



# **TOWN OF IGNACIO BOARD OF ADJUSTMENT MEETING**

**Wednesday, October 3, 2018**

**6:30 P.M.**

**570 Goddard Avenue, Ignacio CO 81137**

**Town Meeting Room**

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## **BOARD OF ADJUSTMENT MEETING MINUTES**

### **I. Call Meeting to Order**

Amanda Brown called the meeting to order at 6:31PM. She asked each person to state their name for roll call.

Present: Jeremy Schulz, Mandy Brown, Clark Craig, Dixie Melton, Mark Garcia

### **II. Appoint Mr. Jeremy Schulz to the BOA**

Mr. Garcia stated that Mr. Schulz has been appointed by the Town Board to sit on the Board of Adjustment. Ms. Gina Schulz has stepped down from the Board. We still need one member to be a full Board; there are enough members for a quorum at each meeting. All the other members welcomed Mr. Schulz onto the Board of Adjustment.

### **III. Ignacio Community Church Variance Request – Public Hearing**

Mr. Garcia stated that this was discussed at a prior meeting of the Board of Adjustment; he stated that he has erred in not issuing notice of a public hearing in a local newspaper. Also, the notice that went to property owners did not extend the full 100 feet excluding public right-of-way. There were two inconsistencies with our policies, so the decision was made to re-hear this variance request. Mr. Garcia met with the applicant, staff and representatives and they all concurred that they wanted to rehear the request so that all was done in line with the Code. We did publish in the newspaper and did notice the property owners that were missed in the initial notification.

Mr. Garcia stated that the Board of Adjustment needs to open the public hearing, address any comments and/or questions, and state their decision for the record.

Ms. Brown welcomed everyone in attendance at the public hearing. She requested a brief history of the variance requests; Ms. Hunter introduced herself, Mr. Haynes and Mr. Foutz and stated that they are present for the purpose of requesting four variances to the Code requirements. History is the extenuating circumstance; the church was built in 1910, which precedes any zoning codes and the residential community grew around the church; when zoning took place, the area was zoned residential, and churches are typically part of a residential zone. Modern churches typically have a nursery, Sunday School classrooms, a Fellowship Hall and a kitchen. The original church had none of these, and that is why the church is proposing to do an addition to the existing building and realized they needed variances to have the addition relate well to the existing building. The variance requests are as follows:

1. Line up the north wall of the addition to the north wall of the existing building, which sits on the property line (rather than having a setback).
2. The existing church roof is at 31'2" above grade; in order to not have the two roofs collide, the new roof would require a 2'6" variance on the maximum roof height for the residential zone.
3. Maximum lot coverage for the residential zone is 30%. The state has a requirement for minimum classroom size and, to meet that requirement and the functional needs of the church (pastor's office, nursery, toddler room, etc.) the church is requesting variance for maximum lot coverage of 68% or slightly more. Ms. Hunter has been working with Goff Engineering; however, they are not willing to do a lot improvement certificate because of the lack of certainty regarding the property line. Ms. Hunter stated that they have not yet contracted with Goff Engineering, as they wanted to find out first if the variances would be granted before investing the capital it would require to hire this engineering firm.
4. The West egress stairway is required based on the size of the meeting area (state requires 2 exits per thousand feet of classroom use). The stairs will be metal; the handrail will be a thin metal rod; there will be no roof over the stairwell – all of these are designed so that the neighbors' line of sight will not be impacted. The Planning Code requires a 10' setback (usually required for fire separation); the Building Code allows the measurement of this setback to be from the face of the building to the center line of the public right-of-way. Section 3-4-10 of the Municipal Code states, "before any variance may be granted it shall be shown:  
"That there are exceptional or extraordinary circumstance or conditions applicable to the property." We believe the exceptional circumstance is that the church was built in 1910 and precedes the zoning codes. The church desires to stay in the heart of the community and desires not to tear down an historic building.  
"That such a variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, and denied to the property in question." This was mentioned in the narrative that was submitted at the September 12 meeting, stating what modern churches typically have.  
"That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity." The church took the initiative to talk with each of the neighbors and inform them of the plans and seek their approval; the church desires to be a good neighbor. There are nine signed letters of approval from various neighbors.

