

BOARD OF ADJUSTMENT AND APPEALS
MEETING AND APPEAL HEARING
OCTOBER 28, 2021
6:00 P.M.

1. CALL TO ORDER
2. SWEARING IN OF KATRINA WEISS, LANCE MCDANIEL, AND ALAN ROLSTON AS MEMBERS OF THE BOARD
3. BUSINESS OF THE BOARD
 - a. Election of Chair and Vice-Chair
 - b. Hear and Decide Request for a Variance to the Side Yard Setback Requirements in the Commercial Highway (C) Zoning District, for the Construction of a Wash Bay Located at 1650 East Main Street, As Submitted by Shelby and Adele Seely, Owners of the Super Splash Car Wash, and Review of Board of Adjustment Resolution No. 2, Series 2021.
4. ADJOURNMENT

FYI:

1. Board of Adjustment Proceedings of Meetings (see attached PW-11-92)
2. Requirements for Election of new Chair and Vice Chair and Organization of the Board of Adjustment (see attached memo Officer Election)
3. Excerpt of Section 6.17 Variances
4. Requirements of Land Use Code Section 6.17(C), Relating to the Clarification of Findings of Fact and Procedure of Approval or Denial for Variances (see attached memo PW-07-351)

Business of the Board



City of Cortez
Board of Adjustment
Agenda Memorandum

Item No: 3.b.

Meeting Date: October 28, 2021

MEMO TO: Members, Board of Adjustment and Appeals

FROM: Neva Connolly, Associate Planner

SUBJECT: Hear and Decide Request for a Variance to the Side Yard Setback Requirements in the Commercial Highway (C) Zoning District, for the Construction of a Wash Bay Located at 1650 East Main Street, As Submitted by Shelby and Adele Seely, Owners of the Blanding Super Splash LLC, and Review of Board of Adjustment Resolution No. 2, Series 2021.

ATTACHMENTS: Board of Adjustment Resolution No. 2, Series 2021; Application for Variance Request and Supporting Documentation; Aerial Photo; Vicinity Map; copy of the Henry Subdivision Plat

BACKGROUND

The City has received a request for a variance to the side yard setback requirements from Shelby and Adele Seely, owners of the Blanding Super Splash LLC, for the construction of a wash bay enclosure on the east end of the existing car wash structure. The property is zoned Commercial Highway (C), and is 21,822 square feet in size, and an unnumbered tract of Block 4 of the Henry Subdivision. The applicants are requesting a variance to the Commercial Highway side yard setback requirement of 7.5-feet to construct an addition to an existing garage. Commercial side yard setbacks are 0-feet, except on corner lots (1650 E. Main Street is located on the northwest corner of Sligo and Main Streets); see paragraph below. The applicants have proposed to cover the eastern most car wash bay, which is currently not covered. The existing structure meets current side yard setbacks. The proposed addition will meet lot coverage and height requirements. The bay enclosure would consist of a roof and side wall facing Sligo Street. The side wall would encroach 2'-8" into the setback along Sligo Street and will need a variance to move forward with the proposal.

The City of Cortez Land Use Code Chapter 3.06 (3) states: *Corner lots. For lots with frontage on two intersecting streets, such a lot shall have the front of the lot determined by the legal street address for the lot. Corner lots shall comply with the front yard setback for the front of the lot and 75% of the front yard setback for the side of the lot facing the other street. The rear yard setback and the side yard setback for the interior side of the lots shall be as required by the area regulations.*

After meeting with City Staff, the applicants have decided to exercise the right to apply to the Board of Adjustments and Appeals and request a variance to the side yard setback requirements.

The area regulations for setbacks in the Commercial Highway Zoning District are outlined in the chart below:



City of Cortez
Planning and Building
123 Roger Smith Avenue Cortez,
CO 81321

Board of Adjustment (Variance) Application Checklist

Sept. 1, 2021
Date

APPLICANT: Super Splash Car Wash
MAILING ADDRESS: 1380 N. 500 W. Blanding, UT 84511
PHONE/FAX: 435 275 5881 EMAIL: Supersplashing@gmail.com
TYPE OF VARIANCE REQUESTED: 2'8" boundary
STREET ADDRESS OF SUBJECT PROPERTY: 1650 E main St.
LEGAL DESCRPTION OF PROPERTY: Business Personal Property

Submittal Requirements:

