go 3 feet into the setback.

Board Member Moylan –

Whether it's 3 or 4 feet of overhang does that change staffs perspective of the deck?

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Seth Lorson –

We reviewed this based off of the criteria for approval. That won't change our perspective in any way.

Board Member Levine –

The roof overhang doesn't count in your setback since it's to the front door correct?

John Eastman –

Correct, it's to the front face of the building.

Board Member Moylan –

This won't change staff's perspective and it won't change my vote either.

Board Member Spaustat –

It won't change my vote either.

ADJOURNMENT

Board Member Spaustat moved to adjourn the meeting at approximately 7:10 pm.
Board Member Levine seconded the motion.

VOTE

Vote: 4-0

Voting for approval to adjourn: Effinger, Levine, Spaustat and Moylan

Absent: Pighini, Alkema and Harner