

**AGENDA
CITY OF GUNNISON
ZONING BOARD OF ADJUSTMENT AND APPEALS
SPECIAL MEETING**

DATE: AUGUST 18, 2016
TIME: 7:00 PM
PLACE: CITY HALL, COUNCIL CHAMBERS, 201 WEST VIRGINIA AVE.

- I. CALL TO ORDER**
- II. CONTINUATION OF PUBLIC HEARING – VA 16-3, SUBMITTED BY NAVID NAVIDI, REQUESTING A FRONT SETBACK VARIANCE ALONG REED STREET AND NEW YORK AVENUE.**
- III. CONSIDERATION OF THE AUGUST 11, 2016 MINUTES**
- IV. UNSCHEDULED CITIZENS**
- V. BOARD MEMBER COMMENTS**
- VI. STAFF COMMENTS**
- VII. ADJOURN**

TO COMPLY WITH ADA REGULATIONS, PEOPLE WITH SPECIAL NEEDS ARE REQUESTED TO CONTACT THE CITY OF GUNNISON COMMUNITY DEVELOPMENT DEPARTMENT AT 641.8090

This agenda is subject to change, including the addition or deletion of items at any time. Regular Meetings and Special Meetings are recorded and action can be taken. Work sessions are not recorded and formal action cannot be taken. For further information, contact the Community Development Department at 641-8090.

STAFF REPORT
Navid Navidi – 1001 West New York Avenue

TO: Zoning Board of Adjustments and Appeals
FROM: Community Development Staff
DATE: August 18, 2016
RE: Variance Request VA 16-3 – Front Setback Variance

CODE PROVISIONS

City of Gunnison Land Development Code (LDC), Section 8.1, Variances, authorizes deviation from the standards of the underlying zone district and shall be authorized only for maximum height, minimum floor area, minimum building width, maximum lot coverage, minimum setbacks, maximum setbacks, parking requirements and minimum landscape area.

The *LDC* specifies that variance applications be reviewed by the Zoning Board of Adjustments and Appeals (Board) at a Public Hearing after 15 days public notice. The Board may approve, approve with conditions, deny, or remand the application back to the applicant. The Board is the final authority for variance applications.

Variances are authorization to deviate from the literal terms of the *LDC* that would not be contrary to the public interest in cases where the literal enforcement of the provisions of the *LDC* would result in undue or unnecessary hardship.

APPLICATION

The applicant, Navid Navidi, is requesting a front setback variance for the construction of a 70' by 100' shop building. The legal description of the property is Lots 15 and 16, Island Acres #2, City and County of Gunnison, Colorado. The applicants' narrative states:

“I am building a 70x100 metal shop building on my property at 1001 West New York Avenue. Based on special circumstances surrounding my property, I am requesting a variance on the City of Gunnison set back standards.

This corner lot is surrounded by Reed street on the West, New York Avenue to the North, and highway 50 to the East. According to the city definition, this property has three front lines which require 15 foot setbacks each.

I am asking the board to consider a variance to classify Reed street and New York street as rear and side lot lines with 5 foot setbacks as this will be necessary to provide reasonable use of this property.”

STAFF REPORT
Navid Navidi – 1001 West New York Avenue

SITE ASSESSMENT

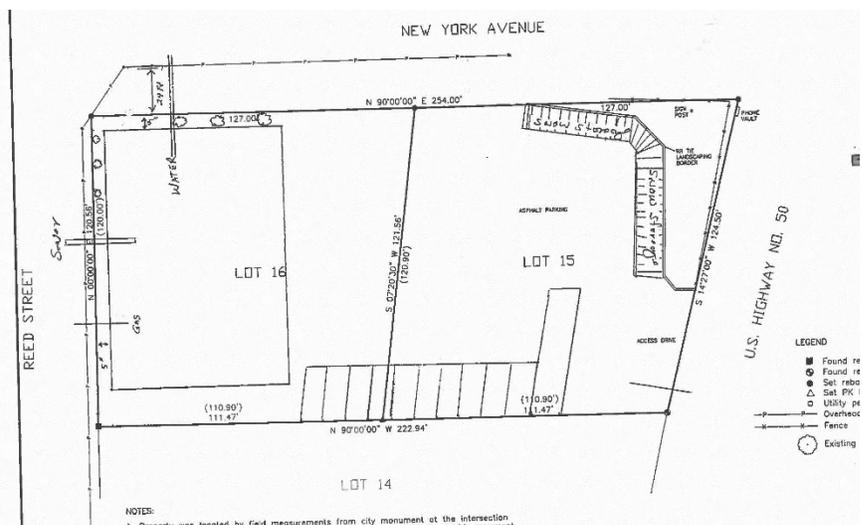
The property is located on the corners of Reed Street, New York Avenue and Highway 50 and is within the Commercial zone district. The site is constrained with three street frontages. The site was historically a fast food restaurant that was destroyed by fire. The site has been vacant since and surrounding uses include residential to the west and north and commercial services to the east and south.



