



**Zoning Board of Appeals
Remote Meeting Instructions for August 24, 2021 Meeting**

No physical location, including the City Council Chambers, will be set up for viewing or participating in this meeting.

Citizen Participation During Hearing

Click the link below to join the virtual meeting. During the public hearing portion, use the Q&A or raised hand features at the bottom of the screen and you will be called upon to speak at the appropriate time.

<https://greeleygov.zoom.us/j/84802739679?pwd=Q2xobUZiSU1XdFJJeTdEU1RpVk5KUT09>

Passcode: 744961

Livestream on YouTube:

View a live stream of the meeting on the City of Greeley YouTube channel
<https://www.youtube.com/CityofGreeley>.

Other options for sharing public comments:

E-mail – Submit to cd_admin_team@greeleygov.com

All comments submitted by e-mail will be read into the record at the appropriate points during the meeting in real time. Comments can be submitted up to and throughout the meeting.

Traditional Mail – Planning Commission, 1100 10th Street, Greeley, CO 80631

All written comments must be received no later than the day of the meeting. Written comments received by mail will also be read into the record in real time.

To download the agenda and agenda packet, click on the "Enter City Meeting Portal" button on the Planning Commission web page – <https://greeleygov.com/government/b-c/boards-and-commissions/planning>. You may also call the Planning office at 970-350-9780 if you have any other questions or require special accommodations to attend a virtual hearing.



Zoning Board of Appeals

August 24, 2021 at 1:15 PM
Virtual via Zoom

Agenda

1. Call to Order
2. Roll Call
3. Approval of the Agenda
4. Approval of July 27, 2021 Minutes
5. Citizen Input
6. VAR2021-0009: Public hearing to consider a variance request located at 3207 County Road 27 to reduce the established front setback of the property by approximately 45 feet to allow for construction of a detached garage in the Holding Agriculture zone district
7. Adjournment

City of Greeley, Colorado
ZONING BOARD OF APPEALS PROCEEDINGS

July 27, 2021

I. Call to Order

Chair Yeater called the remote meeting to order at 3:00 p.m. via the City's Zoom platform following adjournment of the Planning Commission meeting.

II. Roll Call

The hearing clerk called the roll.

PRESENT

Chair Justin Yeater
Commissioner Louisa Andersen
Commissioner Larry Modlin
Commissioner Chelsie Romulo
Commissioner Christian Schulte

ABSENT

Commissioner Erik Briscoe
Commissioner Brian Franzen

III. Approval of Agenda

The agenda was approved during the Planning Commission meeting.

IV. Approval of April 13, 2021 Minutes

Commissioner Andersen moved to approve the minutes dated April 13, 2021. Commissioner Romulo seconded the motion. Motion carried 5-0.

V. Public hearing to consider a variance request to allow up to a 9.6-foot fence/wall in the R-L (Residential Low Density) zone district

Project: 2015 27th Avenue Height Variance

Case No.: VAR2021-0005

Applicant: Jared Mortell

Location: 2015 27th Avenue

Presenters: Kira Stoller, Planner II

Kira Stoller addressed the Board and introduced the request for a height variance. She noted that the agenda and notices reference a 9.6-foot wall and clarified that it only applies to the area along the northern property line, adding that more details would be provided during the presentation. She presented a map of the site and described the surrounding land uses.

By way of background, Ms. Stoller advised that the applicant is requesting a variance to install a fence on top of a concrete wall that would have a combined height of 8 to 10.6 feet. She noted that the height difference is due to a change in grade on the site, which decreases about 5 feet from the south side of the lot to the north. Ms. Stoller stated that fences over 6 feet in height require approval of a variance measured on the grade that exists at the time of construction. Any wall constructed for the purpose of increasing the height of a fence is considered part of a fence or wall. Ms. Stoller advised that the concrete retaining wall, already constructed and less than 6 feet in height, does not trigger the need for a variance on its own. She added that since the retaining wall is over 4 feet tall, a building permit is required. A building permit submitted after construction of the wall has not yet been approved.

Ms. Stoller presented several photographs of the retaining wall already constructed along the northern property line that depicted the gradual slope on the site. Other photographs included the previous site conditions along the northern property line and the retaining wall that has historically existed along the rear property line situated on a neighboring property to the west. She presented photographs showing the retaining wall that has been constructed along the northern property line with fence posts installed to secure a 5-foot vinyl fence on top of the wall for a combined height of 9.6 feet, beginning at the leading edge of the garage and moving west toward the rear property line. Ms. Stoller advised that the fence and wall are not proposed to extend beyond the front of the house. She noted that the area between the home and the wall would be filled with dirt, leaving 7 inches of the retaining wall visible from the subject site. She added that up to 56 inches of the wall would be visible from the neighboring property to the north. Ms. Stoller reported that, on its own, the wall is less than six feet and may be allowed to remain in place, whether or not a variance request is approved, if other conditions are met as part of the building permit. Ms. Stoller presented photographs showing a portion of the retaining wall already constructed along the western property line and stated that the applicant proposes to construct a 6-foot vinyl fence on the new retaining wall for a combined total of 10.6 feet along the rear property line with up to 56 inches of the wall visible to the neighboring property to the west.

