



## BOARD OF ADJUSTMENT

Lynne Derby  
Kathy Kvasnicka  
Thomas Meyers

Mike Simone, Chairperson

Paul Weber  
Bushrod White, Vice-Chairperson  
Vacancy

Mark Grajeda, Alternate

**Board of Adjustment Agenda  
Regular Meeting  
Fort Lupton City Hall – 130 S. McKinley Ave.  
Thursday, October 22, 2020  
6:00 P.M.**

*(Order & Contents Subject to Change by Action of the Commission)*

### **Call to Order – Roll Call**

### **Approval of Agenda**

**Consent Agenda** – Consent Agenda items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda items unless a Commission member so requests, in which case the item may be removed from the Consent Agenda and considered at the end of the Consent Agenda.

- a. Approval of the Minutes of the May 28, 2020 Meeting

**Public Comment** – This portion of the Agenda is provided to allow members of the audience to present comments to the Planning Commission related to items not otherwise listed on the Agenda.

### **Action Items**

- a. None

### **Discussion Items**

- a. Board of Adjustment Training
- b. Administrative Variance Updates

### **Future Business**

### **Adjourn**

### **VIRTUAL MEETING LOG-IN INSTRUCTIONS**

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### **Planning Commission Attendance Information**

The meeting will be held at City Hall in the Council Chambers. You are welcome to attend either in person or remotely through GoToMeetings. For your safety and ours we will be enforcing social distancing protocols, including but not limited to, limiting the number of people allowed into Council Chambers at a time, encouraging the use of face masks, and requiring a six-foot separation. Additional instructions on meeting conduct will be provided prior to the start of the meeting.

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**RECORD OF PROCEEDINGS  
FORT LUPTON BOARD OF ADJUSTMENT  
May 28, 2020**

The Board of Adjustment of the City of Fort Lupton met in session at the City Complex, 130 South McKinley Avenue, the regular meeting place of the Board of Adjustment, and virtually via GoToMeeting on Thursday, May 28, 2020 at 7:26 p.m.

**ROLL CALL**

Roll was taken and those present were Chair Mike Simone and Board Members Lynne Derby, David Hushbeck, Kathy Kvasnicka, Thomas Meyers, and Paul Weber. Also present were Planning Director Todd Hodges, City Planner II Alyssa Knutson, City Planner I Maria Lancto, and Planning Technician Stephanie Darnell.

Chair Simone gave the following statement:

The President of the United States, the Governor of the State of Colorado, and the Mayor of the City of Fort Lupton have collectively declared federal, state, and local emergencies due to the outbreak of the COVID-19 virus. As such, a portion of tonight's meeting shall be held virtually so as to ensure the health and safety of the general public, and the City of Fort Lupton Planning Commission, and staff. The intent and purpose of the Fort Lupton emergency policy and procedures is to ensure that the City is innovative in providing the general public the most meaningful access possible in light of the current emergency challenges present as a result of the COVID-19 pandemic. Therefore, subject to social distancing and public health orders, members of the general public will be offered both the opportunity to be physically and or electronically present for meetings at the City, subject to existing health conditions. An electronic link has been made available for tonight's meeting on the City's website, and social media platforms, as well as posted at the City Hall so that the general public, and Planning Commission, and staff may participate electronically via the internet, on the phone, or in limited circumstances in-person.

**APPROVAL OF AGENDA**

Chair Simone asked for a motion to approve the agenda. It was moved by Member Paul Weber and seconded by Member Lynne Derby to approve the agenda as submitted.

Motion carried unanimously by a voice vote.

**CONSENT AGENDA**

Chair Simone stated that it was his understanding that the Board could approve the Consent Agenda because they are one entity.

There was a general consensus of agreement.

Chair Simone asked for a motion to approve the consent agenda. It was moved by Member Paul Weber and seconded by Member David Hushbeck.

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Chair Simone asked Member Lynne Derby if she noticed anything in the minutes that were not accurate and needed to be changed since she was at the last Board of Adjustment meeting.

Member Lynne Derby stated that she did not see anything that needed to be changed.

Motion carried unanimously by a voice vote.

**PUBLIC COMMENT**

Chair Simone asked if anyone wish to make comments not otherwise related to the agenda; seeing no one the public comment portion was closed at 7:31 p.m.

**ACTION ITEM**

**Retana Variance**

Chair Simone asked the applicant, Brenda Retana, if she understood that he has the right to continue the public hearing to such a date to allow a full in-person public hearing.

Ms. Retana stated yes.

Chair Simone asked Ms. Retana if she has agreed to voluntarily waive that right by proceeding tonight electronically and in-person, is that correct?

Ms. Retana stated yes.

Chair Simone asked Ms. Retana if she has voluntarily signed and submitted the written waiver and consent to proceed electronically tonight.

Ms. Retana confirmed.

Chair Simone asked Ms. Retana if she waived her right to proceed in an in-person public hearing and have consented to proceed forward voluntarily tonight in this virtual and in-person Board of Adjustment meeting.

Ms. Retana stated yes.

Mr. Henderson stated yes, that is correct.

