

CITY OF CODY  
PLANNING, ZONING AND ADJUSTMENT BOARD  
TUESDAY SEPTEMBER 28, 2021  
CITY HALL COUNCIL CHAMBERS @ 12:00 NOON

1. Call meeting to order
2. Roll Call, excused members
3. Pledge of Allegiance
4. Approval of Agenda for the September 28, 2021 meeting
5. Approval of Minutes of the August 24, 2021 regular meeting
6. New Business:
  - A. Public Hearing for a Special Exemption to reduce the side yard setback requirement for a carport on the east side of 1732 Alger Avenue.
  - B. Review a Special Exemption request for the setback reduction to zero feet from the east property line for the 48' x 11' carport, at 1732 Alger Avenue.
  - C. Review a fence-height-waiver request for a 6-foot-tall privacy fence in the front yard at 1404 Alger Avenue.
7. P & Z Board Matters (announcements, comments, etc.)
8. Council Update
9. Staff Items
10. Adjourn

The public is invited to attend all Planning, Zoning and Adjustment Board meetings. If you need special accommodations to participate in the meeting, please call the City office at (307) 527-7511 at least 24 hours in advance of the meeting.

**City of Cody**  
**Planning, Zoning, and Adjustment**  
**Board Meeting August 24, 2021**

A meeting of the City of Cody Planning, Zoning and Adjustment Board was held in the City Hall Council Chambers on Tuesday, August 24, 2021 at 12:00 pm.

Present: Richard Jones; Scott Richard; Carson Rowley; Cayde O'Brien; City Deputy Attorney Sandee Kitchen; City Planner Todd Stowell; Council Liaison Andy Quick; Administrative Coordinator Bernie Butler.

Absent: Sandi Fisher; Rodney Laib

Richard Jones called the meeting to order at 12:03 pm, followed by the pledge of allegiance.

Carson Rowley made a motion, seconded by Cayde O'Brien, to approve the agenda and switch the order of items A & B under "New Business". Vote on the motion was unanimous, motion passed.

Carson Rowley made a motion, seconded by Scott Richard to approve the minutes from the August 10, 2021 meeting. Vote on the motion was unanimous, motion passed.

At the August 10, 2021 meeting the Board approved a conditional use permit authorizing a modular accessory dwelling unit located at 2442 Central Avenue. One condition of approval was to provide some architectural enhancement(s), including a 12" eave such as an awning or other features on one side of the building.

The applicant presented a new drawing of the modular home that had a 4-foot roof extension (awning) on the front side of the building, with 4" x 4" or 6" x 6" posts as needed.

The other condition of approval was the building permit for the accessory dwelling unit would need to be obtained within 2 years. The applicant hopes to have it done within one year.

Scott Richard made a motion, seconded by Carson Rowley, to approve the updated modular ADU with recommendations in the staff report. Vote on the motion was unanimous, motion passed.

Todd Stowell reviewed the preliminary plat for the Pederson 2-lot minor subdivision, located at 225 Robert Street. The 1.5-acre lot will be divided into two lots. One lot contains the applicants house and detached garage. The other lot is vacant with utility services on it. The review is based on a single-family home or duplex being installed on the vacant lot.

Subdivision regulations were reviewed, along with variances and conditions of approval.

Applicant Mike Pederson answered questions from the Board. He would like a single-family residence built on the vacant lot. There are no plans to further subdivide the property. Mr. Pederson is willing to install a pathway along the Robert Street frontage of the property. He would like to keep his irrigation water rights with Cody Canal, and will work with them in piping the ditch.

Scott Richard made a motion, seconded by Carson Rowley, to recommend to Council to approve the Pederson 2-lot minor subdivision, with variances 1-4, conditions 1-4, and other findings noted in the staff report. Vote on the motion was unanimous, motion passed.

Richard Jones moved to adjourn the meeting, seconded by Carson Rowley. Vote on the motion was unanimous. Meeting adjourned at 12:54 pm.