- Application
- Letter of petition requesting variance and narrative describing and demonstrating the need for the variance. The Board of Adjustment will review the variance request using the criteria listed in Chapter 6.17(c) (attached). The narrative should discuss items 1-6 in the review criteria.
- A site plan and any and all other information necessary to clearly demonstrate eligibility for the requested variance. The site plan shall show the boundary of the property and proposed or existing buildings.
- Filing fee (\$300) to cover the costs of review in accordance with the current adopted fee schedule

Table 3.06 RESIDENTIAL AREA REGULATIONS									
Development Standard	Zoning Districts								
	RE	R-1	R-2	MH	CBD	C	NB	I	O
Single or One-Family Dwelling									
Min. Lot Area/unit (sq. ft.)	--	--	--	--	--	3,000	--	--	--
Min. Front Yard (ft.)	--	--	--	--	--	10'	--	--	--
Min. Side Yard (ft.)*	--	--	--	--	--	0*	--	--	--
Min. Rear Yard (ft.)	--	--	--	--	--	7'	--	--	--
Max. Lot Coverage (%)	--	--	--	--	--	50%	--	--	--
Min. Floor Area/ (sq. ft.)	--	--	--	--	--	--	--	--	--
Max. Height (ft.)	--	--	--	--	--	50'	--	--	--
Min. Lot Width (ft.)	--	--	--	--	--	--	--	--	--

*Corner lot side yard setbacks are 75-percent of the front yard setback for the zoning district (10-ft for Commercial Highway), making the side yard setback for commercial lots on a street corner 7.5-feet.

BOARD AUTHORITY

The Land Use Code, Section 6.15 declares the **Jurisdiction of the Board**. It states that:

(c) **Jurisdiction.** *The Board of Adjustment shall have the following powers, and shall have the power to impose reasonable conditions to insure compliance and protect adjacent property:*

- (1) *To hear and decide Appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official of the City in the enforcement of this Chapter, pursuant to Sec. 6.16, Appeals.*
- (2) *To permit Variance or modifications of the height of structures, **yard**, area, and lot coverage, pursuant to Sec. 6.17, Variances.*
- (3) *To grant Variances from flood hazard standards. The Board shall follow the guidelines set forth in the Flood Hazard Ordinance (Appendix “C”) when considering such Variances.*

Section 6.16(a) of the Land Use Code describes the **Authority of the Board**.

“In exercising its powers, the Board of Adjustment may, in conformity with the provisions of the Statutes of the State of Colorado as existing or hereafter amended, reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination appealed from and make such order, requirement, decision or determination in the Board’s opinion, as ought to be made and shall have all the powers of the officer from whom the appeal is taken.”

VARIANCE REQUEST

The applicant is requesting that the Board consider granting a variance to the required Commercial side yard setback of 7.5-feet to a requested setback of approximately 4'-7”.

Section 6.17(a) describes the **Authority of the Board for Granting Variances**, and under the specific circumstances that a variance may be granted.

“The Board of Adjustment shall be authorized to permit such Variance or modifications of the height, yard, area, and lot coverage as may be necessary to secure appropriate development of a parcel of land that differs from other parcels in the district by being of such restricted area, shape or slope that it cannot be appropriately developed without such modification.”

The applicants were given a copy of the required findings and has attached their own comments in regard to each of the findings (see attached letter of petition). Staff has also provided comments regarding each finding.

Section 6.17(c) Required findings. *In exercising its power to grant a Variance in accordance with this Chapter, the Board of Adjustment shall make finding and show in its minutes that:*

(1) There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the same area and zone district;

The lot is similar in character to other lots in the Henry Subdivision, and does not have special circumstances that do not apply to other property in the area. The lot is of appropriate acreage and dimensions to meet standard C-zoning district requirements and does not have unusual topography, shape, or size.

Applicant’s Response: *“We are requesting a variance of 2’8” so that we can enclose our existing outside bay by building one masonry wall and adding a roof over it. Because this is an existing bay all of the car wash equipment is already in place, as well as the water drainage and the electrical.”*

(2) That a Variance is necessary to permit the Applicant the same rights in the use of this property that are presently enjoyed under this Chapter, by other properties in the vicinity and zone, but which rights are denied to the subject property;

The setback variance is not necessary to permit the applicant the same rights in use as others in the C Zoning District. The applicant can develop the property under the existing Land Use Code regulations. The existing structure meets Commercial Highway zoning regulations.

Applicant’s Response: *“We believe we can increase revenue by providing an enclosed bay. We have noticed that people are unwilling to use the open bay, or they do not realize that it is a bay because it does not have a wall or roof enclosure. Two, we are hoping to increase safety to our customers and employees by adding the wall and roof. We know that by having a structure in place it will make it less likely to be used as a short cut at the light of Sligo and Main Street.”*

(3) That the granting of the Variance on the specific property will not adversely affect the land use pattern as outlined by the Land Use Plan and will not adversely affect any other feature of the Comprehensive Plan of the City of Cortez.

