Anaconda-Deer Lodge County

Board of Adjustment Minutes

Thursday, May 28th, 2020 ALDC Building, 1st Floor Conference Room 4 p.m.

Meeting called by Donna Kostelecky, Vice-Chair

Type of meeting Variance Meeting

Minutes taken by Carlye Hansen

Members Present: Donna Kostelecky, Vice Chair Stormi Brosseau, Judy Barber

Members Absent: Bill Johnson, Chair (Excused)

Staff: Carl Hamming, Planning Director; Gayla Hess; Carlye Hansen, Planning Department Secretary

Guests Present: Please see sign in sheet

AGENDA TOPICS

Call to Order

Meeting was called to order at 4:01 by Donna Kostelecky, Vice Chair

Call to Order

Donna Kostelecky introduced the Board of Adjustment and did review the Board of Adjustment (BOA) Process to the applicants and the public in attendance. Introductions of the new ADLC Planning Director and new BOA member Judy Barber were made.

Approval of Minutes

December 5th, 2019

Motion was made by Stormi Brosseau to approve the minutes of the December 5th, 2019 Board of Adjustment meeting; seconded by Judy Barber. Motion passed 3-0

Public Hearings

Variance 20-001

A request by James Davison of 601 E. Commercial for a variance (V20-001) to allow relief from Appendix A. Division 2 Regulation A.1 of the Development Permit System (DPS) which prohibits fencing within or bounding a required front setback from exceeding 4 feet in height. Applicant proposes to erect a six (6) foot solid panel fence on the north portion of the lot; legally described as "ANACONDA ORIGINAL TOWNSITE, S03, T04 N, R11 W, BLOCK 30, Lot 10-12." The area is within the Goosetown Neighborhood Conservation Development District (GNCD).

Staff Report:
Gayla Hess, Planner I, reviewed the staff report put together by her and her office. The applicant seeks relief from Chapter 24, Appendix A, Division, Regulation A.1, which prohibits fencing within or bounding a required front setback from exceeding 4 feet in height. Applicant wishes to erect a six (6) foot solid panel fence on the north portions of their lot.

Please refer to the attached Staff Report dated May 28th, 2020.

There was one public comment received from Katherine Chase of 521 East Commercial and she was quoted as saying, "I don't care, he can put up his six (6) foot fence." She did express hope that the fence would look nice.

Board Question and Comments:
Donna Kostelecky, Vice Chair, wanted to verify what the Variance actually entailed and Carl Hamming, Planning Director, explained that this would be a six (6) foot all the way around, including the front, which would normally be four (4) feet, but this is the reason they are requiring this variance. The length was also questioned but this case was fine on that end.

Applicant Comments:
Jim Davison applicant, address of 609 East Commercial. The fence that he and his wife are looking at has now changed a little bit in design. They are now looking at doing something that is roughly five (5) feet tall with one (1) foot pickets across the top. There is a similar fence with this type of design up on Hamburg Street. This would still only be six (6) feet tall, so does not affect this variance at all. The fence that faces Commercial Street actually will be built up 1/3 of the side of their house so this will not be affecting the corner of the house as they are concerned with seeing around Commercial from the street. The biggest

issue as to why they are building this is that while all the deer are wonderful, they are not liking them in their yard.

Public Comment:
None

Motion

Motion was made by Judy Barber to approve Variance 20-001, which allows the applicant to seek relief from Chapter 24, Appendix A, Division, Regulation A.1, which prohibits fencing within or bounding a required front setback from exceeding 4 feet in height. Applicant wishes to erect a six (6) foot solid panel fence on the north portions of their lot; seconded by Stormi Brosseau. Motion passes 3-0.

Variance 20-002

Request by Daniel Counter of 5 North Preston for a variance (V20-002) to allow relief from Sec. 24-275(2) of the Development Permit System (DPS) which limits maximum structural height of 28 feet for structures within the Opportunity Development District (ODD). Applicant proposes to build a forty (40) foot pole for a windmill. Property is legally described as "OPPORTUNITY ORIGINAL TOWNSITE, S10, T04 N, R10 W, Lot 57, ACRES 0.75, N2W150 FT."

At this time, Mr. Daniel Counter did not show up to attend the meeting.

