

MINUTES
EVANS ZONING BOARD OF APPEALS
Regular Meeting, 5:30 pm
May 3, 2012

CALL TO ORDER

The May 3, 2012, meeting of the Zoning Board of Appeals was called to order at 5:30 p.m. by Board Chair Schanwolf.

ROLL CALL:

Present: Board Members Thaden, Schanwolf, Bernardo, Clark, Buck
Absent: None

APPROVAL OF MINUTES

Adoption of Minutes from April 5, 2012. It was moved by Board Member Buck, seconded by Board Member Bernardo to approve the minutes with the condition that page 7, paragraph 3 be changed from Cook to Clark; Page 8 last sentence of paragraph 1 to finish Mr. Schanwolf's statement. Unanimous consent

APPROVAL OF THE AGENDA

Mr. Ratkai stated Item B on the Agenda is shown as Item A in the report. He advised the Board to make the corrections in their packets.
Board Member Bernardo moved to approve the Agenda. The motion was seconded by Board Member Buck.

NOT YET APPROVED

AGENDA ITEMS:

Agenda Item A.

Public Hearing —Resolution No. xx-2012 – Variance Request to Sections 19.14 and 19.48 of the Evans Municipal Code for Setbacks - 3205 11th Avenue, Evans, Colorado - (Spear Garage)

Chair Schanwolf opened the public hearing and asked to hear from staff. The following information from the packet was reviewed by Mr. Ratkai:

BACKGROUND INFORMATION		
Location:	3205 11 th Avenue	
Applicants:	Steven Spear, Owner	
Existing Land Use:	R-1, Single Family Residential	
Proposed Land Use:	Same	
Surrounding Land Use:	North	32 nd Street, single family residential
	South	Duplex
	East	11 th Avenue, The Grove at Campus Crest
	West	Single family residential
Existing Zoning:	R-1	
Proposed Zoning:	Same	
Surrounding Zoning:	North	R-1
	South	R-1
	East	C-3
	West	R-1
Future Land Use Designation:	Residential – urban neighborhood	

PROJECT DESCRIPTION: The City has received an application from Steven Spear, land owner for a variance in order to construct a garage. Please see the attached vicinity map and the attached application for the property location, which is 3205 11th Avenue in Evans.

The requested variances include the following:

- 8' setback from rear of property line (Code requires 20')

RECOMMENDATION: Recommend denial to City Council.

ANALYSIS:

Background:

The owners of the property, which has been long held in the family, wish to construct an attached garage to protect their vehicles. They will attach the garage to the house via an enclosed walkway per the attached site plan. In recent years the setback to the north was reduced by the need for right of way acquisition to construct 32nd Street, and as some point in the past the setback for the home was at 6' from the rear property line. The garage will meet setback requirements from the front yard (facing 11th Avenue).

If approved, the applicants will have to come through the site planning process to apply for a building permit, and will be required to adhere to all the standards in the Evans Municipal Code.

Section 19.14 of the Evans Municipal Code (Accessory Structures):

The entire Section 19.14 has been attached for the review of the Zoning Board of Appeals and is also included here.

Chapter 19.14

R-1 SINGLE FAMILY RESIDENTIAL DISTRICT

Sections:

- 19.14.010 Intent
- 19.14.020 Permitted uses
- 19.14.030 Special Uses
- 19.14.040 Property development regulations.

19.14.010 Intent. It is the intent of the City of Evans, when establishing the R-1 zone district, to provide a district that is centered around the single-family home neighborhood. The densities and uses required by this chapter are established to enhance the open residential character that is typical to a low density non-business zone district. The allowable nonresidential uses listed here are intended to be harmonious with low density residential living and should support the local neighborhood. (Ord. 005-00: prior code 15.15)

19.14.020 Permitted uses. Permitted use groups in the R-1 district shall be as follows:

- Dwelling, single-family residential;
- Farming;
- School;
- Public service facilities;
- Accessory building/structure;
- Accessory use.

(Ord. 232-03: Ord. 005-00)

19.14.030 Special uses. Uses permitted pursuant to the terms and conditions of a special use permit as required by Chapter 19.44 are as follows:

- Recreational facilities, outdoor extensive;
- Day care center;
- Long-term care facility;
- Group homes;
- Community facilities.

(Ord. 005-00)

19.14.040 Property development regulations. Please refer to Table 19-14 for the following requirements: setbacks, lot area, open space, and height regulations. (Ord. 272-04: Ord. 005-00)

Table 19-14. Minimum lot requirements for the R-1 zone district						
FRONT	SIDE	STREET SIDE	REAR	LOT	OPEN SPAC	HEIGHT
25'	5' or 1 foot for each 3' of building ht. or fraction	15'	20'	2X total floor area, but not	N/A	3 stories or 35' which ever is less

Section 19.48 of the Evans Municipal Code (Accessory Structures):

The entire Section 19.48 has been attached for the review of the Zoning Board of Appeals. The applicable sections that are under consideration for this variance application have been pulled out as follows:

“Garage” shall mean a fully-enclosed structure accessory to a residence or residences and capable of being used for storage of one or more vehicles, i.e., having a garage door. “Garage, front-facing,” shall mean a garage with vehicular doors generally parallel to the front property line.