The granting of this request as a single variance will not adversely affect the land use pattern or the Comprehensive Plan. However, the lack of hardship or special circumstances in this case

could allow for similar variances to be granted, with the cumulative effect adversely affecting land use patterns.

Applicant's Response: No direct response.

- (4) *That the Variance, if granted, will be no material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity;*

Granting the variance will not affect overall public welfare. The variance will allow for a structure approximately 4'-7" from the property line. The open bay currently exists with sprayer equipment and drain.

Applicant's Response: "We witness on a daily basis people cutting through the outside open bay to avoid stopping at the red light when making a right-hand turn. They are usually in a big hurry and drive through the car wash with excessive speed."

- (5) *That such unnecessary hardship has not been created by the Applicant; and*

The applicant can continue to use the existing uncovered car wash bay without a structure encroaching into the setback.

Applicant's Response: The applicant has stated that leaving the bay as is continues to be a safety hazard.

- (6) *That the proposed use is a permitted use in the underlying zone district.*

A carwash is an allowed use under the Land Use Code Section 3.05 with a Conditional Use Permit. The applicant applied for and received a CUP for the project in 1999, and the bay, though not enclosed, was part of the application at the time. If the variance is granted, the applicant is required to follow site plan review standards (and has applied for a site plan review).

Applicant's Response: Not directly addressed.

SCHEDULE OF USE REGULATIONS									
Use Type	RE	R-1	R-2	MH	O	CBD	C	NB	I
Automobile and Related Services	Zoning District								
Car Wash	--	--	--	--	--	C	C	--	P

ALTERNATIVES

If the Board does not find that all six of the required findings can be met, then the following option should be utilized.

- 1) The Board can **deny** the request for a variance to the required Commercial Highway side yard setback of 7.5-feet to a requested 4'-7" or less setback at 1650 East Main Street;

If the Board finds that all of six of the required findings can be met, then they can utilize the following alternative:

- 2) The Board can **grant** a variance to the required Commercial side yard setback at 1650 East Main Street, from a setback of 7.5-feet, to a requested 4'-7" setback, and state their reasons;

CONCLUSION

The Board can grant a variance only if it finds that all of the applicable criteria listed above have been satisfied. As noted in the attached memo (PW-07-351), the Board will need to vote on each of the required findings separately.

If the Board should find the request to be in keeping with the required findings of Land Use Code Section 6.17, and thereby authorizing the granting of the variance, the Board can make the following motion:

Having found the variance request to be in keeping with the required findings of Land Use Code Section 6.17(c), **move to approve the application for variance in Commercial Highway (C) side yard setback requirement of 7.5-feet to allow for a side yard setback of 4'-7" for construction of a car wash canopy, for property located at 1650 East Main Street, and granting said approval through the adoption of Board of Adjustment and Appeals Resolution No. 2, Series 2021.**

Or;

If the Board should find the request to be in conflict with the required findings of the Land Use Code Section 6.17, and thereby authorizing the denial of the variance, the Board can make the following motion:

Having found the variance to be in conflict with the required finding of Land Use Code Section 6.17(c), **move to deny the application for variance in the Commercial Highway Zoning District (C) side yard setback requirement of 7.5-feet to allow for a side yard setback of 4'-7" for construction of a car wash canopy on property located at 1650 East Main Street, and granting said approval through the adoption of Board of Adjustment and Appeals Resolution No. 2, Series 2021.**

**CITY OF CORTEZ
BOARD OF ADJUSTMENT AND APPEALS
RESOLUTION NO. 2, SERIES 2021**

**A Resolution to Approve an Application for a Variance to the Side Yard Setback on
Property Located at 1650 East Main Street in the Commercial Highway (C) Zone**

WHEREAS, Shelby and Adele Seely (hereinafter "Owners") have applied for a side yard setback variance and holds title to the property addressed as 1650 East Main Street, and more particularly described as follows:

*Amended Plat of Portions of Unnumbered Tracts in Block 4, Henry Subdivision
As Recorded in Book 7, Page 36
Seely Property
City of Cortez,
Montezuma County
State of Colorado
Reception # 483923, Book 14, Page 25*

WHEREAS, the Owners have applied to the City for a variance to lot area regulations because the proposal does not comply with Land Use Code Section 3.06, *Area Regulations*; and

