

**Town of Lyons  
Board of Adjustments Meeting**

**7:00 p.m. June 18, 2019**

**Shirley F. Johnson Council Chambers  
Lyons Town Hall, 432 5<sup>th</sup> Ave., Lyons, Colorado**

- I. Roll Call And Pledge Of Allegiance
- II. Public Hearing
  - II.1. Variance Application Submitted By Steven McCain To Consider Side Yard Setbacks For Property Located At 231 Park Street

Documents:

[VARIANCE EVALUATION 231 PARK STREET.PDF](#)  
[MCCAIN BOA APP.PDF](#)  
[231 PARK SITE PLAN.PDF](#)  
[LFPD LETTER.PDF](#)  
[SIDDALL LETTER.PDF](#)  
[RESOLUTION 2019-01 GRANTING VARIANCE.PDF](#)  
[RESOLUTION 2019-01 DENYING VARIANCE.PDF](#)

- III. General Business
- IV. Adjournment

“The Town of Lyons will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. Persons needing accommodations or special assistance should contact the Town at [hr@townoflyons.com](mailto:hr@townoflyons.com) as soon as possible, but no later than 72 hours before the scheduled event.”

<b>APPLICANT NAME:</b> Steven T. McCain	<b>VARIANCE ADDRESS/LEGAL DESCRIPTION:</b> 231 Park Street / Lot 7 Amended Plat of Lyons 6,7,8,9,12 and 13, Block 20
<b>NAME OF REVIEWER:</b> Paul Glasgow	<b>REPORT DATE:</b> Jun 13, 2019
<b>OWNERS NAME:</b> Steven and Jarred Todd McCain	<b>BOA MEETING DATE:</b> June 18, 2019

**ZONING DISTRICT AND STANDARD TO BE VARIED:** Single Family Residential (R-1) (Sec. 16-3-260) (d) (4) b. Side yard - Total of both side yards shall not be less than fifteen (15) feet, with each side yard to be at least five (5) feet.

The Applicant requests variances from the side yard minimum setback of five (5) feet to zero (0) feet for the installation of a deck and stairs. Please note although the Applicant is requesting a zero-lot line setback, the site plan indicates the stairs and deck, the reason for the requested setback only requires a two (2) foot setback.

**SUBJECT PROPERTY and BACKGROUND:** The subject property has a modular home placed on foundation; construction started in 2017. The applicant inhabited prior to receiving a certificate of occupancy from the Town.

The Applicant applied for and received a flood development permit for the home as the home is in the 100-year floodplain. The best available data (the soon to be adopted floodplain maps). That floodplain application also did not include the deck or stairs on the west side of the building.

In April of 2017 the Board of Adjustments heard and approved a variance to the front yard setback of the property, but the Applicant did not apply for or receive a variance on the west side of the property. The application exhibits showed the modular home situated on the side yard setback, but it did not have stairs or deck identified on the west side of the modular home.

On 1/30/2019 the Town issues a Notice of Violation after discovering that the stairs were built in the setback, without a floodplain permit and the home was occupied without the building official issuing a Certificate of Occupancy.

The Applicant is seeking approval of the variance set for in the application to accommodate a deck and stairs built within the side-yard setback. If the variance is not approved, the applicant would be required to remove the stairs and deck and eliminate the side egress from the home.

The applicant indicated that the stairs and deck are required for the applicant to receive a certificate of occupancy from the Lyons Regional Fire District. Staff also received a referral letter stating that was the case, but when Staff consulted with the Building Official, the Building Official indicated that only one door is needed for egress. Staff followed up with the Lyons Regional Fire District and they confirmed that removing the western egress, if approved by the Town's building department, would not prevent a certificate of occupancy.