19.48.032 Setbacks.

A. Garages, accessory buildings and structures and storage/utility sheds shall comply with all applicable open space and minimum yard sizes (setbacks), with the following exceptions:

1. *Detached garages, accessory buildings, and structures that are separated from the principal structure by at least ten feet shall be set back from side and rear property lines at least five feet, plus one additional foot for every three feet, or fraction thereof, of building height over 15 feet. This provision notwithstanding, alley-loaded garages shall be setback at least 15 feet from alleys, whether or not attached to the principal structure.*

The proposed variance will NOT meet this code as it does not meet the setback requirements in Section 19.14.

19.48.034 Garages and carports.

A. Driveways required. All garages and carports in all R – Residential – zoning districts, except the R-1E – Estate Residential – zoning district, shall have a minimum ten-foot wide paved driveway extending from the vehicular opening of such structure to the public right-of-way improvements, or to the right-of-way line if public improvements do not exist. Such driveway shall be constructed of asphalt, concrete or similar impervious surface. The Public Works Director has the authority to grant a conditional waiver to the requirement for the paving of such driveway based upon existing public improvements and other factors in the vicinity of the proposed accessory structure. The absence of public improvements in the vicinity shall not automatically guarantee such a waiver.

B. Garages and carports accessory to single-family dwellings.

1. The front plane of an attached front-facing garage shall be no more than five feet closer to the front property line than the front façade of the principal structure, unless (a) the garage is located no less than thirty feet from the front property line, and (b) the house includes a front porch. In no event shall the front plane of a front-facing garage be more than ten feet closer to the front property line than the front façade of the principal structure and in no event shall a front-facing garage encroach into a required front yard.

The proposed variance will meet this code, as the garage (which is front facing) will not be in the front façade of the principal structure (the house).

To the maximum extent feasible, garage entries, carports, and parking garages shall not be located between a principal multifamily building and a street frontage, but shall instead be internalized in building groups so that they are not visible from adjacent public streets. **The proposed variance will meet this code.**

The applicant has submitted a letter to the Zoning Board of Appeals outlining the request and their situation.

Section 19.58 of the Evans Municipal Code (Variance Criteria):

Below are the Criteria for approval of a Variance:

19.58.030 Criteria for Variances.

A. The City Council must find all of the following circumstances to be true in order to approve a variance:

1. Approval of the variance would not jeopardize the health, safety, or welfare of any person; **Staff finds the proposed variance would meet this criteria of approval.**
2. Denial of the variance would result in a practical difficulty and unnecessary hardship to the applicant; **Staff finds that this request could be considered a hardship, as a garage is a standard construction item in most homes.**
3. Such practical difficulty and unnecessary hardship are due to an irregular, narrow, or steep lot, or other physical situation or condition of the building or land; **Staff finds that this criteria can be met as the size of the lot is small. However, the size of the garage can also be limited to meet the criteria. The applicant is requesting to build a large garage on a small lot.**
4. Such practical difficulty and unnecessary hardship have not been unreasonably self-imposed by the applicant. **Staff finds that the applicant could locate the garage elsewhere on the property and meet the code, or limit the size of the garage and meet the code (move the garage 7 feet closer to the front property line, for example).**

Issues:

The main concern with the application is that the applicant could meet the code as it stands by limiting the size of the garage and/or moving the location of the garage.

Notice of this public hearing was provided in accordance with Chapter 19.64 of the Municipal Code.

FINDINGS OF FACT AND CONCLUSIONS

After reviewing the Spear USR for construction of a garage the following findings of fact and conclusions have been determined:

The variance criteria in Section 19.58 of the Evans Municipal Code cannot be appropriately and sufficiently met.

STAFF RECOMMENDATION:

Staff recommends that the Zoning Board of Appeals forward a recommendation of denial of the requested variance with the findings and conclusions listed above.

Chairman Schanwolf asked for questions from the board for staff.

Mr. Buck asked for clarification about the 4th criteria in regards to staff's direction that the garage could be moved 7 ft., when moving it 7 ft. would still violate the setback. Mr. Ratkai would seek clarification on that from the Community Development Director.

Chairman Schanwolf asked what the dimensions of the proposed garage and then decided to wait and ask applicant.

