

ZONING BOARD OF APPEALS SUMMARY

ITEM: Appeal of an Administrative Decision Related to the Maximum Size of Accessory Structures in the Residential High-Density (R-H) Zone District

PROJECT: 8944 10th Street – Building Permit for 20,000 Square Foot Accessory Structure (BRX2108-0121)

LOCATION: 8944 10th Street

APPLICANT: Bob Choate, Esq. on behalf of Owner, Alan Wiedeman

CASE PLANNER: Carol Kuhn, AICP, Chief Planner

ZONING BOARD OF APPEALS HEARING DATE: May 10, 2022

ZONING BOARD OF APPEALS FUNCTION:

The appeal of administrative decisions is a process to determine if there was an error in any final decision in the interpretation, administration or enforcement of this code by an administrative official of the City (24-210). Appeals of administrative decisions are filed with the Zoning Board of Appeals and the Board shall grant the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant. A majority vote of the Board present shall be necessary to sustain an appeal. An appeal shall be sustained only upon written findings that the official was in error. In exercising the appeal power, the Board shall have all the powers of the official from whom the appeal is taken, and the Board may reverse or affirm wholly or partly or may modify the decision being appealed (24-210(c)).

EXECUTIVE SUMMARY

The appellant has submitted an appeal of the administrative decision regarding a building permit for the construction of a 20,000 square foot accessory structure in the R-H zone district. The building permit was denied based on the maximum allowance for accessory structures in the zone district. The appellant asserts that the Community Development Director erred in denying the building permit for the accessory structure and requests that the Zoning Board of Appeals overturn the Community Development Director's decision and allow a 20,000 square foot accessory structure in the R-H zone district. The maximum size for accessory structures in the R-H zone district, under the 1998 development code is 60% of the principal structure.

A. REQUEST

The applicant is appealing the administrative decision regarding the maximum size of the accessory structure permitted in R-H Zone District. Specifically, that the appeal be granted and

the denial of the building permit be overturned. The appellant’s full written appeal request is included as an attachment to this staff report (Attachment C).

B. STAFF RECOMMENDATION

Uphold the Community Development Director’s determination to deny the building permit based on the maximum size of accessory structures in the R-H zone district.

C. SITE DATA:

Site Area: 15.91 acres

Zoning: R-H (Residential High Density)

Surrounding Zoning:

North:	PUD – Planned Unit Development; Weld County – Agricultural
South:	R-L – Residential Low
East:	R-H – Residential High; R-L – Residential Low
West:	H-A – Holding Agriculture

Existing Uses: One Single-Family Home (1050 square feet), Accessory Buildings, Two Oil & Gas Wells, Agricultural Production

Surrounding Land Uses:	North:	Undeveloped Residential (Cache); Our Saviors Lutheran Church
	South:	Residential – Pebble Brook and Mountain Shadows
	East:	Residential – Trails at Sheep Draw
	West:	Residential; Vacant/Undeveloped Land – PDC Energy

D. BACKGROUND

The 15.91-acre site contains a one-story ranch home, addressed off of 10th Street. This single-family residence was originally constructed in 1897 (See Attachments A & B Zoning Map & Aerial).

The property was annexed in 2006 as part of the Creekside Annexation and was zoned as Residential High-Density (R-H) in 2006 as part of the Reichert Farm Establishment of Zoning, project file number Z 20:05. The Reichert Farm Establishment of Zoning included two other parcels, a 56.49-acre parcel zoned R-L (Residential Low Density), and a 1.53-acre parcel zoned CD (Conservation District).

On August 6, 2021, the applicant applied for a building permit to construct a 20,000 square foot accessory structure (BRX2108-0121). The permit was reviewed by Planning, but was not issued, due to the proposed size of the accessory structure. Accessory structures are limited to a maximum size of 60% of the size of the principal structure (24-1264(a)3) (Attachment E).

“Section 24-1264(a)(3) Accessory structures shall not exceed the height of the principal building or structure and 60 percent of the footprint of the principal building on the site, including attached garage area, except in the H-A Zone, which shall not have a limit on the size of accessory structures and buildings used for agricultural purposes.”

