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[EXTERNAL] Public Comment re: Requested height variance for the Orchard Town Center

From Michael Luby <michael.luby@protonmail.com>

Date Mon 1/12/2026 6:56 PM

To McConnell, John <jmcconne@westminsterco.gov>; Planning <planning@westminsterco.gov>

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Mr. McConnell & City of Westminster,

I am emailing petitioning the city to formally deny the requested height variance for a flagpole at the Orchard Town Center, located at 14697 Delaware Street. After reviewing the January 13, 2026 Planning Commission packet and applicable provisions of the Westminster Municipal Code ("WMC"), I respectfully urge the Commission to deny the variance request in its entirety.

Under WMC § 11-11-11(A), flags are regulated as *Incidental Signs*, and for properties with a Commercial land use designation, the maximum allowable flagpole height is 35 feet. The applicant seeks approval for a structure exceeding 41 feet in total height, well beyond what is permitted by code. The ordinance is unambiguous, numeric, and deliberately calibrated. This request seeks not interpretation, but exemption.

Variances are not intended to serve as an alternative permitting pathway for uses or dimensions the City has already expressly limited. Granting this request would functionally rewrite the sign code for a single property.

The Application Fails to Meet the Mandatory Variance Criteria

Section **11-11-13(E)**, **WMC** requires that *all six criteria* be satisfied before a variance may be granted. Staff correctly concluded that this application fails at the threshold.

Most notably:

- No special or unique circumstances exist that restrict the effectiveness of a code-compliant 35-foot flagpole. The site is a large, developed commercial shopping center whose conditions were created by the property owner, not imposed by external or unusual constraints.
- The applicant's narrative does not identify any condition *peculiar* to this property that would justify deviation. It fails to even make a formal statement but simply makes a request for increased visibility.

It has already been noted that generalized conditions such as visibility from roadways or surrounding development are common to nearly all commercial properties and cannot form the basis for a variance without nullifying the sign code altogether.

Rather than focusing on improving the overall layout and stores contained within the Orchard itself, it simply requests to install an overtly large flag. It has been repeatedly requested to install larger cell towers which create a hazard to local neighbors and those have been denied.

The Westminster sign regulations are intentionally numeric and uniform to ensure predictability, fairness, and equitable treatment among similarly situated properties. Deviation from these quantified standards weakens the general purpose of the sign regulations and sets an untenable precedent.

The City itself states that it has repeatedly denied variance requests for far more utilitarian infrastructure, including cell towers intended to expand wireless coverage, where applicants could at least articulate public safety, emergency access, or service-delivery justifications. **By contrast, this request offers no comparable necessity and seeks relief solely to enhance visibility of a symbol.**

Approving this variance while continuing to deny variances for critical infrastructure would be inconsistent, inequitable, and damaging to the City's credibility in land-use administration.

The applicant's stated justification amounts to little more than a preference that the flag be seen "from a greater distance." That is not a land-use hardship, nor is it a planning concern recognized under the WMC. The code already permits a substantial, visible, and functional flagpole. The request does not address safety, access, economic necessity, or compatibility—it merely seeks amplification.

The absence of any substantive justification underscores that this variance is not required for reasonable use of the property and is instead discretionary, symbolic, and unnecessary.

While political or symbolic expression may be meaningful to the applicant, such motivations are not a lawful basis for granting zoning relief. The Planning Commission is charged with applying adopted criteria and not adjudicating symbolic visibility. When a variance request is unsupported by hardship, necessity, or unique conditions, and is instead driven by expressive preference, denial is not only appropriate, it is required.

The mere presence of a flag, much less one of this size is only expressive of political leanings and not of actual structural purpose.

Staff has thoroughly analyzed the application and correctly concluded that the variance fails to satisfy the mandatory criteria set forth in **WMC § 11-11-13(E)**. The staff recommendation to deny the request is well-supported by both the factual record and the governing law.

For the foregoing reasons, I respectfully request that the Planning Commission deny the requested height variance. Doing so preserves the integrity of the Westminster Municipal Code, ensures consistent application of the City's sign regulations, and avoids creating an unjustified precedent that would invite future erosion of adopted standards.

Independently, the petitioners are required to deploy formal notice to any neighbor within 300 feet. As the Huntington Trails neighborhood did not receive any notice, this is invalid on its face and must be dismissed for failure to properly notify.

Ultimately, the petitioners should focus on building and deploying a better product with better restaurants, bars, and attractions in lieu of seeking out attention seeking symbols in clear violation of the law.

Thank you,

Michael Luby

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