The applicant is requesting front yard setback variances, from 15 feet to five feet, on Reed Street and New York Avenue to construct a shop that is 70 feet by 100 feet. Historically, in similar instances, a variance has been granted for at least one of the three street frontages for reasonable use of the site.

A public hearing for this request occurred on August 11, 2016 and was continued to August 18th at 7:00 PM because the applicant presented additional information regarding the New York Avenue request. The applicant identified several reasons to justify the New York Street front setback variance. The applicant reasons included the ample width of the rights of way that maintain about 24 feet of front yard, access needs for large trucks, snow plowing and removal, solar access, and stormwater drainage.

The site has an existing drainage swell that serves this site and the property located directly south, which is also owned by the applicant. It is anticipated that final site grading work will be required to accommodate any large buildings that may be developed on the site in the future. The site currently has two access drives, one on the



STAFF REPORT
Navid Navidi – 1001 West New York Avenue

the frontage Road and the other on New York Street. While a five foot setbacks would allow more convenient access to the site, the existing accessways provide adequately and safe access.

The lot width is 120 feet and the proposed structure is 100 feet long. A setback of 10 feet instead of the required 15 feet along the New York frontage would allow the applicant adequate distance between buildings to configure site drainage, snow removal, solar access, based on city solar access codes.

In summary the variance request is being driven by the applicant's desire to construct a 100-foot wide structure and not specific site constraints normally considered as factors for granting a variance.

Staff is supports a variance for the Reed Street setback of five-feet and believes it is appropriate because most of the structures along Reed Street are placed in a similar configuration. Staff also supports a variance from the New York front yard setback and recommends a setback of 10 feet, which allows ample area to reconfigure drainage and to allow for snow removal.

DEPARTMENTAL COMMENTS:

Fire Marshall:	No issue
Building Official:	No issue
Parks and Recreation Dept.:	No issue
Police Department:	No issue
Public Works Director:	No issue
City Engineer:	No issue
Water/Sewer Superintendent:	No issue
Electric Superintendent:	No issue as long as the height does not interfere with the overhead power lines.

STAFF OBSERVATIONS:

1. The applicant is requesting a variance of the front yard setback to a five foot minimum on Reed Street and New York Avenue to place a 70' by 100' shop.
2. The site is constrained with a three street frontages and historically in similar situations, variances for at least one of the street frontages have been approved.
3. The proposed variance along Reed Street is appropriate and provides consistency with the existing structures south of the subject site.
4. The proposed structure can be located on the site with a 10-foot setback on the New York Avenue frontage to accommodate the existing drainage swell and provide access from Reed Street.
5. Staff recommends approval of the Reed Street variance for a five-foot setback and the New York Avenue setback of 10 feet.
6. The Reed Street and New York variance is considered appropriate and does not negatively affect the health, safety and welfare of the community.

STAFF REPORT
Navid Navidi – 1001 West New York Avenue

REVIEW STANDARDS

Section 8.3 (Required Showing) states that “... *The applicant shall demonstrate the following to the Board before a variance may be authorized:*”

A. **Special Circumstances Exist.** There are special circumstances or conditions which are peculiar to the land or building for which the variance is sought, that do not apply generally to land or buildings in the neighborhood.

No Conflict. The site is constrained with three street frontages. The variance of the Reed Street frontage is appropriate and provides consistency with other structures situated along Reed Street with a five-foot setback.