Motion

Motion was made by Judy Barber to table Variance 20-002, until a time in which Mr. Counter would be available; seconded by Stormi Brosseau. Motion passes 3-0.

Variance 19-003

Request by Tamara Martin of 500 E. Commercial for a variance (V20-003) to allow relief from Sec. 24-104 of the Development Permit System (DPS) setbacks for an accessory structure within the Goosetown Neighborhood Conservation District (GNCD) which requires a minimum 2.5 foot side yard and five (5) feet of minimum rear yard. Applicant proposes to place a metal garage at the back of the property to be within a foot or less of the side and rear property lines. Property is legally described as "ANACONDA ORIGINAL TOWNSITE, S03, T04 N, R11 W, BLOCK 2, LOT 13A, COS 186A."

Staff Report

Gayla Hess, Planner I, reviewed the staff report put together by her and her office. The applicant seeks relief from Sec. 24-104 of the Development Permit System (DPS) setbacks for an accessory structure within the GNCD which requires a minimal 2.5 foot side yard and five (5) feet of minimum side yard.

Please refer to the attached Staff Report dated May 28th, 2020

Board Questions and Comments

None at this time

Applicant Comments

Tami Martin, 500 East Commercial, actually wrote out a statement that she pretty much read to the board. Please see attached copy of statement.

Donna Kostelecky did mention that there have been issues with new built homes where you have to retain a certain amount of green space, Ms. Martin stated that she is not interfering with any green space as the area where she is putting the garage was never green space before, so she is not taking away any green areas or covering up any green areas. She did state that she did have reclamation done and that there is grass where there was grass before.

Donna Kostelecky confirmed the size of her potential garage being 20' x 12" exterior dimensions.

Public Comment

Jayne Mitchell, 819 South Anderson Avenue, Apt #2, Glendive, MT 59330.

Mrs. Mitchell is the owner of the neighboring property to the north of the Martin's at 9 Chestnut.

First off, Mrs. Mitchell thanked the board for the opportunity to speak in opposition to Variance 20-003.

She states that she did actually buy the property in 2006, and the reason was to live in the residence while she was in Anaconda, and it is also her future retirement home. She originally came from Eastern Montana and she knew that it was difficult to find a place in Western Montana. When she found this place she fell in love with Anaconda and the surrounding area. She liked the architecture and the Victorian look of the neighborhood that this house is in. She especially liked the large green lot, Lot 15A,

where there is a little side garden outside the bay window alongside the fence and she likes the big, open spaces. She is very sentimental for bay windows and anything that looks Victorian.

With respect to living in the house, she lived there from 1996 to 1998, and then from 2014 to 2016, and yes, she has had this rented during interim because she was working out of the area, and she had a property manager and tenants to assure that the property stayed in good condition.

She referred to pictures sent to the Planning Secretary (see attached photos). She was living there when the previous structure, on the now Martin property, was torn down and she reviewed some of the history in regards to this small building. Her concern is that in looking at the drawings that she received, and with looking at the staff report it looks like the new garage will be next to her wire fence, She stated that the old building was not in this the exact area where the Martin's want to build their garage, and there was quite a bit of space between the building and her property, roughly 5 ft. There was a survey taken, and she states that Ms. Martin covered over the survey stakes and that is why the fence went up where it did. She again stated that there was a reasonable distance between the old building and where the fence line began and her house.

She is asking the Board to not approve the variances and that they give her some light, some air, and some room for green space. She used to love to see the deer come in and the back area is open anyway, so a deer can walk in anytime that it wants.

Again, her main concern is that the garage is going to be "slammed" right up against the fence corner and that this was never the case historically and it doesn't need to be the case now. She states that if you look at the driveway, you can see that you could put a garage square to the driveway equal distance from both sides of the edge of the driveway and give her some breathing place if they moved the canopy which is not a permanent structure and it is sticking about 2 ½ feet into the driveway and she feels that this would make the garage straight on square to the driveway if she moved the canopy.

She does appreciate the fact that Anaconda is making their neighborhoods look more and more attractive all of the time. This does take some zoning for green spaces, light, and air, and there is not any really any point to passing regulations if you don't enforce them. She feels that the lot in question is very tiny and that Ms. Martin knew what she was getting. If she wanted something bigger, she could have purchased something larger, but she has what she has, and she asks that the zoning requirements be upheld, and that if they need to do something, have her move the canopy.

