

Zoning Board Meeting
Newcomb Community Center

May 13th, 2024, at 7:00pm

Remote participation via ZOOM: <https://us06web.zoom.us/j/4136159288> Meeting ID: 413 615 9288

Minutes

1. **Call to Order:** Vice Chairperson Ed Pianalto called the meeting to order at 7:01 pm. Zoning Board members Ed Herman and Gayla Gibb were present. Zoning Board Chairperson Jesse Garetson and Zoning Board member Rodger Lull were present via Zoom.

2. **Public Comments:** None

3. **NEW BUSINESS:**

- Discuss and vote to approve minutes of the 4/08/2024 Zoning Board Meeting

Motion to approve the minutes of the 4/08/2024 Zoning Board Meeting made by Zoning Board member Ed Herman. Seconded by Zoning Board member Gayla Gibb. Motion carried 5-0.

- Discuss and vote on Chairperson and Vice-Chairperson.

Current Chairperson Jesse Garetson would like to nominate Ed Pianalto as new Chairperson. Seconded by Zoning Board member Ed Herman. Motion carried 5-0.

Zoning Board member Ed Pianalto stated that he would be honored to be the chairperson.

Zoning Board Chairperson Ed Pianalto stated that he and Jesse have worked well together and he would like to keep Jesse as the vice chairperson.

Motion to nominate Jesse Garetson as vice chairperson made by Zoning Board Chairperson Ed Pianalto. Seconded by Zoning Board member Rodger Lull. Motion carried 5-0.

Zoning Board member Jesse Garetson stated that he would accept the position as vice chairperson.

- Discuss and possible action of Board of Trustees/Zoning Board of Adjustment Workshop item: *To add an item to the ZBA Agenda, please submit it in writing to the Town Clerk at thetownofpitkin@gmail.com no later than Wednesday at 5pm prior to the regularly scheduled meeting. Supporting documentation must also be submitted no later than 5pm on the Wednesday before the meeting.*

Zoning Board Chairperson Ed Pianalto stated that he would like to make the language at the bottom of the Zoning Board agenda official by taking a vote. He read the language

aloud. Zoning Board member Jesse Garetson asked if this also applies to submission of the agenda to the Town Clerk. Clerk Sara Gibb confirmed that noon on Friday is still a good deadline for her to receive and post the agenda. Zoning Board member Gayla Gibb asked if supporting documentation would be sent out more than 24 hours in advance. Clerk Sara Gibb confirmed that the agenda and meeting documents would be provided to Zoning Board members Friday afternoon.

Motion to accept the language as written and add it to each Zoning Board agenda/minutes made by Zoning Board member Gayla Gibb. Seconded by Zoning Board member Ed Herman. Motion carried 5-0.

- Discuss and vote on Variance Request for 1016 State Street. ***This item contains a public hearing and possible site visit to 1016 State Street.***

This is Zoning Board Chairperson Ed Pianalto's residence. He moved from the front table to the podium in order to present his request.

Vice Chairperson Jesse Garetson asked the Zoning Board to confirm that they all received the request packet. All members confirmed that they had received the packet. He stated that he does not need a site visit based on the information provided in the drawing. Zoning Board member Rodger Lull stated that he hoped for a report from the Building Inspector. He has a number of issues that he'd like to discuss. His concerns do not necessarily hinge on an on-site visit. Vice Chairperson Jesse Garetson stated that the Building Inspector could not make the on-site visit due to being a seated member of the Board of Trustees. Should an appeal to the Board of Trustees be required, Mr. Gibb's input would be required for that appeal.

Ed Pianalto clarified that his lots are 9-11 and do not include lots 8 or 12. He is requesting a 0' setback for the dripline of the garage with a 1' overhang of the eave. The building foundation would be 1' from the property line. He pointed out the irrigation/fire ditch, which would put the building foundation 6'6" from the center of the ditch. He discussed the orientation of the cabin and the location of the cabin to the property line. Had the building been placed parallel to the property line, a variance would not be required today. This is an exceptional circumstance. A 10' setback from the property line would only allow an 8' wide garage. A typical vehicle with doors open is 13'. The OWTS leach field is behind the house, therefore the rear yard would not accommodate a garage or any other building. Before placing the workshop in the rear yard, he measured to see if a garage could fit in that same space.

