

RESOLUTION 2020-097
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING REMOTE QUASI-JUDICIAL HEARINGS FOR CERTAIN APPEALS
PURSUANT TO CITY CODE SECTION 2-119(4), TO THE BUILDING REVIEW BOARD
PURSUANT TO ORDINANCE NO. 079, 2020

WHEREAS, in response to the public health emergency resulting from the spread of the Novel Coronavirus 2019 (“COVID-19”), the City Manager proclaimed a local emergency on March 13, 2020, and City Council extended such proclamation with its adoption of Resolution 2020-030; and

WHEREAS, to protect Councilmembers, appointed board and commission members, members of the public, and City staff from COVID-19 while allowing City Council and board and commission meetings to be conducted, City Council authorized remote participation in meetings using remote technology by adopting Emergency Ordinance No. 054, 2020, which was superseded by Ordinance No. 061, 2020, which in turn was superseded by Ordinance No. 079, 2020, adopted on second reading on June 16, 2020; and

WHEREAS, Section 4.B. of Ordinance No. 079, 2020, prohibits certain quasi-judicial hearings from occurring unless, as stated in Section 8, Council adopts a motion by the affirmative vote of five members that authorizes an otherwise prohibited quasi-judicial hearing to occur after finding that (1) the quasi-judicial hearing item is pressing and requires prompt action; and (2) that the remote technology enabling remote participation will provide sufficient public participation and input; and

WHEREAS, the prohibited quasi-judicial hearings listed in Section 4.B. of Ordinance No. 079, 2020 include appeals of any decision as such appeals may be authorized under the City of Fort Collins Municipal Code and Land Use Code, except that variances considered by the Zoning Board of Appeals (“ZBA”) are not prohibited "appeals" subject to this provision.

WHEREAS, Section 8 of Ordinance No. 079, 2020, allows Council to consider exceptions on a case-by-case basis, as follows:

“Section 8. The Council may, by the affirmative vote of five members on a motion, authorize additional types of meetings, hearings or proceedings, or individual matters otherwise not allowed hereunder, to proceed using remote technology, provided the Council determines that the authorized action is pressing and requires prompt action and that the remote technology available for the proceeding will provide sufficient public participation and input called for by the type of meeting, hearing or proceeding or the individual matter, as applicable, in light of the specific circumstances.”

and;

WHEREAS, currently, an appeal of a decision of the Building Official to deny a request to waive the exam requirements for a contractor’s license to Matt Tschetter of Luxury Homes of N. CO (the “Pending Appeal Request”) is pending; and

WHEREAS, like variances heard by the ZBA, “appeals” to the Building Review Board (“BRB”) pursuant to Code Section 2-119(4) are permitted so that the BRB may allow variances to the Code requirements in specific cases; and

WHEREAS, in these specific cases, the BRB may grant a variance if a “peculiar or exceptional hardship” upon the person regulated is found, or the applicant can “demonstrate to the satisfaction of the Board” that they “possess other qualifications not specifically listed in Chapter 15, Article V,”; and

WHEREAS, while termed an “appeal”, what the applicant is requesting in these situations is termed a “variance” that is beyond of the Building Official’s authority to permit; only the BRB can permit these “variances,” from the Code requirements; and

WHEREAS, City Council finds that “appeals” to the BRB arising from City Code Section 2-119(4), including the Pending Appeal Request, require prompt action because they impact the licensure and continued livelihood of licensed contractors regulated by the City and remote technology will permit sufficient public participation to provide due process under the United States and Colorado constitutions; and

WHEREAS, City Council has, after due consideration, determined that all “appeals” to the BRB arising from City Code Section 2-119(4), including the Pending Appeal Request, should be heard using remote technology; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That all “appeals” to the BRB pursuant to Section 2-119(4) that otherwise meet the procedural due process requirements of Ordinance No. 079, 2020 are hereby authorized to be heard by the BRB using remote technology provided that such hearings shall meet the requirements of Ordinance No. 079, 2020.

Section 2. That the Pending Appeal Request is hereby authorized to be heard by the BRB using remote technology, provided that such hearing shall meet the requirements of Ordinance No. 079, 2020.

Section 3. That this Resolution is approved for adoption by the affirmative vote of at least five Councilmembers as required by, and in satisfaction of, Section 8 of Ordinance No. 079, 2020.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 20th day of October, A.D. 2020.



Mayor

ATTEST:



City Clerk/Chief Deputy