A drainage swell is located to the south of the property that would be affected if the New York Avenue front setback (15 feet) is required. A 10-foot setback allows the applicant reasonable use of the site and would accommodate the drainage swell and snow removal between the two buildings.

B. **Not Result of Applicant.** The special circumstances and conditions are not the result from any act of the applicant.

No Conflict. The placement of existing structures along Reed Street is not the result of the applicant. The Reed Street variance is appropriate and would provide consistency with existing structures to the south of the site.

The existing building on the lot to the south and the drainage swell were not a result of the applicant and allowance of the New York variance will allow reasonable use of the site.

C. **Strict Application Deprives Reasonable Use.** The special circumstances and conditions are such that the strict application of the provisions of this *LDC* would deprive the applicant of reasonable use of the land or building.

No Conflict. The Reed Street variance is appropriate to provides reasonable use of the structure. Allowance of a 10-foot setback on New York provides ample area to accommodate stormwater drainage swell to the south.

D. **Variance is Necessary to Provide Reasonable Use.** The granting of the variance is necessary to provide the applicant a reasonable use of the land or building.

No Conflict. The Reed Street and New York Avenue variances provide reasonable use of the site and provides consistency with setbacks south of the subject site and accommodates the existing drainage swell.

E. **Minimum Variance.** The granting of the variance is the minimum necessary to make possible the reasonable use of the land or building.

No Conflict: The applicant is proposing the minimum necessary along Reed Street for the reasonable use and function of the structure. A 10-foot setback on New York would provide reasonable use of the land to accommodate final grading modifications to for stormwater drainage.

STAFF REPORT
Navid Navidi – 1001 West New York Avenue

F. **Not Injurious to the Neighborhood.** The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare or the environment.

No Conflict: The granting of the Reed Street and New York variance will not be detrimental to the neighborhood or public welfare.

G. **Consistent with the *Land Development Code*.** The granting of the variance is consistent with the general purposes and intent of this *LDC*.

No Conflict: The purpose of the *Land Development Code* includes: (1) establish standards for all proposed development in the City; (2) protect quality of life; (3) establish a review process; (4) provide for orderly development of the City; (5) provide adequate public facilities; and (6) conserve property values.

The Reed Street and New York variance request is consistent with the intent of the *Land Development Code*.

ACTION

At the Zoning Board of Adjustments and Appeals meeting of August 18, 2016, Board Member _____ moved, and Board Member _____ seconded to APPROVE the request by Navid Navidi for Variance Application, VA 16-3 for a front yard setback variance on the Reed Street and New York Avenue, based on the following findings of fact:

Findings of fact:

1. The Zoning Board of Adjustments and Appeals finds that the record of this action includes the application contents on file with the City of Gunnison; all comments entered into the Public Hearing record; provisions of the *City of Gunnison Land Development Code*; and the *City of Gunnison Master Plan (2007)*.
2. The Zoning Board of Adjustments and Appeals finds that the applicant is requesting a variance from the minimum front setback of 15 feet to five feet on the Reed Street and New York Avenue frontages, for the placement of a 70' by 100' shop.
3. The Zoning Board of Adjustments and Appeals finds that the site is constrained with a triple street frontage lot configuration. The Board further finds that, historically, with this type of configuration a setback variance from at least one of the street frontages has been approved.
4. The Zoning Board of Adjustments and Appeals finds that the majority of structures along Reed Street are situated with a five-foot setback and granting the variance for the Reed Street frontage is appropriate and provides consistency.

