

**New Castle Town Council Regular Virtual Meeting
Tuesday, April 06, 2021, 7:00 PM**

Due to concerns related to COVID-19, this meeting will be open to the public as a virtual meeting only.

**To join by computer, smart phone or tablet:
<https://us02web.zoom.us/j/7096588400>**

**If you prefer to telephone in:
Please call: 1-346-248-7799
Meeting ID: 709 658 8400**

Follow the prompts as directed. Be sure to set your phone to mute until called on.

Call to Order

Mayor A Riddile called the meeting to order at 7:01 p.m.

Pledge of Allegiance

Roll Call

Present	Councilor Hazelton Mayor A Riddile Councilor Leland Councilor G Riddile Councilor Owens Councilor Copeland Councilor Mariscal
Absent	None

Also present at the meeting were Town Administrator Dave Reynolds, Town Clerk Melody Harrison, Town Planner Paul Smith, Town Treasurer Loni Burk, Town Attorney David McConaughy and members of the public.

Meeting Notice

Town Clerk Melody Harrison verified that her office gave notice of the meeting in accordance with Resolution TC 2021-1.

Conflicts of Interest

There were no conflicts of interest.

Agenda Changes

There were no agenda changes.

Citizen Comments on Items not on the Agenda

There were no citizen comments.

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Consultant Reports

Consultant Attorney – Town Attorney David McConaughy told the council that he was present for agenda items. He also said that he was scheduled for his second COVID immunization so would likely be attending a town council meeting in person soon.
Consultant Engineer – not present.

Items for Consideration

Recess the Town Council Meeting, Convene as the Board of Zoning Adjustment

MOTION: Mayor A Riddile made a motion to recess the town council meeting and to convene as the board of zoning adjustment. Councilor Mariscal seconded the motion and it passed unanimously.

Mayor A Riddile opened the public hearing at 7:02 p.m.

Consider Resolution BOZA 2021-1 - Approving a Variance for Property Located at 156 N 3rd Street in the R-1 Zone District

Town Planner Paul Smith told the board that the applicant was Mr. Richard Acerra of Basalt. He said that Mr. Acerra was hoping to build a new home with an additional dwelling unit on a lot in town, but that the lot was unique in that it was just over 2,600 square feet.

Planner Smith screen shared photos of the original home that had been torn down and said that Mr. Acerra wanted to rebuild on the remaining foundation, and was asking for three variances in the application.

Planner Smith reviewed the following staff report for the board.

Board of Adjustment - Hearing Tuesday, April 6th, 2021

Resolution BZ2021-01

Staff Report

Name of Applicant	Richard Acerra
Mailing Address	110 Harris St., Unit 102, Basalt, CO 81621
Property Address	156 N 3 rd St., New Castle, CO 81647
Name of Property Owner	Richard Acerra
Existing Zoning	Residential (R-1), New Castle Original Townsite
Surrounding Zoning	R-1
Surrounding Land Uses	Single Family Residential

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Existing use of property	Single Family Residential
Proposed use of property	Single Family Residential + ADU
Lot size	0.06ac or 2,625sf

1) **Background & Reasons for Variance:**

The applicant requests **three** variances to the R-1 zoning requirements to accommodate the construction of a new single-family home and a below ground accessory dwelling unit (ADU):

- **Variance 1:** encroachment into north & south side setbacks;
- **Variance 2:** a reduction of the R-1 floor-area-ratio (FAR) limits;
- **Variance 3:** an exemption to the minimum lot size requirement for ADUs.

The property is bordered by single family homes to the north & south, 3rd Street to the west, and a 15' alleyway to the east. Due to its deteriorating state, the original 676sf home, built in 1955, was recently demolished to the foundation in order to accommodate a new structure.

Variance 1

Currently the zoning provisions for R-1 require eight foot side setbacks for new structures. The former home foundation exceeded this requirement by several feet. Pursuant to municipal code section 17.20.120, given that the original structure remained without expansion or change, the nonconforming state could persist. However, *"such uses and/or conditions shall not be continued without conforming to the provisions of this code when...a nonconforming structure is dismantled, removed, demolished or condemned"* (17.20.120.A & 17.88.020). As a result of the demolition and removal of the original structure, conformance with the current setback requirements became necessary.

Conformance, however, poses challenges with the building envelop. The lot measures approximately 24' feet in width. Less the two 8' setbacks means the width of a new structure would be limited to 8'. Though property setbacks serve an essential land use function, in this case conformance would result in an unbuildable lot. Instead, the applicant claims that a contemporary home, meeting all the current building codes, could be erected if the structure were approved to encroach.

Variance 2

Additionally, the applicant requests that the overall floor area be allowed to exceed the 43% R-1 floor-area-ratio (FAR) specified in section 17.20.080. The FAR "means the total enclosed gross [above grade] floor area of all buildings or structures on a zoning lot divided by the area of said lot" (17.04.050). The objective is to limit disproportionately large structures on smaller lots. A 43% FAR on the current lot translates to a maximum 1,129sf home. The applicant proposes an above ground area of 1,501sf or a 57% FAR. The variance request is therefore to exceed the code by 14% FAR or 372sf.