Mr. Pianalto discussed the affect to the neighborhood and stated it would not change the character of the neighborhood. Additionally, the irrigation/fire ditch provides a barrier between the proposed garage site and any building that would be placed by the neighbor.

Mr. Pianalto read a letter from the affected neighbor, stating support for Mr. Pianalto's request.

Mr. Pianalto reviewed the measurements and structures on his site plan. He pointed out that many feet of his "front yard" are Town right of way.

Zoning Board member Rodger Lull stated that a 0' setback is not a slight easement. He thinks a lot line agreement should be required and a hold harmless agreement for the Town due to the location of the ditch. With regard to the defensible space between buildings, he wonders if Chris [neighbor] understands that he can't build within 20' of the garage due to fire risk. He would like to have the attorney weigh in, should Chris ever sell lot 12 so this goes with the deed. It needs to be drawn up by the Town attorney. That's not something the Zoning Board does. He does not think 0' setback is a minimal easing of the requirements.

Mr. Pianalto stated that the 0' setback was granted to Mr. Schellenberg to set a building. Mr. Pianalto does not have an issue with a hold harmless agreement. His building would be a minimum of 6.5' from the middle of the ditch. There would be a minimum of 13' between the buildings based on the ditch location. Mr. Pianalto reported that Mr. Nasso is aware of the defensible space requirement.

Zoning Board member Ed Herman has no questions. Zoning Board member Gayla Gibb stated that it sets a bad precedent to allow a zero lot line. She stated that garages are nice, but they aren't necessary. Mr. Pianalto won't always own his property, and neither will Mr. Nasso always own his property. That could be a conflict in the future.

Mr. Pianalto stated that the Town has already set the precedent of allowing a 0' setback several times. His recommendation would be to clarify in the Zoning Code how much of a setback could be allowed. The variance request asks for current owner permission, not future owners. Future owners should not be taken into account.

Public comments: Ramon Reed stated that there is no ditch commissioner right now, or he wouldn't be bringing up these points. He suggested verifying the information he is about to share. The water ditches that run through Pitkin are considered the same as all the irrigation ditches that exist in Colorado. All irrigation ditches have a 25' easement on both sides of the ditch for access and maintenance. In Pitkin there are places where that easement doesn't exist. This would be another one. If a proposal like this were made within the county, the answer would be, "absolutely no." He suggests that if the Zoning Board wishes to approve this variance, it should be in a motion subject to approval by the Board of Trustees as well. He suggests that the clerk send the proposal along with the action to the Town Attorney and request that he look into the aspect of the ditch and what is required. The Board of Trustees may require more than what is required by the Zoning Board.

Mr. Pianalto stated that a month ago, a variance was granted to the Pitkin Hotel for their porch, which is over the ditch. None of this was brought up. Mr. Reed stated that the porch already existed and has been in existence for at least 45 years. Only the roof is new.

Tom Gibb would like to see the diagram. He asked if the ditch running along the back of the property is underground. Mr. Pianalto stated that it does not run underground. Mr. Gibb stated that he was not in favor of Mr. Schellenberg's variance request because it opened the door to similar requests. Mr. Schellenberg's container is moveable. Mr. Pianalto stated that the container is not the variance he referred to earlier. Mr. Gibb stated that he understands that one can't always get what one wants on a 9,000 square foot lot. He would like to fall back on what the Zoning Code requires which is a "minimal easing of the requirements." He wonders why the garage could not have gone in the back off the alley. Mr. Pianalto stated that there is a mature tree limiting space in the back for a garage. Mr. Gibb is concerned that as soon as there are two variances such as this one, there will be no way for the Town to refuse any future, similar requests.