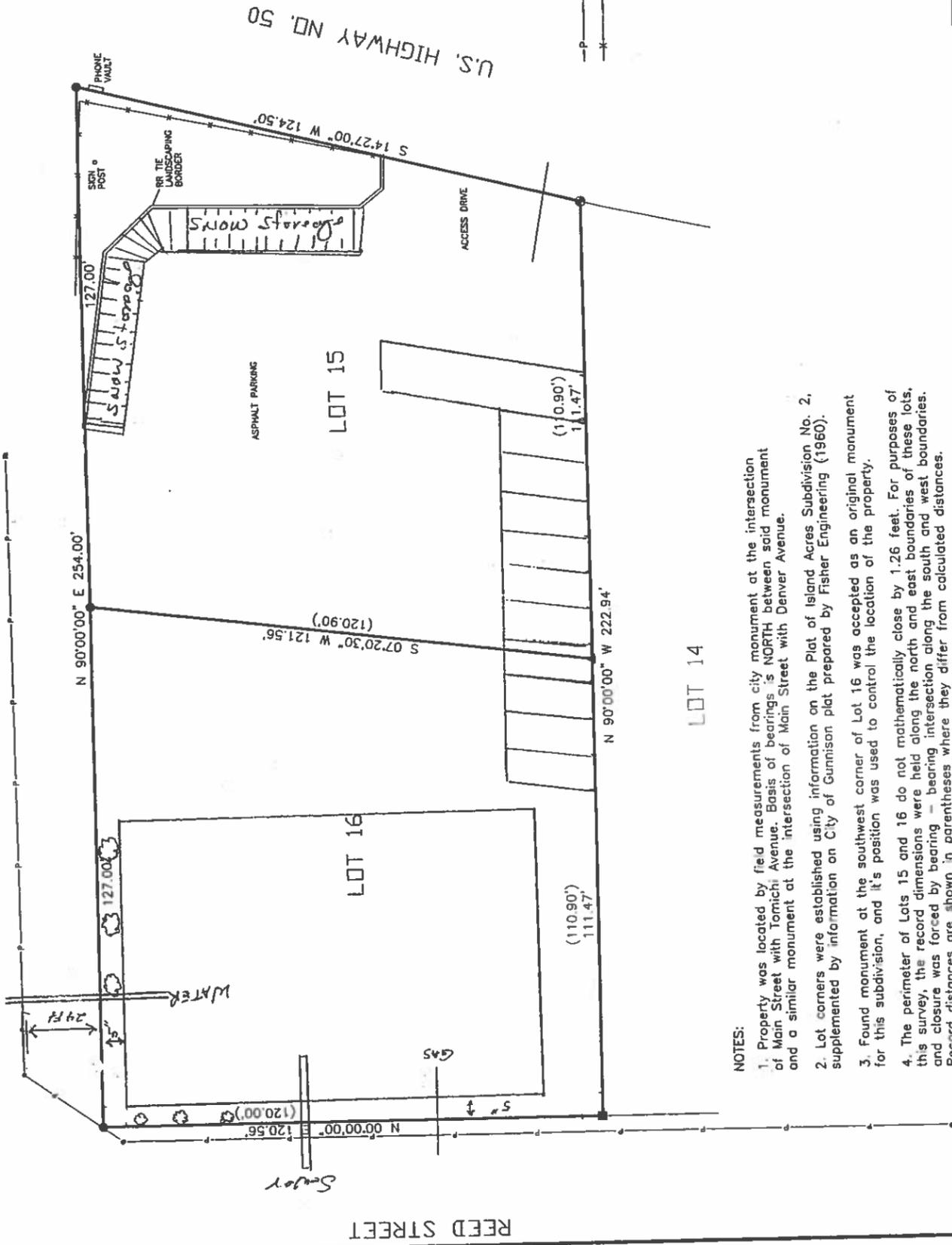
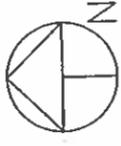
STAFF REPORT
Navid Navidi – 1001 West New York Avenue

5. The Zoning Board of Adjustments and Appeals finds that the site contains a drainage swell to the south of the property and a 10-foot setback on the New York Avenue frontage accommodates this drainage swell and provides adequate area between buildings for snow removal.
6. The Zoning Board of Adjustment and Appeals finds that the perceived hardships defined by the applicant is the product of their desire to construct a 100-foot wide structure.
7. The Zoning Board of Adjustments and Appeals finds that a 100-foot wide building could fit onto the site without any variance allowance, but providing additional area between buildings will allow ample area to maintain stormwater flow lines through the site.
8. The Zoning Board of Adjustments and Appeals finds that the variance request for the five-foot setback on Reed Street and a 10-foot setback on New York Avenue meets the seven review standards as defined in the *Land Development Code* for variances.
9. The Zoning Board of Adjustments and Appeals finds that a five-foot minimum setback on the New York Street frontage is not warranted based on the submitted application materials and public hearing testimony.
10. The Zoning Board of Adjustments and Appeals finds that the Reed Street and New York Avenue setback variance promotes the long term health, safety, and welfare of the community.

