



## BOARD OF ADJUSTMENT STAFF REPORT

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**MEETING DATE:** August 28, 2023  
**AGENDA ITEM TITLE:** Barnes Variance Application -326 E. Eighth Street  
**AGENDA SECTION:** Public Hearing

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**REQUEST:** The request is to receive a variance from the minimum setback of twenty (20) feet required for the rear yard setback of the primary structure. The applicant is requesting a minimum allowed rear yard setback of 7' to build a covered patio/deck on the existing non-conforming primary structure located at 326 E. Eighth Street.

**APPLICANT:** The applicants are property owners Peggy and Rodney Barnes, 4018 Central Street, Evans, CO 80620.

**LOCATION:**

The subject property is legally known as SWLY 52 feet Lots 12 & 13, Block 94 Haskells Addition, City of Salida, Chaffee County, Colorado. This property is also known as 326 E. Eighth Street.



**PROCESS:**

Variances are addressed in the City's Code of Ordinances, Section 16-4-180, Zoning Variances.

Variances may be granted from the standards of the underlying zone district shall be authorized only for maximum height, minimum floor area, maximum lot coverage, maximum lot size, minimum setbacks and parking requirements.

The Board of Adjustment holds a public hearing after fifteen days advance notice of the hearing. The public hearing shall be held, at which any person may appear or be represented by agent or attorney. The Board may describe appropriate conditions and safeguards in conformity with the Zoning title of the City Code.

## **OBSERVATIONS:**

1. The subject property is located within the Medium Density Residential (R-2) zone district. Surrounding properties are also within the (R-2) zone district.
2. The existing primary structure is considered a nonconforming structure as it does not meet any of the required setbacks. Nonconforming structures are structures that were lawfully established pursuant to the zoning and building regulations in effect at the time of their development which do not now conform to the provisions of the current zoning regulation.
3. The lot is 2,600 square feet and is also considered nonconforming. The lot was split off from 748 C Street in the late 1960's prior to current code.
4. The request is to receive relief from the required minimum 20' rear setback to construct a covered patio/deck attached to the entrance of the residence. The applicants are not requesting to increase the nonconformity further into the setback, they are requesting the variance to be able to build the covered patio/deck seven feet (7') from the rear property line.
5. If the variance is granted the applicant will submit the necessary building permits for staff review and approval.

## **REQUIRED SHOWING (Section 16-4-180(e)):**

Variances from requirements of this Chapter shall be considered an extraordinary remedy. When considering, reviewing and deciding on whether to approve a variance application, the Board of Adjustment must find that all of the following criteria have been met:

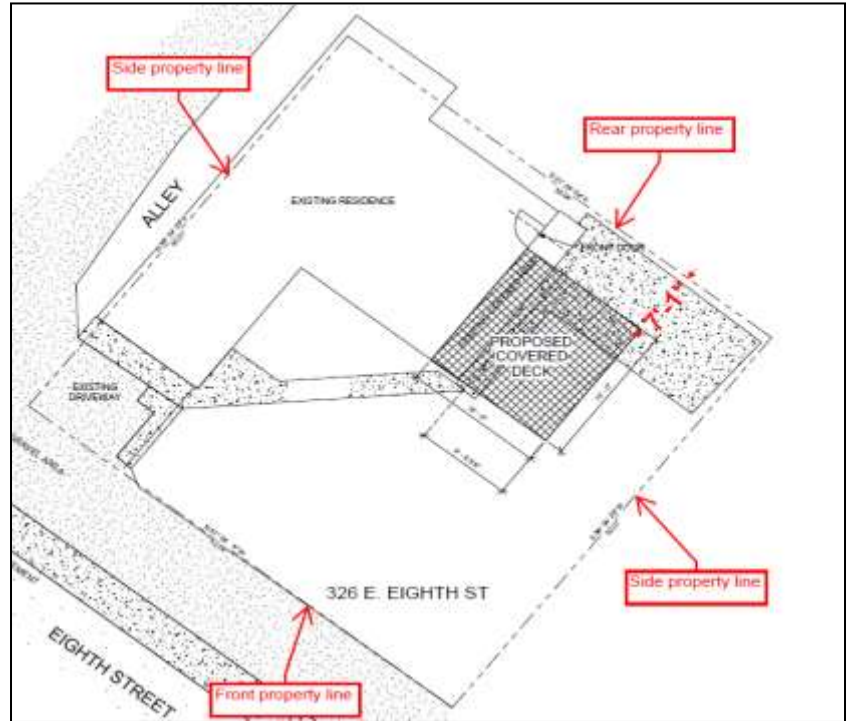
1. Special circumstances exist such that strict application of the standards adopted in this Chapter would result in undue hardship or practical difficulties for the owner of such property. Special circumstances include, but are not limited to, exceptional or peculiar limitations to the dimension, shape or topography of the property, such



as slope, standing or moving water, wetlands, floodplain, rock features, narrowness, shallowness or irregular shape of a lot.

