

Posted on May 23, 2023 at: _____



**TOWN OF WIGGINS
BOARD of ADJUSTMENT
MEETING AGENDA**

May 24, 2023 at 6:30 P.M.

**304 CENTRAL AVENUE
WIGGINS, CO 80654**

***NOTE: DUE TO LIMITED SEATING CAPACITY, THE PUBLIC IS HIGHLY
ENCOURAGED TO ATTEND THE MEETING VIA ZOOM***

GO TO <https://us06web.zoom.us/j/89289885942> FOR THE MEETING LINK

MEETING AGENDA

I. INTRODUCTIONS

1. Call the Meeting to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda

II. CONSENT AGENDA

1. Approval of Board of Adjustment Meeting Minutes April 27, 2022

V. CONSIDERATION OF BOA RESOLUTION NO. 01-2023

A Resolution Approving a Fence Variance Request for Mario Saldana for the Property located at 206 N Agate Street

1. BOA Resolution No. 01-2023

XIII. ADJOURNMENT

1. Closing Remarks by Chairperson and Members and Meeting Adjournment



MINUTES OF MEETING
TOWN OF WIGGINS
BOARD OF ADJUSTMENTS MEETING

April 27, 2021 at 6:30 p.m.

CALL TO ORDER & ROLL CALL

A Board of Adjustments meeting for the Town of Wiggins, Colorado was held on Wednesday, April 27, 2022. Chairman Jeffrey Palmer called the meeting to order at 6:33 p.m. The following Members answered roll call: Members: Bruce Miller, David Herbstman, Mark Strickland, Chad Forbes, Jerry Schwindt, Bryan Flax and Chairman Jeffrey Palmer. Staff present were Tom Acre, Town Manager; Hope Becker, Town Planning and Zoning Administrator; Melinda Culley, Town Attorney and Deb Lee, Town Clerk.

APPROVAL OF AGENDA

Motion was made by Member David Herbstman to approve the agenda. Seconded by Member Jerry Schwindt. Roll Call: The agenda was approved unanimously.

MINUTES

Motion was made by Member Mark Strickland to approve the minutes. Second was made by Member Bruce Miller. Roll Call: Unanimously approved.

PUBLIC HEARING- CONSIDERATION OF A VARIANCE APPLICATION SUBMITTED BY KRIS MUSGRAVE FOR THE PURPOSE OF ADJUSTING SETBACK REQUIREMENTS FOR THE PROPERTY LOCATED AT 600 W 3RD AVENUE:

The Public Hearing was opened by Chairman Jeffrey Palmer. The Town Clerk stated proper notifications were made.

The Planning and Zoning Administrator provided the staff report and information to the Members of the Adjustment Board regarding the setback variance application. Kris Musgrave with Stage Coach Meats requested a variance to adjust setback requirements for the property located at 600 W. 3rd Avenue. Mr. Musgrave requested a 10' setback from the rear of the property, a 10' setback from the west side of the property, and a 20' setback from the front of the property. He has made plans to construct an expansion of his existing facility and the deep Industrial Zone setback requirements prevent him from maximizing the property he currently owns. Hope indicated the property location was in a quiet corner of town and allowing the setback requests would not cause adverse effects to traffic flows and neighboring properties.



Mr. Musgrave provided additional information to the Members regarding his future plans for Stage Coach Meats and the property.

Chairman, Jeffrey Palmer, opened the meeting for public comments at 6:41 p.m. No comments were received from the Board Room or Zoom audience. Public Comment portion of the hearing was closed at 6:42 p.m.

The Members did not have additional questions or concerns regarding the variance application.

CONSIDERATION OF BOA RESOLUTION NO. 02-2022

A Resolution approving a setback variance request for the property at 600 W 3rd Avenue, Wiggins, Colorado.

Motion was made by Member David Herbstman to approve BOA Resolution No. 02-2022. Seconded by Member Mark Strickland. Roll Call: BOA Resolution No. 02-2022 was unanimously approved.

ADJOURNMENT

Chairman Jeffrey Palmer, upon receiving no further comments or concerns from the Board of Adjustment Members, adjourned the meeting at 6:51 p.m.

Respectfully submitted by:

A handwritten signature in cursive script, appearing to read "Dee", is written in black ink.