Condition:

1. The applicant shall maintain a minimum five-foot setback on Reed Street and a minimum 10-foot setback on New York Avenue.

NEW YORK AVENUE



LEGEND

- Found rebar with aluminum cap stamped "LS 1776"
- Found rebar with plastic cap stamped "LS 11250"
- Set rebar with plastic cap stamped "LS 34979"
- △ Set PK Nail with aluminum washer stamped "LS 34979"
- Utility pedestal
- Overhead utility lines
- Fence
- Existing aspen tree

NOTES:

1. Property was located by field measurements from city monument at the intersection of Main Street with Tomichi Avenue. Basis of bearings is NORTH between said monument and a similar monument at the intersection of Main Street with Denver Avenue.
2. Lot corners were established using information on the Plat of Island Acres Subdivision No. 2, supplemented by information on City of Gunnison plat prepared by Fisher Engineering (1960).
3. Found monument at the southwest corner of Lot 16 was accepted as an original monument for this subdivision, and its position was used to control the location of the property.
4. The perimeter of Lots 15 and 16 do not mathematically close by 1.26 feet. For purposes of this survey, the record dimensions were held along the north and east boundaries of these lots, and closure was forced by bearing - bearing intersection along the south and west boundaries. Record distances are shown in parentheses where they differ from calculated distances.

IMPROVEMENT SURVEY PLAT
LOTS 15 & 16
ISLAND ACRES SUBDIVISION NO. 2
CITY OF GUNNISON
GUNNISON COUNTY, COLORADO

PEARSON SURVEYING
P.O. BOX 652
GUNNISON, CO 81230
970-641-2910
PROJECT # 12-2-7

DATE : 4/20/12
LATEST REVISION DATE :

SHEET 1 OF 1

SURVEYOR'S CERTIFICATE

I, Timothy E. Pearson, a registered land surveyor in the State of Colorado, certify that this survey and plat were made under my direction and control, and that both are true and correct to the best of my knowledge. I further certify that this plat accurately depicts the location of the existing improvements located within the boundaries of the subject parcel, that there are no visible encroachments upon the subject parcel by the improvements of any adjoining parcel, except as shown, and that monuments evidence of any easement crossing or burdening the subject parcel, except as shown, and that monuments have been set or found as shown.

Timothy E. Pearson
Timothy E. Pearson
Colorado L. S. No. 34979

Date: 4-20-12

MEMBERS	PRESENT	ABSENT	EXCUSED
MARLA LARSON	X		
ELLEN HARRIMAN	X		
SCOTT FRAZIER	X		
SHARON CAVE	X		

OTHERS PRESENT: Director Steve Westbay and Planner Andie Ruggera

I. CALL TO ORDER AT 7:00 PM BY CHAIR MARLA LARSON

II. PUBLIC HEARING – VA 16-3, SUBMITTED BY NAVID NAVIDI, REQUESTING A FRONT SETBACK VARIANCE ALONG REED STREET AND NEW YORK AVENUE.

Open Public Hearing. Chair Larson opened the public hearing at approximately 7:01 p.m.

Proof of publication. Proof of publication was entered into the record.

Review of the Process. Director Westbay reviewed the process for a Variance Application and stated the applicant was requesting a five-foot variance on both Reed Street and New York Avenue. The legal description of the property is Lots 15 and 16, Island Acres #2, City and County of Gunnison.

Applicant Presentation. Mr. Navid Navidi introduced himself and stated he is trying to construct a shop on property that was formally the A&W. When he went to the City to get a building permit he thought that Reed was a rear setback and New York was a side setback. Mr. Navidi stated he has already ordered a building that is 70 feet by 100 feet for the site.

Mr. Navidi stated after he talked with Steve and Erik [in the Community Development Office] he was told he had three street frontages that are counted as front setbacks. If he sets his building back to 15 feet that would leave 40 feet to the pavement of New York and put the building right up against his shop to the south. This would create problems for him and he would lose his access from Reed Street. Mr. Navidi stated his business revolves around big trucks and many times he has semi-trucks on his site. This would make it difficult to run his business if he can't exit on Reed Street.

