

**RETANA VARIANCE
VARIANCE REQUEST STAFF REPORT
Project No. LUP2020-0005 & Plan No. VAR2020-0001**

PROJECT DESCRIPTION

Project No.: LUP2020-0005 / Plan No. VAR2020-0001

Project Name: Retana Variance

Owner's Name: Agustin and Brenda Retana ("Applicants")

Representative: N/A

Location of Request:

The site is located in a part of the Southeast Quarter of Section 32, Township 2 North, Range 66 West of the Sixth Principal Meridian, City of Fort Lupton, State of Colorado. It is located at 906 Fir Avenue, Fort Lupton, Colorado, and is approximately 0.03 miles northeast of the intersection of Fir Avenue and 9th Street ("Property").



Nature of Request:

The Applicant is seeking a variance for two existing sheds and an existing concrete patio. No permits exist with the City for these items. The sheds and patio infringe on rear and side yard setbacks. Additionally, the sheds are situated over a 10-foot utility easement located in the rear of the yard. The applicant is requesting that the sheds and patio remain in their current locations.

The shed situated on the north side of the property was existing when the applicant purchased the home in 2009. The shed situated on the south side of the property was also in existence when the applicant purchased the home, however this shed was moved into the 10-foot utility easement in 2016. The applicant believes this shed would not withstand another move. The concrete was poured by the applicant in 2016. Because the Applicant is already applying for a variance for the sheds, they believe the patio should be included with this application. The Applicant understands that if the variance is granted, they may still be asked to remove all items at their own expense if access to the utility easement is required.

Please view the attached application materials submitted by the Applicant for more information on the requested variance.

Site Size: The Property is 0.144 acres, more or less.

Zone District: 'R-2' Residential District – Medium Density.

Proposed Use: The use of the property would not change. The applicant is requesting that two existing sheds and an existing concrete patio are allowed to remain.

Existing Use: The property is an existing residence with two sheds and a concrete patio.

Hearing Date: Thursday, May 28, 2020 at 6:00 PM, or immediately following the adjournment of the Planning Commission meeting.

Hearing Location: Fort Lupton City Hall – Council Chambers, 130 S. McKinley Ave., Fort Lupton, Colorado.

Staff Recommendation: Approval with conditions, as shown on the proposed resolution.

APPLICATION PROCESS

The Applicant is requesting approval of a variance. A variance is processed under [Section 16-13](#) of the Fort Lupton Municipal Code (“Code”).

After required public notice of the variance application, the Board of Adjustment shall consider the application, and any public testimony at a public hearing and shall, by resolution, approve, approve with conditions or deny the variance based on criteria listed below. Findings and conclusions of any variance approved by the Board shall be stated in writing in the minutes of the Board with the justifications set forth.

The Planning Department shall advise the applicant of the Board of Adjustment decision and of any conditions contained in the Board’s decision.

Resolutions of the Board of Adjustment granting variances shall be recorded with the Weld County Clerk and Recorded at the expense of the applicant.

Any appeal of the decision of the Board of Adjustment may be made to the District Court as provided by law; provided, however, that such appeal must be made prior to thirty (30) days following the date of the final action taken by the Board of Adjustment, as provided by Rule 106, Colorado Rules of Civil Procedure.

The Board of Adjustment shall not grant a variance to the Code, which:

- a. Permits a land use not allowed in the zoning district in which the property is located;
- b. Is in the public right-of-way or on public property;
- c. Alters any definition of the Code;
- d. Is other than the minimum variance that will afford relief with the least modification possible to the requirements of the Code;
- e. Is based on physical conditions or circumstances of the property so general or recurring in nature as to reasonably make practicable the formulation of a general regulation to be adopted as an amendment to the Code;
- f. Is based exclusively on findings of personal or financial hardship. The Board may consider the hardship the applicant may suffer, as long as the applicant did not create his or her own hardship. Buying property without being aware of available facts about the property does not create a hardship. Failing to verify or misinterpretation by the applicant of any City code does not create a hardship. Convenience, profit or caprice shall not constitute undue hardship; or
- g. Will result in the extension of a nonconforming situation, use, building or lot; authorize the initiation of a nonconforming use of land or conflict with the goals and policies of the Comprehensive Plan.