Donna Kostelecky thanked Jayne for calling in and being concerned. She would like to address a couple of things at this time.

The fence is actually on the property line and that this is the correct property line? Yes, stated Ms. Mitchell. It had been surveyed, but then the encroachment happened.

She also stated that this is in the Goosetown District and that some houses are very close together and that some considerations are made routinely due to this issue.

Donna then asked Ms. Martin about the canopy and Ms. Martin said that the canopy doesn't give that much room and that it is maybe 1 foot off of the driveway. This was cost effective and it is very nice and that this really make a whole lot of difference.

Mike Thomas, 9 Chestnut, Anaconda, MT 59711

Mr. Thomas is the current renter at Ms. Mitchell's house until the end of next month. He has been pretty much kicked out by Ms. Mitchell, however he is currently living there and he has talked to the Martin's extensively about the garage and he even went out when they measured. He states that this is not going to obstruct the view of the mountains, it is not going to obstruct the view of anything, and it is not going to hinder the wildlife. The neighbors on his other side have a garage and a shed. At most times, there are very little deer on the property. The garage will not block any of the sunlight. He watched them doing the measurements and it is a good portion off of the fence line. In his opinion and with currently living in that residence, it would not obstruct any of the views and if you were upstairs, you can see above the neighbor's house and get a view of the mountains.

Donna Kostelecky did explain to Ms. Mitchell, that the Board cannot deal with light and air as they do not have the power of God, so that is not quantified to deal with. The Board also does not deal with wildlife either. In regards to degrading the character of the neighborhood, they do take that into consideration.

Tami Martin, just wanted to respond to several items mentioned by Ms. Mitchell.

She states that the canopy is not a real issue. She doesn't even think it will give even a foot of room and isn't even a full square.

She states that she is looking at something in size that matches what was previously there, nothing larger. When she purchased the property, she was told that there are variances available and they could go through the process of the variance, in order to get a garage again.

She also states that she did not cover up any stakes when she moved into town.

Donna again reiterated that they do give variances more consideration given the small size of the properties within this area.

The county has given the BOA the recommendation that grants the variance relief.

Motion

Motion was made by Stormi Brosseau to approve Variance 20-003 and grant relief from Sec. 24-104 of the Development Permit System (DPS) setbacks for an accessory structure within the GNCD which requires a minimal 2.5 foot side yard and five (5) feet of minimum side yard; seconded by Judy Barber. Motion passes 3-0.

Miscellaneous

Donna just wanted us to be sure and address the Lemm Variance that took place in December. Mr. and Mrs. Lemm were given until August 5th, 2020, to move their trailer, and this will need to be looked at again soon and addressed by the Board.

Carl stated that we will need to get Mr. Counter's variance rescheduled and that in speaking with Gayla Hess, there are several more variances coming up, so it is likely that we will be having another meeting in the near future and he would like to thank them all for their work and support.

Donna asked about the Property Record Card, and Carl explained that is used for the useful information listed on this in regards to public property information. Donna asked if there is something on this information card that stands out that the Board needs to know, that the Department somehow highlights this information for the Board to see.

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Public Comment

None

Next Meeting Date

TBA

Adjournment

Meeting was adjourned at 4:57 p.m.

Respectfully submitted,

Carlye Hansen

Attachments

1. BOA Sign-In Sheet
2. Variance V20-001 Staff Report
3. Variance V20-003 Staff Report
4. Variance V20-003 Applicant Statement, Tami Martin

DRAFT

Board of Adjustment
Anaconda-Deer Lodge County
March 28th, 2020 @ 6 p.m.
ALDC Building, 1st Floor Conference Room

Sign-In Sheet

Name	Address	E-Mail Address	Are you an attorney or legal representative?
Tamara L Martin	500 E Commercial	trent.tami.martin@gmail.com	☐ Yes ☒ No
Jim Davison	609 E Commercial	jamesh.davison@gmail.com	☐ Yes ☒ No
Jayne Mitchell via conference call	819 S. Anderson Avenue Apt 2 Glendive 59330		☐ Yes ☒ No
			☐ Yes ☐ No
MaryCarol Davison	609 E Commercial	caroldavison46@hotmail.com	☐ Yes ☒ No
Michael Thomas	9. Chestnut.	chads14.9@icloud.com.	☐ Yes ☒ No
			☐ Yes ☐ No
			☐ Yes ☐ No

ANACONDA- DEER LODGE COUNTY
Board of Adjustments

Staff Report
Variance Request by James Davison
May 28, 2020

A report to the ADLC Board of Adjustments on a request from James Davison for a variance to allow a fence taller than four (4) feet in height towards the front of the lot adjacent to **601 East Commercial** within the urban area (Goosetown Neighborhood Conservation District (GNCD)).

