



STAFF REPORT

TO: Mayor Jones and Members of the Board
FROM: Karen Proctor, Town Administrator
DATE: May 16, 2019
RE: 7231 S Quintero St. Appeal

BACKGROUND:

On October 18, 2018 the Town was made aware that a “dome” had been built on the property at 7231 S Quintero St. Records indicated that no permit had been applied for regarding this dome. SAFEbuilt contacted the owner, Ms. Allen, who stated she was unaware that a permit was needed. Upon learning that this was a 30’ diameter, 855 square foot, geodesic dome style greenhouse, Ms. Allen was notified that according to Section 16-2-50(b)(2)(h), a greenhouse may not exceed 200 square feet. It was explained to Ms. Allen that she had three options: 1) remove the greenhouse; 2) reduce the size of the greenhouse; or 3) apply for a variance. The hardship criteria for granting a variance was explained to Ms. Allen. No action was taken so a final notice of violation was sent to Ms. Allen on January 31, 2019. Ms. Allen’s attorney, Mr. McNeish, presented questions of administration and enforcement to the Town Administrator pursuant to Section 16-5-70(b)(2) regarding the final notice. Attached as Exhibit A is Mr. McNeish’s letter to the Town Administrator and attached as Exhibit B is the Town Administrator’s response letter.

I determined that the “dome” does not meet code and instructed that the “dome” was required to come into compliance within thirty (30) days of this letter. Pursuant to Code § 16-5-70(b)(3), Ms. Allen filed an appeal of this decision.

I request that the Board uphold my decision.

POTENTIAL MOTIONS FOR BOARD CONSIDERATION:

Below are the potential motions related to the appeal hearing for 7231 S. Quintero Street. The motions may be amended by the Board as necessary.

- a. I move to **reverse** the decision made by the Town Administrator regarding the enforcement of the Dome located at 7231 S. Quintero Street, finding that it meets the criteria of Section 16-2-50 of the Foxfield Municipal Code.
- b. I move to **uphold** the decision made by the Town Administrator regarding the enforcement of the Dome located at 7231 S. Quintero Street finding that it does not meet the criteria in Section 16-2-50 of the Foxfield Municipal Code.

ATTACHMENTS:

Exhibit A – Letter dated March 1, 2019 from Mr. McNeish, Spencer Fane, to the Town Administrator

Exhibit B- Letter dated March 8, 2019 to Mr. McNeish, Spencer Fane, from the Town Administrator



GILBERT MCNEISH
DIRECT DIAL: 303-839-3722
gmcneish@spencerfane.com

March 1, 2019

VIA CERTIFIED MAIL AND E-MAIL

kproctor@townoffoxfield.com
Karen L. Proctor, Town Administrator
Town of Foxfield
P.O. Box 461450
Foxfield, CO 80046

Re: Final Notice of Violation dated January 31, 2019 - Property Location: 7231 S. Quintero Street - Case No: 18-0881 - Jan Allen (Owner) - Questions of Administration and Enforcement - Municipal Code, Chapter 16, Zoning, Sec. 16-5-70(b)(2)

Dear Ms. Proctor:

I am writing to you on behalf of Ms. Jan Allen concerning the above captioned Final Notice of Violation dated January 31, 2019 (“Final Notice”), regarding property she owns located at 7231 S. Quintero Street, Foxfield, Colorado. Specifically, I am writing pursuant to Chapter 16, Zoning, Section 16-5-70(b)(2) of the Foxfield, Colorado (“Town”), Municipal Code (“Code”) wherein it states that all questions of administration and enforcement of Chapter 16 (Zoning) and Chapter 18 (Building Regulations) shall first be presented to the Town Administrator prior to an appeal to the Board of Adjustment.

As I believe you are aware, this matter involves the placement by Ms. Allen of a “Growing Dome” (“Dome”) on her property last fall. At that time, based on information previously provided by the seller of her home, and her understanding of the Code, it was her belief that the Dome could be erected on her property without obtaining a permit or other approval from the Town. In addition to the advice she received from her seller, her belief was based on the general nature of the Dome’s construction, including the fact that it does not have a permanent floor or foundation.