In order to grant a variance to the Code, the Board of Adjustment shall find that all the following have been satisfied:

- a. That there are unique physical circumstances or conditions of the land such as irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical condition of the land particular to the affected property;
- b. That, because of these unique physical circumstances or conditions, the property cannot be reasonably developed or used in compliance with the provisions of the Code;
- c. That such unique physical circumstances or conditions are unique and unusual or nearly so, rather than shared by many surrounding properties;
- d. That, due to such unique physical circumstances or conditions of the land, the strict application of the Code would create a demonstrated hardship;
- e. That the demonstrable hardship is not self-imposed;
- f. That the hardship or poor land use of which the applicant complains is one suffered by the applicant alone and not by neighbors or the general public;
- g. That the variance, if granted, will not adversely affect the proposed development or use of adjacent property or the neighborhood;
- h. That the variance, if granted, is in keeping with the intent of the Code;
- i. That the variance, if granted in a floodplain or floodway, meets the requirements of floodplains and floodways of this Code and any other applicable law;
- j. That the variance, if granted, will not adversely affect the health, safety or welfare of the citizens of the City; and

k. That the variance requested is the minimum necessary to provide relief.

NOTIFICATION REQUIREMENTS

The Zoning Regulations require published notice of the hearing at least fifteen (15) days prior to the hearing. The Board of Adjustment hearing was published in the Fort Lupton Press on May 13, 2020.

Notice of the public hearings was posted on May 13, 2020 at the Property, which is at least fifteen (15) days prior to the hearings, as required by the Zoning Regulations.

Notice was mailed to neighbors within one-hundred (100) feet of the Property on May 12, 2020, as required by the Zoning Regulations of the Code.

CONFORMANCE WITH CITY STANDARDS, REGULATIONS AND POLICIES

The property is located within the ‘R-2’ Residential – Medium Density Zone District. Within this zone district, accessory buildings, including sheds, are included as permitted uses.

The following characteristics of the ‘R-2’ zone district are outlined in the Municipal Code:

1. The rear yard setback is 20 feet (Sec. 16-36(e)).
 - a. Patios may not extend more than 10 feet into the rear yard setback (Sec. 16-36(e)).
2. The side yard setback is 5 feet (Sec. 16-36(f)).
3. Accessory buildings or utility sheds may not be located so as to encroach on easements (Sec. 16-36(i)).

The north shed is situated 3 feet from the rear property line, 2 feet from the north property line, and 7 feet into the utility easement. The south shed is situated 5 feet from the rear property line, 1 foot from the south property line, and 5 feet into the utility easement. The concrete patio extends to the rear property line and into the entire 10-foot utility easement. In order for this property to be in compliance, these structures will need to be removed or the applicant will obtain a variance from the Board of Adjustments for these items.

The variance process is intended to provide relief to persons who are unable to conform to the provisions of this Chapter due to unusual circumstances or hardship, and who meet the criteria for issuance of a variance by the Board of Adjustments. These criteria were outlined above.

CONFORMANCE WITH THE COMPREHENSIVE PLAN

The Fort Lupton Comprehensive Plan designates this area as the Single Family Detached land use type. The subject items of the variance request compliment to this land use type.

REFERRALS

Referrals were provided to the list below. Any comments received are enclosed with the Board of Adjustment packet.

Building Inspector	CenturyLink	City Attorney
Comcast	Fort Lupton Fire Protection District	GIS Specialist
Public Works Director	United Power	Xcel Energy

STAFF RECOMMENDATION

Staff has determined that the proposed variance for two existing sheds and an existing concrete patio to remain at their current locations can meet the intent of Section 16-13 of the Code based on the pre-existing circumstances and through the conditions of approval. The requirements for sheds and flat work in the City of Fort Lupton is currently under review. Staff have been having conversations with the building officials that some the existing requirements may be eliminated or modified in the City Municipal code based on current and future building codes requirements.

For more information on this development, please refer to the Board of Adjustment packet provided. Additional documents are available for review at the Fort Lupton City Hall.