Ms. Stoller advised that the wall may remain in place provided that, at a minimum, the following is completed in conjunction with approval of a building permit: 1) engineered plans for the full wall to be submitted for review, 2) easement encroachment to be approved by all applicable utility providers as a portion of wall is situated within 15 feet of drainage and utility easements on the property, 3) exposed sections of concrete wall to be improved with a decorative finish, 4) fence posts currently shown on top of the wall to be removed.

Ms. Stoller presented a site plan provided by the applicant and pointed out the areas where the retaining wall had already been constructed along the north property line and a portion of the western boundary. She added that nothing has been constructed on the southern property line, but noted an existing fence that exceeds six feet in height that would not be permitted to be rebuilt without a variance. Based on code regulations, the combined height of the retaining

wall and fence would be 9.6 feet on the north, 10.6 on the west and 8 feet on south property lines. Ms. Stoller advised that the site plan differs from existing field conditions as it only makes note of measurements as viewed from the subject site.

Mr. Stoller described the approval criteria in Section 24-516(f) and advised that the request does not meet variance consideration criteria 1, 2, 3, 4 or 5. She added that the request does not meet mandatory criteria 1, 2 or 3. Notice of the hearing was accomplished with one citizen voicing opposition (included as part of the staff report). Staff recommended denial of the request.

Commissioner Andersen asked whether building the wall without a permit was an oversight. Ms. Stoller reported that the applicant had reached out to staff in the summer of 2020 asking whether a permit was required to erect a fence. She noted that a permit is not required for a fence, but is required for a retaining wall that exceeds 4 feet in height. She opined that the plans changed between last summer and now which lead to the current situation. Upon question by Chair Yeater, Ms. Stoller reported that she believed the wall was built by a contractor, adding that the applicant could confirm.

Upon question by Commissioner Andersen, Ms. Stoller stated that the city became aware of the situation when a building inspector was doing rounds and discovered that there was not a permit on file and a stop work order was issued. Commissioner Andersen asked whether it is common for a contractor to pour concrete without a permit. Ms. Stoller reported that there have been occasions when flatwork is poured and a resident expresses that they are unaware of the requirement for a permit. Chair Yeater noted the obvious changes to the grade and asked whether a new drainage plan had been submitted. Ms. Stoller reported that the applicant was proposing some drainage improvements to the site, adding that the presentation of the next item would address the drainage issue in more detail. She advised that Lauren Hillmer was available to speak to the question.

Lauren Hillmer, formerly with Engineering Development Review, addressed the Board and indicated that there was not a drainage plan as part of the variance request, but would become a condition if the applicant were able to keep the retaining plan in place. Chair Yeater observed that it appeared water historically traveled along the back property lines of all properties and that the change in grade now impacted properties on both sides of the subject property. Ms. Hillmer stated that historical flows from the subject property flowed to the street on 27th Avenue and believed that was part of the applicant's proposal. She agreed that building the wall is changing the historic drainage on the site.

Commissioner Andersen noted that if the wall meets building permit standards, Planning staff is requesting a decorative wall. She asked whether that would be on the portion facing the applicant's property or on the portion facing away from the applicant's property. Ms. Stoller advised that the way the code is written, the decorative finish would apply to the exterior side facing away from the applicant's property.

Commissioner Schulte asked for clarification that the process to decide on a retroactive building permit was not the issue before the Board. Ms. Stoller confirmed that to be the case. She added that because the wall does not exceed 6 feet in height, it is not part of the variance request. The variance is only because the applicant proposes to install a fence on top of the existing retaining wall. Ms. Stoller stated that because the wall is over the 4-foot measure, a building permit is required with conditions as part of that approval process to ensure that it is improved appropriately. She explained that the Board consideration does not have to do with whether the wall can remain in place, but is whether or not a fence can be placed on top of the wall. Commissioner Schulte asked why the placement of a fence is being considered before it is determined that the wall is allowed to remain. Ms. Stoller stated that the reason planning staff did not sign off on the building permit that was submitted retroactively was because the applicant indicated a desire to place a fence on top of the wall which triggered the application for a variance. She added that until there was clarity on that issue, staff did not want to approve a building permit.

Chair Yeater asked whether some type of fence or railing would need to be in place to meet any safety codes based upon the height of the wall if the wall were to remain in place and the Board denies the height of the fence. Ms. Stoller was not aware of anything in the development code standards. Brad Mueller, Community Development Director, addressed the Board indicating that this falls under the building code and stated that Tim Swanson, Chief Building Official, was in attendance and could respond. Mr. Swanson advised that since this is not a typical walking surface, but more of a landscape feature, the building code does not come into play.

Upon question by Commissioner Andersen, Ms. Stoller advised that the applicant intends to remove the existing fence posts from the front of the garage to the street and no longer wishes to proceed with any fencing in front of the house. She added that the applicant proposes fencing to begin at the front of the garage and move back toward the rear of the lot.