Ms. Hunter went on to address the question that had been raised at the September 12 meeting about the number of parking spaces that could fit on the North side of the building: there are 14, including two barrier-free spaces. Per current code, the church would need 21 parking spaces total; there are 14 at the church, plus the Southern Ute Tribal Education Center (a copy of their agreement was given to the Commission previously) would provide 19 additional spaces (including two barrier-free), plus Farmers Fresh would provide an additional 27 spaces, including one barrier-free space. All added up, there are 60 spaces, including 5 barrier-free spaces.

Ms. Brown asked for clarification on dates: at the September 12 meeting the statement was made that the church began in 1895. Mr. Haynes clarified that the church was, indeed, established in 1895 and they met at what is currently Zion Baptist Church. The building where the church now meets was constructed in 1910, and the two congregations swapped buildings sometime in the 1920's. Ms. Brown expressed appreciation for the clarification.

Ms. Hunter stated that 8 of the 9 signed letters are from neighbors within the 100' requirement of notification. Ms. Hunter explained that, when the 100' was determined in the beginning, she had to draw that by hand because GIS does not allow for skipping the right-of-way as our Code requires. GIS is the most widely accepted legal way to determine boundaries and neighboring properties; the Commission may want to discuss changing the wording of the code to not require that the right-of-way be excluded and add another 50-100 feet to the noticing boundary.

Ms. Brown asked Mr. Foutz if he had anything to add. He stated that he knows a survey is required to proceed with the plans; however, the church wanted to wait until they knew whether or not they would be approved before they invested the funds into getting the survey done.

Ms. Brown asked Mr. Haynes if he had anything to add. He did not. She expressed appreciation to each of these three individuals for coming again this evening to present to the Board of Adjustment and answer the questions.

Ms. Brown opened the public comment section of the meeting. She welcomed Ms. Lana Jo Chapin and Mr. Chris Duran to the meeting.

Mr. Duran stated that his only comment is that the variances should be granted so the property does not sit empty.

Ms. Chapin stated that she wanted to express appreciation for the re-do of the hearing. She also expressed appreciation for each member of the Board of Adjustment for the difficult and important job they do. She stated that the purpose of the variance is to ensure that everyone in the same vicinity and zone has the same privileges as everyone else in that same vicinity and zone. She stated that every variance weakens the Code because, once a variance is extended to one person, it must be extended to anyone else in that same vicinity and zone. Ms. Brown expressed appreciation for Ms. Chapin bringing up this point. She expressed that the intent and desire of the Board of Adjustment is to ensure that everyone is treated equitably. She apologized to Ms. Chapin for not having been sent a notice of the hearing and the plans of the church to expand.

Ms. Chapin stated that she has spoken with Ms. Hunter and Mr. Haynes and understands that it was an oversight; she is not against the project. She expressed that what she is "for" is a consistent and equitable use of the process and the Code, both its word and intent. Ms.

Brown stated that she is in agreement with Ms. Chapin and believes that the rest of the Board is in agreement that what is fair for one is fair for all.

Ms. Chapin made the observation that the Board of Adjustment only meets when there is a variance request. Ms. Brown stated that is accurate. Ms. Chapin stated that the signed letters of approval from the neighbors is not required by the Code; the Code requires written notification and that proof of that written notification be kept with the application.

Ms. Chapin stated that the parking at Farmers Fresh does not comply with the current code, as it is not within 1/2 block of the property and the business is open on Sunday.

Regarding the age of the structure, there are a lot of older homes in Ignacio, even along that same street; therefore, she believes this argument does not apply.

Ms. Brown stated that the church is required to have 21 spaces; between parking at the church and the Southern Ute Education Center they have enough. Ms. Chapin concurred.