WHEREAS, the Owners desire to construct a canopy that will extend into the required side yard setback in the Commercial Highway (C) Zone; and

WHEREAS, the Owners have held legal ownership of the property subsequent to the adoption of said Board of Adjustment and Appeals Resolution No. 2, Series 2021; and,

WHEREAS, the Owners holds an undivided interest in the property, and has petitioned the City, through the Board of Adjustment and Appeals, for a variance to the side yard setback requirements that do not comply with Section 3.06, *Area Regulations*; and,

WHEREAS, in accordance with the Land Use Code, the Board held a duly-advertised public hearing on October 28, 2021, to receive public comment on the proposed variance; and,

WHEREAS, based on the evidence and testimony presented at the public hearing, the City of Cortez Board of Adjustment and Appeals reviewed the application for a variance to Section 3.06, *Area Regulations*, and determined that it was not detrimental to the community to approve the variance to the lot area; and,

WHEREAS, the Board of Adjustment and Appeals reviewed the criteria of Land Use Code Section 6.17(c)(1)-(6) and found that:

- (1) There are special circumstances existing on the property on which the application is made relative to size, shape, area, topography, surrounding conditions and location that do not apply generally in the same area and zone district; and
- (2) A variance is necessary for the applicant to enjoy the same rights in the use of the property as that enjoyed by others in the same area; and

- (3) Granting a variance would not adversely affect the land use pattern as outlined in the Land Use Plan or adversely affect other features of the Cortez Comprehensive Plan; and
- (4) The variance, if granted, would not be a material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity; and
- (5) The unnecessary hardship was not created by the Applicant; and
- (6) The proposed use is a permitted use in the underlying zone district.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF CORTEZ BOARD OF ADJUSTMENT AND APPEALS:

THAT, through Board of Adjustment and Appeals Resolution No. 2, Series 2021, the application **for a variance in the Commercial Highway (C) side yard setback requirement of 7.5-feet to allow for a side yard setback of 4'-7"** for construction of a carwash canopy on property located at 1650 East Main Street, is hereby approved.

MOVED, SECONDED AND ADOPTED THIS 28TH DAY OF OCTOBER, 2021.

Chairperson

ATTEST:

Linda L. Smith, City Clerk

**CITY OF CORTEZ
BOARD OF ADJUSTMENT AND APPEALS
RESOLUTION NO. 2, SERIES 2021**

**A Resolution to Deny an Application for a Variance to the Side Yard Setback on Property
Located at 1650 East Main Street in the Commercial Highway (C) Zone**

WHEREAS, Shelby and Adele Seely (hereinafter "Owners") have applied for a side yard setback variance and hold title to the property addressed as 1650 East Main Street, and more particularly described as follows:

*Amended Plat of Portions of Unnumbered Tracts in Block 4, Henry Subdivision
As Recorded in Book 7, Page 36
Seely Property
City of Cortez,
Montezuma County
State of Colorado
Reception # 483923, Book 14, Page 25*

WHEREAS, the Owners have applied to the City for a variance to lot area regulations because the proposal does not comply with Land Use Code Section 3.06, *Area Regulations*; and

WHEREAS, the Owners desire to construct a canopy cover that will extend into the required side yard setback in the Commercial Highway (C) Zone; and

WHEREAS, the Owners have held legal ownership of the property subsequent to the adoption of said Board of Adjustment and Appeals Resolution No. 2, Series 2021; and,

WHEREAS, the Owners hold an undivided interest in the property, and has petitioned the City, through the Board of Adjustment and Appeals, for a variance to the side yard setback requirements that do not comply with Section 3.06, *Area Regulations*; and,

WHEREAS, in accordance with the Land Use Code, the Board held a duly-advertised public hearing on October 28, 2021, to receive public comment on the proposed variance; and,

WHEREAS, based on the evidence and testimony presented at the public hearing, the City of Cortez Board of Adjustment and Appeals reviewed the application for a variance to Section 3.06, *Area Regulations*, and determined that it was detrimental to the community to approve the variance to the lot area; and,

WHEREAS, the Board of Adjustment and Appeals reviewed the criteria of Land Use Code Section 6.17(c)(1)-(6) and found that:

- (1) There are not special circumstances existing on the property on which the application is made relative to size, shape, area, topography, surrounding conditions and location that do not apply generally in the same area and zone district; and

- (2) A variance is not necessary for the applicant to enjoy the same rights in the use of the property as that enjoyed by others in the same area; and
- (3) Granting a variance would adversely affect the land use pattern as outlined in the Land Use Plan and adversely affect other features of the Cortez Comprehensive Plan; and
- (4) The variance, if granted, would be a material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity; and
- (5) The unnecessary hardship was created by the Applicant; and
- (6) The proposed use is a permitted use in the underlying zone district.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF CORTEZ BOARD OF ADJUSTMENT AND APPEALS:

THAT, through Board of Adjustment and Appeals Resolution No. 2, Series 2021, the application **for a variance to the Commercial Highway (C) side yard setback requirement of 7.5-feet to allow for a side yard setback of 4'-7" for construction of a carwash canopy on property located at 1650 East Main Street** is hereby denied.