Deborah Lee, Town Clerk



STAFF REPORT

Board of Adjustment Meeting May 24, 2023

DATE: May 22, 2023

TOPIC: Hearing & Consideration of BOA Resolution 01-2023 – Fence Variance Application

FROM: Hope Becker, Planning & Zoning Administrator

BACKGROUND:

Mr. Mario Saldana has applied for a fence variance for his property located at 206 N Agate Street. The subject property is currently zoned R-2 Multi-Family Residential and is located near the corner of Agate Street and Elm Avenue and across the street from the Wiggins Supers grocery store.

Mr. Saldana's home has limited rear lot space to provide the typical backyard due to the house placement being near the rear of the property. There is 16' 5" space between the mobile trailer home and the rear property line. In addition to replacing and repairing the north and rear property line fences with 6' privacy fences, he would like to construct a 6' privacy fence on the front property line (Agate Street) to provide the lot some private yard space that is commonly seen in residential back yards. The lot frontage is along Agate Street, there is no driveway access to the home from Agate Street. The property is accessed by vehicles via the Town alley located at the rear of the lot. Mr. Saldana plans to keep an established gate entrance and pedestrian footbridge off of Agate Street that will allow pedestrian and emergency personnel access to the home and has agreed to proceed with a License Maintenance Agreement with the Town to allow the footbridge to remain over the Town's stormwater ditch.

The placement of the mobile home on the lot also presents a unique situation in that the front elevations of the home do not face the front of the property and Agate Street. The applicant's mobile home's front door faces east. The back door faces west and is the common access point from their parking spaces and rear property entrance to the lot. If the Land Development Code (LDC) requirements are followed, Mr. Saldana would only be allowed to construct a four-foot fence along his Agate Street property line.

The LDC requires land owners to apply for a variance when adjustments need to be made to the minimum requirements of the LDC for a property. A variance is a relaxation of the terms of the zoning ordinance where such relaxation will not be contrary to the public interest, where owing to conditions peculiar to the property, and not the result of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

LAND DEVELOPMENT CODE ANALYSIS:

LDC, 1.14 Definition: Variance

As used in the LDC, a variance is authorized only for height, area, and size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or adjoining zoning districts.

LDC 02.14.L3.b Variances

Per the Wiggins LDC, a variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the Ordinance would result in practical difficulties or unnecessary hardship for the applicant and that, by granting the variance, the spirit of the Ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:

1. If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property; or
2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public; or
3. The hardship relates to the applicant's land, rather than the 2.41 personal circumstances; or
4. The hardship is unique and unusual, or nearly so, rather than one shared by many surrounding properties; or
5. The variance requested is the minimum that will afford relief and the least possible modification of the requirements of this Ordinance; and
6. The hardship is not the result of the applicant's own actions; and/or
7. The variance will neither result in the extension of a nonconforming situation in violation nor authorize the initiation of a nonconforming use of land, nor conflict with the goals and policies of the Comprehensive Plan

LDC 3.05.G Fences

Fences located within the required front yard setback shall not exceed four (4) feet in height.

SUMMARY:

The mobile home is on a lot zoned for residential homes. Due to the nature of the zoning, a full perimeter 6' fence enclosing the property may take away the residential aspect of the lot. The LDC provides guidelines to ensure that development and construction of homes, fences, landscaping, etc. projects are compatible and in sync with the surrounding areas. It is important to consider how the request may impact the lot itself as well as the neighbors.

Staff's recommendation is to consider allowing the construction of a 6' fence from:

- the west side of the home to the north edge of the foot bridge along the Agate Street property line; from

- the north edge of the footbridge to the northwest corner of the property near Agate Street; from
- the northwest property corner to the northeast property corner near the Town alley; from
- the northeast property corner to the southeast property corner – adjoining to the existing 6' fence; and
- allowing the construction of a 6' fence further down the existing 6' fence along the south side of the property line to the southeast corner of the mobile trailer home.

This consideration will provide open space to the property owner's south side of the property and front door for easy access for visitors and emergency personnel entering from the Agate Street footbridge. It will allow the home to establish a "front yard" while still providing the property owner a designated enclosed area for private family gatherings and animal control and it will support the residential aspect of the LDC.

In addition, all t-post fence posts and field fencing would be required to be removed as per the Wiggins LDC. These materials are not approved fencing materials and would be considered non-conforming with the approval of the variance and the applicant's fence permit. Staff's suggestion is provided on the additional site plan, which is being offered for the Board's consideration.

OPTIONS AVAILABLE TO THE BOARD OF ADJUSTMENT:

- Option #1: Adopt the resolution granting the variance per the Applicant's site plan.
- Option #2: Adopt the resolution granting the variance per the staff recommended site plan.
- The Board of Adjustment may approve either resolution with amendments.
- The Board of Adjustment may disapprove the resolution and deny the variance.