Referencing the information in the packet that the proposal does not meet any of the criteria, Commissioner Romulo asked whether the process to build the wall would stop if the height variance is denied. Ms. Stoller advised that staff paused approval of the permit for the wall until it could be established whether other elements would be proposed. She added that staff sought action by the Board in order to determine what requirements might be applied to the building permit. Upon question by Commissioner Schulte, Ms. Stoller advised that the permit for the wall could be approved administratively if the applicant met all conditions associated with the building permit.

Chair Yeater invited the applicant to share any further details. The applicant declined the opportunity to address the Board.

Chair Yeater opened the public hearing at 3:20 p.m. There being no comments, the public hearing was closed at 3:20 p.m.

Commissioner Schulte observed that ordinarily when there is a variance request, there has usually been a recommendation for approval and there is discussion in the mandatory criteria section that the Board implicitly adopts as findings for approval. He suggested that if any commissioner was contemplating a recommendation of approval, it might be incumbent upon them to address each of the mandatory criteria in the motion prior to a vote. Assistant City Attorney, Michael Axelrad, agreed. Commissioner Schulte stated that any motion recommending approval would need to include for the record the mandatory criteria that had been met. Mr. Mueller advised that a motion can be in any format desired by the Board and that the motion in the packet is only a recommendation. He agreed with Commissioner Schulte that if there is a motion other than the recommended motion, it is a best practice to list all of the criteria.

Commissioner Andersen moved that, based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested variance to allow for up to a 10.6 foot tall fence/wall, where 6 feet is allowed, does not comply with Section 24-516(f) or (g) of the Development Code; and, therefore, denies the request. Commissioner Schulte seconded the motion.

Commissioner Schulte expressed that the information in front of the Board does not provide evidence to support the underlying criteria and that he would have to vote in favor of the motion being presented. He added that he typically errs on the side of a landowner's right, but in this case, there is an aggrieved neighbor. Commissioner Romulo confirmed that the issue pertains specifically to the height and that the building of the wall can proceed.

Motion carried 5-0.

VI. Public hearing to consider a variance request to allow for a 3-foot reduction from the required interior side parking setback, from three to zero feet in the R-L (Residential Low Density) zone district

Project: 2015 27th Avenue Setback Variance

Case No.: VAR2021-0011

Applicant: Jared Mortell

Location: 2015 27th Avenue

Presenters: Kira Stoller, Planner II

Ms. Stoller addressed the Commission and described the request for a setback variance. She presented a map showing the site and surrounding area.

Ms. Stoller advised that the request is to reduce the required 3-foot interior side parking setback to zero feet. Ms. Stoller stated that the applicant indicated the property has experienced erosion issues along the northern side of the house which has also damaged the existing driveway. She added that a retaining wall has been constructed along the northern property line and the applicant wishes to extend the driveway up to the wall to address the erosion problem.

Ms. Stoller presented photographs showing the area of the proposed driveway extension, noting that it would extend to the retaining wall. She presented a drawing of the proposed driveway extension showing the slope and added that the applicant proposes to install a drainage pipe under the driveway extension to route water away from the site.

Ms. Stoller presented the approval criteria and reported that the variance request does not meet any of the consideration criteria. She explained the rationale used by staff to determine that each criteria had not been met. Ms. Stoller reported that the request meets all of the mandatory criteria.

Notice of the hearing was accomplished. Staff recommended approval based on the request meeting all of the mandatory criteria.

Chair Yeater asked for clarification about the request, observing that but for the retaining wall that was already installed, the mandatory requirements might not have been met. Ms. Stoller stated that if the retaining wall was not in place, the discussion might be slightly different, adding that because of the retaining wall, there was potential for negative drainage impacts. Staff determined that it was in the best interest to approve the setback request to extend the driveway rather than require a 3-foot separation between the driveway and the wall. Chair Yeater again sought to clarify that the mandatory criteria had been met only because of the location of the retaining wall that had already been installed. Ms. Stoller affirmed and stated that the reason for keeping the requests separate was that, while they might have been considered together, the drainage matter applies more to the second request. She added that if there is a way for the wall to remain in place with a corresponding building permit, that should be factored into the second request.

Commissioner Schulte observed that the applicant might have constructed the retaining wall due to accumulating erosion issues that may not have been present when the house was built. Ms. Stoller expressed that was her understanding, but noted that staff was not provided with much documentation to confirm. She stated that the applicant could describe how the property has changed over time. Commissioner Schulte noted that it would seem odd to incur an expense if the owner did not perceive a problem that needed to be addressed.

Commissioner Andersen asked whether the recommendation for approval was intended to allow a simpler remedy than to tear out the wall. Ms. Stoller advised that in the event the request is denied, there are other drainage options that might not require tearing out the wall. She added that staff saw a potential for more problems in the future if the request is not granted. Commissioner Andersen asked whether the concrete would extend all the way along the north side of the house to the back yard. Ms. Stoller reported that the request pertained to the front of the house to service the driveway extension, adding that code allows paving closer than three feet to a property line if it is not associated with a driveway extension.

Upon question by Commissioner Romulo, Ms. Stoller advised that staff would obtain clarity on a proposed drainage plan before a building permit is issued. Upon question by Commissioner Schulte, Ms. Stoller reported that the driveway extension would cover most of the sloping area from the house to the street, allowing water to flow toward the street.