MOVED, SECONDED AND ADOPTED THIS 28TH DAY OF OCTOBER 2021

Chairperson

ATTEST:

Linda L. Smith, City Clerk



City of Cortez Ownership Map

Printed: 10/22/2021

1 inch = 25 feet



50

N. 1st St

Legend



Super Splash, Inc.
1380 North 500 West
Blanding, Utah 84511

City of Cortez
Department of Planning and Building
City Hall
123 Roger Smith Ave.
Cortez, CO 81321

September 1, 2021

To whom it may concern,

We, the owners of Super Splash Car Wash are requesting a variance of 2'8" so that we can enclose our existing outside bay by building one masonry wall and adding a roof over it.

Because this is an existing bay all of the car wash equipment is already in place, as well as the water drainage and the electrical.

By doing this we are hoping to accomplish two things. One, we believe we can increase revenue by providing an enclosed bay. We have noticed that people are unwilling to use the open bay, or they do not realize that it is a bay because it does not have a wall or roof enclosure. Two, we are hoping to increase safety to our customers and employees by adding the wall and roof. We know that by having a structure in place it will make it less likely to be used as a short cut at the light of Sligo and Main Street. We witness on a daily basis people cutting through the outside open bay to avoid stopping at the red light when making a right-hand turn. They are usually in a big hurry and drive through the car wash with excessive speed. This is a serious safety concern.

We would appreciate your consideration of this request.