Applicant's response: *We have a non-conforming structure on a non-conforming lot built in 1948. Originally part of property at 748 C Street. We would like to build a covered deck 7 feet from the rear property line.*

- Special circumstances exist because the lot was subdivided in its current configuration sometime after 1965 by the previous owner, thus creating a lot that does not conform to today's dimensional standards.



- The size and shape of the non-conforming lot does not allow for the owners to construct the proposed covered patio/deck without being granted variance approval. The applicant will be able to meet all remaining standards of the code.

2. The requested variance would not create a substantial detriment to the public good and would not substantially impair the intent and purpose of this Chapter, this Code or the City's Comprehensive Plan.

Applicant's response: *The deck will not impair the intent of City code.*

- Setbacks help provide open space and to address basic safety issues: distances between buildings decrease the potential damage in case of a fire, provide the room necessary for a homeowner to maintain his/her buildings on his/her own property and provide for solar access and ventilation.
  - With the proposed 7' rear setback there would still be adequate space which the owner can use for maintenance of the structure. The addition of a covered patio should not create a detriment to the public good.
3. The requested variance would not result in significantly adverse impacts to the natural environment or to the surrounding properties and neighborhoods.

Applicant's response: *Deck will not adversely impact natural environment. Deck may add to look of neighborhood.*

- The addition is in the rear of the property and will not be highly visible from the public street. There should not be any adverse impacts to the surrounding properties.

4. Minimum Variance. The granting of the request is the minimum variance necessary for reasonable use of the property or building and the least deviation required from the applicable zoning standard to afford relief.

Applicant's response: *The house at 326 e. 8<sup>th</sup> is to be improved and deck will be an additional improvement. It will be vastly more enjoyable to sit outside out of the rays of the sun. Being retired now, we want to spend more time in this oasis called Salida. I've been coming here my whole life.*

- The applicant would like to construct the covered patio/deck which cannot be achieved without the granting of this variance.
- All new construction in the City is required to meet the setback requirements unless some special circumstance exists such as an existing building that does not meet the setback requirements. Currently the primary residence does not meet setbacks and is encroaching on the neighboring property.

#### **Review Agency Comments:**

**Assistant Fire Chief, Kathy Rohrich** – Fire Department has no concerns.

**Chaffee County Building Department, Chad Chadwick** – Covered patio construction proposed setback will meet minimum fire separation distances per residential building code.

#### **REQUIRED ACTIONS BY THE BOARD:**

1. The Board shall confirm that adequate notice was provided and a fee paid.
2. The Board shall conduct a public hearing.
3. The Board shall make findings that points 1 through 4 of the above section are met by the applicant.

#### **RECOMMENDED FINDINGS:**

1. That the variance request is in conformance with Section 16-4-180 (e), Required showing, because special circumstances exist, the variance will not create a substantial detriment, the variance will not result in significantly adverse impacts, granting of the variance request is the minimum variance necessary and is in keeping with the general purposes of the Code.

**STAFF RECOMMENDATION:**

Staff recommends the Board of Adjustment **APPROVE** the Barnes Variance request to receive a variance from the minimum rear yard setback of twenty (20) feet required for a primary structure. The applicant is requesting a minimum allowed rear yard setback of seven (7) feet to construct a covered patio/deck on the existing primary structure, subject to the conditions listed below:

**RECOMMENDED MOTION: “I make a motion to approve the Barnes Variance request as it meets all the review standards for a Zoning Variances, subject to the following condition.**

1. That the applicant submits a building permit that meets the requirements of the building department.

**If the Board recommends denial of the variance request the findings for denial must be stated.**

BECAUSE THIS APPLICATION IS FOR A VARIANCE, THE SALIDA BOARD OF ADJUSTMENT SHALL MAKE THE FINAL DECISION ON THIS APPLICATION. THE DECISION OF THE BOARD OF ADJUSTMENT MAY BE APPEALED WITHIN 15 DAYS OF THE DECISION AS SET FORTH IN SECTION 16-2-70 OF THE LAND USE CODE.

Attachments: Application materials  
Site Plan