Commissioner Andersen expressed her understanding that there would be an engineered drain structure underneath driveway and Ms. Stoller stated that was correct. Chair Yeater asked if that was to capture gutter water, or to capture runoff that goes around the house, hits an elevated driveway, and comes around to the front, or both. Ms. Stoller understood that it was to catch gutter water, but could not speak to the other component. Ms. Hillmer expressed her understanding that it was only to capture water from the gutter. Chair Yeater asked if staff could envision any other way to get water from the back of the house to the front of the house if the driveway is extended across. Ms. Hiller responded that unless the area was quickly stabilized after being filled in, any runoff would cause erosion. She added that it takes a while for grass to be established.

Chair Yeater stated he could not envision any other way to drain the property without extending the retaining wall and asked whether approval of the request essentially allowed extension of the retaining wall around the rest of the property. Ms. Stoller asked whether Chair Yeater was referring to the wall as it currently stands or elsewhere on the site. Chair Yeater responded that he was speaking to both since a drainage plan was not submitted. From a review of the photographs and the retaining wall already in place, Chair Yeater stated that he could not envision drainage toward the front of the property with the existing retaining wall and driveway extension unless the plan was to take water and push it to the north toward the adjacent property and run off that side. Ms. Stoller recalled that the contours for the site allowed some drainage to the west as well, adding that water behind the house drains west and in front of the house drains toward the east. Chair Yeater agreed that was the historical flow, but noted that has changed with the retaining wall. Ms. Stoller understood that the applicant intends to have something similar to the historic pattern, but stated that staff will require more information to know what that will look like. Chair Yeater asked if an approval of the request was also an approval of the retaining wall, as he could not see another drainage plan that would work. Ms. Stoller advised that since the retaining wall is hinged upon approval of a building permit and staff sees no reason to deny the building permit, it could be assumed that the retaining wall will remain in place.

The applicant, Jared Mortell, 2015 27th Avenue, addressed the Board and spoke to the drainage concern. He stated that the north side of the house will be concrete and slope to the east, while drainage would go toward the west in the back of the house. Mr. Mortell advised that all drainage would stay off the north part of the retaining wall, adding that drainage from the back of the house to the front flows east down the driveway and drainage in the back flows west and stays off the northern retaining wall. Upon question by Chair Yeater, Mr. Mortell advised that he was trying to mirror the historical drainage. He stated the house

was over 50 years old and the foundation was starting to become exposed. Mr. Mortell explained that the retaining wall was put in place to stop the north side from eroding and drain to the west and east. Upon question by Commissioner Andersen, Mr. Mortell explained that there was not a full retaining wall across the back of the property, but only on one corner and a small section on the west with relief vents every four feet for water to pass and carry to the west.

Chair Yeater opened the public hearing at 3:46 p.m. There being no public comment, the public hearing was closed at 3:46 p.m.

Commissioner Andersen noted that the motion seemed appropriate and that keeping the wall and a properly engineered driveway would likely alleviate any erosion issues. Commissioner Schulte respectfully disagreed with the assessment of staff that none of the consideration criteria had been met, as he believed the applicant met consideration criteria 2 and 3.

Commissioner Andersen moved that, based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested variance to allow for a three (3) foot reduction from the required interior side parking setback complies with Section 24-516(g), Items 1, 2 and 3 of the Development Code; and, therefore, approves the request. Commissioner Schulte seconded the motion.

Chair Yeater indicated that he would support the motion, but disagreed slightly with Commissioner Schulte's assessment. He stated that the action was ultimately approving the wall and felt it would have been appropriate for staff to approve or disapprove the wall and allow the Board to vote on the wall height and the driveway extension. Chair Yeater indicated that the request for a driveway extension is appropriate, but the way it was put in place essentially created an approval of the wall. He added that he would like to have seen both items put in place so that the Board could devote its attention to both. Chair Yeater stated that although he agrees with Commissioner Schulte's assessment that an owner has a right to use property as they see fit, he did not feel that this would be harmful to the adjacent property owner. For those reasons, he advised that he would support the request.

Motion carried 5-0.

VII. Staff Report

Mr. Mueller thanked the Commissioners for addressing the code update and commended them, staff and the consultant for the fantastic effort to date.

He advised that today will be his last meeting and expressed that it has been a privilege to work with this group over the years and that he appreciated how much the Planning Commission and Zoning Board dig into issues and seek a high level of educational opportunities.

Mr. Mueller introduced Becky Safarik who will serve as interim director until a permanent replacement is hired. Ms. Safarik greeted the Commission and stated that she previously held this role for a little over 35 years and intended to keep things running smoothly. She was excited to see the attention paid by the Commission in how the city takes form and expressed her intention to support the Commission and staff in their efforts to complete their work. She invited the commissioners to reach out to her if they felt there were matters requiring her attention. Chair Yeater welcomed Ms. Safarik. Commissioners Modlin, Schulte and Andersen thanked Mr. Mueller for his assistance and guidance over the years and wished him luck in his future endeavors.