*Bernie Butler*

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Bernie Butler, Administrative Coordinator

**CITY OF CODY  
PLANNING, ZONING AND ADJUSTMENT BOARD  
STAFF REPORT**

<b>MEETING DATE:</b>	SEPTEMBER 28, 2021	<b>TYPE OF ACTION NEEDED</b>	
<b>AGENDA ITEM:</b>		P&Z BOARD APPROVAL:	X
<b>SUBJECT:</b>	SPECIAL EXEMPTION PUBLIC HEARING: REDUCE THE SIDE SETBACK REQUIREMENT AT 1732 ALGER AVENUE. SUP 2021-11	RECOMMENDATION TO COUNCIL:	
<b>PREPARED BY:</b>	TODD STOWELL, CITY PLANNER	DISCUSSION ONLY:	

**PROJECT DESCRIPTION & BACKGROUND:**

Scott Emmerich has submitted a special exemption application requesting that the side setback requirement from his east property line be reduced to zero, to allow a 48-foot long by 11-foot wide carport to be located immediately next to the side property line. It is noted that the standard side yard setback requirement in the zoning ordinance is five feet, except three feet is permitted for accessory buildings that meet any applicable fire-resistant construction standards.

The property is located in the R-3 residential zoning district. The carport already exists and was constructed without a building permit. A building permit has since been applied for, and is pending the result of the special exemption request.

The public hearing for the exemption request was advertised as required by mail to neighboring properties within 140 feet on September 7, 2021, and by publication in the newspaper on September 14, 2021.

**REVIEW CRITERIA:**

Pursuant to Section 10-14-2(B)(1) of the City of Cody Code, the Planning and Zoning Board may consider special exemptions to setback requirements.

The standards for approval of a special exemption are as follows, with staff comments provided.



*No special exemption shall be approved unless the planning and zoning board finds:*

- a. *The special exemption will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties;*

Staff Comment: Neighbor response is typically a good measure of whether an undesirable change in the character of the neighborhood would result. Eighteen neighboring property owners were notified of the proposal. As of the time of this staff report, two responses of "no objection", and one "objection" response have been received. All responses are attached. Any additional information presented before or at the meeting will also need to be considered.

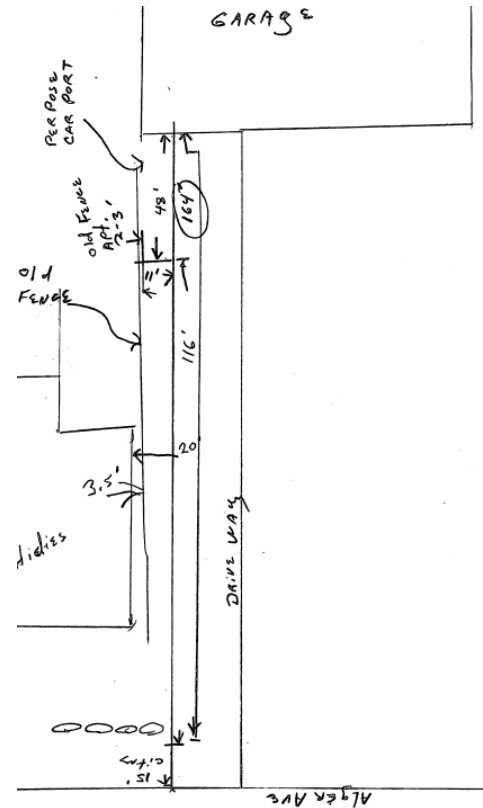
One of the "no objection" responses was with the stipulation that the property owner add a gutter and downspout to collect the roof runoff and keep it off of the neighbor's property. This is a reasonable request and can be included as a condition of approval. It came from the property owner that would be affected by the roof runoff.

Due to the slope of the applicant's property toward the neighbor, it will be necessary to either install an infiltration system (i.e. infiltration trench) or cut in a swale to control the water from running onto the neighbor's property.

The reason for the one "objection" response was due to the precedent it sets. Staff shares some of that concern.

- b. *The special exemption is designed to be compatible with adjacent land uses and the area or neighborhood;*

Staff Comment: The setback that would be reduced is from a side property line. Benefits of a side setback include that it: provides some level of fire separation between properties, allows room for maintenance without having to utilize a neighbor's property, provides room to accommodate drainage, and preserves more solar access to neighboring property. As the setback standard would not be met, appropriate mitigation to address these differences can be considered. Neighbor comment can help identify if any mitigation is desired.



