



**MEMORANDUM**

TO: Mayor Jones and Members of the Board

FROM: Karen Proctor, Town Administrator

DATE: July 18, 2019

RE: 7231 S Quintero Street Appeal and Variance Orders

**BACKGROUND:**

At the meeting on May 16, 2019 the Board heard the Appeal of the Town Administrator's determination regarding questions of Administration and Enforcement and a request for a variance regarding the Dome at 7231 S. Quintero Street.

Attached for your review and approval are the Final Orders for the appeal and variance. This is not a re-opening of the decisions made, but should be reviewed to ensure that the orders reflect the intentions of the Board when the decisions were made.

**ATTACHMENTS:**

**Exhibit A** – Appeal Order 7231 Quintero and Variance Order 7231 Quintero

**BOARD OF ADJUSTMENT FOR THE TOWN OF FOXFIELD****Case No. AP 0001**

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**FINAL ORDER RE: Appeal from Town Administrator's Determination regarding Questions of Administration and Enforcement – 7231 S. Quintero Street**

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THIS MATTER comes before the Board of Adjustment on an appeal of the Town Administrator's interpretation of the Town of Foxfield Municipal Code (the "Code") as it applies to a "Growing Dome" (the "Dome") constructed on the property located at 7231 S. Quintero Street (the "Property") sought by the Property owner, Jan Allen (the "Applicant"). Applicant sought review of the Town Administrator's decision issued on March 8, 2019, finding that the Dome violates the Code. After reviewing the record, including the final decision by the Town Administrator, receiving a summary of the matter from staff, and hearing argument of the Applicant on May 16, 2019, the Board of Adjustment finds and orders as follows:

**I. Background**

A. Applicant constructed the Dome on the Property and submitted Questions Presented to the Town Administrator regarding: 1) the Dome's designation as a structure under § 16-6-10 of the Town of Foxfield Municipal Code (the "Code") subject to permitting requirements of the Town; and 2) the Dome's exemption as a shade cloth structure under Section 105.1 of the International Building Code (the "IBC"), as adopted by the Town.

B. On March 8, 2019, the Town Administrator issued a determination finding that the Dome is a structure and that the Dome is not a shade cloth structure as exempted under the IBC.

C. Applicant subsequently filed an Appeal of the Town Administrator's determinations to the Board of Adjustment. A hearing was held on May 16, 2019.

**II. Appeal Criteria**

Pursuant to the Code, the Board shall apply the following criteria for Review of an Appeal of a Town Administrator's decision:

1. The Town Administrator acted clearly in a manner inconsistent with the Code; *or*
2. The Town Administrator acted beyond the Town Administrator's authority.

Code § 16-5-70(b)(1).

### III. Board of Adjustment Decision

A. The Board held a hearing on May 16, 2019, regarding whether to affirm the Town Administrator's determination made on March 8, 2019, that the Dome violated the Code and was not exempt under the IBC.

B. Applicant admitted to not knowing that a permit was required for the Dome. However, Applicant presented argument reiterating the position that the Dome is not a structure and, therefore, does not require a permit. As such, the Town Administrator erred in the interpretation of Code. Additionally, the Applicant argued that if the Board agrees that the Dome is a structure, the Dome is exempt pursuant to the IBC. The Town Administrator noted the findings in the March 8, 2019 Determination and provided a staff report for purposes of the May 16, 2019 Hearing.

C. No public comment was heard since the hearing was limited to matters raised on appeal.

D. The Board finds that the Dome is a structure and that the Town Administrator's interpretation as such was in a manner consistent with the Code. Additionally, the Board finds that while the Dome is used as a green house, it does not meet the definition of a "shade cloth structure" to be exempted from the permitting requirements. Furthermore, the Dome is not a permitted accessory structure as allowed under the Code. Therefore, the Board finds that the Town Administrator's interpretations are consistent with the Code.

E. The Board, therefore, affirms that decision and interpretations of the Town Administrator and denies the Applicant's Appeal.

WHEREFORE, the Board hereby DENIES the Appeal and AFFIRMS the determinations of the Town Administrator.