VIII. Adjournment

With no further business before the Commission, Chair Yeater adjourned the meeting at 3:59 p.m.

Justin Yeater, Chair

Becky Safarik, for Brad Mueller, Secretary

Zoning Board of Appeals Agenda Summary

August 24, 2021

Key Staff Contact: Kira Stoller, Planner II, 970-336-4050

Title:

VAR2021-0009: Public hearing to consider a variance request located at 3207 County Road 27 to reduce the established front setback of the property by approximately 45 feet to allow for construction of a detached garage in the Holding Agriculture zone district

Summary:

The City of Greeley is considering a variance request, located at 3207 CR 27, to reduce the established 370 foot front setback of the property by approximately 45 feet, to allow for the construction of a detached garage in the H-A zone district. According to the Development Code the front setback is established based on the placement of the principal structure and in this case the existing front building line (situated about 370 feet from front lot line) exceeds the required front setback (25 feet) by about 345 feet.

Recommended Action:

Based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested variance to allow a detached garage to be constructed approximately 45 feet beyond the existing front setback, thereby establishing a new front setback of 325 feet, complies with Section 24-516(f), Items 2 and 5 and Section 24-516(g), Items 1, 2 and 3 of the Development Code and, therefore, approves the request.

Attachments:

Staff Report
Attachment A – Applicant Narrative
Attachment B – Vicinity Map
Attachment C – Site Plan

ZONING BOARD OF APPEALS SUMMARY

ITEM: Request for a variance to reduce the established front setback by approximately 45 feet in the H-A (Holding Agriculture) zone district to allow for the construction of a detached garage

CASE NO: VAR2021-0009

PROJECT: 3207 CR 27 – Setback Variance

LOCATION: 3207 CR 27 (also known as 3207 83rd Avenue)

APPLICANT: Lynn Casseday of New Horizon Builders, Inc., on behalf of Dale Boehner

CASE PLANNER: Kira Stoller, Planner II

ZONING BOARD OF APPEALS HEARING DATE: August 24, 2021

ZONING BOARD OF APPEALS FUNCTION:

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

EXECUTIVE SUMMARY

The City of Greeley is considering a variance request, located at 3207 CR 27, to reduce the established 370 foot front setback of the property by approximately 45 feet, to allow for the construction of a detached garage in the H-A zone district (*see Attachment A – Applicant Narrative*). According to the Development Code the front setback is established based on the placement of the principal structure and in this case the existing front building line (situated about 370 feet from front lot line) exceeds the required front setback (25 feet) by about 345 feet.

A. REQUEST

Approval of a variance to allow for the construction of a detached garage within the established front setback.

B. STAFF RECOMMENDATION

Approval

C. LOCATION

The subject site is located west of 83rd Avenue/Two Rivers Parkway, south of 28th Street and north of 37th Street (*see Attachment B – Vicinity Map*).

Abutting Zoning: North: H-A (Holding Agriculture)
South: H-A
East: H-A
West: H-A

Surrounding Land Uses: North: Agricultural
South: Agricultural
East: Agricultural
West: Agricultural

Site Characteristics: The subject property is zoned H-A (Holding Agriculture) and is approximately 5 acres in size. The site currently contains a single-family home and an accessory structure, which were constructed in 1993, when the property was still under Weld County jurisdiction. The property features a number of grade changes that are generally located behind the house, on the western side of the lot.

D. BACKGROUND

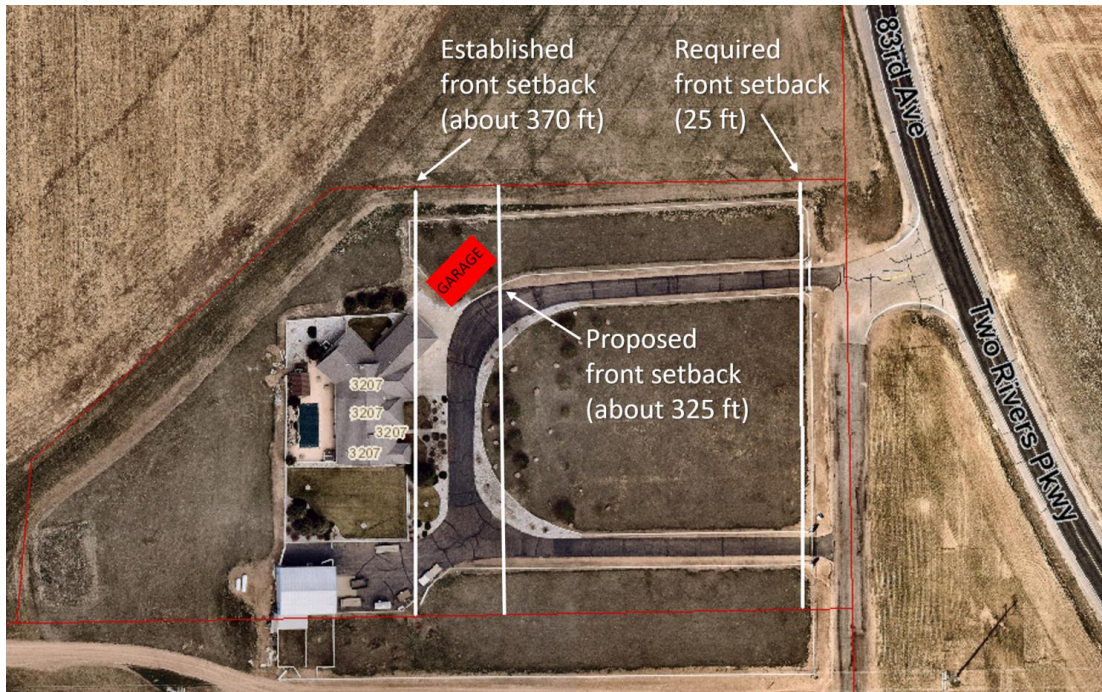
On April 7, 2021, the applicant submitted a building permit (BRX2104-055) for a 990 square foot detached garage. The accessory structure was proposed to be located to the northeast of the existing attached garage (*see Attachment C – Site Plan*). After determining that the proposed garage placement did not meet the established setback for the property, because it was situated in front of the house, staff provided the applicant with the following alternatives: 1) locate the garage elsewhere on the property in order to meet the applicable setbacks, 2) construct the garage as an addition attached to the existing house, or 3) submit a variance to request that the garage be allowed to be remain in the proposed location.