**RECOMMENDATION:** Staff finds the construction of the deck and stairs violates Section 16-14-70 (a) (d) and Section 16-14-70 (b) (1), (2), (3), (4) and (5) therefore the application does not achieve the variance approval criteria. Staff cannot recommend approval of the variance. **Recommendation is DENIAL.**

Sec. 16-14-70. - Variance criteria for approval		
CRITERION	HAS CRITERION BEEN MET?	FINDINGS
The following need to be met for the Board of Adjustments to approve a variance:		
A. Land use is allowed in zoning district.	<b>AFFIRMATIVE</b>	The entire subject property is single family Residential (R-1). Sec. 16-3-150 of the Lyons Municipal Code (LMC) sets forth that the intent of the R-1 zone district is a low-density housing district intended primarily for single-family uses on individual lots.
B. Variance is not in the public right-of-way or on public property.	<b>AFFIRMATIVE</b>	The variance does not affect the public right-of-way.
C. Variance will not alter any definition of Chapter 16 of the LMC (the <i>Lyons Zoning Regulations</i> ).	<b>AFFIRMATIVE</b>	No definition of the <i>Lyons Zoning Regulations</i> will be altered by the granting of the proposed variance.
D. Variance is the minimum variance that will afford relief with the least modification possible to the requirements of the <i>Lyons Zoning Regulations</i> .	<b>NEGATIVE</b>	The stairs and deck are already constructed but the site plan indicates they are two (2) feet from the property line, so the variance requested is not the minimum that will afford relief. If the Board of Adjustments chooses to approve the variance, Staff recommends that the
E. Variance is based on physical conditions or circumstances unique or peculiar to the property. Variance is not based on physical conditions or circumstances of the property that are of a general or recurring in nature so as to reasonably make practicable the formulation of a general regulation to be adopted as an amendment to the <i>Lyons Zoning Regulations</i> .	<b>AFFIRMATIVE</b>	The property is flat.
F. Variance is <i>not</i> based exclusively on findings of personal or financial hardship. Convenience, profit or caprice shall not constitute undue hardship.	<b>AFFIRMATIVE</b>	

**IN ORDER TO GRANT A VARIANCE, THE BOARD OF ADJUSTMENTS SHALL FIND THAT ALL THE FOLLOWING HAVE BEEN SATISFIED:**

<b>CRITERION</b>	<b>HAS CRITERION BEEN MET?</b>	<b>FINDINGS:</b>
1) That there are unique physical circumstances or conditions, such as irregularity, narrowness or shallowness of the lot, or exceptional topographical or other physical condition particular to the affected property.	<b>NEGATIVE</b>	Although there are floodway issues on the site, those did not create the side setback issue.
2) That, because of these unique physical circumstances or conditions, the property cannot be reasonably developed or used in compliance with the provisions of this Chapter.	<b>NEGATIVE</b>	As set forth and documented in the applicant's application materials, the primary reason for the variance request is that the Applicant placed the modular too close to the property line, other building types or building placement could have been considered when planning the site.
3) That, due to such unique physical circumstances or conditions, the strict application of this Chapter would create a demonstrated hardship.	<b>NEGATIVE</b>	The lot is buildable.
4) That the demonstrable hardship is not self-imposed.	<b>NEGATIVE</b>	The original site planning and front yard variance approved in 2017 did not indicate or request the variance for the west stairs and deck. The deck and stairs were constructed without a building permit or a floodplain permit.
5) That the variance, if granted, will not adversely affect the proposed development or use of adjacent property or neighborhood.	<b>NEGATIVE</b>	The variance is within the setback and the adjacent property structure near the deck and stairs.
6) That the variance, if granted, will not change the character of the zoning district in which the property is located.	<b>AFFIRMATIVE</b>	
7) That the variance, if granted, is in keeping with the intent of this Code.	<b>AFFIRMATIVE</b>	
8) That the variance, if granted, will not adversely affect the health,	<b>AFFIRMATIVE</b>	

IN ORDER TO GRANT A VARIANCE, THE BOARD OF ADJUSTMENTS SHALL FIND THAT ALL THE FOLLOWING HAVE BEEN SATISFIED:

CRITERION	HAS CRITERION BEEN MET?	FINDINGS:
safety or welfare of the citizens of Town.		