Applicant: James H. Davison
609 E. Commercial
Anaconda, MT 59711

Property is legally described as:
ANACONDA ORIGINAL TOWNSITE, S03, T04 N, R11 W, BLOCK 30, Lot 10-12.

Summary of Request:
Applicant requests relief from Chapter 24 Appendix A. Division 2 Regulation A.1 which prohibits fencing within or bounding a required front setback from exceeding 4 feet in height[1]. Applicant wishes to erect a six (6) foot solid panel fence on the north portion of their lot.

The privacy fence location is proposed to be built 27 feet back from Commercial Ave. right-of-way and 31 feet setback from Birch Street (indicated in yellow on Figure 3). The resident owns a private parking lot which comprises the western area of the aggregated lot. Planning Department representatives met with residents on April 28, 2020 for photos and verification of measurements.

Figure 1:Google maps photo; facing south east

[1] "Urban and suburban areas. In the HDRD, LDRD, MDRD, CBDD, HCDD, and in the WVDD on residential ***Lots*** of 15,000 square feet or less and in all commercial ***Development***, no fence, hedge, or freestanding wall (not part of a ***Building***) located within or bounding a required front ***Setback***, may exceed forty-eight inches (4 feet) in height..."

Figure 2: Facing NE towards Commercial Ave. (people in approximate location of proposed fence)

Proposed fence location

Proposed fence location to edge of sidewalk ≈ 27'

Proposed fence location to house ≈ 47.5'

Distance from sidewalk to fence ≈ 31'

Surrounding Neighborhood: Primarily Residential with Commercial uses to the south.

Variance Criteria: Per Sec. 24-33(5), in order to grant relief from the provisions of the Development Permit System (DPS), the Board must find that:

a. *The variance is necessitated due to exceptional and/or extraordinary circumstances or conditions that are unique to the subject property and are not generally characteristic of similarly situated properties.*

   The Davisons own the adjacent vacant corner lot and vacant corner lots are not common. The proposed fence location provides greater than 25 feet from sidewalk corner on both Commercial and Birch Streets which provides for a greater visibility triangle than most corners in GNCD.

b. *Approval of the variance(s) will preserve a property right or use that is generally enjoyed by owners of similarly situated properties, and conversely, approval of a variance will not bestow a special privilege on the applicant that is not generally enjoyed by the owners of a similarly situated properties.*

   Other Goosetown properties are not as large thus not allowing a privacy fence to be greater than 20 feet from the primary structure/residence. Fences of 6 feet in height currently exist within the same neighborhood and are also set back further from the front lot line – allowing privacy in the back and side yards

c. *The alleged hardship has not been created by the applicant.*

   No hardship has been created by the applicant.

d. *Specific relief from these **DPS Regulations** shall be the minimum necessary to accomplish the applicant's stated objectives.*

   Applicant must apply for an Administrative Development Permit (ADP) if variance is granted; contractor Continental Fence ADLC Business License #401.

e. Adverse impacts associated with granting relief from the **DPS Regulations** are avoided or effectively mitigated.

   Placement of fence will allow for adequate visibility of Commercial Ave. at the corner for from Birch Street.

   ADLC Road Foreman and MDT had "no concerns" regarding this variance.

Public Comment (received by 05/20/2020):
Katherine Chase of 521 E. Commercial called 05/20/2020 to say, "I don't care- he can put up his six-foot fence." She did express hope that the fence would look nice.