Planner I Maria Lancto introduced the project. She stated that the application involves two (2) sheds and a concrete patio. She stated that the site is located at 906 Fir Avenue in Fort Lupton, and is approximately 0.03 miles northeast of the intersection of Fir Avenue and 9<sup>th</sup> Street. She stated that the property is located in the R-2 Medium Density Residential zone

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district. She stated that the applicant is seeking a variance for two (2) existing sheds and an existing concrete patio. She stated that these items infringe on the rear and side yard setbacks and also extend into a ten-foot (10') utility easement located at the rear of the property. She stated that the shed situated to the north side of the property was existing when the applicant purchased the home in 2009 and the shed located at the south side of the property was also in existence when the applicant purchased the home, however the shed was moved into the ten-foot (10') utility easement in 2016. She stated that the applicant believes that the shed would not withstand another move, which is why it is included in the variance. She stated that the concrete patio was also poured by the applicant in 2016, and because the applicant is already applying for the variance for the sheds, the patio is also included in the application as well. She stated that the application was sent out to utility companies for review, and all the utility companies either responded that they were okay with it, and there was one condition from United Power about putting the fence in the backyard, otherwise they were willing to work with the current layout. She stated that if the Board of Adjustment decides to approve the application, there would be a condition that would say, "If the access to the utility easement was required, the applicant would have to move or remove all items immediately and at their own expense." She concluded by stating that the applicant is present if the Board has any questions.

Chair Simone opened the public comment portion of the hearing; seeing no one, he closed the public comment portion at 7:33 p.m.

Chair Simone asked staff if any comments were received by neighbors or anyone else.

Ms. Lancto stated there were no comments received.

Chair Simone asked the Board members if they had any comments.

Member Thomas Meyers asked if there was a gate or fence that was being requested by United Power.

Ms. Lancto stated that there is an existing fence, so they're requesting a gate be put in.

Member David Hushbeck asked the applicant if they were okay with the four (4) items added by the City.

Ms. Retana stated yes, they will go by what the city tells them to do.

Chair Simone asked Mr. Hodges about the language of the "immediate removal". He asked in the event they're not home, what happens.

Planning Director Todd Hodges stated that is part of the risk of keeping the items in the utility area. He stated that this is something that is added to other items, such as fencing, that are in an easement. He stated if it has to come out, it will be taken out by the utility company. He stated that any damage from having it in that location is at their risk. He stated that

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typically staff would be denying this type of request, however, these property owners bought the property with the larger structure in place, and then poured the pad and moved the shed. He stated that this is something that through the conditions of approval staff felt like staff could move forward with. He stated that should this application not be approved, then the property owner's only other option is to obtain the property permit and move everything to meet the proper set back. He briefly discussed that staff is looking at sheds and fencing requirements in the future.

Chair Simone stated that after looking at the code section 16-13 and watching the recent Board of Adjustment webinar training, it sounded like it would need to be through no fault of their own, but the applicant poured the concrete and put up the other shed. He stated that he had concerns about setting a precedence for approving variances where the applicant created the situation rather than being through no fault of their own. He asked Mr. Hodges if he had made similar decisions where the applicant was granted a variance from something they had done.

Mr. Hodges stated that he thought there was one other variance that was granted that was very similar where a shed was put in a utility drainage easement. He stated that based on the condition, the shed wouldn't immediately stop the flow of the drainage as the applicant had addressed the flow underneath for the drainage and the shed could be moved if it needed to be moved in the future, but it had been there for years. He stated that in this case, if the applicant had built all three (3) sheds, they would have been denying the application right off the bat. He stated that because the larger structure, the one that is probably worth the most and was built prior to them moving in, is the one that he would be more concerned about. He stated that because of this, they went on the logic that if we're going to deny the two (2) small sheds, the larger one is really the issue. He stated that through this variance, this allows the Board to review it with this certain circumstance with the conditions of approval that would address that. He stated that in regards to precedence, any decision made on an individual project would not necessarily set precedence for the next one. He stated that he believes this would protect the Board of Adjustment because a lot of people do want to cry foul and they can always follow up. He stated that the Board needs to understand that if they deny something, or have a condition of approval that the applicant cannot be met by the applicant, they cannot go to City Council or Planning Commission, they would have to go to court. He stated that the Board has the ultimate say. He stated that the option is the conditional approval or denial and if the applicant wants to keep the shed and the out building then they would have to meet setbacks.

Member David Hushbeck asked if he read correctly that the bigger building was there before the house was.

Mr. Hodges stated that he doubted that, but he thinks the sheds were after the home was built, but before the applicants moved in.

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Chair Simone asked the Board if they had any more questions; seeing none, he requested a motion to approve Resolution BOA2020-001. It was moved by Member Paul Weber and seconded by Member David Hushbeck.

Motion carried by unanimous voice vote.

**DISCUSSION ITEMS**

Mr. Hodges briefly explained what a staff variance entails.

**FUTURE BUSINESS**

**ADJOURNMENT**

It was moved by Member Paul Weber and seconded by Member Lynne Derby to adjourn the May 28, 2020 Board of Adjustment meeting at 7:43 p.m.

Motion carried on voice vote.

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Alyssa Knutson, Planner II

Approved by Board of Adjustment

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Mike Simone, Chairperson