MOTION FOR APPROVAL:

I make a motion to adopt Option #1 - BOA Resolution 01-2023 A Resolution Approving a Fence Variance Request for Mario Saldana at the Property located at 206 N Agate Street, Wiggins, Colorado.

Or

I make a motion to adopt Option #2 - BOA Resolution 01-2023 A Resolution Approving a Fence Variance Request for Mario Saldana at the Property located at 206 N Agate Street, Wiggins, Colorado.

ACTION REQUIRED:

Motion, Second, Roll-Call Vote

(Resolutions require affirmative votes from the majority of Board of Adjustment members present.)

Option #1 – Applicant Site Plan

**TOWN OF WIGGINS
BOARD OF ADJUSTMENT**

RESOLUTION BOA NO. 01-2023

**A RESOLUTION APPROVING A FENCE VARIANCE REQUEST FOR MARIO SALDANA AT THE
PROPERTY OF 206 N AGATE STREET, WIGGINS, COLORADO**

WHEREAS, Section 3.05.G of the Wiggins Land Development Code states that fences located within the required front yard setback shall not exceed four (4) feet in height; and

WHEREAS, there has been submitted to the Board of Adjustment of the Town of Wiggins a request for approval of a variance to Section 3.05.G of the Wiggins Land Development Code for 206 N Agate Street to allow:

- A 6' privacy fence to be constructed along the west property line parallel to North Agate Street; and

WHEREAS, the Wiggins Land Development Code provides the Board of Adjustment the authority to vary or modify zoning provisions applicable to property, upon the finding that certain conditions are present; and

WHEREAS, after a duly-noticed public hearing, at which evidence and testimony were entered into the record, the Board of Adjustment finds for the reasons set forth below the requested variance meets the conditions enumerated in the Wiggins Land Development Code, and therefore should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT OF THE TOWN OF WIGGINS, COLORADO:

Section 1. The Board of Adjustment of the Town of Wiggins finds the requested variance meets the conditions enumerated in Wiggins LDC § 02.14.L3 as set forth below:

- If the applicant complies strictly with the provisions of the Ordinance, he/she can make no reasonable use of his/her property; or
- The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public; or
- The hardship relates to the applicant's land, rather than personal circumstances; or
- The hardship is unique and unusual, or nearly so, rather than one shared by many surrounding properties; or
- The variance requested is the minimum that will afford relief and the least possible modification

of the requirements of this Ordinance; or

- The hardship is not the result of the applicant's own actions; or
- The variance will neither result in the extension of a nonconforming situation in violation nor authorize the initiation of a nonconforming use of land, nor conflict with the goals and policies of the Comprehensive Plan.

Section 2. In accordance with the above findings, the Board of Adjustment of the Town of Wiggins hereby approves the requested variance for the property located at 206 N Agate Street, Wiggins, Colorado subject to the following conditions:

- A 6' privacy fence to be constructed along the west property line parallel to North Agate Street as per the applicant's site plan attached as exhibit A.
- The fence shall be constructed in accordance with all other requirements of the Wiggins Land Development Code.
- The physical address of "206 N Agate St" must be displayed on the west side of the privacy fence for emergency personnel and not smaller than four-inches in height.
- A License Maintenance Agreement between the Town and applicant is required for the pedestrian footbridge installed across the Town's stormwater ditch that runs parallel to Agate Street.
- If the mobile home trailer is removed or reoriented so that it fronts Agate Street, the fence shall be removed or reconstructed to comply with all Land Development Code requirements.
- The approved special review will be recorded with the Morgan County Clerk and Recorder's office by the Town for the purpose of creating a land use record for future owners.

INTRODUCED, ADOPTED AND RESOLVED THIS 24TH DAY OF MAY, 2023.