Findings and Recommendation: Should the Board find that the criteria for granting relief from DPS Appendix A. Division 2 Regulation A.1 which prohibits fencing within or bounding a required front setback from exceeding 4 feet in height, and therefore, takes action to grant the requested variance; staff recommends the following conditions:

1. Administrative Development Permit required
2. Fence must be installed within 12 months of approval with an option for approval extension from Planning Department for up to twelve additional months

Attachments:

(1) Variance Application
(2) Cadastral Property Record Card
(3) Chapter 24, Appendix A, Division 2
(4) Email response from ADLC Road Dept. (05/15/2020)
(5) Email response from MDT (05/15/2020)

ANACONDA- DEER LODGE COUNTY
Board of Adjustments

Staff Report
Variance Request by Tamara Martin
May 28, 2020

A report to the ADLC Board of Adjustments on a request from Tamara Martin for a variance to allow a structure to encroach within the Goosetown Neighborhood Conservation District (GNCD) setbacks.

Applicant: Tamara Martin
500 E. Commercial
Anaconda, MT 59711

Property is legally described as:
ANACONDA ORIGINAL TOWNSITE, S03, T04 N, R11 W, BLOCK 2, LOT 13A, COS 186A

Summary of Request:
Applicant requests relief from Sec. 24-104 of the Development Permit System (DPS) setbacks for an accessory structure within the GNCD which requires a minimum 2.5 foot side yard and five (5) feet of minimum rear yard.

Applicant proposes to place a metal garage at the back of the property to be within a foot or less of the side and rear property lines; Figure 1 depicts former garage in proposed location. Existing lot is 30x80 feet. The metal garage proposed for the property is 12x20 feet (interior dimensions of 10.63x18.5 feet).

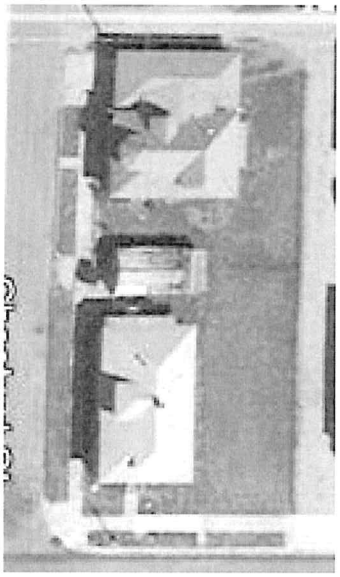

Figure 1: Google Earth aerial photo

Figure 2: Facing East towards planned location for garage

Figure 3: Garage (Model #50952), 20x 12, lowes.com

Surrounding Neighborhood: Primarily residential

Variance Criteria: Per Sec. 24-33(5), in order to grant relief from the provisions of the Development Permit System (DPS), the Board must find that:

a. *The variance is necessitated due to exceptional and/or extraordinary circumstances or conditions that are unique to the subject property and are not generally characteristic of similarly situated properties.*

   Customary in the GNCD, the subject lot is a rather small, measuring 30'x80'. Placement of the new garage will be in the same location as a former structure and will use the existing driveway approach. No overlap (including eaves or dripline) will extend beyond property or existing fence.

b. *Approval of the variance(s) will preserve a property right or use that is generally enjoyed by owners of similarly situated properties, and conversely, approval of a variance will not bestow a special privilege on the applicant that is not generally enjoyed by the owners of a similarly situated properties.*

   Prevailing setbacks are closer while lots are typically smaller in GNCD in comparison to other development districts. Resident proposes to align new garage with home. Neighboring property

is yard nearest property boundaries. Many residences within Goosetown enjoy garages or accessory buildings.

c. *The alleged hardship has not been created by the applicant.*

Hardship has not been created by the applicant. Lot size and driveway approach are existing.

d. *Specific relief from these **DPS Regulations** shall be the minimum necessary to accomplish the applicant's stated objectives.*

Residents will be required to obtain an Administrative Development Permit (ADP) and a building permit should the variance be granted.

e. *Adverse impacts associated with granting relief from the **DPS Regulations** are avoided or effectively mitigated.*

Driveway approach from Chestnut is existing and currently in use; no traffic impacts.

Public Comment (received by 05/20/2020):
Jayne Mitchell, 9 Chestnut, called on 5/20/2020 to voice her opposition to the variance requested. Ms. Mitchell is concerned that the proposed metal building within the setbacks would:

- Infringe on her property
- Cut off access to light and air [to her property]
- Discourage wildlife
- Degrade the character of the neighborhood.

Ms. Mitchell further pointed out that parking is available for the residents (including the street) and that the patio area could be taken out to meet setbacks.