Variance 3

Finally, section 17.72.230.C of the town code prohibits ADUs on lots smaller than 5,000sf. The current lot measures 2,625sf. Because the ADU is proposed to be entirely underground the applicant maintains that the lot size requirement is generally immaterial for his purposes. The minutes to the approving ordinance for ADUs (TC2003-16) evidence a concern by the Planning Commission and

Council for limiting a structure's "footprint" on a lot and thereby curbing excessive building density. The lot size requirement was therefore restricted to a minimum 5,000sf and maximum ADU area of 850sf. Again, because the lot size requirement targets lot coverage, the applicant maintains that the ordinance is not applicable in this situation.

2) Decision Criteria:

17.12.020 - Board of Adjustment. The Board shall hear and decide all matters referred to it and the following matters as required under this Title:

- A. Hear and decide applications for variances where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Title. The Board has the power to vary or modify the application of the regulations or provisions of this Title relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of this Title is observed, public safety and welfare secured in substantial justice done, provided the Board finds that the following criteria, in so far as applicable, have been satisfied:
 - 1. That there are unique physical circumstances or conditions, such as a regularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;
 - 2. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this Title;
 - 3. That such unnecessary hardship has not been created by the applicant;
 - 4. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property;
 - 5. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of this Title's provisions that are in question.
- B. Where feasible, the Board may vary or modify the application of this Title for the purpose of considering access to sunlight for sewer energy devices.
- C. Hear and decide the proper application of unlisted uses or combination of uses to a use group as provided in Chapters 17.16 through 17.68.
- D. Hear and decide the proper off-street parking requirements as provided in Chapter 17.76.
- E. Hear and decide such other matters as the Town Council may by ordinance provide.

3) Findings and Staff Comments:

- 1. *That there are unique physical circumstances or conditions, such as irregularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;***

Staff Comment – Variance 1 - The applicant elected to demolish the existing structure due to its deteriorating condition. Starting-over made more economical and logical sense than trying to update the original building. The decision however, triggered the 8' setback requirement resulting in an exceptionally narrow building envelope. Compliance with the current provisions of the code would make building infeasible. **Variance 2** – Nothing apparent with the physical circumstances or conditions of the property would demand that a 57% FAR is necessary. A

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structure with less bulk would meet all code requirements, enhance the quality of life, meet the aesthetic standards of the downtown core, and still provide a reasonable size home. **Variance 3** – Because the code appears to target lot coverage of above ground structures, the minimum lot size requirement for ADUs is difficult to apply in this context.

2. *That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this Title;*

Staff Comment – Variance 1 - As a result of the narrowness of the building envelope compliance with the current provisions of the code make residential development infeasible.

Variance 2 – a modest residential build could be achieved at the 43% FAR (1,129sf) level. Similar size structures exist on equivalent lots within the downtown. This property could be reasonably developed at a smaller scale than proposed. However, a creative possibility for additional square footage may still be an asset for the community. **Variance 3** – Granting variance 1, a reasonably sized home could be constructed without a bonus ADU. Nevertheless, because of its below ground style, the proposed ADU may be exempt from consideration of the above criterion.

3. *That such unnecessary hardship has not been created by the applicant;*

Staff Comment – Variance 1 – the combination of the existing lot size and the current setback requirements are the locus of the hardship to the applicant. Redeveloping the property in a way that is commensurate with surrounding homes will not be possible for any owner without a concession with the setbacks. **Variance 2** – Exceeding the FAR requirements for the R-1 zoning is unnecessary for a residential dwelling to be constructed. **Variance 3** – See earlier comments.

4. *That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property;*

Staff Comment – Variance 1 – Because the new home will be placed on the existing foundation – ostensibly replacing what was there – the structure should not alter the essential character of the surrounding neighborhood. **Variance 2** – FAR requirements essentially limit building bulk. Unless the applicant can demonstrate otherwise, the new building may appear blocky and imposing to surrounding structures. There is additional concern that an overall three-bedroom count would impact on-street parking to a greater degree than a two-bedroom. One parking place is reserved for the proposed ADU. This leaves a single parking place for a dwelling that in most circumstances would have a two-car garage. **Variance 3** – Since the ADU will not be visible above ground there should be no substantial visual impacts. However, the ADU will add to density and will likely influence traffic flow in the alleyway.

5. *That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of this Title's provisions that are in question.*

Staff Comment – Variance 1 – the encroachment request is about as narrow as possible for development to be feasible. **Variance 2** – As discussed previously, the FAR may be minimized further to meet the requirements of the code. **Variance 3** – Omitting the ADU would provide the least design modification possible while still allowing a SF home on the property. Conversely, if an ADU were granted, the proposed design would certainly be the least impactful.