Chairman Schanwolf then asked to hear from the applicant and/or the applicant's representative. Mr. Steve Spear, owner, addressed the Zoning Board of Appeals. Applicant brought additional pictures for board to view.

Mr. Spear stated they would like to build a 24x24 garage. Would increase property value and building the garage would make it easier to get their handicapped son from the vehicle to the house. Mr. Spear asked for questions, concerns, or ideas from the Board.

Mr. Clark's concern regards fire safety due to existing garages in the neighborhood being too close to the property line.

Mr. Bernardo asked if the garage was moved 7 ft. forward, would it be on the concrete? Mr. Spear indicated it would be and they would have to take out the tree.

Chairman Schanwolf wanted to know if the existing structure shown in the pictures was a shed. Mr. Spear confirmed.

Chairman Schanwolf was wondering if they could remove the shed. Mr. Spear said not planning on that.

Chairman Schanwolf suggested to move it 7 ft forward and over. Mr. Spear originally proposed to build a detached garage, but wanted to make it attached for their son.

Mr. Buck asked how close would the tree be from the east side of the garage? Mr. Spear 12 to 15 ft. He said they would lose 7 ft and it would make it hard to get a car in there.

Mr. Clark asked what is the distance of the proposed garage from the side property line?
Mr. Spear stated about 24 feet.

Mr. Bernardo: if allowed, what would material be to build garage. Mr. Spear said it would be a 16 ft door with a wood frame, similar materials to the house.

Mr. Buck what is the lot size? Mr. Spear: 7200 sq ft.

Chairman Schanwolf questioned how the neighboring garages were allowed to be built so close to the property line. He then followed up by asking when the current setback code was approved. Mr. Ratkai stated that the most recent ordinance listed in the code book showed 2004.

Mr. Spear said it would make things much easier to put something in there and be able to keep cottonwood trees.

Chairman Schanwolf asked if that was the applicant's fence in the picture. Mr. Spear said no, it is the neighbor's fence.

Chairman Schanwolf how much room to south fence to driveway? Mr. Spear stated 12 feet or so.

Chairman Schanwolf asked width? Mr. Spear stated 10-12 ft.

Mr. Buck garage directly to the west what is the size? About the same size. County records 483 sq ft. Similar to what applicant wants to build.

Chairman Schanwolf then asked if there were any more questions of the board to Mr. Spear. There were none.

Chairman Schanwolf then asked if there was anyone in the audience that wanted to speak in favor of this issue. No one came forth.

Chairman Schanwolf then asked if anyone in the audience wanted to come forth and be opposed to this issue. No one came forth.

Chairman Schanwolf then asked the applicant if they had any additional comments. Mr. Spear said not at the time.

Chairman Schanwolf closed the public hearing and said the Board would now discuss it amongst themselves.

Mr. Clark staff recommended moving the garage forward 7 ft. and inquired about access points. Ratkai said it would still be accessed off 11th front facing.

Chairman Schanwolf said it may be hardship to app to get out of structure

Chairman Schanwolf asked if there were any additional questions from the Board? There were none and he closed public hearing.

Mr. Bernardo said he drove and looked at the property and he feels the variance should be allowed. It is not the applicant's that the property got reduced down over time. He thinks it would help the community. No house in that area could meet criteria.

Chairman Schanwolf said they are trying to make the best of what they've got.

Mr. Thaden said that a building that close to the property line would be dangerous if there was a fire.

Mr. Buck said after reviewing it, 3 criteria have been met the 4th is in question. He feels the hardship has not been self-imposed. The garage would be beneficial to the homeowners and add to neighborhood. Concern could be fire, but he quite frankly thinks that he would have to move it more than 7 ft...more like 13 ft. in order to bring it into compliance. He feels comfortable with the proposal and supports overturning the staff recommendation.

Mr. Clark thought it would cut down on fire hazard to remove storage shed.

Chairman Schanwolf said we can put conditions on the variance and could make motion with condition and applicant will have to meet concerning the existing storage shed. He will be in support with overturning the staff recommendation under the condition that the shed is removed for safety precautions.

Chairman Schanwolf asked for a motion to approve or deny the variance with or without the condition.

Mr. Bernardo moved:

"Mr. Chairman, on the issue of the Spear Garage Variance for construction of a garage, I move that the Zoning Board of Appeals forward a recommendation of approval with conditions as follows because it meets the criteria outlined in Sections 19.58 of the Municipal Code." Condition: that the existing, small storage shed be removed from the property in order to accommodate the new construction and alleviate potential fire hazards.

Mr. Thaden seconded.

Motion carried unanimously.

This will be taken to the next City Council meeting on May 15, 2012.