**Alternatives**

As this is a quasi-judicial action the Board has the following alternatives

- 1) Approve the variance as submitted in the application with or without conditions
- 2) Approve the variance as amended by the Board of Adjustments with or without conditions
- 3) Deny the variance application
- 4) Continue the public hearing for additional information

**Attachments:**

- 1. Application Packet
- 2. Lyons Fire Protection District Letter
- 3. Letter from the desk of Dan Siddall
- 4. Resolution 2019-01 DENYING variance
- 5. Resolution 2019-01 GRANTING variance

**BOARD OF ADJUSTMENT APPEALS APPLICATION  
AND  
BOARD OF TRUSTEES APPEALS APPLICATION**

This application and required information must be returned complete. Application may be delayed if incomplete.

**PLEASE PRINT THE FOLLOWING INFORMATION:**

Applicant STEVE McCain  
Variance address 231 Park Lyons Colo  
Mailing address PO Box 1155 LYONS Colo 80540  
Work phone # 720-771-2353 Home phone # SAME  
Type of variance requested side yard Variance & set Back  
Legal description of site LOT 7A Block 20 Lyons Amended  
Zoning of site \_\_\_\_\_

**APPLICATION MUST BE ACCOMPANIED BY:**

- ✓ An improvement location certificate and a map with a scale drawing depicting the property affected by the variance request, including but not limited to required or existing setbacks and proposed setbacks from adjacent lot lines or structures. Include the location of all existing and proposed site improvements showing all dimensions including the height of existing structures and proposed structures. All easements on or adjoining the property must be identified.
- ✓ 500-dollar application fee and 250-dollar deposit.
- ✓ A legal description of site.
- ✓ Explanation letter identifying the variance being requested, a citation of the portion of the Code from which relief is requested and explaining what exceptional condition, practical difficulty or unnecessary hardship exists to require the variance. The letter shall also address how the variance, if granted, will not be detrimental to the public good, create a conflict with the Town Comprehensive Plan or impair the intent and purpose of this Code. Please ensure a thorough description of exceptional and substantial hardship due to physical conditions of the property and/or ordinance interpretations. Please address each hardship, use additional paper if necessary.
- ✓ Please list the mailing addresses of all property owners.

- ✓ Title Commitment. The title commitment must be current and dated no more than thirty (30) days from the date of the application submittal.
- ✓ Surrounding and interested property ownership report. Provide the Town Clerk with a current list (not more than thirty [30] days old) of the names and addresses of the surrounding property owners within three hundred (300) feet of the property, mineral interest owners of record, mineral and oil and gas lessees for the property and appropriate ditch companies. The applicant shall certify that the report is complete and accurate.
- ✓ Review the Town of Lyons Municipal Code, Chapter 16 Article 14.
- ✓ Public hearing notification envelopes. Provide the Town Clerk with one (1) set of addressed, certified (return receipt requested) envelopes. The envelopes shall have the Town's address as the return address, and the envelopes shall be addressed to the surrounding property owners within three hundred (300) feet of the property, mineral interest owners of record, oil and gas lessees for the property and the appropriate referral agencies.
- ✓ A signed certification from the applicant that proper notice has been provided to the mineral estate owner pursuant to and in accordance with Section 24-65.5-103, C.R.S., or a certification that such notice is not required because the surface estate has not been separated from the mineral estate for the property described in the application. It is the applicant's responsibility to ensure that accurate and complete information is provided (staff may be able to assist).

SIGNATURE OF APPLICANT

Steve McCarroll

Please address each of the variance criteria in detail, attaching additional sheets, if necessary.

1. Explain how the property has exceptional topographic or physical conditions, is exceptionally narrow, shallow, etc.  
Lot 7 of Block 20, also know as 231 Park St., lies fully in the St. Vrain Creek Flood Plain and borders the floodway. The further North from the river that the house can be located, the safer it will be for future residents.
2. Explain how the strict enforcement of applicable zoning code would result in a peculiar, exceptional and undue hardship upon the property owner.  
The egress on the West side of the house is necessary to meet fire code.
3. Will a variance create a substantial detriment to the public good; substantially impair the intent and purpose of the zoning ordinance pertaining to your property?  


---

- 
- 
4. Explain what exceptional circumstances apply to this specific property, which do not generally apply to other properties in the same zoning area or neighborhoods.

Door is on original plans but no landing was on the blue prints. This landing will provide the necessary egress needed for this residence.

5. Explain the specific practical difficulties and unnecessary hardships you would incur if the variance appeal is denied.