- c. The special exemption is the minimum deviation from the specifications of the zoning ordinance necessary and adequate for the proposed activity, structure or use;*

Staff Comment: As the structure is already constructed, and cannot be structurally modified to meet the setback requirement without being completely removed and rebuilt, the extent of the special exemption is necessary if the structure is to remain where it is.

- d. The benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue other than a special exemption;*

Staff Comment: Again, as the structure is already constructed, no other feasible options appear to exist. Either the exemption is granted, or the structure is removed. However, its existence should not be justification alone for granting the special exemption.

- e. Adequate services and infrastructure are or will be available to serve the proposed activity, structure or use;*

Staff Comment: No additional utility services or public infrastructure are proposed or needed.

- f. The special exemption is consistent with the goals, policies and future land use map of the master plan.*

Staff Comment: Language in the master plan related to setbacks is limited. The following principle in the master plan is interpreted to be relevant to setbacks.

*Principle 3.1.b Existing neighborhoods. Protect the existing character in stable residential areas. New residential...development that is not in harmony with the existing or desired future character of these neighborhoods should be discouraged.*

### **ALTERNATIVES:**

Approve, deny, or approve with conditions. The Planning and Zoning Board may impose any reasonable condition(s) or modification(s) pertaining to operational or physical features of a special exemption to ensure conformance with the approval standards.

### **ATTACHMENTS:**

Neighbor comments.

### **RECOMMENDATION:**

That the Board make the following findings:

(Draft, subject to information received at public hearing.)

1. That proper notice of the special exemption public hearing was provided by advertising in the Cody Enterprise and by mail to all property owners within 140 feet at least ten days before the hearing.
2. That the Planning and Zoning Board may grant special exemptions that are reasonable and harmless deviations from the zoning ordinance as determined by the standards outlined in Section 10-14-2, City of Cody Code.
3. That the Planning and Zoning Board has held a public hearing as required and has considered all comments pertaining to the request; and,
4. That the points identified in the staff report and at the Board meeting are adequate to set forth the reasoning why the criteria of 10-14-2(C)(2) are met.

AND,

Approve the setback reduction to zero feet from the east property line for the 48' by 11' carport, subject to the following conditions.

1. Within 60 days, the applicant shall install a system to collect all storm water runoff from the carport and pipe it to a location within the applicant's property, where it will can either infiltrate into the ground or make its way to the street without spilling onto any adjoining private property. The drainage system and flow within the property must be confirmed by observation before a final inspection is signed off. (Note: Installation of an infiltration system or cutting in a swale will be needed to prevent the runoff from flowing onto the neighbor's property. Discuss details of the drainage plan with the Board.)
2. The east "wall" must be left open (without sheathing and siding), unless the entire structure is modified to meet the fire-resistant requirements of the building code.



**Notice to Owners of Neighboring Properties:**

**Please return your comments by Sept. 21, 2021 to:**

Date: September 6, 2021

Cody City Planner

P.O. Box 2200

RE: **SPECIAL EXEMPTION REQUEST**

Cody, WY 82414

Or, send an email to: [todds@cityofcody.com](mailto:todds@cityofcody.com)

**THE CITY OF CODY HAS RECEIVED THE FOLLOWING REQUEST FOR A SPECIAL EXEMPTION.  
YOUR COMMENTS WOULD BE APPRECIATED.**

Applicant Name(s): Scott Emmerich  
Address of Subject Property: 1732 Alger Avenue

Description of Request: Reduce the side yard setback requirement to allow a 48' long and 11' wide carport to be located immediately next to the side property line (a zero-foot setback on the east side of 1732 Alger Avenue). It is noted that the standard side yard setback requirement is 5 feet, except 3 feet is permitted for accessory buildings that meet applicable fire-resistant construction standards. A 0' setback is requested.



**This request will be considered at a public hearing held by the City of Cody Planning & Zoning Board at their regularly scheduled meeting on Tuesday, September 28, 2021 at 12:00 p.m. in the City Hall Council Chambers, at 1338 Rumsey Ave. Anyone is welcome to attend and comment at the public hearing.**

**Response Letter from Owners of Neighboring Properties within 140 Feet of the Subject Property:**  
(Responses may be submitted in any written format. The following form is provided for your convenience.)

Dear Planning and Zoning Board Members:

I am familiar with the proposal by Scott Emmerich for the Special Exemption request described above.