Agenda Item B

Public Hearing – Ordinance No. xxx-12 – Adoption of the 2011 National Electrical Code

Chair Schanwolf opened the public hearing and asked to hear from staff. The following information from the packet was reviewed by Mr. Ratkai:

**ZONING BOARD OF APPEALS
INFORMATION SHEET**

AGENDA ITEM B

DATE: May 3, 2012

SUBJECT: Public Hearing —Ordinance No. xx-2012 – Repeal and Re-Enacting of Chapter 15.20 National Electric Code of the Evans City Code.

PRESENTED BY: N. Zach Ratkai, Building and Development Manager

ACTION: Recommendation to City Council

CITY COUNCIL DATE: Tuesday, May 17, 2012 at 7:30 pm

PROJECT DESCRIPTION: As of July 1, 2011, the State of Colorado Electrical Board, a division of the Colorado Department of Regulatory Affairs, adopted the 2011 National Electric Code (hereafter known as the NEC) as their minimum standard for electrical design, construction and inspection.

As a result of this adoption by the State, local jurisdictions had until June 1, 2012 to adopt the 2011 NEC for their own regulatory purposes.

In order to bring the City of Evans Building Department into compliance with State regulations as well as coincide with regional jurisdictions and agencies, we present to the Zoning Board of Appeals and subsequently the Evans City Council, an ordinance revoking the prior used 2008 NEC and adopting the 2011 NEC, subject to the amendments listed.

ANALYSIS:

The adoption of the 2011 NEC is in reference to adoption of the entire NEC code book; however, there are a number of amendments outlined within the ordinance itself. These amendments coincide with amendments made during the adoption of the 2011 NEC by the City of Greeley. This was chosen by staff to be included within the Evans adoption due to our relationship with the City of Greeley who, by way of agreement and contract, conducts electrical plan review and inspection for Evans. In addition to that, staff feels that adopting the same amendments as Greeley benefits local contractors and builders and does not show a perceived impediment to building in Evans.

RECOMMENDATION: Recommend approval to City Council.

Chairman Schanwolf asked for questions from the board for staff.

Mr. Ratkai addressed the Board about the 2011 NEC. The 2011 version of the NEC was adopted by the State of Colorado Electrical Board in July of 2011, local jurisdictions have until June of 2012.

This process was initiated in order to bring the Evans Building Dept. into compliance. Attached is an Ordinance to revoke the 2008 version and to adopt the 2011 version.

A number of amendments are included, as taken from the Greeley adoption. City of Greeley is currently under contract to perform the electrical inspections for Evans as they have the properly credentialed personnel. Mr. Ratkai determined that adopting similar amendments as Greeley will reduce regulatory hardships among the building and contracting community. In addition, the amendments had already been vetted among the community through Greeley's adoption process as well as approved by the inspectors themselves.

Chairman Schanwolf asked if there are board questions of staff.

Mr. Bernardo thought we tried to stay 2 yrs behind the current versions.

Mr. Ratkai said we would have to utilize state inspectors if we don't adopt the State's version. This was conducted in part to maintain local control.

Mr. Buck commented related to an amendment, wanting to know the reasoning behind 210.11(c)(3) (listed under Section 15.20.100 of the Ordinance). He continued pointing out that the last sentence seemed redundant. Mr. Ratkai concurred with this realization and promised the board to follow up on the reasoning and prepare a more coherent sentence for the City Council.

Chairman Schanwolf then asked if there was anyone in the audience that wanted to speak in favor of this issue. No one came forth.

Chairman Schanwolf then asked if anyone in the audience wanted to come forth and be opposed to this issue. No one came forth.

Mr. Schanwolf closed the public hearing and said the Board would now discuss it amongst themselves.

Mr. Buck moved:

"Mr. Chairman, on the issue of adoption of the 2011 National Electric Code, I move that the Zoning Board of Appeals forward a recommendation of approval with conditions to the Evans City Council." Conditions: Correct and clarify the language outlined in Section 15.20.100 of the proposed ordinance.

Thaden Seconded.

Motion passes unanimously.

GENERAL DISCUSSION

Recap of the Tuesday, May 1, City Council meeting from Mr. Barnardo and Chairman Schanwolf with both attended. General discussion revolving around the Grove apartments and the SolarCity contract, construction and entitlements through the City. Essentially a report to the ZBA board.

Mr. Ratkai will research some of the open-ended questions from the Council meeting and report back to the ZBA.

Discussion of Fire District tax levies.

AUDIENCE PARTICIPATION:

(This portion of the Agenda is provided to allow members of the audience to provide comments to the Planning Commission on items that were not considered on the current Agenda.) There were no comments from the audience.

ADJOURNMENT

Mr. Bernardo moved to adjourn, Thaden Second

The May 3, 2012, meeting of the Zoning Board of Appeals was adjourned at 6:33 p.m. by Board Chair Schanwolf.

N. Zach Ratkai, Building and Development Manager

NOT YET APPROVED