Ms. Chapin stated that she does not know how other property owners in this same vicinity and zone enjoy the variances that the church is requesting. Ms. Brown stated that this is a church that is requesting the variance; the other properties in this zone and vicinity are residences. That is how they differ from the other properties. Ms. Chapin stated again that she is not opposed to the project; she simply wants to ensure that all the criteria are met so that everyone within the same zone and vicinity is treated equitably. She acknowledged that the Code is in flux and that the Board of Adjustment has the difficult task of working with a changing Code. She again expressed appreciation to each member of the BoA for their willingness to do this difficult task. Ms. Brown expressed appreciation for Ms. Chapin's comments and education in this area.

Ms. Brown asked if there were any other comments; as there were none, she closed the public comment section of this variance request hearing and requested guidance from Mr. Garcia on next steps. Mr. Garcia stated that at the September 12 meeting there was discussion on each of these variance requests based on the criteria for requesting a variance and that motions were made and unanimous decisions formed. Mr. Schulz stated that he was not at that meeting; Mr. Garcia acknowledged that and recommended that Mr. Schulz not express affirmation of the previous decisions since he was not a part of that meeting. Mr. Garcia stated that a resolution needs to be drafted that states the approvals and conditions of the Board for the granting of these variance requests. He reminded the Board that at the last meeting the agreement was that this resolution would be drafted by staff, sent to each member for approval, and signed by the chair without the need to reconvene. He stated that, if there was not anything that changed their motions based on what was heard this evening, he recommends they reaffirm their previous decisions and direct staff to work on the resolution. If there are any changes to any of the individual variance requests, then address each of them individually and make a new motion to that effect, complete with a second, discussion and a vote. He stated if there are no changes to the previous decisions, they can be reaffirmed as a whole.

Mr. Craig stated that he really likes the parking design that was presented this evening, as it adds to the previous information that was given and confirms the previous discussion.

**Action:** Mr. Craig moved to reaffirm the existing motions from the 12<sup>th</sup> of September in whole, all four of them. Ms. Melton seconded this motion. Mr. Garcia stated that he would like to make the new parking diagram part of the record. The Commission agreed. Mr.

Garcia stated the two new letters would be added to the record as well. The motion passed with Mr. Schulz abstaining due to not having been part of the previous discussion.

Ms. Brown again expressed appreciation to Ms. Chapin for her comments; Ms. Chapin expressed appreciation for the opportunity to speak and for the Board members doing what they do.

#### **IV. 90 Browning Ave (New Residence) Variance Request – Public Hearing**

Mr. Garcia stated that there are a few discrepancies in the addressing of this residence. All the requirements and regulations were followed in the noticing of this public hearing. Each of the neighbors within 100' of this property (excluding right-of-ways) was notified, and it was published in the newspaper.

The current address for this property is on Ignacio Street; the project Mr. Duran is proposing would have a front entrance from Browning Ave. Typically addresses are formed based on the front entrance; at the time that Mr. Garcia and Mr. Duran discussed this, they assigned an inaccurate number to the property. Mr. Garcia stated that it was brought to his attention that, because of the block on which this property sets, it should have an address of 100 or greater. There is a house just to the south of this lot that is addressed as 100 Browning; if this project is approved, the necessary paperwork will be filed to ensure that address is updated and the vacant lot is given the 100 Browning address. The addressing is a non-substantive issue for the variance requests; Mr. Garcia simply wanted to explain why there are differing addresses on this lot.

Ms. Brown expressed appreciation for the clarification and asked Mr. Duran to present concerning his variance requests.

Mr. Duran stated that the addressing is not something this he is insistent on; he can post whatever the address is so that it can be seen from either street.

Ms. Melton stated that the address is based on the front entrance to the building. The address is not in question at this meeting; this will be taken care of in time.

Mr. Duran stated that he would like to put a gate on the corner of the lot at Browning & Ignacio streets. Mr. Garcia stated this idea for the gate may be problematic with the current triangular setback requirements; this access point will need to be discussed in the future. Mr. Garcia stated that he would work with Mr. Duran on this detail that is not included in the plans that have been submitted to date.