☒ I have NO OBJECTION to the Special Exemption request.

Name Brock & Heidi Rasmussen

Address: 1738 Alger Ave

Comments:

We have spoke w/ Scott about his project. We have no objection as long as he adds gutter & the gutters drain onto his property  
\*\*\*\*\*

☐ I OBJECT to the Special Exemption request:

Name:

Address:

Reason for Objection:

**If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please provide your email address: E-mail address: \_\_\_\_\_**

☒ I have NO OBJECTION to the Special Exemption request.

Name: Shirley Smiley --- Eric Mosen

Address: 1402 17th - PO Box 38 1402 17th St

Comments: I'm happy he wants to improve his lot - NO objections  
Shirley Smiley

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☒ I OBJECT to the Special Exemption request:

Name: Margaret Denver

Address: 1726 Alger Ave Cody

Reason for Objection: I don't like the precedent it sets 5 feet  
is barely enough.

If you would like to receive a copy of the Planning and Zoning Board agenda materials for this request, please provide your email address: E-mail address: jersey-denver@hotmail.com



# CITY OF CODY PLANNING, ZONING AND ADJUSTMENT BOARD STAFF REPORT

<b>MEETING DATE:</b>	SEPTEMBER 28, 2021	<b>TYPE OF ACTION NEEDED</b>	
<b>AGENDA ITEM:</b>		P&Z BOARD APPROVAL:	X
<b>SUBJECT:</b>	REQUEST FOR A 6-FOOT-TALL PRIVACY FENCE IN THE FRONT YARD OF 1404 ALGER AVENUE.	RECOMMENDATION TO COUNCIL:	
<b>PREPARED BY:</b>	TODD STOWELL, CITY PLANNER	DISCUSSION ONLY:	

## **PROJECT DESCRIPTION:**

Chrissy Williams, an occupant of 1404 Alger Avenue, with the permission of the owner Wray Jenson, has submitted a fence-height-waiver request in order to install a 6-foot-tall privacy fence along the front lot line of the property. The City fence requirements limit the height of solid fences to three feet within the front yard setback area (limited to 4' if at least 40% open). The front yard setback area for this property is 15 feet in depth. Although not specifically stated in the application, their intent is to have the 6-foot fence along the east property line as well. That portion of the side fence within 15 feet of the front property line would also require a height waiver.

## **REVIEW PROCEDURE:**

Section 9-4-1(E)(1) of the City of Cody Code states that the Planning and Zoning Board may approve a fence taller than that specified when the additional height will not have any adverse impacts to neighboring properties or the public health and safety.

The review process requires the applicant to notify owners of the adjacent lot(s) of the request and allow them up to ten (10) days to provide comments. The applicants have provided written notice to the owners of the properties to the north, east and west. Property to the south is owned by the City and is not directly affected by the request.

Of the owners that have been notified, none have presented any objection, although one response was



not clear that they understood what was proposed. Staff emailed them for clarification, but as of the time of this staff report have not received a response. If no additional response is received, their 10-day notice period ends Monday, before the meeting. All neighbor comments are attached.

**STAFF ANALYSIS:**

The characteristics of the situation are as follows. Alger Avenue and the public sidewalk change alignments along the front of this property. Note in the photos below that the sidewalk is adjacent to the curb at the west end of the property, and fully detached at the east end. A concrete retaining wall runs along the front property line (actually about 1 foot into the Alger Avenue right of way). The top of the retaining wall is three feet above sidewalk level. The proposal would place a 6-foot-tall cedar fence just behind the top of the retaining wall. That situation would result in the fence extending to a height of 9 feet above the sidewalk, just a foot or two from the edge of the sidewalk at the east property line. At the west property line, the fence would be about 12 feet from the sidewalk.



The review language in the ordinance is that there should be no adverse impacts to neighboring properties or the public health and safety. Due to concerns with winter

icing of the sidewalk due to the fence height and location, staff would propose that the fence be required to be set back somewhat further from the sidewalk. If it were located further from the front property line, the shadow effect from the fence would be reduced, so that the sidewalk could receive more sun and therefore have reduced icing times—increasing safety. It would also provide a more visually open situation, for vehicles backing or driving across the sidewalk and onto Alger Avenue—also increasing safety.