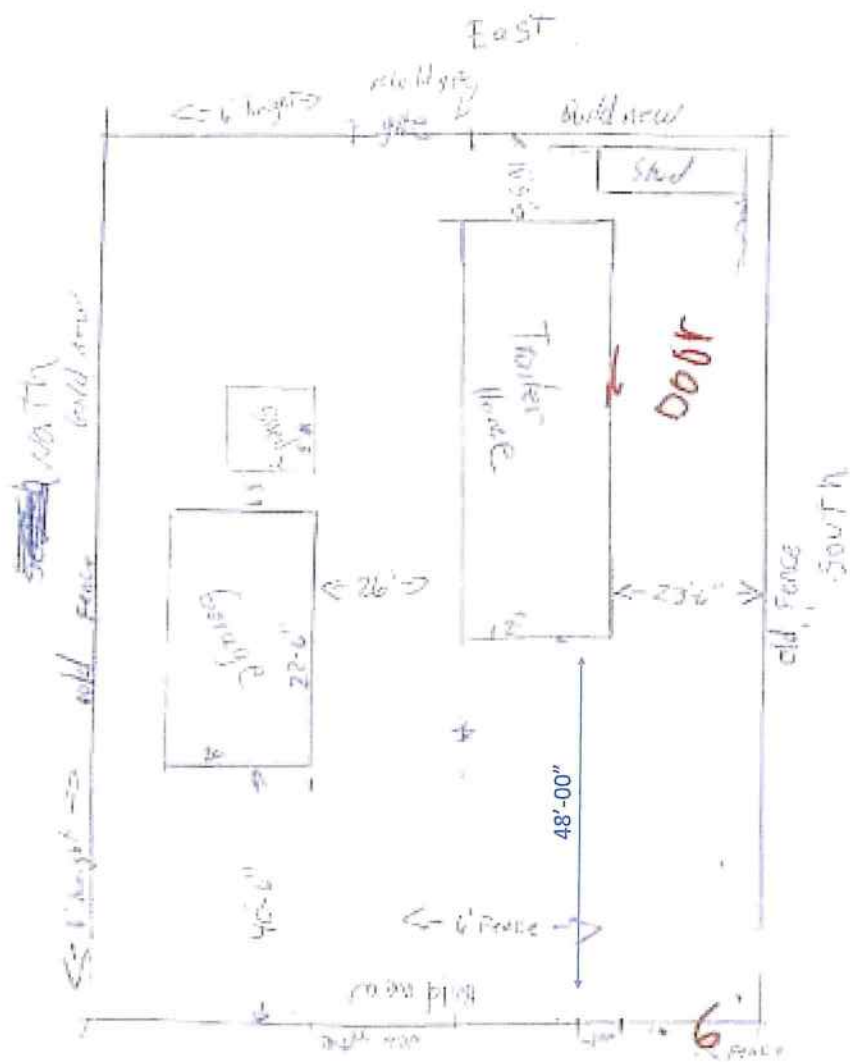
TOWN OF WIGGINS, COLORADO

Christopher Franzen, Chairman

ATTEST:

Tom Acre, Interim Town Clerk

EXHIBIT A



New Fencing West
 on 3 sides - east - west -
 gate at east and west

Option #2 – Staff recommended site plan

**TOWN OF WIGGINS
BOARD OF ADJUSTMENT**

RESOLUTION BOA NO. 01-2023

**A RESOLUTION APPROVING A FENCE VARIANCE REQUEST FOR MARIO SALDANA AT THE
PROPERTY OF 206 N AGATE STREET, WIGGINS, COLORADO**

WHEREAS, Section 3.05.G of the Wiggins Land Development Code states that fences located within the required front yard setback shall not exceed four (4) feet in height; and

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- A 6' privacy fence to be constructed along the west property line parallel to North Agate Street; and

WHEREAS, the Wiggins Land Development Code provides the Board of Adjustment the authority to vary or modify zoning provisions applicable to property, upon the finding that certain conditions are present; and

WHEREAS, after a duly-noticed public hearing, at which evidence and testimony were entered into the record, the Board of Adjustment finds for the reasons set forth below the requested variance meets the conditions enumerated in the Wiggins Land Development Code, and therefore should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT OF THE TOWN OF WIGGINS, COLORADO:

Section 1. The Board of Adjustment of the Town of Wiggins finds the requested variance meets the conditions enumerated in Wiggins LDC § 02.14.L3 as set forth below:

- If the applicant complies strictly with the provisions of the Ordinance, he/she can make no reasonable use of his/her property; or
- The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public; or
- The hardship relates to the applicant's land, rather than personal circumstances; or
- The hardship is unique and unusual, or nearly so, rather than one shared by many surrounding properties; or
- The variance requested is the minimum that will afford relief and the least possible modification

of the requirements of this Ordinance; or

The hardship is not the result of the applicant's own actions; or

The variance will neither result in the extension of a nonconforming situation in violation nor authorize the initiation of a nonconforming use of land, nor conflict with the goals and policies of the Comprehensive Plan.