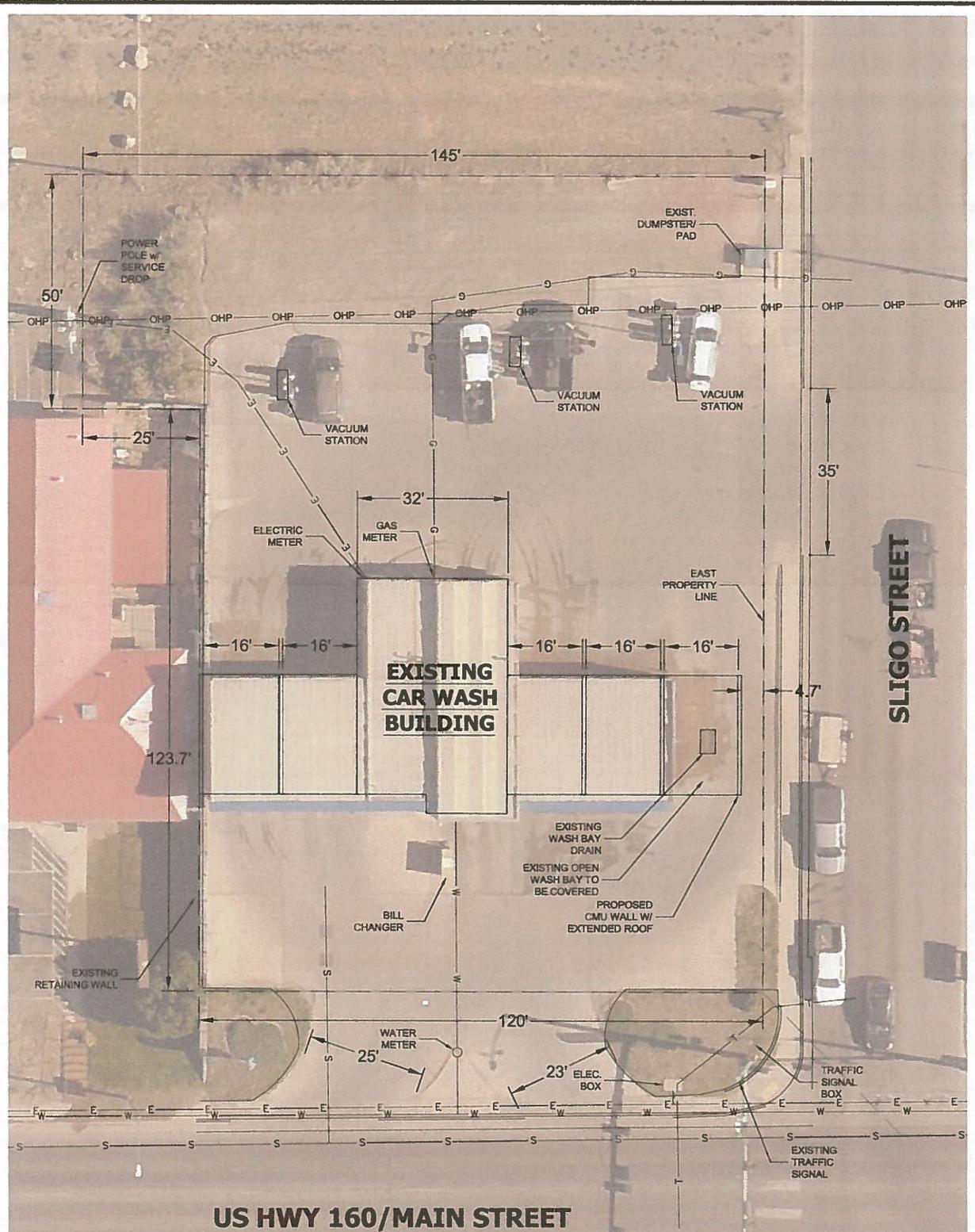
Thank you,

Shelby D. Seely

A handwritten signature in cursive script, appearing to read "Shelby", with a long horizontal flourish extending to the right.

Adele Seely

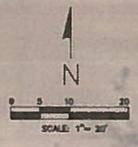
A handwritten signature in cursive script, appearing to read "Adele Seely", with a long horizontal flourish extending to the right.



US HWY 160/MAIN STREET

1650 E. Main Street:
 Lot Area: 0.52 [AC]
 Zoning: Commercial Highway Business
 Subdivision: Henry Subdivision Amended Block 4

Construction Notes:
 All construction to conform with the 2015 IBC, the 2017 National Electrical Code. All utility service connections shall meet and conform with the requirements for the City of Cortez, the Cortez Sanitation District, Empire Electric or any other utility company providing services to the building.



DATE: June 2021
 DRAWN BY: BSG
 CHECKED BY: BSG
 SHEET 3 OF 3

**SUPER SPLASH CAR WASH
 1650 E. MAIN STREET
 SITE PLAN**

REVISIONS		
No.	DESCRIPTION	By:

Stoner Engineering & Surveying
 Engineering, Testing & Surveying
 28 S. Washington - P.O. Box 1183 - Cortez, CO. 81321 - Phone: 970.565.7483

FYI:

- 1) Board of Adjustment Proceedings
- 2) Requirements for Election of New Chair and Vice Chair
- 3) Excerpt of Section 6.17
- 4) Findings of Fact and Procedure

BOARD OF ADJUSTMENT AND APPEALS PROCEEDINGS OF MEETING

1. Introductory statement from Chairman as to what is the business of the board.
2. Notice of publication and mailings completed.
3. Presentation by staff on memo and background of situation.
4. Any questions from the Board for staff.
5. OPEN PUBLIC HEARING – have applicant state his presentation – need name and address for record – step to the podium.
6. Is there anyone in the audience that would like to speak for or against this application?
7. No further discussion from the audience. CLOSE PUBLIC HEARING.
8. Discussion among Board Members – can ask questions of staff or applicant. As part of the discussion, go through the findings of fact and vote on them individually.
9. When discussion is completed, Chair entertains a motion from the Board to approve or deny the variance – approval or denial is in accordance with the enclosed DRAFT Resolution presented by staff. Resolution can be changed according to Board's findings of fact.
10. TO BE READ BY CHAIR OR STAFF:

"Every decision of the Board shall be subject to review by Certiorari, as provided by Rule 106(a)(4) Colorado Rules of Civil Procedure. Such appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the municipality. Such appeal shall be taken within such time as provided by the Colorado Rules of Civil Procedure. A notice of appeal, in writing, specifying the grounds for such an appeal, shall also be filed with the Board within thirty (30) days of the final written decision of the Board."
11. Adjournment.
12. A letter will be sent to the applicant informing them of the Board's decision.