Findings and Recommendation: Should the Board find that the criteria for granting relief from DPS Sec. 24-104 which requires a minimum side yard of 2.5 and a minimum 5.0 feet rear yard, and therefore, takes action to grant the requested variance; staff recommends the following conditions:

1. Applicants apply for and obtain an ADP and a building permit for the proposed garage.
2. Any lighting attached to exterior of garage will be required to be oriented in a downward direction.
3. Garage work must commence within 12 months of approval with an option for approval extension from the Planning Department for up to twelve additional months.

Attachments:
(1) Variance Application
(2) GNCD Development District Standards
(3) Cadastral Property Record Card
(4) COS 186A
(5) Email sent for comment (05/15/2020)
(6) Email from Jayne Mitchell (05/20/2020)

Received 6/8
Tamara Martin Statement

I have been making and will continue to make improvements to my residential home. It is where I live and desire to enjoy normal comforts of a homeowner, which include a garage. I believe I meet the criteria of the variance.

I have taken pictures to show exactly the placement of the garage should I be granted the variance. I also have pictures of the neighboring home and of the neighborhood as there has been concern expressed that I will compromise the character of the neighborhood by one of my neighbors, Ms. Mitchell. The blue home is the rental/retirement property of Ms. Mitchell.

Nearly everyone in Goosetown has a garage. My lot is a small corner lot. There was a garage there before and it is still noted on the document filled with the county that there is a detached garage. Which obviously isn't there now. The google maps picture I believe is from 2013. I purchased the home in 2016 and the garage was taken down prior to my purchase and prior to me ever looking at the property although I could clearly see there had been a garage before.

As stated in the variance report I will be using the existing driveway approach and there will not be any overlap including eaves and dripline that extend beyond my property line.

Request is for a garage that is smaller than the one that was there before and was there when Ms. Mitchell purchased her property.

While the garage will be close to one of the property lines, it will not be close to another building structure.

I am not causing any hardship to any of my neighbors by putting up a garage. I currently use the driveway. The garage will be put in the same place the previous one was before.

I understand I need a building permit should I be granted a variance.

Ms. Hess asked for concerns from public officials – fire department, law enforcement and 911, to which none have expressed concerns.

Regarding Ms. Mitchell's comments noted in the report:

- there is no infringement that will be made on or to her property. The garage is smaller than the one that was there when she purchased her property in 2006.
- The garage is not oversized and will not cut off light or air to her property.
- She put up a fence which would cause more discouragement to wildlife than a single car garage. This is not a property in the country. We are on the corner of Commercial and Chestnut.
- The structure is a new and nice garage. It will bring value to the property and will not degrade the character of the neighborhood.
- Yes, there is street parking available. However, I am not asking for a garage just for parking. I have a driveway. I would like to have a place to store my lawn mower and a few other things in addition to a covered area for my car.

Regarding Ms. Mitchell's letter:

- Ms. Mitchell does not reside in her home. As she has stated in her letter she resides in Glendive. Her property has been a rental property since prior to my purchase in 2016. She is not able to

enjoy seeing the deer or the mountains from her bay window. She does not reside there. Even if she were to move there the garage I am wanting to put up is smaller than the one that was there when she purchased her home. So again, she will not be denied anything she thought she would have when she purchased her home in 2006. One of the photos I have provided show the view that she would still have. This photo was taken in line with her bay window on my property.

- I am not decreasing the green space on my property. The garage is going in a spot where there was one before and shows one to be on the plans. She does not have a garden as she states she does.
- Her water line will be just as assessable as it was when she purchased her property. There will be no infringement on utility access.
- This is not country property. The nearest spring is off Pennsylvania and does not run through or near this property. Nor can it be heard from the property.
- Ms. Mitchell's accusations regarding my disrespect of property boundaries are false and defamation to my character. I did not trespass on her property nor did I bury surveyor stakes.
- COVID-19 has no bearing on a garage.
- I reside in my home. I have a room that I rent out from time to time. I use the Air BnB service, (which I had to go through a variance process to do) so that I can screen renters, control who comes and goes in my home, and have protection for both myself and anyone who would rent from me. Having a garage is not going to encourage crowded living or a transient population.
- Ms. Mitchell is stating that having a garage on my property will keep her from enjoying her retirement home. Again, I am not asking for anything that wasn't already there when she purchased her home in 2006 and hasn't resided there since before June 2016.