Jim Fisher stated that if an agreement was made between two landowners that they could do that because it doesn't involve the city. If Chris Nasso's property is next to him and he allows an easement, then that would be allowed.

Vice Chairperson Jesse Garetson stated that he is quite concerned that we [Zoning Board] are doing what we can do to stop one of our residents making an improvement on his property rather than what we can do to help him. How many square feet of his property is to the benefit of the Town of Pitkin? Vice Chairperson Jesse Garetson doesn't know the validity of the water commission of the State of Colorado for the Town of Pitkin. A variance is allowed based on narrowness or the creek. The ditch running across all 3 lots is a violation of the property. The Town should be appreciative of the ditch. No owners have ever complained about the ditch. Having heard all the comments, Zoning Board Vice Chairperson Jesse Garetson would like to incorporate a "hold harmless" agreement for the Town and would like to see the easement of 25' that Mr. Reed mentioned abolished. He wants to pass this on to the Board of Trustees and the Attorney to make sure this [hold harmless agreement] is worded properly. He would like to see this variance request approved. He would like the Zoning Board to make a recommendation to the Board of Trustees on behalf of Mr. Pianalto for a 0' for his garage.

Motion to forward this variance application to the Board of Trustees with recommendation for the development of a hold harmless agreement with the Town and recommendation for approval of this variance pending attorney review. Seconded by Zoning Board member Rodger Lull.

Zoning Board member Ed Herman – approve; Zoning Board member Gayla Gibb – approve; Zoning Board member Rodger Lull – approve; Zoning Board vice chairperson Jesse Garetson – approve.

Zoning Board member Gayla Gibb asked if Mr. Pianalto could get the garage any closer to the back porch. Mr. Pianalto stated that he could not. Additionally, reducing the garage size would prevent him from parking within the garage and opening the doors of his vehicle. Zoning Board member Ed Herman asked if fireproof siding could be used and a culvert could be placed in the ditch. Mr. Pianalto stated that the ditch is not on his property.

Zoning Board member Rodger Lull asked if Mr. Pianalto has considered asking to buy half of lot 12. Zoning Board vice chairperson Jesse Garetson stated that Mr. Nasso's leach field is close to that property line. Zoning Board member Gayla Gibb stated that should not be possible so close to the ditch. Mr. Pianalto stated that Mr. Nasso is not willing to sell. He also discussed the location of Mr. Nasso's septic system and that it would be on the partial lot he would purchase.

- Discuss and possible action on written Progress Report for Building Permits reaching two years without completion for property at 3 River Street and 507 River Street.

Zoning Board chairperson Ed Pianalto read the email from Mr. Phil Figueiredo at 507 River Street.

Zoning Board member Rodger Lull stated that the 2-year thing in the Zoning Code addresses what the Zoning Board does, not building. This is the building inspector's jurisdiction and the Town Council as needed. If a variance is granted and not acted upon within 2 years, it expires. This has nothing to do with building permits.

Zoning Board Chairperson Ed Pianalto read from the Zoning Code, in which the 2-year expiration date is discussed. Zoning Board member Rodger Lull repeated that this has been misinterpreted and that the Zoning Board does not manage building permits. He states this is the building inspector's job. Zoning Board member Jesse Garetson stated that this is a simple update.

Clerk to clarify with attorney – is it reasonable for the ZB to receive a letter from a property owner with an update.

Zoning Board member Rodger Lull asked how the Zoning Board can require anything about a permit that they don't issue.

Zoning Board chairperson Ed Pianalto asked if the Board accepts Mr. Figueiredo's update. The Zoning Board members stated that they accept the update. Zoning Board chairperson Ed Pianalto read aloud an email from Molly Gibb at 3 River Street.

The Zoning Board accepts the update from Molly Gibb.

- Discuss and possible action on Zoning Code proposal revisions for the recommendation to the Board of Trustees (Limit to 60-minute discussion – ongoing process)
 - Review Fence Permit Form draft proposed 12/18/23 with the addition of site plan drawing.