Mr. Garcia went on to list the variances the Mr. Duran is requesting:

- Setback on both sides of the property
- Setback on the rear of the property
- Maximum lot coverage

It is already a non-conforming lot (it is only 37.5 feet x 90 feet), so these variance requests are based on that fact. No variance request is needed on the pre-existing issue that is already platted and approved. Ms. Melton asked when the subdividing of the property was approved that created this non-conforming lot; Mr. Duran stated that he believed that happened in 2012. Ms. Melton asked what process was followed at that time. Mr. Garcia clarified, asking if this subdivision went before the Planning Commission or the Board of Adjustment; Mr. Duran stated it was through the title company.

Mr. Craig asked about the South side of the property only having a 3.5 foot setback. This looks like it will leave only about 6 feet between the new home and the existing home. Mr. Duran stated that there will be 8 feet between the houses. Mr. Craig stated that his concern is that, with the snow shed, there will not be enough space for adequate drainage. He stated that his opinion is that this setback needs to be at least five feet.

Mr. Craig then asked about the North side of the property. He asked if Mr. Duran owns the property at 125 Ignacio; he does not. This property has less than the required 8 foot setback; Mr. Craig asked if that provides the basis for granting this variance request. His concern is that, if the Town ever wanted to put a sidewalk in on this street there would not be enough room to allow for that. Mr. Garcia clarified that there is already a sidewalk on this street. Mr. Craig expressed appreciation for this clarification.

Ms. Brown stated that each variance request should be addressed individually. The first variance is an 8 foot setback from the street to the north (Ignacio) versus the required 10 foot setback. Mr. Schulz stated that he does not believe this will be an issue for fire mitigation or other emergency vehicles; however, it may be an issue on Browning due to the required 15 foot view triangle. Ms. Brown stated that her concern has to do with the fact that this house would be two feet closer to the street than the one next to it, so the view from the porch of the other house may be obstructed. Mr. Craig clarified that, based on a drawing they were viewing, it seemed like the house next to the proposed house actually only has a 6 foot setback. Ms. Brown concurred.

Ms. Melton asked if there was a drawing of Browning Street to look at. She was concerned about the vision clearance as well. Ms. Brown stated that Mr. Duran will meet that 15 foot vision clearance requirement due to the proposed positioning of the house. Mr. Garcia stated that the gate that Mr. Duran is proposing may be an issue with vision clearance; however, if there is a fence there anyway, a gate may not be an issue. Ms. Melton stated that her concern is that this did not go through the subdivision process with the Town; how did this lot get to be the size that it is without going through that process? Ms. Melton stated that, prior to approving any of these variance requests, she would like to know how we ended up with a non-conforming lot; has it been surveyed; is this really the lot size, etc. Mr. Duran stated that the subdivision happened before he took ownership; he does not know how this happened. Mr. Garcia stated that he concurred that it should be investigated to ensure that the lots were legally subdivided; this could be done before going through the variance process or it could be a condition of the variances being granted. Ms. Melton stated that she is not against the project; she simply wants confirmation that the lots were subdivided legally. The other members of the Board concurred. Mr. Duran stated that it was sold to him in this way and that at the time of the purchase it went through the title companies, completed with surveying at that time. He bought the first part in 2010 and the second part in 2014. It was subdivided prior to when he bought it because he purchased it as two separate parcels.

Ms. Brown asked about Mr. Duran's parking: the required parking for this zone is 9 foot by 20 foot times two; the proposed garage is 14 foot by 26 foot, which is just shy of the requirement. She asked Mr. Duran how he plans to park two vehicles. He stated he would put one vehicle in the garage and the other up against the garage door; there is also parking available on the street. Mr. Brown stated that he is still short on the parking requirements.

Ms. Brown stated that she had the same concern as Ms. Melton because the minimum lot size is 6000 square feet and this lot is only 3375 square feet. Ms. Melton stated she has

been on the Planning Commission since 2010 and she does not remember this coming through the process while she has been on the Commission.

