

<b>ZONING BOARD OF APPEALS SUMMARY</b>
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**ITEM:** Variance request to reduce the interior side setback from 5 feet to 0 feet to accommodate an existing storage shed

**CASE NO:** VAR2021-0015

**PROJECT:** 7714 Plateau Road Setback Variance

**LOCATION:** 7714 Plateau Road

**APPLICANT:** Melinda Strauss

**CASE PLANNER:** Darrell Gesick, Planner III

**ZONING BOARD OF APPEALS HEARING DATE:** January 11, 2022

**ZONING BOARD OF APPEALS FUNCTION:**

Review the proposal for compliance with Chapter 5, Variances, of the 1998 City of Greeley Development Code and approve, approve with conditions, continue the application for future consideration, or deny the request.

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**EXECUTIVE SUMMARY**

The City of Greeley is considering a variance request by Melinda Strauss to reduce the interior side setback (west property line) from 5 feet to 0 feet to allow for an existing shed (see Attachments A and B).

**A. REQUEST**

Approval of a variance to allow for a reduction of the interior side setback from 5 feet to 0 feet (see Attachment A).

**B. STAFF RECOMMENDATION**

Approval

**C. LOCATION**

**Abutting Zoning:** North: PUD (Planned Unit Development)  
South: Weld County Agricultural Zoning  
East: PUD  
West: PUD

**Surrounding Land Uses:** North: Single-Family Residential  
South: Agricultural land  
East: Single-Family Residential  
West: Single-Family Residential

**Site Characteristics:** The subject property is zoned PUD (Planned Unit Development), is approximately 0.227 acres in size, and is developed with a single-family home. The lot is a typical rectangular shaped lot that slopes down from the south (back) to the north (front) of the property (see Attachment A).

#### **D. BACKGROUND**

A previous property owner submitted a building permit to construct a new single-family dwelling on the subject site in 2005 (see Attachment C). The home is two stories on the front, and the previous owner wanted access to the second story from the front driveway and requested a building permit to add a staircase to the side of the western part of the home in 2006 (see Attachments D and F). Per the 1998 Development Code, staircases were allowed to encroach into the side setback. As part of the staircase install, a shed was built below the staircase, with the top of the shed roof being the landing for the staircase (see Attachment F). It is not known if the City was aware that the 2006 permit request included the shed. The shed was placed on a permanent foundation, located within the west side property line setback, which was not allowed by the 1998 Development Code. Unfortunately, the placement of the shed was never caught by City staff. The home was given a Certificate of Occupancy by the Building Inspection Division in 2007 (see Attachment E).

In January of 2020, a building permit was applied for by the current homeowner to remove the staircase and to add a second story shed on top of the existing shed (see Attachment G). During the review of the permit, it was discovered by City staff that the existing and proposed shed was located within the 5-foot west property line setback. The property owner had begun work without first obtaining a building permit on the second story shed and was issued a Stop Work Order by the Building Inspection Division, and was instructed to not continue work until a variance request had been applied for and approved by the Zoning Board of Appeals (see Attachment H). Because it was unlikely that the second story shed would be supported by City staff, the current owner removed the second story shed. The current property owner is requesting a variance to keep the first story shed as constructed in 2007, prior to their ownership of the home.

#### **E. APPROVAL CRITERIA**

**Variances:** Section 24-516 of the 1998 Development Code states that: *When practical difficulties, unnecessary hardship, or results inconsistent with the general purpose of this Code occur through the strict and literal interpretation and enforcement of the provisions thereof, the Zoning Board of Appeals shall have the authority, subject to the provisions of this Chapter, to grant such conditions as it may determine to be necessary to be in conformance with the intent of the Land Use Chapter of the Comprehensive Plan. In general, the power to authorize a variance from the terms of this Code shall be exercised only under peculiar and exceptional circumstances. The Board may grant a variance as applied for, or a variance constituting a reduction thereof. The Board may attach conditions in granting a variance, which conditions shall be reasonably related to promoting compatibility with the surrounding area and land uses.*

The review criteria found in Section 24-516 (f) 1-5 and (g) 1-3 of the 1998 Greeley Development Code shall be used by the Zoning Board of Appeals when considering all variance requests.

**Consideration Criteria: Development Code Section 24-516 (f) 1-5**

In taking action on a variance request, the Zoning Board of Appeals shall consider any comments received from the public and the applicant and the staff recommendation. The Board shall also consider if the proposed variance meets the following criteria in taking action to approve, approve with conditions, deny, or table the application for future consideration:

**1. Any variance granted shall be the minimum needed to accommodate or alleviate the difficulty or hardship involved.**

Staff Comment: The shed is technically setback from the property line approximately 2 feet. However, it is unclear where exactly the property line is located. City staff did not feel that it was necessary for the current owner to spend money to have a survey completed to locate the property line, so staff suggested that the request should be to reduce the west property line from 5 feet to 0 feet. This would allow the shed to remain in the current location. This would be the minimum needed to alleviate the hardship of the current property owner, who did not create the setback issue. The shed was built by the previous property owner, was reviewed by the Planning Division, and granted a Certificate of Occupancy by the City.

The request complies with this criterion.

**2. A variance is necessary to accommodate an unusual or atypical lot configuration, which makes a reasonable use of the property unreasonable without a variance.**

Staff Comment: The subject site is a typical rectangular lot, which is not unusual or atypical. The only thing that is unusual about the property is that it slopes up from the front to the back, creating a two story front of the house. The previous owner wanted to have direct access to the second story of the home, which is why a staircase was requested and installed. Unfortunately, a shed was built under the stairs, with the top of the shed being used as the landing for the staircase. Although this occurred, this does not make the property unusable without a variance.