Chairperson Ed Pianalto prefers the Clerk's version. Zoning Board member Jesse Garetson pointed out that the Clerk's version does not include a line for the fee. Clerk Sara Gibb will add a line for the fee.

Zoning Board member Rodger Lull questions the validity of having a Zoning Board member sign these permits. The Zoning Board is a committee, so one or two members signing does not represent the committee. He thinks it is a liability on the Zoning Board members. Zoning Board member Jesse Garetson believes this is a "CYA" for the building inspector to reinforce his calls. He is not in favor of a one-man board on anything. When all the load is on one person, then it is unjust for that person. Before he signs permits, he prefers a site visit. Zoning Board member Gayla Gibb stated that it was her understanding that Zoning Board signatures represented that no zoning requirements have been neglected. They aren't approving or disapproving, they are verifying. Chairperson Ed Pianalto stated that the fence permit application is derived from the building application. Under Zoning Code section 17 D, it says that all applications for building permits must be reviewed for conformance to the Zoning Code.

Motion to accept the Clerk's revision of the fence permit made by Zoning Board member Jesse Garetson. Seconded by Zoning Board member Gayla Gibb. Motion carried 5-0.

- Renewal of Building Permits beyond the two-year completion and update Fee Schedule to reflect Building Permit Renewal (Section 17. H) – Tabled from the 2/12/2024 meeting for more research.

Motion to table this and all other items related to Zoning Code revisions made by Zoning Board member Jesse Garetson. Seconded by Zoning Board member Ed Herman. Motion carried 5-0.

- Demolition Permit for the demolition of a structure and update Fee Schedule to reflect fees for a Demolition Permit (Section 17) – Tabled from the 2/12/2024 meeting for more research.
- Update of Appendix "A" International Residential Code version
 - Current Ordinance No. 2, Series 2002 – specifies UBC - 1997

- Section 18: Board of Zoning Adjustment Subsection C – Variances – add verbiage that explains the process of the variance to include first approved/denied by ZBA. Appeal process to the BoT. Also includes variances on Town property.
- Checklists for Building Permit Inspections including Final Inspections and Certificate of Occupancy.
- Section 19: Violations Subsection B. - Clarify responsibility for drafting and mailing of certified letters.
- Section 18: B: Duties and Powers. - Clarify responsibility for drafting and posting of meeting notices.

4. OLD BUSINESS:

- Discuss and possible actions on the recommendation to the Board of Trustees for the follow up letter regarding Building Permits beyond the Two-Year time period.

This was discussed at a previous meeting. Zoning Board member Gayla Gibb had requested to modify original draft of the letter. Zoning Board chairperson Ed Pianalto stated that Mayor Balch requested that the letters look forward and not backward. He suggested that both formats be sent to the Board of Trustees and let them ask the attorney which letter he likes.

Motion to send both letters to the Mayor and Board of Trustees made by Zoning Board member Jesse Garetson. Seconded by Zoning Board member Ed Herman. Motion revised to:

Motion to send both drafts to Mayor Balch and at his discretion he can poll the trustees or request input from the attorney made by Zoning Board member Jesse Garetson. Seconded by Zoning Board member Ed Herman. Motion carried 5-0.

- Discuss updates to the Building Permit spreadsheet and update OWTS Data and review any new permits or closed permits.

Zoning Board member Gayla Gibb stated that her report is made to the Board of Trustees. She doesn't care to write up two reports. She reported that the Mayor said the OWTS report can be obtained from the Commissioner Reports. Zoning Board chairperson Ed Pianalto marked Figueiredo and Gibb as "in progress" with a report provided. Building Inspector Tom Gibb stated that the Trustee packet will include the updated building report.

5. ADJOURN: Motion to adjourn made by Zoning Board member Gayla Gibb. Seconded by Zoning Board member Ed Herman. Motion carried 5-0. Meeting adjourned at 8:46 pm.