4) Staff Recommendations:

Staff asks that the Board to consider the following conditions in their decision on **Resolution BZ2021-01**:

1. The applicant shall comply with all applicable building, residential, electrical, and municipal code requirements including all sign code regulations.
2. The alleyway may not be used for storage or staging of building related waste or materials. As a public right-of-way, the alleyway must remain unobstructed for egress.
3. Excavations in the right-of-way shall require approval through the Public Works Department.
4. Prior to permit, demonstrate that all exterior illumination shall comply with acceptable International Dark-sky Association (IDA) standards.
5. All representations for the Applicant contained in the Application or otherwise stated in writing or presented verbally at the public hearing before the Board of Adjustment shall be considered part of the Application and binding on the Applicant.
6. The Applicant shall reimburse the Town for all expenses incurred by the Town regarding this approval, including, without limitation, all costs incurred by the Town's outside consultants such as legal and engineering costs.
7. Violation of any of the above conditions shall be cause for revocation of the variance.

Mayor A Riddile asked Mr. Acerra if he had any comments.

Mr. Acerra greeted the council. He said that the first item he wanted to address was the parking. Mr. Acerra said that he intended to clean and maintain the right-of-way alley, which he understood the town did not maintain. He said that he would have parking in the rear portion of the lot which meant that the basement dwelling unit would be reinforced and constructed at one end to support two vehicles. He said that the alleyway and into the lot would be access for a medium and small-sized car. He felt that addressed the required parking spaces.

Regarding the ratio to floor plan, he said the front of the home would be moved back off the street, and the roof would be built to match most other structures on the street with an 'A' roof up top and then a porch roof. Mr. Acerra said that to keep the aesthetics the same as the rest of the street, he would overhang the second floor and third bedroom over the backyard, which would keep yard space from being lost. He said that once it was excavated and the parking installed, it would be filled back in as a green roof, and the second-floor overhand would act as an awning.

Mr. Acerra said that the site was difficult to develop and that when he bought it he thought he could salvage it but the foundation was never structural and had settled over time. He said that when the walls were opened, the wiring was from the 1800's. Mr. Acerra said there were too many things about the house that made it not feasible to rehab it. Mr. Acerra said that he was under the impression that as long as he kept the foundation footprint that he would be able to rebuild on that footprint without any problem. He said he learned otherwise when he began working with Planner Smith and then understood that he had removed enough of the house to be considered (Mr. Acerra gestures). Mr. Acerra said that the foundation would be seated and a structural beam that sat on concrete pillars would be added around the existing foundation and fix eight spots

that would support the weight of the new floor and second floor. It would be backfilled and sealed for air and moisture and frostline.

Planner Smith said that staff had worked extensively with Mr. Acerra to ensure that everything was code-compliant so there were no concerns regarding safety, egress, or adequate access for emergency personnel with the way it was designed.

Public Comments

Mike and Jacqueline Dority, 126 N. 3rd Street.

Mr. Dority said, with respect to the contractor, that it was too bad that he bought a lot that was unbuildable. He felt that the contractor should have done more planning before tearing down a house that he might have been able to remodel. Mr. Dority said he had no idea of the previous condition of the house, but it fit the mood of the neighborhood of small, mostly older miner shacks that had been brought up to modern specs. Mr. Dority said that with current ordinances the house would be eight (8) feet wide as stated by Planner Smith. Mr. Dority felt that if the contractor had checked with the town, he would have known that there would be no profit in it other than flipping a small house.

Mr. Dority said that he thought it ironic that there would be a picture shown that showed the maximum parking in front of the house of one car and one truck. He felt that a normal family of three would have at least two vehicles. Mr. Dority said that the contractor was proposing to use a non-existent alley, that was unusable because a neighbor from the next street was constantly blocking the alley. Mr. Dority felt that the parking in back should be eliminated unless it was for long-term storage. Mr. Dority also voiced concern that the neighboring house would be completely overwhelmed by the size of the proposed home, and it would block all sunlight. Mr. Dority also felt that the underground apartment was not desirable, and that the contractor had done more damage by tearing the original house down than was recoverable. Mr. Dority said that he thought that the best plan was for the lot to be sold and for the loss to be claimed on income taxes. He said he was not trying to be insulting, but the contractor did not do any planning and did not realize what he was doing. Alternatively, he said perhaps the contractor did know what he was doing and was trying to pull a fast one on New Castle.

Mrs. Dority said that she thought the proposal would change the great feel of New Castle which is such a quaint town, and 3rd Street was also quaint. Mrs. Dority said she was also concerned about the parking. She said she was concerned about how many people might live in the home.

Steve Vasilakis, 131 N 3rd Street. Mr. Vasilakis said that he had been on town council at the time Castle Valley Ranch was coming in and there had been a lot of education on planning and how to do things right, and he felt he had some background on it. He said he had a personal interest because it affected the neighborhood. Mr. Vasilakis said that the neighborhood was mostly home-owner occupied and was two communities in one: the upper end of the block and the lower end of the block and some cross-connections in between. He said the proposed house was at the transition of the two neighborhoods, so it had some importance. He felt that the proposed home did not fit into that.