Ms. Brown asked if Mr. Duran has completed a land use application; Mr. Garcia stated that Mr. Duran has not, because he facilitated the application process for him. Mr. Garcia stated that he will fill one out; Mr. Duran has been working on the building permit application. He stated that Mr. Duran got ahead of the process by contacting adjoining property owners and now Mr. Garcia is attempting to work with him through the process.

Ms. Brown asked if the Board members had any more questions prior to opening the public hearing. Mr. Schulz asked for clarification on which side of the lot the interior for which the side setback variance of 3.5 feet is being requested. Mr. Garcia clarified that it is for the Browning Avenue side. 210 Ignacio would be the rear setback for Mr. Duran's proposed plan. Discussion ensued among the Board members regarding the setback variance requests, clarifying which side of the house each setback applied to. They Board concurred that, with a few minor adjustments, one of the variance requests could be eliminated altogether; Mr. Garcia would then need to amend the application.

Ms. Brown invited Mr. Duran to come to the table so the Board could show on the diagram what has been discussed. Mr. Craig showed Mr. Duran that, if one setback were 6.5 feet and another were 5 feet, then there would not need to be a variance on the other side. It would involve moving the proposed structure closer to Ignacio Street. Mr. Duran stated that would be fine.

Mr. Garcia stated that the Code allows front yard setbacks to be compared to others houses in the vicinity. There is also a provision for reducing the side yard setback, but it shall not be reduced to less than 5 feet (3-6-12). However, this is also a corner lot and the Code has different minimum setback requirements for a corner lot (3-6-9).

Ms. Chapin stated that this requirement is not in the table of minimum and maximum standards (3-5-7). Mr. Garcia concurred; it is one more discrepancy in our code.

Mr. Craig stated that the corner lot on Ignacio Street does not have a 10' side setback and this could be used as precedence. Ms. Chapin stated that this building pre-existed the zoning ordinance; therefore it is a pre-existing non-conforming use.

Ms. Brown stated the maximum lot coverage of this proposed residence will be 48% (the requirement of the Code is 30%). Mr. Schulz stated he did not have concerns about this; Mr. Craig stated that the lot size will require more coverage than the standard.

Ms. Brown opened the public hearing.

Ms. Chapin stated that perhaps Mr. Duran could consider a lot consolidation so that he is only work with one lot instead of two. Ms. Chapin also stated that the Code requires that an application be completed before the Board of Adjustment hears the variance requests and the statement has been made that the application is not yet filed. Perhaps the Code needs to be changed.

Ms. Rockwell asked if there were any more public comments; there were none, so she closed the public hearing and opened the discussion to the members of the Board of Adjustment. Mr. Craig stated that he would request that Mr. Duran continue to work with Town Staff to complete the application process, work on reasonable setbacks based on conversation and bring this back before the Board. Ms. Melton stated that we also need a plat that answers the questions of the history of the subdivision of this land. Mr. Craig stated that the Town of Ignacio needs new buildings, so he is hopeful that the Board of

Adjustment can work through this and allow the proposed project to get done. Mr. Schulz stated that he has nothing to add at this time. Ms. Brown expressed concern about the addressing: how it was advertised with one address, notification letters had another address, and now we are talking about another address, and people may know it as an Ignacio Street address. This could be very confusing with using four different addresses for the same lot. She feels it should be re-advertised with the correct address. The Board concurred. Mr. Craig pointed out the Mr. Duran has three letters of approval from adjacent property owners, and that is a good thing. Mr. Garcia clarified that the letters that were signed did not include the distance that was added due to right-of-way exemptions.