This exit is necessary for the life safety of the house.

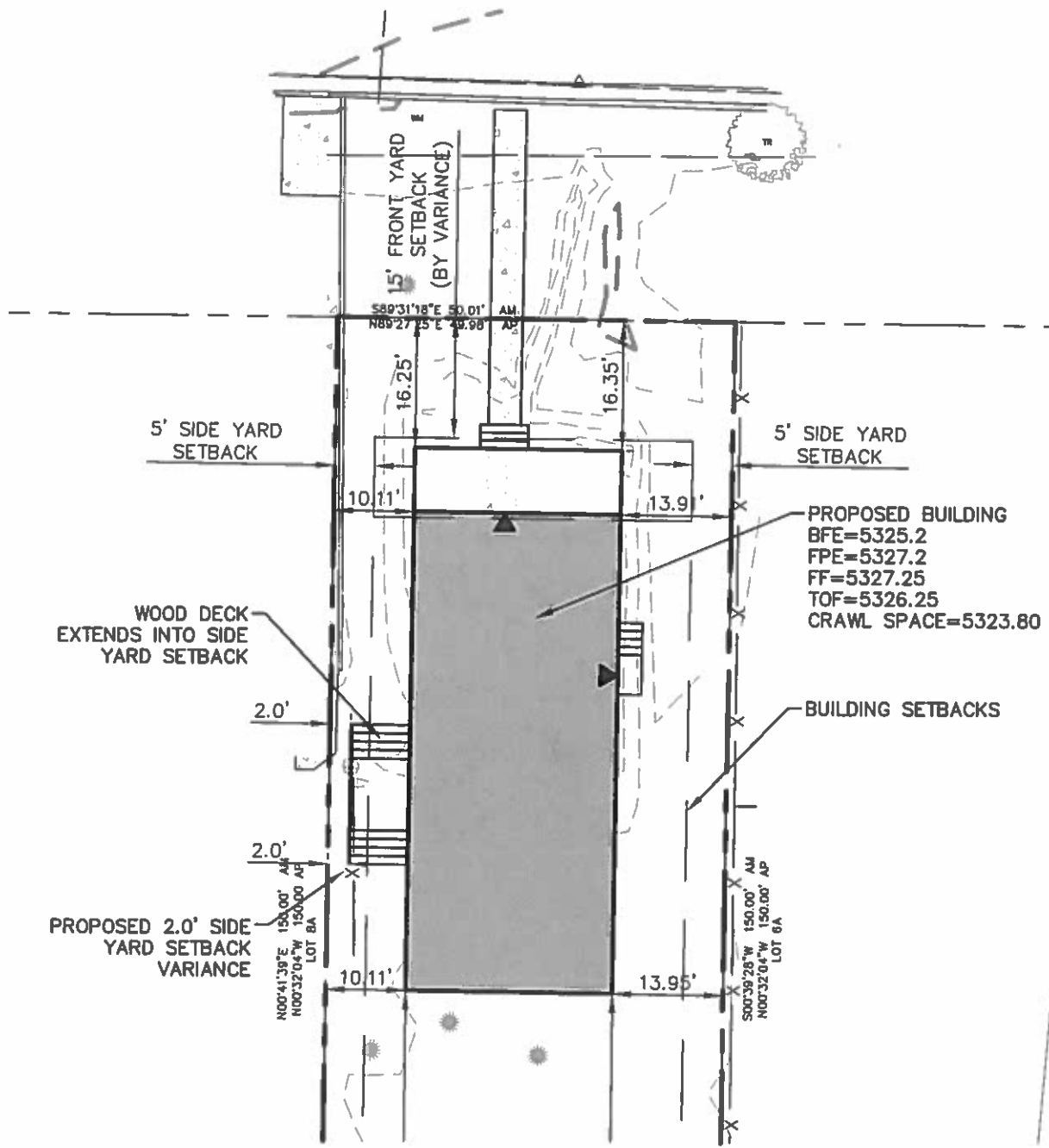
The applicant has the responsibility of proving that all of the above are applicable to his/her case since he/she is requesting a special privilege. The decision to approve, deny, or approve the variance with conditions will be based specifically on the evidence presented.