City of Cortez
Interoffice Correspondence

PW-09-439

December 31, 2009

MEMO TO: Members, Board of Adjustment and Appeals
FROM: Kirsten Sackett, City Planner, Updated by Neva Connolly (Associate Planner)
SUBJECT: REQUIREMENTS FOR ELECTION OF NEW CHAIRMAN AND VICE
CHAIRMAN AND ORGANIZATION OF THE BOARD OF ADJUSTMENT

The first item of business before the Board is the election of a new chairman. Previously, Chris Eastin was Chairman, and Glenn Leighton was Vice-Chair.

Land Use Code Section 6.15 covers the organization of the Board of Adjustment and Appeals and describes the officers and the procedures for operation. Under these guidelines, a Chairman and Vice Chairman shall be elected as the first order of business by the Board of Adjustment and Appeals at their special meeting on Thursday, July 12, 2018.

6.15 Board of adjustment.

(a) Creation and Organization. There is created a board known as the board of adjustment, which shall be organized as follows.

(1) The board of adjustment and appeals shall consist of five members who shall be appointed by the city council. Not more than two (2) members may be current members of the city planning commission. No member of the city council shall serve on the board of adjustment and appeals. The city council shall also appoint two (2) alternate members to the board, designating the alternate members as the first or second alternate. An alternate member shall vote only in the absence of one (1) or more regular members according to his or her priority (i.e. the first alternate shall vote if one (1) regular member is absent and both alternates shall vote in the absence of two (2) regular members of the board). When a regular member resigns, the first alternate member shall automatically be designated as a regular member in replacement and the second alternate member shall automatically be designated as the first alternate.

(2) Appointments to the board shall be for a period of three (3) years; except when vacancies occur prior to the expiration of a regular term, they shall be filled in the same manner as regular appointments but shall serve only until the expiration of the term in which the vacancy occurred.

(3) The city council shall have the power to remove any member of the board for cause after official public hearing.

(b) Officers and Procedures.

(1) Members of the board shall elect from their members a chairman to serve for a term of one (1) year and may adopt such rules as may be necessary for the conduct of its business.

(2) The chairman shall preside over meetings. In the event a question over procedures arises, Robert's Rules of Order shall apply.

(3) The recording of the minutes of the board of adjustment meetings shall be the responsibility of the staff.

(4) The board of adjustment may adopt rules to govern its proceedings and conduct of the business before the board provided, however, that such rules are not inconsistent with this code or statutes of the state of Colorado.

(5) Meetings of the board shall be held at the call of the chairman, and at such other times as the board may determine. Such chairman or, in his or her absence, the vice-chairman shall administer oaths and compel attendance of witnesses. All meetings of the board shall be open to the public. Minutes of its proceedings shall be kept by the staff showing the vote of each member upon such question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the board and shall be a public record.

(6) The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision or determination of the city staff, or to decide in favor of the applicant on any matter upon which the board is required to act under this code or to grant any variance authorized by this code.

(7) The filing fee for every petition to be submitted to the board of adjustment shall be calculated to cover the cost of legal publications, accumulation of data, administrative cost and all other costs incurred by the city in the review and processing of the petition or as provided for in the fee schedule adopted by resolution of the city council.

(8) In the event any person appealing to the board is dissatisfied with the ultimate decision of the board of adjustment and appeals, the expense of reproducing the record before that board shall be at the expense of the appellant.

6.17 - Variances.

- (a) Authority. The board of adjustment shall be authorized to permit such variance or modifications of the height, yard, area, and lot coverage as may be necessary to secure appropriate development of a parcel of land that differs from other parcels in the district by being of such restricted area, shape or slope that it cannot be appropriately developed without such modification.
 - (1) City Council Approval of Variances. In conjunction with the review of subdivision applications, the city council shall be authorized to grant variances subject to the requirements of this section.
- (b) Submittal Requirements. The applicant shall file three (3) copies of an application requesting a variance. The application shall be accompanied by or show the following:
 - (1) The street address and legal description of the property affected;
 - (2) A site plan and any and all other information necessary to clearly demonstrate eligibility for the requested variance based upon the required findings in subsection 6.17(c), below; and
 - (3) A filing fee to cover the cost of review in accordance with the fee schedule adopted by resolution of the city council.
- (c) Required Findings. In exercising its power to grant a variance in accordance with this code, the board of adjustment shall make finding and show in its minutes that:
 - (1) There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the same area and zone district;
 - (2) That a variance is necessary to permit the applicant the same rights in the use of this property that are presently enjoyed under this code, by other properties in the vicinity and zone, but which rights are denied to the subject property;
 - (3) That the granting of the variance on the specific property will not adversely affect the land use pattern as outlined by the land use plan and will not adversely affect any other feature of the comprehensive plan of the city;
 - (4) That the variance, if granted, will be no material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity;
 - (5) That such unnecessary hardship has not been created by the applicant; and
 - (6) That the proposed use is a permitted use in the underlying zone district.