Mr. Vasilakis thanked the board for the opportunity to speak to them and said that he had gotten a copy of the proposal from the town. He complimented Planner Smith on a thorough staff report. In regard to criteria #3, "That such unnecessary hardship has not been created by the applicant" Mr. Vasilakis felt that the applicant made a conscious choice to do what he did. He said he had been watching projects in the neighborhood, and on another

25-foot wide lot the owner had stripped everything back to the studs and roof, and then was compliant with the laws. That home was rebuilt and was quite livable.

Mr. Vasilakis said that with (Mr. Acerra's) house, when the first construction began, it appeared the same thing was happening, but then after several times starting and stopping construction, the house was taken down to the ground. That was the contractor's choice. Mr. Vasilakis said that as a contractor, he should have known the circumstances when he tore the house down. Regarding parking, he said that at one point he had four vehicles at his home and had made some improvements to the alley, and then created a parking space behind his house, which he maintained. Unfortunately, a large four-wheel drive SUV rutted the alley quite badly and caused issues because that alley is not structural. Mr. Vasilakis said that he shoveled the alley himself for the many years he used it. Mr. Vasilakis said that it was a tough turn to get into a parking space from the narrow alleys, and Mr. Acerra's property was much further up the alley than his home was. He felt that it was impractical to provide parking for the ADU in the rear, particularly since the alley was not structural because a great portion of the alley would need to be improved. Mr. Vasilakis said that parking in the downtown was almost always problematic and was worse in the evenings because of the parking for restaurants and more so during special events such as Burning Mountain Festival. Mr. Vasilakis felt that a three-bedroom house plus an underground ADU was too much for the lot. Mr. Vasilakis said that the proposed structure would be nothing more than a box with a bunker behind it and he felt that it would not fit the neighborhood.

Wesley Toews, 186 N. 3rd Street. Mr. Toews said that he lived at the top of third, and he asked if the neighbor immediately adjacent to the subject property had been contacted because he said he had not received notice and he found out about the meeting from the neighbors. Mr. Toews said that he had used the alley twice to move things to his home at the top of the street and it was his opinion that the alley was not useable. Perhaps for a compact car, but not a pickup truck. It was very complicated because larger vehicles had to utilize the covered parking for the apartments to maneuver in the alley.

Sean Jones, 141 N. 3rd Street. Mr. Jones said that anything he had to say had already been covered. He thanked the board.

Jenn Dority, 136 N. 3rd Street. Ms. Dority said that her home was 850 square feet, and she said she was probably an exception in that there was only one vehicle at her home. She said that when she had guests they had to park up or down the street because parking was an issue. Ms. Dority asked if the existing foundation would stay or if it would be altered and would there be a noise ordinance so that they did not have to listen to a jackhammer at 7:30 on the morning. Ms. Dority said there would be three bedrooms and she wanted to know if the home would be owner-occupied or would it become a rental. Her concern was that with four bedrooms there was potential for eight occupants in the home. She said that everyone who owned a home there had a vested interest in what happened on the subject property. Ms. Dority said that the vehicle ration was typically one-to-one, vehicles to bedrooms not to mention that people would have other equipment such as skis, kayaks, motorcycles and there would be no place for that stuff. Ms. Dority said that alley access was laughable because there was a power pole blocking the alley, in addition there was a gas main there that had already been hit by the neighbor who consistently blocked the alley. Ms. Dority said that parking was a growing issue everywhere, not just on 3rd Street. Ms. Dority asked if there would be a maximum occupant or vehicle clause if the residence became a rental. She asked how the fire department would access the property if there was an emergency. She said that the lot

was made for a cabin, not a large home that looked like a double-stacked container that did not fit. She asked that the residents depended on (BOZA) meetings because there was no HOA in the downtown that made rules. Ms. Dority said that if the proposal was allowed it could not be undone. She asked what would happen to the alley in the winter when there was snow or mud. Ms. Dority said the proposal did not match the community. Regarding the alley, she said that a dumpster had been taken up there and they chose to hack her apricot tree to get the dumpster through and no one asked her or apologized. She said she just found the branches leaning up against her fence. Ms. Dority stated that a friend of hers had battled the town for eighteen months to get an existing ADU into a livable ADU. Ms. Dority said that the ADU with alley access was laughable at best. Andrew Gallegos, 116 N. 3rd Street. Mr. Gallegos said that he was the first home on the street and it was his home/garage that traffic would have to get around to drive up the alley. He said that his garage had been hit seven times by people trying to get up the alley and one a truck had to be stopped from going up the alley because it was too long. He noted that the alley was narrow at about fifteen (15) feet wide and was lined with trees and fences and was not really accessible and meant only for temporary use. The alley would not function for everyday use. Mr. Gallegos said that the aesthetics did not match the community feel of smaller houses, and the residents wanted to keep that feel. He felt that the height was more like something you might see in Willits in Basalt, not downtown New Castle. He felt a smaller cabin would fit better. Jeffrey Chmay, 166 N. 3rd Street. Mr. Chmay, immediately north of the subject property. He said that Mr. Acerra had been very respectful in communicating to him and his fiancée. He said that in reviewing the proposed plans he was concerned about how the building would block sunlight from reaching his property because they had invested a lot of money in the yard, garden and trees.