Case # \_\_\_\_\_

Date Received \_\_\_\_\_ Received By \_\_\_\_\_ Paid \_\_\_\_\_

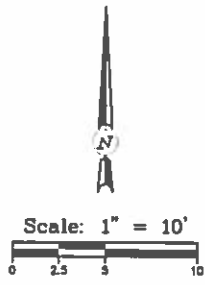
- Zoning Variance
- Set Back Variance
- Nonconforming Use
- Board of Adjustment
- Board of Trustees





**1 SITE PLAN**

SCALE: 1" = 30'



**MCCAIN RESIDENCE  
231 PARK STREET  
LYONS, COLORADO**

**SCOTT, COX & ASSOCIATES, INC.**  
consulting engineers • surveyors  
1530 55th Street • Boulder, Colorado 80303  
(303) 444 - 3051



## LYONS FIRE PROTECTION DISTRICT

March 7, 2019

To: Town of Lyons,  
Ref- 231 Park Street

To whom it may Concern,

I was contacted by owner Steve McCain of 231 Park street reference his new home. It was brought to my attention that the possibility of deleting the man door on the west side of the home has come up during discussion. We do not agree with this as; the original plan had this door specifically designed and installed as it is also a door used for egress in the event of a fire. I feel that this door must remain in place to serve as an egress / exit path and doorway regarding life safety.

If you have any questions regarding this permit please contact me,

Sincerely,

A handwritten signature in black ink, appearing to read 'J.J. Hoffman', with a long horizontal flourish extending to the right.

J.J. Hoffman  
Fire Chief



*From the desk of.....*

**dan siddall**


RE: 231 Park St, Lyons, CO 80540

To Whom it May Concern:

We have been informed by our neighbor to the west of the property that we own at 217 Park St, Steve McCain, that he would like to build a landing for a deck stairway with zero setback between his property and ours. We have no objections to this.

Feel free to contact me with any questions or concerns.

Thank you,

*Kathy Siddall*  


Dan and Kathy Siddall  
303-918-8400  
siddall@realtor.com

**TOWN OF LYONS, COLORADO  
BOARD OF ADJUSTMENTS  
BOA RESOLUTION # 2019-01**

**A RESOLUTION OF THE TOWN OF LYONS BOARD OF ADJUSTMENTS  
APPROVING A VARIANCE TO SIDE YARD SETBACK  
(McCAIN APPLICATION – 231 PARK STREET – R-1 ZONE DISTRICT)**

**WHEREAS**, the Board of Adjustments for the Town of Lyons, Colorado (“BOA”), is authorized pursuant to state law and the Lyons Municipal Code Section 16-14-10 to grant and approve variances to zoning requirements including standards for the applicable SIDE YARD SETBACK; and

**WHEREAS**, STEVEN T. McCAIN (“Applicant”) is the owner of the following property in the Town of Lyons:

LOT 7A, Amended Plat of Lots 6, 7, 8, 9, 12 and 13, Block 20,  
Town of Lyons, Resolution No. 2002-05  
County of Boulder, State of Colorado

aka 231 Park Street, Lyons, CO 80540 (the “Subject Property”); and

**WHEREAS**, the Subject Property is located in the R-1 zone district; and

**WHEREAS**, Section 16-3-150(d)(4) of the Lyons Municipal Code establishes a five foot (5’) side yard setback in the R-1 zone district; and

**WHEREAS**, Applicant has applied for a variance to reduce the side yard setback of the Subject Property to zero feet (0’); and

**WHEREAS**, the BOA conducted a public hearing following the provision of lawfully required notice to the public and the Applicant provided sufficient and competent evidence at the hearing as is necessary to establish the requirements for the granting of a variance, pursuant to the Lyons Municipal Code and state law.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENTS OF THE TOWN OF LYONS, BOULDER COUNTY, COLORADO, THAT:**

**Section 1.** The BOA hereby approves a variance to the SIDE YARD SETBACK of the Subject Property, as follows:

The applicable SIDE YARD SETBACK shall be reduced from **five feet (5’) to zero feet (0’)**. The Subject Property shall comply with all remaining setbacks as set forth in Section 16-3-150(d)(4) of the Lyons Municipal Code.