She has made previous alterations to her home and in all cases, she has obtained the requisite permits from the Town. At no time, including the erection of the Dome, has she intentionally violated any provision of the Code. Nevertheless, she has been cited as described below as being in violation of several provisions of the Code with respect to the Dome.



In order for Ms. Allen to more fully understand the Code violations cited, and the options she may have, I have questions and Code enforcement matters that I request you address related to correspondence from the Town to Ms. Allen in letters dated October 25, 2018 (Courtesy Notice) and January 31, 2019 (Final Notice), as follows:

1. Code, Chapter 16, Zoning

a. In the Final Notice, the Dome is cited as being in violation of Section 16-2-50(c). First, it is stated in the Final Notice that violation of Section 16-2-50(c) is one of several violations which still exists on the property as detailed in previous communications (Courtesy Notice). Note, however, that Section 16-2-50(c) was not cited as a Code section violation in the earlier Courtesy Notice.

Furthermore, the general reference in the Final Notice to subsection (c) of Section 16-2-50 is overly vague. Subsection (c) lists eight dimensional requirements for the RR Zone District, but the Final Notice does not indicate which specific dimensional requirements among the eight listed are violated by the Dome. Please clarify and be more specific with respect to the cited Code violations under subsection (c) so that your enforcement action can be properly evaluated by us, including any corrective action which may be taken by Ms. Allen.

b. Please also note that Section 16-2-50, and in particular subsection (c) as cited in the Final Notice is only applicable to “structures”. By definition pursuant to Section 16-6-10, a structure is defined, in part, as “Anything which is built or constructed or the use of which requires permanent location on the ground or attached to something having permanent location on the ground.” (*Emphasis*) Pursuant to the manufacturer’s specifications, the Dome does not require permanent location on the ground or attachment to something having permanent location on the ground, and therefore it is not a “structure” as defined by the Code. Accordingly, because the Dome is not a structure, it does not appear to be subject to Chapter 16 of the Code, including Section 16-2-50 and subsection (c) thereof. Please clarify the Town’s position in this regard.

2. Code, Chapter 18, Building Regulations.

Please note pursuant to Section 18-1-10, and in particular Section 105 of the 2015 International Building Code (“2015 IBC”), the Dome appears to be an exempt building for which no building permit is required. Specifically, pursuant to 105.2, Building: 10 of the 2015 IBC, it is provided, in part, that permits shall not be required for “Shade cloth structures constructed for nursery or agricultural purposes...”. The Dome by its manufacturer’s specifications and description is a shade cloth structure constructed for nursery purposes, and therefore it appears to be exempt from the Town’s building permit requirements pursuant to the 2015 IBC. Please also clarify the Town’s position concerning this provision.

In conclusion, based upon the definition section and other provisions of the Code as described above, including the 2015 IBC, I respectfully request on behalf of Ms. Allen that you withdraw your Final Notice and cease any further code enforcement action related to the Dome. In the event that you are in disagreement with my interpretation of the relevant Code provisions which I have cited, please



provide a detailed explanation of your position, and also clarify the specific Code provisions which you believe are violated by the Dome.

Lastly, based on an email which I received on February 27th from Ms. Ruthanne Goff, Town Attorney, it is my understanding that the Town takes the position that this letter request pursuant to the Code will not automatically stay the deadline of March 4, 2019 for compliance with the Final Notice. Accordingly, I respectfully request your agreement that the Town will, in fact, stay all enforcement proceedings pursuant to the Final Notice until you have rendered your decision in response to this letter, and then for an additional period of up to thirty (30) days following that decision to allow Ms. Allen the opportunity to file an appeal with the Board of Adjustment, if necessary, pursuant to Section 16-5-70(b)(3) of the Code.

I look forward to your response at your earliest convenience and hope to resolve these issues in a manner mutually acceptable to both Ms. Allen and the Town. Please contact me if you want to discuss any matters concerning this letter or the enforcement action.