Mayor A Riddle closed the public hearing at 7:53 p.m.

Town Attorney David McConaughy clarified the public hearing process for the board. Mayor A Riddle re-opened the public hearing at 7:53 p.m.

Mayor A Riddle invited Mr. Acerra to comment.

Mr. Acerra said that he thought the town encouraged off-street parking, and for the alley to be used for off-street parking. He felt that there was plenty of room for vehicles to access the alley and in fact had driven his Chevy Tahoe there. He stated again that there was plenty of room to get past the neighbor's garage. Mr. Acerra said that his interpretation was that the town was asking people to use the alley. Mr. Acerra said that he did not have a contractor's license, he said he has a specialty roofing license. He said he was not a contractor and was not building the home for profit or to flip. He said he would pull the permits and under Colorado Law he could build the home as the property owner. Mr. Acerra said that regarding the height and size, the original proposal was a flat-roof plan to lower the overall height, but the town does not allow flat roofs. He said that he was trying to do a small porch in front to match some of the other homes on the street, and code was 32 feet. Mr. Acerra said that he understood everyone's opinion and he wanted it to be understood that he was not a contractor and it was not a for-profit house. It was a dwelling and he was one person. He said there were plans to expand and grow. Mr. Acerra said that if he was to rent any of the house it would be the ADU in the

rear and that would be a structure for one person because it was a studio without a bedroom. The kitchen would not be a full kitchen because there would be no oven. Mr. Acerra said that eventually, everyone sold their home, and the purpose the three bedrooms was to attract a younger family. He said hanging the second floor out over the property was to not use up the land ratio to the house.

Planner Smith said that it was true that the code did encourage parking in the rear, but the fifteen feet was challenging. He also said that Mr. Acerra was not required to have a contractor's license with the town, but his contractors were. Planner Smith said that the foundation was already designed by an engineer and will exist on the existing footprint. Regarding the noise ordinance, that was regulated by state statute and would be regulated as such under the permit from the town. Planner Smith said the egress was provided for all bedrooms. Planner Smith further stated that Mr. Acerra had done everything he could to try to make the proposal work.

Councilor G Riddile asked if staff had looked at the alley and what the opinion was. Planner Smith said that the alley was only fifteen feet wide and there were some obstacles. He said that other fifteen-foot alleys in the downtown were used regularly, but that he would have to take the residents' word for it about what the challenges were as well as Mr. Acerra's as to whether or not it was accessible. He said that if people were parking back there that could be remedied by other mean, by the town code. Councilor G Riddile said that in general he felt that using the alley was a good idea, but the application indicated the alley would be used year-round. He asked what Planner Smith thought.

Planner Smith said he did not think a large pickup truck would be able to access the alley, but smaller vehicles could get in there reasonably. He said if there was snow piled up that could be an issue unless the occupants were willing to move the snow.

Councilor Owens said that he understood there was no HOA, so the town was serving in that capacity. Planner Smith said there was no design criteria and what was shown in the elevation drawings met the code, and in particular, the height met the code. He agreed that the proposal was taller than what was there before, but it met the code.

Attorney McConaughy said that regarding the aesthetic impacts, the only thing before the board were the three variances, so they were not discussing whether the roof was pretty or not, but whether granting the variance would alter the character of the neighborhood or not.

Councilor Owens said that the neighbors had made a lot of comment about aesthetics and he had wanted to know how much of that came into play regarding the board's decision. He said that he now understood that the board was only considering the three variances, not aesthetics. Attorney McConaughy said only to the extent that the three variances would impact that.

Councilor Owens addressed Mr. Acerra and said that when he had purchased the lot and then chose to demolish the home, it then triggered the need to abide by current codes. Mr. Acerra said that initially he had intended to remodel the house but the entire back porch was not on a foundation and had to be removed. Inside he said he tried to level the floors but the home's foundation was only 24 inches, he felt that the foundation was still in a settling mode. He said if they had kept the original home, the odds were that it would continue to settle, and any improvements would be ruined. Mr. Acerra said that the roof

was not structurally sound because it was built with 2x4s. He said that everything he attempted to repair had led to more issues.

Attorney McConaughy said that as a pre-existing, non-conforming use, theoretically he could build an exact replica of what had been there previously without needing the variances, including the setback encroachments. He clarified that was not what the board was currently considering.