Another hardship is that he will not be able to plow between buildings. The building he ordered has an office on the south end. If he has to move the structure to the south, it will diminish the solar access.

Mr. Navidi stated there is a storm drain between the two buildings and it would be very expensive to redo the parking lots. If he sells the property in the future the setback will diminish the value of the property.

Other buildings along New York Avenue are sitting right on the property line. The Building right behind me is sitting on the property line. Mr. Navidi stated it is unreasonable for the City to deny the five-foot setback on New York. He has run out of room and is spending a lot of money. With the new site he would be able to park all vehicles in the building. Mr. Navidi stated he is requesting variances on both Reed and New York.

Chair Marla Larson asked if it has to be five feet or if the setback could be more. Mr. Navidi responded that he would not be able to drive through the two buildings [off Reed Street] and it would affect the existing drainage.

Mr. Navidi stated there are a lot of other buildings that are right on the property line. Chair Larson stated that we [Board] are constrained by what happens today. Mr. Navidi replied if you make me setback 15 feet are you going to make other people tear their structures down.

Public Input. There was none.

Staff Presentation. Director Westbay stated the real problem when determining the application is that staff couldn't find reasoning for New York. The applicant has recited other reasons during this public hearing that could be hardships. There are three potential hardships I heard Mr. Navidi state:

- There could be a hardship on existing drainage to the south of the property;
- Solar access of the new building could be diminished; and
- The operational needs of the site may or may not be applicable.

Mr. Navidi stated that when he talked to Erik Jansen he made it sound like a five-foot setback wasn't an issue when he submitted an application for the variance.

Director Westbay also stated that there are street buffer requirements and there should be plenty of real estate to work with.

Commission Discussion. Chair Larson stated she would like to remand the application back to Mr. Navidi so he can work with staff to come up with a different number than the five-foot setback on New York. Director Westbay stated the public hearing could be continued to a later date so the applicant wouldn't have to start all over.

Mr. Navidi stated the building is a huge investment to him and given the fact that other properties have structures on the property line on New York, he would just like the variance.

Board Member Frazier stated he feels like we [the Board] needs a recommendation form staff. I understand we have to look at the future and if staff says we don't need the setback we can take a closer look at this application.

Chair Larson stated that staff can come back to the Board with a different recommendation.

Mr. Navidi stated he thought Steve had already said there was plenty of real estate. He can't build in the winter time.

Board Member Cave moved to continue the public hearing for application VA 16-3, submitted by Navid Navidi, requesting a front setback variance along Reed Street and New York Avenue, to Thursday, August 18, 2016 at 7 p.m. Board Member Harriman seconded the motion.

Roll Call Yes: Larson, Frazier, Harriman and Cave

Roll Call No:

Roll Call Abstain:

Motion Carried

II. CONSIDERATION OF THE JUNE 1, 2016 MEETING MINUTES

Board Member Harriman moved and Board Member Frazier seconded to approve the June 1, 2016 meeting minutes as presented.

Roll Call Yes: Larson, Frazier and Harriman

Roll Call No:

Roll Call Abstain: Cave excused from the June 1, 2016 meeting.

Motion Carried

III. ELECTION OF NEW OFFICERS

Board Member Larson moved and Board Member Cave seconded the nomination to appoint Board Member Frazier as Chair.

Roll Call Yes: Harriman, Frazier, Cave and Larson

Roll Call No:

Roll Call Abstain:

Motion Carried

Board Member Cave moved and Board Member Larson seconded to appoint Board Member Harriman as Vice Chair.

Roll Call Yes: Harriman, Frazier, Larson and Cave

Roll Call No:

Roll Call Abstain:

Motion Carried

IV. UNSCHEDULED CITIZENS -There were no unscheduled citizens.

V. BOARD COMMENTS- None

VI. STAFF COMMENTS

Director Westbay updated the Board and stated that staff has been working on the FY2017 budget and capital planning. The new City Manager will also start the end of August.

VII. ADJOURN

The meeting was adjourned at approximately 8 p.m.

Marla Larson, Chair

Attest:

Andie Ruggera, Secretary