The expectation for the portion the side fence within the front setback is that it will extend only as far as the front fence location, wherever that will be. As such, it will not be the limiting factor in this situation.

Of all the residential properties on Alger Avenue, only one has a 6-foot-tall fence in front of the house, and that fence meets the 15-foot front yard setback requirement, so no height waiver was needed. (One other lot has a 6' side yard fence on the Alger side.) As a general statement, the proposed fence will likely appear out of place, and inconsistent with neighboring properties.

Admittedly staff is not excited about a fence height waiver for this property due to the resulting effects noted above, but as the immediate neighbors apparently do not have any great concern, approval of some form of waiver would be supported. However, to minimize the effects noted above, it is recommended that the fence be set back at least six feet front the front property line. That would provide shading of the sidewalk at an amount equivalent to a 3-foot-tall solid fence, which height would be otherwise permitted.

**ALTERNATIVES:**

Approve or deny the request for a 6-foot-tall privacy fence in the front yard of 1404 Alger Avenue.

**RECOMMENDATION:**

Approve a fence height waiver for a 6-foot-tall privacy fence to be located no closer than six feet from the front property line at 1404 Alger Avenue.

To: City of Cody

I Wray N. Jenson do Authorize  
A PRIVACY FENCE To be built ~~at~~  
AND MAINTAINED AT 1404 ALGER AVE.  
Cody WY.

587-5877

Wray N. Jenson

9-22-21





Todd Stowell <todds@cityofcody.com>

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## Re: Addresses

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Courtney <courtney@hnatt.com>

Fri, Sep 10, 2021 at 11:42 AM

To: chrissy oesterle <chrissy.williams@live.com>, Todds <todds@cityofcody.com>

Hi Chrissy and Todd,

We wanted to let you know that we are fine with the privacy fence being put up on the recessed cement wall as described by Todd. Chrissy, our understanding is that this will be a finished cedar plank fence installed in panels that are 6 feet at maximum height.

Todd and Chrissy, please confirm your receipt of this email.

Thanks and have a nice weekend,  
Courtney

Courtney Hnatt

Planning and Zoning Board,

We own the property at 1408 Alger Avenue and have no objection to the fence height waiver at 1404 Alger Ave. The fence should be an improvement on the front of the property. There are overgrown trees, shrubs, and vines along the front of their property that give them privacy from the street. The wind has knocked down a section of trees.

Don Schoenfelder & Bernie Butler



**CITY OF CODY**  
WYOMING

Todd Stowell <todds@cityofcody.com>

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## 1404 Alger Fence

2 messages

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**Jessica Ivanoff** <jessmallison@gmail.com>  
To: todds@cityofcody.com  
Cc: Matthew Ivanoff <mattcivanoff@gmail.com>

Thu, Sep 16, 2021 at 1:25 PM

Good Afternoon Todd-

Chrissy at 1404 Alger has asked me to email you regarding a proposed fence they want to install on their property located at 1404 Alger Alger. I own the rental property across the street, located at 1401 Alger under JAI Enterprises, LLC.

As long as the said fence 1404 Alger complies with the city planning and zoning ordinances, I have no problem with them erecting it on their property.

Please let me know if you need anything additional from me.

Respectfully,  
Jessica Ivanoff  
970-420-1732

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**Todd Stowell** <todds@cityofcody.com>  
To: Jessica Ivanoff <jessmallison@gmail.com>  
Cc: Matthew Ivanoff <mattcivanoff@gmail.com>

Thu, Sep 16, 2021 at 5:25 PM

Jessica,  
Thanks for the email. Let me confirm that you understand what Chrissy is proposing, so that I interpret your comments correctly.  
The City restricts the height of a fence in the front yard setback area to 3 or 4 feet tall, depending on the style. Taller fences can be permitted if a height waiver is granted. Chrissy has requested a height waiver to construct a 6-foot tall, cedar, privacy fence at her front property line, which is immediately behind the top of the 3-foot tall concrete retaining wall on her property. Please comment based on this information.  
Let me know if you have any questions.  
Thanks,

**Todd Stowell, AICP**  
Community Development Director/City Planner  
City of Cody, Wyoming  
(307) 527-3472  
[www.cityofcody-wy.gov](http://www.cityofcody-wy.gov)

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