Sincerely,

Gilbert F. McNeish

cc: Jan Allen (via email)
Randi Gallivan (via email)
Chris Pratt (via email)
Cory Hoffman (via email)
Ruthanne Goff (via email)



March 8, 2019

VIA CERTIFIED MAIL AND E-MAIL

Gilbert F. McNeish
Spencer Fane, LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

**Re: Questions of Administration and Enforcement, Code § 16-5-70(b)(2)
Jan Allen - Final Notice of Violation dated January 31, 2019
Case No. 18-0881, 7231 S. Quintero Street**

Dear Mr. McNeish:

This letter is in response to your March 1, 2019 letter to me submitted pursuant to the Foxfield Municipal Code (the "Code") § 16-5-70(b)(2), which requires that all questions of administration and enforcement concerning zoning shall be presented to the Town Administrator.

Pursuant to the January 31, 2019 Final Notice of Violation (the "Final Notice"), your client, Jan Allen, was cited with several violations of the Code concerning the construction of a "Growing Dome" (the "Dome") on the property. Specifically, your client received a citation for failure to obtain a necessary building permit from the Town of Foxfield and a citation pursuant to Code § 16-2-50(c) related to violation of the dimensional requirements for an accessory structure.

You first argue that Section 16-2-50(c) of the Code, as cited in the Final Notice, was not included in a courtesy notice issued in previous communications by the Town. Assuming that previous communication with your client did not include this provision, the Town is within its discretion to issue a Notice of Violation when it believes a violation of the Code exists.

As you acknowledge, Ms. Allen did not obtain a building permit based on her own understanding of the Code and conversations with the previous owner of her property. On behalf of the Town, I do not find Ms. Allen's misinterpretation of the Code to be a compelling argument. Furthermore, if Ms. Allen applied for a building permit or otherwise sought the advice of the Town Building Department concerning the need for a permit, she would have learned the specific Town restrictions concerning construction of the Dome without the need for issuance of the Final Notice.

In addition to the citation concerning Ms. Allen's failure to obtain a building permit, the Town also issued a citation for violation of Code 16-2-50(c) regarding the allowable dimensional requirements of accessory structures within the Town. In particular, pursuant to these provisions,

*P.O. Box 461450, Foxfield, CO 80046-1450
(303) 680-1544
www.foxfieldcolorado.com*

it is the Town's position that the Dome does not qualify as a permitted accessory structure within the Town. For instance, in addition to violation of the general restrictions on accessory structure, as a greenhouse, the Dome may not exceed two hundred (200) square feet Gross Floor Area (GFA). *See* Code § 16-2-50(b)(2)(h).

The Town also does not agree with the distinction you have raised in which you claim that the Dome does not qualify as a "structure" for purposes of Code § 16-6-10. Specifically, this provision defines a "structure" as "[a]nything which is built or constructed *or* the use of which requires permanent location on the ground or attached to something having permanent location on the ground." The Town finds that inclusion of the word "or" is significant and does not limit "structures" to only requiring a permanent location on the ground. Therefore, even assuming as you have stated, that that Dome does not require a permanent location, the Town deems the Dome to be a "structure" for purposes of the Code.

Lastly, you cite Section 105.2 of the 2015 International Building Code (the "2015 IBC"), alleging that the Dome is an exempt building for which a building permit is not required because it is a "shade cloth structure constructed for nursery or agricultural purposes." It is important to point out that the same Section states that any potentially exempted structures should not be "deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction." In this case, the Dome is not a permitted accessory structure pursuant to the Code and therefore construction of the Dome is a violation of the Code. Accordingly, even assuming that the Dome qualifies as a "shade cloth structure constructed for nursery or agricultural purposes," and I find it is not exempt based on the permanent nature of the structure, this alleged exemption is precluded by the fact that construction of the Dome would violate the Code.

Therefore, your client is required to come into compliance within thirty (30) days of this letter. Pursuant to Code § 16-5-70(b)(3), your client is also entitled to present questions to the Board of Adjustments on appeal from this decision by filing a written appeal to me within thirty (30) days following issuance of this letter.

Sincerely,



Karen Proctor
Town Administrator

c: Corey Y. Hoffmann (via email)
Daniel Harvey (via email)
Ruthanne Goff (via email)
Randi Gallivan (via email)

*P.O. Box 461450, Foxfield, CO 80046-1450
(303) 680-1544
www.foxfieldcolorado.com*