

City of Greeley, Colorado  
**ZONING BOARD OF APPEALS PROCEEDINGS**

May 10, 2022

**1. Call to Order**

Vice Chair Briscoe called the meeting to order at 1:15 p.m.

**2. Roll Call**

The hearing clerk called the roll.

**PRESENT**

Vice Chair Erik Briscoe  
Commissioner Larry Modlin  
Commissioner Chelsie Romulo  
Commissioner Brian Franzen

**ABSENT**

Chair Justin Yeater  
Commissioner Jeff Carlson  
Commissioner Christian Schulte

**3. Approval of Agenda**

Commissioner Romulo moved to approve the agenda. Commissioner Modlin seconded the motion. Motion carried 4-0. Chair Yeater, Commissioner Carlson, and Commissioner Schulte were absent.

**4. Approval of January 11, 2022 Minutes**

Commissioner Romulo moved to approve the minutes dated January 11, 2021. Commissioner Modlin seconded the motion. Motion carried 5-0. Chair Yeater and Commissioner Carlson were absent.

**5. Appeal of an Administrative Decision Related to the Maximum Size of Accessory Structures in the Residential High-Density (R-H) Zone District (BRX2108-0121)**

Ms. Kuhn, Chief Planner, explained that on August 6, 2021 the applicant applied for a building permit to construct a 20,000 square foot accessory structure under permit number BRX2108-0121. Planning reviewed the application but never issued it due to the proposed size of the accessory structure. They made this decision based on the development code in place at the time which stated that accessory structures are limited to a maximum size of 60% of the principal structure. On November 8, 2021, the applicant met with Community Development staff regarding the permit who

explained why the storage building would not be allowed. They also presented the applicant with two rezoning options at that time. Today the appellant has submitted an appeal of the administrative decision and asserts the community development director erred in denying the building permit for the accessory structure. They are requesting the Zoning Board of Appeals overturn the decision and allow the accessory structure. Staff finds that there was no error in any final decision in the interpretation, administration, or enforcement of this code by an administrative official of the city. Staff also recommends that the Zoning Board of Appeals uphold the Community Development Director's determination to deny the building permit based on the maximum size of the accessory structures allowed in the R-H zone district.

Commissioner Modlin asked if this would have been considered last year had there been a rezone. Ms. Kuhn replied that it would have been considered under the old 1998 code but not under the new code.

Commissioner Romulo questioned Ms. Kuhn regarding a possible zone under the current code that would allow continued use and residency with this size of structure. Ms. Kuhn responded by saying that under the industrial zone district the residential use could not continue.

Commissioner Schulte inquired about a possibility of partitioning the area into a residential lot and an out lot. Ms. Kuhn stated that would be possible.

Commissioner Franzen asked if there is an optional variance. Ms. Kuhn responded by saying the variance would have to prove hardship and this would be a difficult case due to the area being an empty site.

Bob Choate, representative for Mr. Weideman, 1711 61<sup>st</sup> Avenue, stated that the 72-acre site has been farmed for decades. Mr. Weideman, who owns the property and farms full-time wants to store his expensive farming equipment in the proposed building. He had met with city staff over a year ago when they told him his storage building would be allowed. Because of this, he purchased the structure which is still waiting to be constructed. At that time, there was no size limitation for structures in the code. Mr. Choate pointed out that the city changed the code after the building permit was applied for and after the meeting with city staff. He argued that there is enough room in the code to allow the Commission to interpret it in a way that makes sense for this situation. He then asked the Commission to Grant the appeal and authorize the building permit to be issued. He believes that if the Commission were to grant the appeal that it wouldn't be setting a precedence because this is a rare situation.

Commissioner Schulte asked if there is a provision in the code that addresses accessory structures to a use. Mr. Choate replied by saying that he's not aware of a separate provision in the code.

Commissioner Schulte then asked if the definition section defines accessory structures. Mr. Choate pointed out that the definitions in the code could be interpreted different ways.

Commissioner Modlin asked when Mr. Weideman's building permit was applied for. Ms. Kuhn answered by saying it was applied for under the old code on August 6, 2021. However, after reviewing, they discovered that more information was needed along with a determination from the director.

Commissioner Schulte wanted to know if the director's determination was made under the old code. Ms. Kuhn stated that it was.

Commissioner Schulte wondered if Ms. Kuhn had an example of a similar situation where an accessory structure to the use was permitted after the code had been formally interpreted by the appropriate body. Ms. Kuhn stated that she didn't know of any examples. Mr. Choate added it would be hard to provide those kinds of examples. Noting that someone would need to search through all the building permits on a case-by-case basis.

Commissioner Schulte said we have a statute with clearly defined language regarding accessories to a structure, but that we don't have any language defining limits on accessory structures to a use. He then stated he's worried it is being interpreted as if there are no limits on accessory structures to a use. Mr. Choate replied by saying it's an interpretation that will most likely not occur again. The issue is that it's not clear in the code, but he believes the Planning Commission has the ability to make that distinction in their favor.

Commissioner Franzen asked Ms. Kuhn if they could build the structure and have the house become secondary or accessory. Ms. Kuhn responded by saying the structure would actually need to be habitable because it's located in a residential zone district. Commissioner Franzen further inquired if they could apply for a variance under the new code. Ms. Kuhn said that would be possible if they could prove hardship.

Commissioner Schulte stated that although he sympathizes with the applicant, it would not be good practice to ignore the code as it's written.

Ms. Safarik said that staff has spent considerable time offering and looking for options in an effort of goodwill. Also, that we will continue to work with the applicant to try and find other options but the matter before the Planning Commission is whether the code has been appropriately interpreted in this particular situation.

Vice Chair Briscoe wrapped up by stating he didn't see that an error in decision making was made by the staff.

Commissioner Schulte moved that based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested appeal of the administrative decision to deny a building permit for a 20,000 square foot accessory structure on a 15.91-acre site located at 8911 10<sup>th</sup> Street complies with Section 24-515(f), Items 1 and 3, and Section 516(g), Items 1, 2 and 3 of the 1998 Development Code; and, therefore, denies the request. Commissioner Romulo seconded the motion. The motion carried 5-0.

## 6. Adjournment

With no further business before the Board, Vice Chair Briscoe adjourned the meeting at 2:08 p.m.

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Justin Yeater, Chair

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Becky Safarik, Secretary

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