The property owner initially decided to relocate the garage to the south side of the lot and staff approved the building permit based on this revised plan. However, following issuance of the permit, a survey was conducted of the property and it was determined that there was not sufficient space to construct the detached garage in the new location. After discovering this issue, the property owner decided to proceed with a variance request to construct the garage in the original location that had been proposed.

The detached garage would be located in alignment with the existing garage that is attached to the home. There would be 26 feet between the two structures and 20 feet between the new garage and the northern property line. The eastern most edge of the detached garage would be situated approximately 45 feet beyond the front façade of the home (the established front setback) and would maintain a setback of approximately 325 feet from the front property line. If the requested variance is granted, this would become the new established front setback for the property.

Accessory structures are required to comply with front, rear and side yard setbacks [Sec. 24-1264(e)]. The code specifies that setbacks are also referred to as required yards and yards may contain more land area than a setback based on the following definition: *Yard means that area of a lot between the property line and the foundation of a building, structure or use. The term "required yard" means that area also described as a required setback area where construction of buildings, structures and uses is*

limited in placement. When more than one standard could be applied to a land use proposal, the stricter standard is utilized. Therefore in this instance, the detached garage must be situated outside the front yard or established front setback of the property, rather than just meeting the standard 25 foot front setback requirement. The graphic below helps to demonstrate the difference between the two standards when applied to the subject site.



E. APPROVAL CRITERIA

Variiances: Section 24-516 of the 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 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)

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 detached garage could be located in other locations on the property that would not require as large of a reduction to the established front setback. However, based on the size of the site and where the existing buildings are situated, requiring the property owner to locate the new garage in these areas would make access more difficult and/or would reduce the size of the established yard alongside the residence.

The proposal does not comply 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: While the applicant could continue to utilize their property without the proposed detached garage, requiring the applicant to maintain a setback that was established before the site was within city limits and which is based on a standard that is more geared towards suburban development, would severely restrict the use of much of the site. Approximately 60% of the land area on the subject site is currently situated beyond the front of the house and maintaining the established front setback would make it so that nearly three (3) acres of site could only be utilized as open space. Granting the variance request would allow for a more reasonable use of the property.

The proposal complies 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 variance request is not due to the general conditions of the area and the current property owner is not to blame for the constraints that apply to the property. They purchased the subject site well after the existing buildings were constructed and after the area had been annexed into the city. However, the hardship is self-imposed because the property could still function without the construction of the proposed detached garage.

The proposal does not comply 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: Considering the fact that the subject site is over a quarter mile from any other single-family dwellings, the variance request is not needed for the property to align with other similar structures on the block face. However, it is not unusual for agriculturally zoned properties to have larger setbacks between the roadway and any buildings on the site. Granting the requested variance would not result in a substantial change to the property, seeing as the front setback would still exceed 300 feet.

This criterion is not applicable to the variance request.

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: There are no neighborhood plans for this area, however, the subject site is located within one of the community separators identified on the Imagine Greeley Comprehensive Plan - Land Use Guidance Map. Community separators are described as rural areas that serve as a physical and/or visual separation between Greeley and surrounding cities or towns. Very low-density residential uses (less than two units per acre) are supported within community separators. Allowing the property owner to construct a detached garage would not conflict with the designated land use of the site.

The proposal complies with this criterion.

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

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: Granting the requested variance should not have any negative impacts on adjacent properties or be detrimental to the public interest. It would also support the spirit of the Code because the land use would remain single-family and the proposed detached garage would still be well within the required front setback for the property. Based on the

significant distance (approximately 370 feet) that currently exists between the house and the front property line, reducing the established front setback by 45 feet is unlikely to be noticeable from the adjacent roadway.

