

**ZONING BOARD OF ADJUSTMENT
IN AND FOR THE CITY OF LOVELAND, COLORADO**

**Appeal of Hearing Officer's Decision Regarding Variance Application of Brian Trainor for
937 E. 4th St., Loveland, Colorado**

FINDINGS AND DETERMINATION

Regarding: An appeal of the decision of the Zoning Board of Adjustment Hearing Officer regarding the request of Brian Trainor ("Applicant") for a variance for a lesser trail setback for a proposed residential building at 937 E. 4th Street (the "Variance").

The underlying variance request was heard by Zoning Board of Adjustment Hearing Officer Milo Hovland (the "Hearing Officer") on October 7, 2020. The Hearing Officer denied the Applicant's variance request.

The Applicant timely submitted an appeal to the City, and the Director of Development Services found that, pursuant to Section 18.14.05.05.B of the Loveland Municipal Code, the Applicant's appeal met the threshold review necessary to move forward.

The above matter was thereafter heard by the Zoning Board of Adjustment for the City of Loveland on November 16, 2020 at a public hearing.

Appearing at the hearing was the Applicant Brian Trainor, his consultant Luke Burroughs, and Senior Planner Noreen Smyth for the City.

The Zoning Board of Adjustment ("ZBA") considered the presentation by the City and Applicant at the hearing, invited public comment, and reviewed the record on appeal. Pursuant to Section 18.14.05.08, the ZBA finds as follows:

1. That the Applicant Brian Trainor requested from the Zoning Board of Adjustment a variance from the trail setback set forth in the Loveland Municipal Code for construction of a residential structure adjacent to a trail, seeking instead a standard five foot setback from the property line.
2. That proper notice of the public hearing was given by mailing, posting on the subject property and posting on the City's internet site, as required by Loveland Municipal Code Section 18.14.04.02.
3. That the scope of review by the ZBA of the Hearing Officer's decision is limited to the evidence submitted to the Hearing Officer, or in other words, a review of the record submitted.
4. That the Hearing Officer denied the requested variance on the basis that the Applicant had not presented evidence to support the second criteria for the variance as set forth in

Loveland Municipal Code Section 18.17.15.07.B.2 which states: “[t]here are exceptional conditions creating an undue hardship, applicable only to the property involved, or the intended use thereof, which do not generally apply to the other land areas or uses within the same zone.”

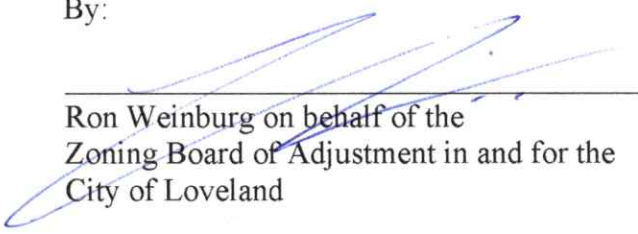
5. That the subject property located at 937 E. 4th Street is located adjacent to the City of Loveland Recreational Trail, which Trail meanders and is not one set distance from the property line.
6. That the meandering nature of the trail adjacent to the property is exceptional to the subject property as within its zone district and creates an undue hardship such that the appropriate setback is varied along the property line and cannot be determined.
7. That the evidence submitted to the Hearing Officer at the underlying variance hearing established all of the criteria set forth in Section 18.17.15.05.B.2 of the Loveland Municipal Code for granting the variance request, and therefore, the Hearing Officer’s decision was incorrect.

NOW THEREFORE, THE ZONING BOARD OF ADJUSTMENT DETERMINES:

That the decision of the Hearing Officer is hereby reversed and the requested variance is approved subject to the condition set forth in Page 11 of the Staff Report submitted to the Hearing Officer on October 7, 2020.

Dated this 2 day of December, 2020.

By:



Ron Weinburg on behalf of the
Zoning Board of Adjustment in and for the
City of Loveland