**IT IS SO ORDERED.**

Board of Adjustment

By: \_\_\_\_\_  
Lisa Jones, Mayor

Attest:

\_\_\_\_\_  
Karen Proctor, Town Administrator

# BOARD OF ADJUSTMENT FOR THE TOWN OF FOXFIELD

**Case No. V001**

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## **FINAL ORDER RE: Application for Dimensional Requirements Variance – 7231 S. Quintero Street**

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THIS MATTER comes before the Board of Adjustment (the "Board") on application for a variance for a "Growing Dome" (the "Dome") constructed on the property located at 7231 S. Quintero Street (the "Property") sought by the Property owner, Jan Allen (the "Applicant"). Applicant seeks a variance from the Board to permit the completed Dome to exceed the maximum 200 square foot dimensional requirements permitted under Section 16-2-50(b)(2)(h) of the Town of Foxfield Municipal Code (the "Code") for green house structures. After reviewing the record, receiving a summary of the matter from staff, and hearing argument of the Applicant and public comment on May 16, 2019, the Board of Adjustment finds and orders as follows:

### **I. Background**

A. Applicant constructed the Dome on the Property without permits. The Dome has a Gross Floor Area ("GFA") that exceeds the permitted size of a greenhouse, as an accessory structure, in the RR zone district.

B. Applicant attempted to get a building permit (after-the-fact) for the Dome upon learning that the Dome was non-compliant with the Code, but was denied.

C. During the public hearing, Applicant stated that while the Dome does not require a permanent location, it cannot be relocated or reduced in size without significant cost. Additionally, Applicant testified that while the Dome was being constructed, no one from the Town informed Applicant that a permit was needed nor informed Applicant that the Dome was too large.

### **II. Variance Criteria**

When reviewing an application for a variance, the following criteria must be met to authorize a variance:

a. The applicant would suffer hardship as a result of the application of the Chapter, which hardship is not generally applicable to other lands or structures in the same zone district because of the unusual configuration of the applicant's property boundaries, because of unique circumstances related to the location of existing structures thereon or because of the existence of exceptional conditions thereon;

b. There are no design alternatives or alternative locations for structures that would obviate the need for the requested variance or would reduce the amount of the variance required;

c. The enforcement of the provisions of this Chapter deprives the applicant of rights enjoyed by a majority of the other properties in the same zone district under the terms of this Chapter;

d. The need for the variance does not result from the intentional, reckless or negligent actions of the applicant or her agent, a violation of any provision of this Code or a previously granted variance;

e. Reasonable protections are afforded adjacent properties;

f. The requested variance will not cause an undesirable change in the character of the neighborhood or have an adverse effect on the physical or environmental conditions of the surrounding property;

g. The variance is the minimum variance that will make possible the reasonable use of the land or structure; and

h. [Additionally], [t]he granting of a variance will:

1. Observe the spirit of the Chapter;
2. Secure the public safety and welfare;
3. Ensure that substantial justice is done; and
4. Observe common sense.

Code § 16-5-70(a)(2).

### **III. Board of Adjustment Decision**

A. The Board held a public hearing on May 16, 2019, regarding whether to authorize the variance requested by Applicant.

B. Applicant admitted to not knowing that a permit was required for the Dome and as such did not attempt to get a permit until after the Dome was constructed and completed. Applicant described the Dome as merely a greenhouse with a modern design that has anti-glare qualities that do not interfere with the adjacent properties. Additionally, Applicant states that authorizing the variance observes the spirit of code since greenhouses are a permitted use in the RR zone district. Denying the variance, however, would do substantial injustice as Applicant has invested a significant amount of money.

C. Testimony was provided by Staff reiterating that all criteria must be met to authorize a variance from the dimensional requirements of the Code. Staff noted that the Property does not have unique property boundaries or topographical conditions that would cause Applicant to suffer a hardship should the Code be strictly applied.

D. The Board heard public comment that was both in favor of and against the variance. Some neighbors adjacent to the Property stated that Dome did not bother or interfere with the use of the adjacent properties. Other members of the public were concerned that the Dome would set negative precedent for allowing individuals to request after-the-fact variances.

E. Based on the record, argument from Applicant and Staff as well as public comment, the Board finds that Applicant has failed to satisfy the first criteria:

a) the applicant would suffer hardship as a result of the application of the Chapter, which hardship is not generally applicable to other lands or structures in the same zone district because of the unusual configuration of the applicant's property boundaries, because of unique circumstances related to the location of existing structures thereon or because of the existence of exceptional conditions thereon.

F. Since Applicant has failed to satisfy all of the criteria in Section 16-5-70(a)(2) of the Code, the Board declines to address the remaining criteria therein.

G. Given the nature of the Dome, the Board will grant Applicant ninety (90) days to address how to remove the Dome and/or reduce the size of the Dome so as to be compliant with the Code.

WHEREFORE, the Board hereby DENIES the Application for a dimensional requirement variance for the Dome located on the Property.

**IT IS SO ORDERED.**

Board of Adjustment

By: \_\_\_\_\_  
Lisa Jones, Mayor

Attest:

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Karen Proctor, Town Administrator