Mr. Craig asked if this should be tabled until the next meeting. Mr. Schulz stated that we should identify what we want brought to the next meeting: A stamped or engineer survey plat map; A revised diagram showing the proposed building moved per previous conversation to have the side setback at the 5 foot minimum, which would eliminate one of the variance requests. Ms. Brown stated that she would like the parking issue addressed: table of minimum and maximum standards requires parking at 18x40 feet; the proposed garage is only 14x26 feet. Mr. Craig stated that the application needs to be completed. Also, Mr. Craig stated that the Board had not yet discussed the west setback variance request; discussion ensued regarding utilities and taps. Ms. Brown asked about the house that used to be on the property; Mr. Duran stated that it burned down in the late 60's. Mr. Duran explained his plan for each of the utilities. Mr. Craig stated that he is not concerned about the setback at the back on the house because it is not an alley; it is simply open space with plenty of room between the proposed house and the existing house. Ms. Brown asked if the Board was willing to accept the written statements of the neighbors even though the written explanation did not include all of the variance requests. Mr. Garcia stated that he would work with Mr. Duran to come up with a thorough statement to give to each of his neighbors.

Ms. Brown stated that the Commission has chosen to table this item until these things are ready to be brought to the Commission:

- A completed application
- Written statement from Mr. Duran
- Plat with date of subdivision – we need more information on the lot in question
- A revised plan with the structure moved to the North; no variance for the setback that is no longer required by moving the structure
- Add the variance request for only one parking stall on the property
- Rear and side setback variance requests (north and east)
- Lot coverage variance request

Mr. Craig stated that the Commission needs to determine if the conditions exist for granting these variances. Ms. Brown clarified that this will be in the written statement (3-4-12). Mr. Garcia asked for clarification on the desired date and time of the meeting to be published and noticed to the neighbors – Thursday, October 18, 2018, at 5PM was the consensus of the Board of Adjustment. Mr. Garcia requested a formal motion.

**Action:** Mr. Craig moved to table the discussion regarding property owner, Mr. Duran, to October 18<sup>th</sup> at 5PM. Mr. Schulz seconded the motion; it passed unanimously by voice vote.

Ms. Brown and the Board expressed appreciation to Mr. Duran for coming to the meeting and answering their questions. Ms. Brown also expressed appreciation to Ms. Chapin for being at the meeting and investing the time to know the Code.

## **V. Establish Terms for BOA Members**

The term for the Board of Adjustment is three years; all the members came on at the same time and the terms should be staggered.

Ms. Melton stated that the code requires that the members be appointed for three years so, even though they were all appointed at the same time, until the code is changed they should all serve for the three-year terms for which they were appointed. Mr. Garcia concurred, as did the rest of the Board members.

Mr. Garcia stated that his intent was to keep everyone from coming off the Board at once and then potentially losing the institutional knowledge all at once as well. The consensus of the Board was that they would all serve the three year terms and that language should be written into the code that ensures that the terms are staggered.

Mr. Garcia apologized to the Board of Adjustment for not having all his T's crossed and I's dotted with Mr. Duran's project. Mr. Duran got ahead of the process and Mr. Garcia was attempting to work with him; he stated that most likely ended up not being helpful to Mr. Duran. In the future, Mr. Garcia stated he will ensure that everything is handled in the proper order and according to the code. Mr. Schulz stated that the process this evening was helpful to Mr. Duran in that he now knows exactly what the Board is looking for from him; it is only postponing the project by a couple of weeks and, if he has all these items in place, it should go smoothly and quickly. Mr. Garcia stated that the questions posed were good questions and they will do the work that has been requested. Ms. Melton stated the process was good for the Board as well – it was a learning experience for everyone. Mr. Garcia stated that he wanted to acknowledge his part in the not having everything in order; he also stated that he will reach out to Lana Jo to see if he can pull her in as she is an acknowledged Code Geek and that could be a helpful thing in the process of rewriting the Code.

Ms. Brown expressed appreciation to Mr. Garcia for all his help in working the Board through the process this evening. She acknowledged the responsibility each Board member has to know the code and to work for the betterment of the community. She expressed appreciation for Mr. Garcia's guidance in the process; the rest of the Board members concurred.

## **VI. Adjourn Meeting**

Mr. Craig moved to adjourn the meeting at 8:17PM. Ms. Melton seconded the motion; it passed unanimously by voice vote. The next meeting will be held on October 18, 2018, at 5PM in the Abel F. Atencio Community Room of Town Hall.