Section 2. In accordance with the above findings, the Board of Adjustment of the Town of Wiggins hereby approves the requested variance for the property located at 206 N Agate Street, Wiggins, Colorado subject to the following conditions:

- A 6' privacy fence to be constructed as per the site plan attached as exhibit A.
- The fence shall be constructed in accordance with all other requirements of the Wiggins Land Development Code.
- The physical address of "206 N Agate St" must be displayed on the west side of the privacy fence for emergency personnel and not smaller than four-inches in height.
- A License Maintenance Agreement between the Town and applicant is required for the pedestrian footbridge installed across the Town's stormwater ditch that runs parallel to Agate Street.
- If the mobile home trailer is removed or reoriented so that it fronts Agate Street, the fence shall be removed or reconstructed to comply with all Land Development Code requirements.
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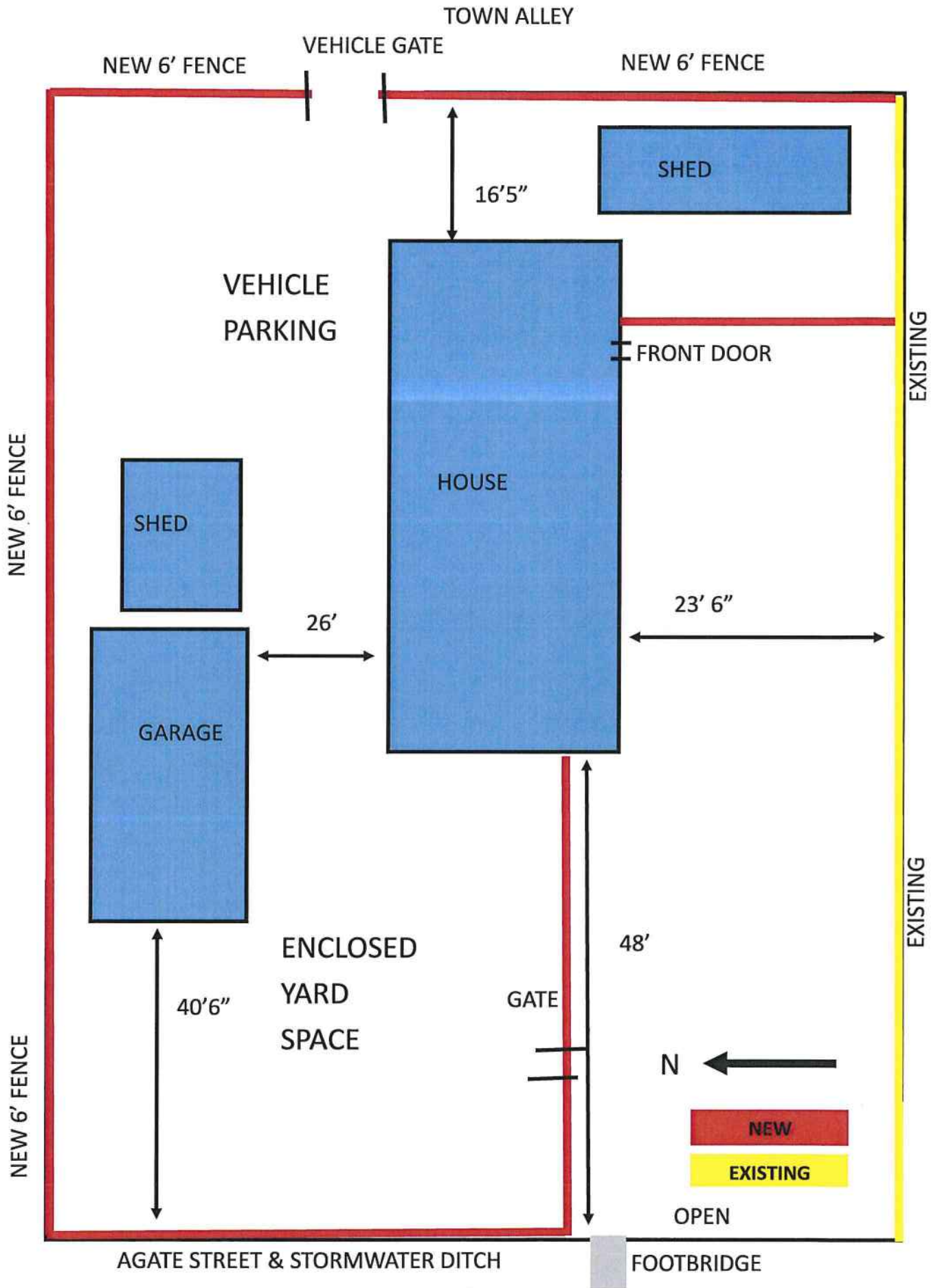
TOWN OF WIGGINS, COLORADO

Christopher Franzen, Chairman

ATTEST:

Tom Acre, Interim Town Clerk

EXHIBIT A





Town of Wiggins
Planning & Zoning Department
 304 E Central Avenue * Wiggins, CO 80654
 Phone: (970) 483-6161 * Fax: (970) 483-7364
townofwiggins.colorado.gov

VARIANCE APPLICATION

Please fill form out completely. Incomplete applications will not be processed.