**Section 2.** The Board finds that the owner established the existence of practical difficulties or unnecessary hardships and further finds that the spirit of the Town Zoning Ordinance is observed, public safety and welfare secured, and substantial justice done by the granting of this variance. The record of this matter, including the Lyons Municipal Code, the Applicant's application materials, and the Staff memorandum prepared for the public hearing provide adequate evidence and basis for the findings supporting the BOA's decision and the same are hereby incorporated into this Resolution.

**Section 3.** This Resolution is effective immediately. However, the recordation of this Resolution with the Boulder County Clerk and Recorder's Office shall not be made sooner than twenty-eight (28) days following the date on which this Resolution has been adopted and approved by the BOA, in order to allow for all applicable periods of appeal of such decision to expire. In the event of a timely filed notice of appeal, the recordation of this Resolution shall be postponed or stayed pending final resolution of the appeal.

**INTRODUCED AND APPROVED BY A VOTE OF NOT LESS THAN FOUR (4) MEMBERS OF THE BOARD OF ADJUSTMENTS AS REQUIRED BY C.R.S. § 31-23-307 AT A PUBLIC HEARING DULY CONDUCTED IN ACCORDANCE WITH APPLICABLE LAW THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019**

**BOARD OF ADJUSTMENTS FOR THE TOWN OF LYONS, COLORADO**

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Town Clerk or Designee

**TOWN OF LYONS, COLORADO  
BOARD OF ADJUSTMENT  
BOA RESOLUTION # 2019-01**

**A RESOLUTION OF THE TOWN OF LYONS BOARD OF ADJUSTMENT  
DENYING A VARIANCE TO REAR YARD SETBACK (McCAIN APPLICATION)**

**WHEREAS**, the Board of Adjustment for the Town of Lyons, Colorado, is authorized pursuant to state law and the Lyons Municipal Code section 16-14-10 to grant and approve variances to zoning requirements including standards for SIDE YARD SETBACK; and

**WHEREAS**, STEVEN T. McCAIN as the owner for certain property within the Town of Lyons applied for a variance to permit a reduction in the minimum SIDE YARD SETBACK for property addressed as 231 PARK STREET, Lyons, Colorado; and

**WHEREAS**, the Lyons Board of Adjustment conducted a public hearing following the provision of lawfully required notice to the public and the owner failed to provide sufficient or competent evidence at the hearing as is necessary to establish the requirements for the granting of a variance for minimum lot width pursuant to the Lyons Municipal Code and state law.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT OF THE TOWN OF LYONS, BOULDER COUNTY, COLORADO, THAT:**

**Section 1.** The Board of Adjustment hereby denies the application for a variance to minimum lot width by the Board's approval of the following motion:

I move that the minimum SIDE YARD SETBACK variance be denied as requested by the application submitted by STEVEN T. McCAIN owner of Lot 7A, Block 20 and addressed as 231 PARK STREET, Lyons Colorado. Such application requested that the minimum SIDE YARD SETBACK applicable to the owner's property be varied from a minimum of FIVE (5) feet to a minimum of ZERO (0) feet.

**Section 2.** The Board finds that the evidence presented failed to establish the existence of practical difficulties or unnecessary hardships and further finds that the spirit of the Town Zoning Ordinance would not be observed, public safety and welfare not be secured, and substantial justice not done by the granting of this variance. The record of this matter, including the Lyons Municipal Code and the owner's application contains the factual evidence and the basis for the findings supporting the Board of Adjustment's decision and is hereby incorporated into this Resolution.

**Section 3.** This Resolution is not intended to be recorded with the Boulder County Clerk and Recorder.

**APPROVED BY A MAJORITY VOTE OF A QUORUM PRESENT AT A PUBLIC HEARING DULY CONDUCTED IN ACCORDANCE WITH APPLICABLE LAW THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2019.**

**BOARD OF ADJUSTMENT FOR THE TOWN OF LYONS, COLORADO**

\_\_\_\_\_  
Connie Eyster, Chairperson

ATTEST:

\_\_\_\_\_  
Dolores M. Vasquez  
Deputy Town Clerk