The request is not applicable with this criterion.

3. **Any difficulty or hardship constituting the basis for a variance shall not be created by the party seeking the variance, nor shall it be due to, or a result of the general conditions in the area.**

Staff Comment: The need for the variance was not created by the party seeking the variance. As stated earlier in the report, the shed was built by the previous owner and in some aspect, approved by the City. The current owner is trying to create a legal shed. The request is also not due to the general conditions in the area.

The proposal complies with this criterion.

4. **Granting the variance is necessary so that the building or structure can align with the prevailing location of other similar buildings or structures on the same block face.**

Staff Comment: The request is not necessary to align this structure with other structures along the block face.

The request is not applicable with this criterion.

5. **Granting the variance is consistent with the Comprehensive Plan and area neighborhood plans, or may achieve a better result in meeting the intent of the plan objectives than if the codes were strictly applied.**

Staff Comment: The Comprehensive Plan does not address sheds in setbacks and there are no neighborhood plans for this area. The request is not applicable with this criterion.

**Mandatory Criteria: Development Code Section 24-516 (g) 1-3**

In every instance where the Board grants a variance, there shall be a finding that:

1. **The granting of such variance will not be of substantial detriment to the public interest or to adjacent property or improvements in such district in which the variance is sought, and will observe the spirit of the Code; and**

Staff Comment: Staff believes that granting the requested variance would not be a substantial detriment to the public interest or to the adjacent property owner, who just recently was approved for a variance to allow retaining walls in the setback that exceeded six feet in height. The shed has been in place for 14 years without creating any substantial issues. The request does not impact utilities, easements, drainage, or access to the rear yard. It appears that the spirit of the Code would be observed.

The proposal complies with this criterion.

**2. The strict application of the provisions of the Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Code; or**

Staff Comment: Strict application of the Code would require the current owner to remove a shed at their cost when the shed was constructed by a previous owner and granted a Certificate of Occupancy by the City of Greeley and would result in practical and an unnecessary hardship. The approval of the variance would allow the shed to remain in the current location and would meet the intent of the Code.

The proposal complies with this criterion.

**3. There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development of the property that do not apply generally to other properties or uses in the same zoning district.**

Staff Comment: The unusual circumstance with the subject site is that the current owner purchased a property that had a shed constructed, with City approval, which was located within the side setback. The property owner is trying rectify the situation by asking for the variance that should have been applied for and presented to the Zoning Board of Appeals 14 years ago. This situation happens from time to time, but it is not common to other properties within the community.

The proposal complies with this criterion.

## **F. PHYSICAL SITE CHARACTERISTICS**

### **1. SUBDIVISION HISTORY**

The subject site was platted as Lot 4, Block 6 of Poudre River Ranch Second Filing, on February 16, 2001 (Rec No. 2826681). The property has not undergone any additional subdivisions since it was platted.

### **2. HAZARDS**

Staff is unaware of any potential hazards that presently exist on the site.

### **3. WILDLIFE**

The site is located within an area of moderate ecological significance. However, all the surrounding platted parcels have already been developed, so staff does not believe any wildlife should be impacted.

**4. FLOODPLAIN**

The property is not located within any flood zones.

**5. DRAINAGE AND EROSION**

The subject site generally drains from the south to the north. The granting of this variance should not impact drainage.

**6. TRANSPORTATION**

The variance request would not require a traffic study. The construction of a single-family home on the subject property should not have any noticeable impacts to area traffic.

**F. SERVICES**

**1. WATER**

Water services would not be impacted by the variance request.

**2. SANITATION**

Sanitation services would not be impacted by the variance request.

**3. EMERGENCY SERVICES**

The subject site is currently, and will continue to be, served by the City of Greeley Police Department and the City of Greeley Fire Department.

**4. PARKS / OPEN SPACES**

Public parks or additional public open space areas would not be impacted by the variance request.

**5. SCHOOLS**

Schools would not be impacted by the variance request.

**G. NEIGHBORHOOD IMPACTS**

**1. VISUAL**

No visual impacts are anticipated with the rezone request. Any development plan application for the property would be reviewed for compliance with the City's Development Code requirements regarding visual impacts.

**2. NOISE**

No noise impacts are anticipated with the rezone request. Any potential noise created by future development will be regulated by the Municipal Code.

**H. PUBLIC NOTICE AND COMMENT**

Notification letters regarding the proposed variance were mailed to 40 property owners within 500 feet of the subject site on December 15, 2021, and a sign was posted on the property on December 15, 2021. One letter in opposition to the request was provided (see Attachment K).

## **I. ZONING BOARD OF APPEALS RECOMMENDED MOTIONS**

### **Approval -**

Based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested variance to allow for a reduction of the interior side setback from 5 feet to 0 feet, complies with Section 24-516(f), Items 1 and 3, and Section 24-516(g), Items 1, 2 and 3 of the 1998 Development Code and, therefore, approves the request.

### **Denial-**

Based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested variance to allow for a reduction of the interior side setback from 5 feet to 0 feet, does not comply with Section 24-516(f), Items 1 and 3, and Section 24-516(g), Items 1, 2 and 3 of the 1998 Development Code and, therefore, denies the request.

## **J. ATTACHMENTS**

Attachment A – Vicinity Map

Attachment B – Narrative

Attachment C – 2005 Building Permit

Attachment D – 2006 Building Permit

Attachment E – 2007 Certificate of Occupancy

Attachment F – Photo of the Front and Side of the Home in 2007

Attachment G – 2021 Second Story Shed Permit

Attachment H – Stop Work Order

Attachment I – Photo of Current Shed and Staircase Landing 2021

Attachment J – Neighborhood Notification Boundary

Attachment K – Neighbor Letter