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: Because the site was established in the county, it was not developed in accordance with city regulations. Strict application of the Code would require the property owner to maintain the established front setback and could result in practical difficulties because the detached garage would have to be located in an area which is constrained by grade changes or that is not easily accessible. The requirement for accessory structures to be located behind the front façade of the primary structure was not designed with rural acreages in mind and applying this standard to the subject site would result in an unnecessary hardship for the property owner because approximately 60% of the lot would be unbuildable.

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: Properties with the H-A zoning designation are generally utilized for agricultural purposes. However, the H-A zone district is also used as a transitional zoning, when applied to annexed properties without a specific future land use. The subject site falls into the latter category and does not meet the standard minimum lot size of 40 acres. Because this was an existing condition when the property was annexed into the city, a variance was not required, however, this circumstance does not generally apply to other H-A zoned properties. Therefore, in this instance the limited lot size is somewhat triggering the need for the variance, because there would likely be more buildable area on a larger property.

The proposal complies with this criterion.

F. PHYSICAL SITE CHARACTERISTICS

1. SUBDIVISION HISTORY

The subject site was platted as Lot A, of Recorded Exemption 1540, on August 18, 1994 (Rec. No. 2402918). The property was part of the Lundvall Annexation that was approved by City Council on March 6, 2001 (Rec. No. 2835105).

2. HAZARDS

Staff is unaware of any existing hazards on the site.

3. WILDLIFE

The site is not located within an area of ecological significance.

4. FLOODPLAIN

The property is not located within any flood zones.

5. DRAINAGE AND EROSION

The principal structure is located on the high point of the lot and the site generally drains to the north and west. Additional documentation would be requested from the applicant ahead of issuing a building permit for the detached garage, to ensure that the proposed design does not result in any negative impacts and maintains historic drainage patterns.

6. TRANSPORTATION

The construction of the proposed detached garage would have no impact on area traffic.

G. OVERLAY DISTRICTS

The property is not located within any overlay districts.

H. PUBLIC NOTICE AND COMMENT

Notification letters regarding the proposed variance were mailed to property owners within 500 feet of the subject site on August 6, 2021, and a sign was posted on the property on August 12, 2021. Public notice was also published in the newspaper on August 18, 2021. No public input pertaining to the setback variance has been received to date, August 17, 2021.

I. ZONING BOARD OF APPEALS RECOMMENDED MOTION

Based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested variance to allow a detached garage to be constructed approximately 45 feet beyond the existing front setback, thereby establishing a new front setback of 325 feet, complies with Section 24-516(f), Items 2 and 5 and Section 24-516(g), Items 1, 2 and 3 of the Development Code and, therefore, approves the request.

J. ATTACHMENTS

- Attachment A – Applicant Narrative
- Attachment B – Vicinity Map
- Attachment C – Site Plan

Dale Boehner
3207 83rd Avenue
Greeley CO 80634

July 13, 2021

City of Greeley
Community Development
Planning Division
1100 10th Street Ste 202
Greeley CO 80631

To Whom It May Concern:

Please consider the following for the variance request. According to Sec. 24-516 (f):

- (1) This variance will allow the garage to be located on the same side of the home as the other garages attached to the home. Allowing easy access to all vehicles.
- (2) The unusual lot configuration of this home is such that mostly all of the available land for the construction of this garage is ahead of the front line of the home. The residence has approx. 5.21 acres and as you can see on the plot plan nearly 4 acres are located in front of the residence. The existing garage is at a 45 degree angle to the residence causing it to be ahead of the front line of the home but being attached allows that. Locating the new garage to the North side of the existing garage would follow the same line of the existing garage.
- (3) There would be no difficulty or hardship created in requesting or allowing this variance. Any future development within the area would not be affected in any way with this variance as it would be completely separate from this property and most likely controlled with fencing.
- (4) As stated in 2 above the new building will align with the existing garages which are at a 45 degree angle allowing them to be ahead of the front line of the residence. In keeping that alignment with the new garage will give it an appearance of following the configuration of the residence.
- (5) The construction of a detached garage on this property is consistent with the land use chapter of the comprehensive plan. As this land sits surrounded by farmland it is not any part of a neighborhood plan and will give a much better look to the residence with all garage locations being on the same side of the residence and consistent with the look of all existing lines and types.

And relating to SEC. 24-516 (g):

- (1) This variance would not be of any detriment to the public interest as it is located within a 5 ½ acre property and would not affect any future development. This variance will not in any way be harmful to adjacent property as the adjacent

property is currently a farm. If it were to develop into housing in the future it would be completely separate from this property and most likely have its own privacy fence at its perimeter. I feel that with all of this in mind it does observe the spirit of the Development Code.

- (2) By conforming to the Development Code in this case the garage would have to be placed in an area that is currently being used as a yard to the residence and is also on the opposite side of the residence from the existing garage. Or it would need to be placed far behind all other buildings and back yard areas leaving very difficult access to and from the building.
- (3) The exceptional or extraordinary circumstances or conditions applying to this property are the fact that most of the 5.21 acres are located ahead of the front line of the home and nearly all of the property behind the front line of the home is used up in other uses surrounding the residence. Locating the building ahead of the front line of the residence will have no affect whatsoever on any other properties or uses in the same zoning district.