Councilor Leland said that he was struggling with criteria #4 that said "...will not alter the essential character of the neighborhood ...". He said that criteria was quite subjective and he asked Attorney McConaughy if it had any legal meaning. Attorney McConaughy said that it was up to the board to make a subjective determination based on the record as long it had a rational basis.

Councilor Owens asked Mr. Acerra why the board should make an exception to grant the variance for the floor area ratio, which was proposed at 57% as compared to the allowable 43%.

Mr. Acerra said that he was required to have a front door at the front of the house, therefore could not have a side door with a bedroom up front. The bedroom was then relocated upstairs.

Councilor Owens said that the big issue with variance #3 was the density and the lack of parking but asked if the ADU was subject to above-ground rules because it was below ground. Administrator Reynolds said it was not subject to above-ground rules, however the variance was necessary because ADUs were not allowed on such a small piece of property, so the variance was to allow an ADU on a property significantly smaller than what the code allowed.

Councilor Owens asked if the board approved all three variances, was precedent being set for everything going forward. Administrator Reynolds said it was a good question and that it could certainly be viewed that way. Attorney McConaughy said that the board needed to view the application on its own merit but agreed that if ten such applications were approved and the eleventh denied, it could be a problem.

Councilor G Riddile asked what the justification was for variance #3, saying that regardless of the fact that it was underground there would still be impacts other than visual. Planner Smith said that he had studied the approval ordinance for the ADU provision in the code and it leaned toward the aesthetic look such as bulkiness and how many structures were on the lot that were visible. The fact that the proposed ADU was underground made it somewhat of an exception because it was not visible. Planner Smith said that traffic was an impact. Councilor G Riddile clarified that the off-street parking requirement for the main unit had been met, and the two spaces behind met the requirement for the ADU. Councilor Leland and Planner Smith both said that only two off-street spaces were needed for the main unit and the ADU combined, so the off-street parking requirement had been met.

Mayor A Riddile closed the public hearing at 8:12 p.m.

The board discussed the application.

Mr. Acerra offered that he had a contingency plan to remove one of the bedrooms on the second floor to be able to stay within the 43% floor area ratio requirement of the code. He added that if they removed the third bedroom upstairs, he said they will request to keep the ADU but turn that into two additional bedrooms for the home.

After additional discussion, Mayor A Riddile asked Attorney McConaughy for direction on how they should proceed.

Attorney McConaughy told the board that two of them were alternates and would not be voting but they could discuss the application and express their opinions. He asked Clerk Harrison to clarify the members. Clerk Harrison told the board that Councilors Owens and Copeland were alternates, and the remaining members were voting members.

MOTION: Councilor Leland made a motion to approve Resolution BOZA 2021-1, a Resolution of the Board of Zoning Adjustment of the Town of New Castle Approving a Variance Application for Property Located at 156 N 3rd Street in the R-1 Zone District, Excluding Section 2.A and Section 2.C. Councilor Hazelton seconded the motion.

Discussion: Attorney McConaughy clarified that the motion was to approve only Section 2.B, the variance for setback only. The board agreed.

The motion failed on a roll call vote: Councilor G Riddile: no; Mayor A Riddile: no; Councilor Hazelton: yes; Councilor Leland: yes; Councilor Mariscal: no.

The board discussed the result of the vote.

Attorney McConaughy told the board that they could make another motion with other exceptions if they wished. They could also make a motion to reconsider the earlier vote.

The board discussed the application further.

MOTION: Councilor Hazelton made a motion to reconsider the vote. Councilor Mariscal seconded the motion.

Discussion: Councilor Leland said that he had voted yes on the assumption of where the other members were going, and said he would vote no because he felt that B and C were acceptable. Mayor A Riddile said that he was opposed to C. Councilors Leland and Hazelton clarified that the motion was to approve variance 2.B only which was for the setbacks.

The motion passed on a second roll-call vote: Councilor Leland: no; Councilor Hazleton: yes; Councilor G Riddile: no; Mayor A Riddile: yes; Councilor Mariscal: yes.

Mr. Acerra said that he was confused by the vote and asked why they did not simply vote on A, B and C separately. He felt that the motions were confusing because there was one to approve just B then one for B and C. He asked if he could get a copy of the meeting transcript to make sure that there had not been a procedural error. Clerk Harrison said yes.

Councilor Leland told Mr. Acerra that part of the confusion was that the variances showed up in the staff report in a certain order and in the resolution in a different order.

Mr. Acerra asked if he could take a consensus. Attorney McConaughy said that no, he could not, and said that there had not been a procedural error.

Attorney McConaughy further explained that there had not been a motion to approve the resolution with B and C, that the motion had been to approve the resolution with B only (setbacks), which failed. Then that vote was reconsidered because someone changed their mind, which was allowable under Robert's Rules. The motion then passed under reconsideration.

Mr. Acerra clarified that his application had been approved to B only, and that A and C had been denied. Attorney McConaughy and the board confirmed that the resolution had been approved with B only.