City of Cortez
Interoffice Correspondence

PW-07-351

September 27, 2007

MEMO TO: Members, Board of Adjustment and Appeals

FROM: Kirsten Sackett, Director of Planning and Building

SUBJECT: DISCUSSION OF LAND USE CODE SECTION 6.17(c), RELATING TO THE CLARIFICATION OF FINDINGS OF FACT AND PROCEDURE OF APPROVAL OR DENIAL FOR VARIANCES

BACKGROUND

The exact meaning of the review criteria when voting on approval or denial of a variance has caused repeated confusion for the Board and Staff. Section 6.17(c) states the exact criteria that must be reviewed as findings of fact in exercising the Board's power to grant a variance. These items must be discussed and the findings of the Board must be recorded in the minutes. In an effort to clarify the discussion about the findings, each item is listed as it appears in the Land Use Code and is immediately followed by a brief explanation of the vote.

***“Required findings.** In exercising its power to grant a Variance in accordance with this Chapter, the Board of Adjustment shall make finding and show in its minutes that:”*

a) There are special circumstances existing on the property on which the application is made related to size, shape, area, topography, surrounding conditions and location that do not apply generally to other property in the same area and zone district;

A “NO” vote indicates that the board member does not feel that there are special circumstances on the property that would warrant granting a variance to the applicant.

A “YES” vote means that the circumstances on the lot, whether physical or impacts from adjacent properties, are such that problems can be mitigated by granting the variance.

b) That a Variance is necessary to permit the Applicant the same rights in the use of this property that are presently enjoyed under this Chapter, by other properties in the vicinity and zone, but which rights are denied to the subject property;

A “NO” vote means that the applicant may have other options available to him that have not been fully explored and that a variance is not necessary for the owner to enjoy the same rights in the development of his property.

A “YES” vote indicates that the Board member is completely satisfied that all options have been exhaustively reviewed and that a variance is is necessary in order for the applicant to enjoy the same rights as neighboring properties.

c) *That the granting of the Variance on the specific property will not adversely affect the land use pattern as outlined by the Land Use Plan and will not adversely affect any other feature of the Comprehensive Plan of the City of Cortez;*

A **“NO” vote** indicates that the Board member believes that a variance will be an adverse affect on the land use pattern and would actually violate the tenants and spirit of the Comprehensive Plan.

A **“YES vote** means that granting of the variance is fully in line with the direction for land use that the Comprehensive Plan gives.

d) *That the Variance, if granted, will be no material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity;*

A **“NO” vote** means that the member of the Board feels that there will be impacts on adjacent properties and that by granting the variance it will actually reduce others enjoyment in the use of their property.

A **“YES” vote** indicates that the variance will not reduce public welfare or reduce the full enjoyment of nearby property owners to use and develop their property.

e) *That such unnecessary hardship has not been created by the Applicant; and*

A **“NO” vote** is a statement from the Board member that the hardship was created by the property owner whether there was a failure to obtain the necessary permits prior to undertaking a project or if some physical work was initiated that may have altered the physical characteristics of the property.

A **“YES” vote** states that the property owner is not responsible for any condition that has led to the application.

f) *That the proposed use is a permitted use in the underlying zone district.*

A **“NO” vote** indicates that the use is not a listed use in the Table of Use Regulations (attached) or in the text for the zoning district.

A **“YES” vote** says that the use is found in the Table of Use regulations in the Land Use Code.

The Board may grant a variance if it finds that **all of the above criteria** have been satisfied.

After the findings of fact above have been determined, whether through a formal vote or general discussion, the Chair should entertain a motion for denial or approval of the variance. A draft resolution will be available for the Board to examine and if necessary, amend to reflect the decision of the Board. The motion should include reference to the Resolution and any amendments to the Resolution that are necessary to reflect the discussion and decision of the Board.

It needs to be understood that the Board convenes to *“hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code”*, and that under ***the authority of the Board***,

“...the Board of Adjustment may, in conformity with the provisions of the Statutes of the State of Colorado as existing or hereafter amended, reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination appealed from and make such order, requirement, decision or determination in the Board’s opinion, as ought to be made and shall have all the powers of the officer from whom the appeal is taken.”

The Board of Adjustment is granted quite a bit of power by the paragraph above and **each reversal, modification, amendment, or decision must be reflected in the Resolution.**

If there are any questions or suggestions for simplifying any of this information, please let me know.