The decision to deny the building permit was made based on the maximum size of accessory structures for residentially zoned properties. In this case, the maximum size of accessory structures for the R-H property would be 630 square feet.

The applicant contends, and the staff concurs, that the continuation of farming is an allowed use under the current residential zoning on the property. However, the staff contends that all new structures and site improvements must conform to the current residential zoning designation on that property. Accessory buildings are not considered incidental or accessory to a use, but to a principal structure.

On November 8, 2021, the applicant met with Community Development Staff regarding the permit. During the meeting, staff noted that the 20,000 square foot storage building is not allowed under the R-H zoning. The applicant was also provided with two options, both of which involved rezoning the property, which were both later outlined in a letter from the Community Development Director dated March 29, 2022 (Attachment D).

D. APPROVAL CRITERIA

DEVELOPMENT CODE COMPLIANCE

Appeals: The appeal of administrative decisions is a process to determine if there was an error in any final decision in the interpretation, administration or enforcement of this code by an administrative official of the City. Except for where this Chapter and Table 24-2-1 establish a different appeal process for specific applications, appeals of administrative decisions may be filed with the Zoning Board of Appeals. Appeals may be filed by any person aggrieved and materially affected by a final decision of an administrative official, or by any officer, department, board, or official public body of the City. Appeals of administrative decisions shall be filed in writing with the Community Development Department within 10 days of the date of the decision being appealed (24-210 a. Appeal of Administrative Decision).

Section 24-210 c. Action and Review Criteria

The Zoning Board of Appeals shall grant the administrative official's decision a presumption of correctness, placing the burden of persuasion of error on the appellant. A majority vote of

the Board present shall be necessary to sustain an appeal. An appeal shall be sustained only upon written findings that the official was in error. In exercising the appeal power, the Board shall have all the powers of the official from whom the appeal is taken, and the Board may reverse or affirm wholly or partly or may modify the decision being appealed.

1. There was no error in any final decision in the interpretation, administration or enforcement of this code by an administrative official of the City (24-210)

Staff Comment

Based on the existing zoning of R-H, established in 2006, the maximum size of all accessory structures for the subject parcel is 630 square feet. This is based on a calculation of 60% of the principal structure (1050 square feet), per Section 24-1264(a)(3) of the City's 1998 Development Code. The proposed 20,000 square-foot structure would exceed the maximum allowance for the R-H property and therefore the building permit (BRX2108-0121) cannot be issued.

E. PUBLIC NOTICE AND COMMENT

No public notice is required for appeals.

F. ZONING BOARD OF APPEALS RECOMMENDED MOTION

Motion:

A motion that, based on the project summary and analysis, the Zoning Board of Appeals upholds the administrative decision of the Community Development Director to deny a building permit for a 20,000 square foot accessory structure in a Residential High-Density zone district, and hereby denies the request for approval of Building Permit BRX2108-0121, based on meeting the approval criteria Section 24-210 e, Effect of Decision as outlined below:

Section 24-210 e Effect of Decision

An appeal shall be sustained only upon written findings that the official was in error and the Zoning Board of Appeals finds that the administrative official was not in error, as the 20,000 square foot accessory structure exceeds the maximum allowance for accessory structures in a residential zone district.

Alternative Motion:

A motion that, based on the project summary and analysis, the Zoning Board of Appeals overturns the administrative decision of the Community Development Director to deny a building permit for a 20,000 square foot accessory structure in a Residential High-Density zone district and approves the building permit for a 20,000 square foot accessory structure, Building Permit BRX2108-0121.

Section 24-210 e Effect of Decision

This motion is based a finding that the administrative official acted in error.

J. ATTACHMENTS:

Attachment A – Zoning Map

Attachment B – Aerial

Attachment C – Applicant’s Appeal Letter (April 6, 2022)

Attachment D – Letter from Community Development Director (March 29, 2022)

Attachment E – City’s 1998 Development Code Section – Accessory Uses & Structures