Mayor A Riddile apologized for the confusion. Mr. Acerra asked if the meeting was then concluded, and if he would receive a copy of the decision. Attorney McConaughy said yes, the meeting was done, and that he and Clerk Harrison would fix the resolution to conform with the board decision, and Mr. Acerra would receive a copy.

Adjourn the Board of Zoning Adjustment, Reconvene the Town Council Meeting
MOTION: Mayor A Riddile made a motion to adjourn the board of zoning adjustment and to reconvene the town council meeting. Councilor Hazelton seconded the motion and it passed unanimously.

Planning Department Update

Planner Smith gave the council an update on what had been going on in building and planning. That included:

- A potential sketch plan application for three parcels in Lakota Canyon Ranch.
- Jody Maloley continued to build homes along S. Wildhorse Drive. He said that she would likely be building into 2022.
- Home building continued in Lakota at a slow but steady pace.
- One vacant lot in Alder Ridge would likely be built in the summer.
- Filing 11 in Castle Valley Ranch had been approved for preliminary but the final application had yet to be submitted.
- Filing 12 in Castle Valley Ranch had completed a pre-application meeting.
- There will be a coffee shop/fly shop in the Trimble Building as well as Defiance Cyclery.
- Western Slope Pilates will open in one of the Balcomb units in the City Market Plaza.
- Rocky Gabossi had opened storage units near where Mr. T's had been.
- A Physical Therapy office has opened where New Castle Fitness had been.
- The Lookout restaurant has opened in the clubhouse in Lakota, and the Lakota Recreation Center will reopen their restaurant in the summer.
- The old schoolhouse on Main Street will be leased by The Ambleside School.

Discussion: American Rescue Plan Act of 2021

Town Council Meeting
Tuesday, April 6, 2021

Administrator Reynolds told the council that staff was tracking the American Rescue Plan Act Plan that had been approved in March by the federal government. He said that it was a 1.9 trillion aid package as part of COVID stimulus and staff was trying to understand what it meant for the community.

Administrator Reynolds provided a power point presentation that detailed the plan as it may apply to the town. New Castle stood to receive about 1.12 million dollars from the Act and Administrator Reynolds listed some of the ways in which the town could use those funds before the deadline of 2024.

Discussion: Congressional Earmarks

Administrator Reynolds described what earmarks had looked like prior to them being outlawed in 2011. An earmark program was being reintroduced in a more structured manner than before. The senate had yet to approve it and the house was also considering it. The appropriations committee needed to have their numbers in by the end of April. He said that Representative Bobert was against earmarks, and it appeared that Colorado's two senators were not in favor.

Administrator Reynolds said that it was important that staff made council aware of the program in the event it was something they wanted to consider, but they did not need to make any immediate decisions. He felt they would hear about neighboring communities that were creating earmark application processes, although there were currently no rules for the program.

The council thought that perhaps the LoVa Trail might qualify for the earmark program and they briefly discussed that it may not be prudent to jump on board until there were finalized rules.

Consent Agenda

March 2, 2021 minutes

March 16, 2021 minutes

March Bills of \$404,825.24

Resolution TC 2021-09 - A Resolution of the New Castle Town Council Approving an IGA with Garfield County and Other Municipalities Within the County

MOTION: Mayor A Riddile made a motion to approve the consent agenda.

Councilor Owens seconded the motion and it passed unanimously.

Staff Reports

Town Administrator – Administrator Reynolds said that the survey that Bill Ray created for the town had been distributed and responses were being received. It would also be publicized on the message board in hopes that there would be a lot of good information out of that. Administrator Reynolds said that with summer coming up there would be a lot of people taking vacations. He said that there would be some fairly full council agendas through the summer, and he asked that everyone please let staff know when they might be away so scheduling could be adjusted accordingly. Administrator Reynolds said that at the 2020 fall retreat the council had identified September 25 for the 2021 retreat.

Administrator Reynolds said that staff had heard a bit of concern regarding the overflow parking from Bear Dance Park. He said that the original design of the park included a parking lot, but the residents there said they did not want the park to have a lot, so it was

removed. Now residents on Blackhawk and Whitehorse have concerns about people parking in the neighborhood, but unfortunately public streets were public parking. Administrator Reynolds said staff was looking at adding more signs in the park encouraging people to park in the recreation center lot. Administrator Reynolds said that staff felt that there might be some space available along Castle Valley Boulevard for parking by widening the shoulder on the north side of the street. He asked the council for their opinion about that. Councilor G Riddile said that he felt it was not a good idea to put parking along Castle Valley Boulevard saying that the roadway was meant to move traffic. With a potential of 500-plus more units being built, Castle Valley Boulevard's purpose of moving traffic needed to be protected. After a brief conversation it was decided that staff would simply provide some public education about where to park and see if that helped reduce parking stresses in the neighborhood. Administrator Reynolds said that there was a potential buyer for the Mr. T's building across the river. And Ace Hardware store had been looking at the building and staff had been working with them. He said they had asked if the town had any incentives. Administrator Reynolds apologized to the council for the last-minute discussion but asked for the council's feedback regarding the ideas that the Ace people had suggested. Those included sales tax relief, property tax relief, personal property tax relief, sign requirement concessions and perhaps some directional signs to direct people to them. The council decided that staff could let the Ace people know that the town was certainly willing to explore potential incentives. Administrator Reynolds said that Valley View Hospital was going to begin ramping up their vaccination clinics, and staff will likely put together some volunteer teams to assist with the process. He said that if anyone was interested in volunteering, to please let him know.