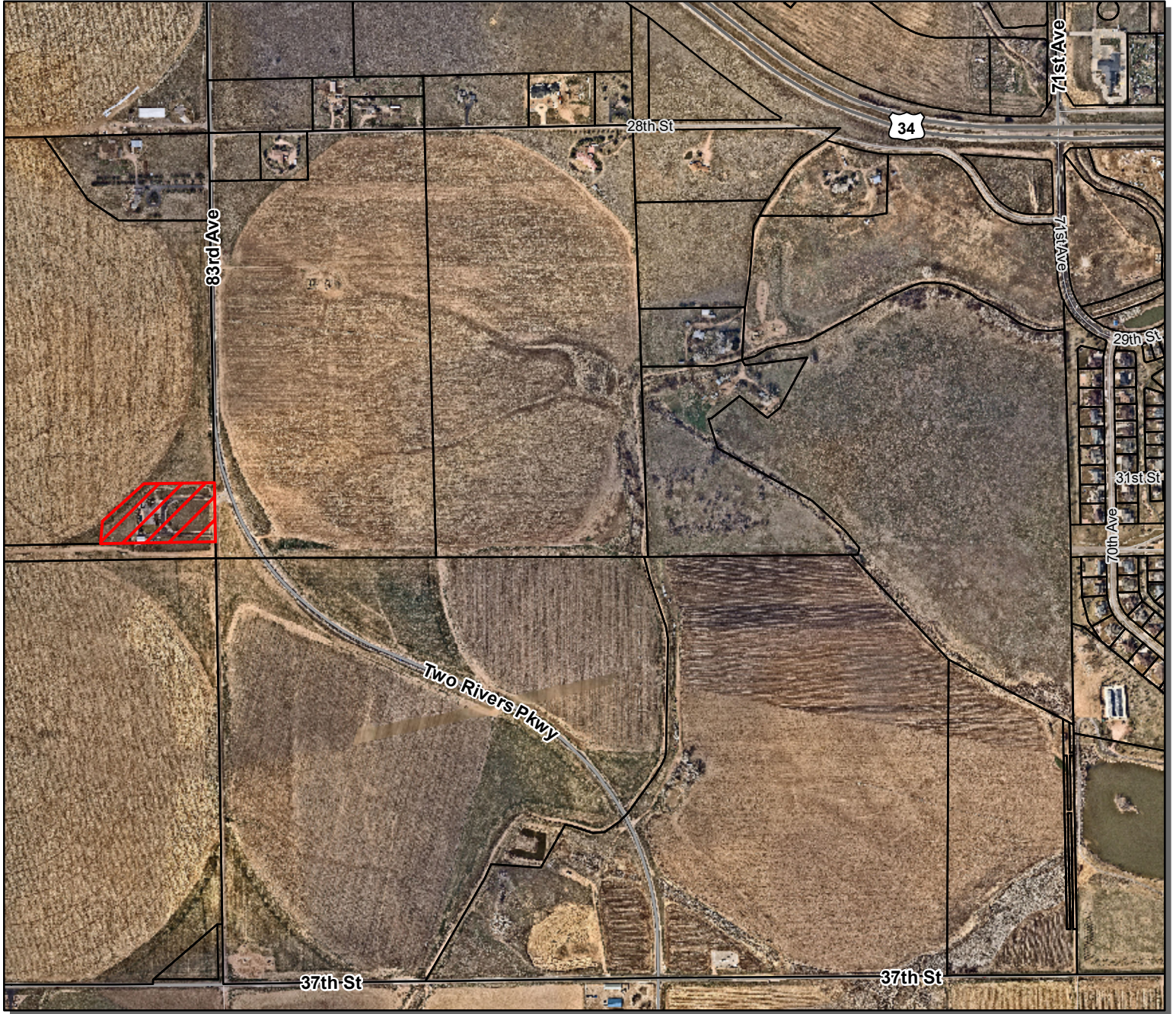
This proposed detached garage will be located along side and 26' to the northeast of the existing residence garage. It will be built with the same look and configuration of the existing garage and home. The North corner of the proposed garage will be 20' inside the North property line and the farthest corner of the new garage will be approximately 45' ahead of the front line of the existing home creating the need for this variance.

Respectfully,



 FOR DALE BOHNER

Dale Bohner
Owner

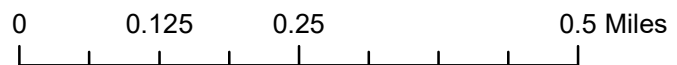
Vicinity Map



Legend

-  Subject Site
-  Parcels

3207 CR 27 - Setback Variance VAR2021-0009





26' BETWEEN EXISTING HOME AND NEW GARAGE

20' FROM PROPERTY LINE TO CORNER OF GARAGE

CONCRETE DRIVEWAY TO CONNECT TO EXISTING ASPHALT

NEW GARAGE TO BE SAME HEIGHT AS EXISTING OR LOWER

LOT "A" RECORDED EXEMPTION
NO. 0959-19-1-RE1540
5.21 ACRES MORE OR LESS
3207 83RD AVE / CR27