*Please note: Applications will be placed on the Board of Adjustors' agenda when application is completed and returned with all proper documentation to the Town Hall by the 1st of each month. Board meetings are held every 4th Wednesday of each month.

Filing Fee: \$250	Date: 5/22/2023
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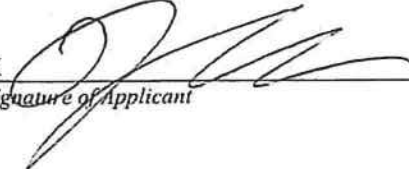
APPLICANT INFORMATION			
Property Owner	Name:	Mario Saldana	
	Address:	206 Agate Stree	City, State Zip: Wiggins Colorado
	Phone:	(970) 576-0390	Email:
<input type="checkbox"/> Owner <input type="checkbox"/> Primary Contractor	Name:	Mario Saldana	
	Company:	N/A	
	Address:	4558 Keota Place	City, State Zip: Loveland Co. 80538
	Phone:	(970) 576-0390	Email: mariogs1996@gmail.com
Property Information	Address: 206 Agate Street		City, State Zip: Wiggins Co. 80654
	Size (acres):	Existing Use: Residential	Existing Zone District:


Description of Variance Being Requested:
 We would like to build a foot privacy fence all the way around our property. This would create a back yard to keep our dogs in, keep our kids safe within the property, and also decrease the chances of thieves stealing from the property.

Documents required with the application:

- Filing fee: \$250 PAYABLE TO: TOWN OF WIGGINS
- Site Plan with dimensions of setbacks indicated
- Elevations
- Vesting Deed
- Authorization Letter (if applicant is not the owner)
- Please answer **ALL** questions from the back. (A separate sheet of paper may be used if necessary.)

By my signature affixed hereto, I certify that I have read and examined this application and know the same to be true and correct. I understand that the granting of a permit does not presume to give authority to violate or cancel any provisions of any state or local laws regulating a variance request.

X 
 Signature of Applicant


 Date

PLEASE PROVIDE ANSWERS TO ALL QUESTIONS. Questions may also be answered on a separate sheet of paper.

- A) If the applicant complies strictly with the provisions of the Ordinance, can he/she can make no reasonable use of his/her property? Please explain.

The property and the residence are outlined toward the east side where the driveway entrance is located. The property is placed with the front door facing south, therefore we do not have back yard space. If we built a 6 foot fence on the east, north, and west sides, we would have a back yard with privacy and our dogs could not jump the fence.

- B) How is the hardship of which the applicant complains suffered by the applicant rather than by neighbors or the general public?

Residents do not have access from the Agate Street. So, we have to access through the alley way only. The residence is facing south, not toward the main road(west).

- C) How does the hardship relate to the applicant land, rather than personal circumstances?

Property residence is facing south and is too far back on top of the property. The home is facing in a unique position, making the "front" of the home to be facing away from the main road. As mentioned before, there isn't access to the Agate street, the main access is through the alley way.

- D) How is the hardship unique and unusual, or nearly so, rather than one shared by many surrounding properties

Due to the residence facing south and placed towards the back of the property, we do not have a back yard. Another hardship to consider is that the property is on foot shorter than the Agate Street. Therefore a 6' fence would only be 5'. If we put up a shorter fence, we would have less privacy.

- E) How is the variance requesting the minimum that will afford relief and the least possible modification of the requirements of the Ordinance?

By allowing us to build a 6' fence on the east, north, and west, this would keep us in ordinance and update the property. The property is grandfathered in and this would allow us to keep the fence in compliance.

- F) How is the hardship not the result of the applicant's own actions?

The residence is old and has been in the same position since it was originally placed. The current fence has been falliing apart and has not been replace. The property is needing some upgrades for compliance because it is older-- The applicant was not responsible for the layout of the property or the home placement.