Administrator Reynolds told the council that there had been some on-going issues with e-mail hackers recently, and Water Treatment Operator Kim Rider's e-mail had been hacked. He said that this was something happening all over with other operators. The issue was that water plants were heavily protected and there would be federal investigation into the hacking of water operator's e-mails. He said that any suspicious e-mail the council members received should be disregarded.

Town Clerk – Clerk Harrison said she had spoken to ProVelocity who had advised that anyone who opened the attachment in those fake e-mails should have IT look at their computer because the attachments likely carry viruses. Clerk Harrison said she had been busy reviewing applications for the administrative assistant position in the clerk's office, and had conducted two phone interviews earlier in the day. She said that she and Deputy Clerk Mindy Andis had been rethinking the position and feel that it was necessary to expand the level of responsibility it held. Clerk Harrison told the council that the council wanted to invite the Coal Ridge High School Cheer Team to a meeting to honor them again for the state championship wins, but they would be going to national competitions and would not be available until May 18. Clerk Harrison said she had been working on the phone system and computers and e-mail for new employees. Clerk Harrison said that the Colorado Municipal Clerks Association had begun a new online training program. She said she had attended a class that was about minutes, not so much teaching, but a sharing of how different agencies handled minutes. She said that the way the town did minutes, a mix of action and summary, seemed to be the most common method. Clerk Harrison said that she would be on vacation beginning April 22 and returning May 3.

Town Treasurer – Treasurer Burk said that her department had been very busy with the new hires as well. The unemployment fraud issue continued. Treasurer Burk said that she would be coming back to Colorado for a visit beginning May 10 through May 21 and said

she looked forward to seeing everyone.
Town Planner – nothing to report.
Public Works Director – not present.

Commission Reports

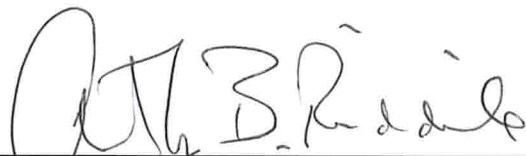
Planning & Zoning Commission – nothing to report.
Historic Preservation Commission – nothing to report.
Climate and Environment Commission – Councilor Leland said that at last meeting they had a productive discussion with Parks Manager Charlie Moore. Some of the commission members would join Manager Moore on April 30 for a tree planting for Arbor Day in Alder Park at 1:00 p.m. Councilor Leland said the GCE had provided door hangers for the Solarize Garfield Program and the CEC members would be walking around town delivering them.
Senior Program – nothing to report.
RFTA – nothing to report.
AGNC – nothing to report.
GCE – nothing to report.
EAB – nothing to report.

Council Comments

Councilor Mariscal said that she had shared the town survey on Facebook and had received three messages from Spanish-speaking residents asking about the parks, as king for photos of them because although they were familiar with the parks, they did not know the names of them, and she said she found that very interesting. She said that she was looking forward to seeing how many Spanish-speaking people responded. Administrator Reynolds said that he thought that had been part of the narrative. Mayor A Riddile said that a map pf the parks could be put on the Visit New Castle page.
Councilor Mariscal said that the State Attorney General was going to be visiting the western slope and she was hoping that she could arrange for him to stop for lunch in New Castle.
Councilor Copeland said that a resident had reached out to her about parking on Lariat Loop and parking for the Colorow trailhead. Apparently there are people parking on private property. Clerk Harrison said she had spoken to the same person and there was a small BLM parking area where three or four cars could park, but adjacent to that was a private driveway where trail-users also parked. Clerk Harrison said the same resident asked if signs could be posted and the call had bee forwarded to Public Works Director John Wenzel and Police Chief Tony Pagni.
Councilor Copeland said that she will miss the July 6 council meeting.
Mayor A Ridile congratulated Administrator Reynolds on his 4th year of employment with the town.
Mayor A Riddile said that the previous Saturday was the kick-off by River Bridge for national child abuse prevention month. He said that he and Councilor Mariscal were in attendance to read off a portion of the more than 300 victims' names from the past year whose ages ranged from less then one year old to 17 years old.
Mayor A Riddile apologized to the council for his confusion during the variance hearing.
MOTION: Mayor A Riddile made a motion to adjourn. Councilor Hazelton seconded the motion and it passed unanimously.

The meeting adjourned at 9:35 p.m.

Respectfully submitted,



Mayor A Riddile


Town Clerk Melody Harrison, CMC