



**PLANNING COMMISSION
REGULAR MEETING AGENDA**

**ZOOM/ YOUTUBE ONLINE MEETING
313 Cree Meadows Drive, Ruidoso, NM 88345**

Tuesday, September 1, 2020 – 2:00 pm

Attendance: In response to the Governor's declaration of a Public Health Emergency and ban on large public gatherings, the Planning Commission meeting on Tuesday, September 1st will be held via Zoom video conference.

Viewing: Members of the public will have the ability to view the meeting through Zoom and YouTube.

Zoom meeting website:

<https://us02web.zoom.us/j/89582621793?pwd=YTVhV1JuLzdIZm1xWlVlVFZNGVFQT09>

Meeting ID: 895 8262 1793

Passcode: 235529

One tap mobile: +12532158782,,89582621793#,,,,,0#,,235529

YouTube at <https://www.youtube.com/channel/UCiI01gVEgmVcl-vZLOxTN0w/featured>. The YouTube channel can be streamed using this address from most smartphones, tablets, or computers.

Public Comment: The Commission will take general public comments and comments on the meeting's specific agenda items in written form via email at: stephaniewarren@ruidoso-nm.gov; fax at 575-258-4367 or by mail: 313 Cree Meadows Drive, Ruidoso, NM 88345 before September 1st at 10:00 am. These comments will be distributed to all Commissioners for review.

1. CALL TO ORDER, ROLL CALL, AND DECLARATIONS OF CONFLICT OF INTEREST

2. CERTIFICATION OF COMPLIANCE WITH RESOLUTION #2020-01

3. APPROVAL OF AGENDA

4. APPROVAL OF MINUTES

- a) Regular Meeting August 4, 2020
- b) Special Meeting August 13, 2020

I certify that notice of the Public Meeting has been given in compliance with Section 10-15-1 through 10-15-4 NMSA 1978 and Resolution 2020-01. Agendas are available at Village of Ruidoso City Hall, 313 Cree Meadows Drive, Ruidoso, NM 88345. If you are an individual who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Village Clerk at Village of Ruidoso City Hall at least one week prior to the meeting or as soon as possible.



5. PUBLIC INPUT *(Limited to items not on Public Hearing Agenda and up to 3 minutes per speaker)* Public Input must be submitted by email to StephanieWarren@Ruidoso-NM.gov or by fax at 575-258-4367 before September 1st at 10:00 AM. In addition, anyone wishing to speak during the meeting can do so by joining the meeting via zoom.

6. QUASI-JUDICIAL PUBLIC HEARING *(all parties with standing shall have an opportunity for cross-examination.)*

- a) **Conditional Use Approval Case CU 2020-0507-** Dakota Montes is requesting Conditional Use approval to convert an existing building into a mixed use of commercial retail and short term rentals within a C-3 Midtown Commercial District located at Block L, Lots 16 through 20 of the Ruidoso Springs Subdivision; 2637 Sudderth Drive, Ruidoso, New Mexico.
- b) **Variance Approval Request Case PV 2020-0594-** Donald Maier is requesting approval of a variance to encroach 5.3 feet into the required 10 feet left-side yard setback to construct a 774 sq. ft. attached covered structure and 3.87 feet into the required 10 feet left side-yard setback to construct a 480 sq. ft. home; as designated by the M-1 Low-Density Mobile Home District located at 123 Spruce Drive, Lot 13A, Block 12 of the Ponderosa Heights Subdivision Unit 2, Ruidoso, New Mexico.
- c) **Variance Approval Request Case PV 2020-0598-** Thomas & Lisa Lahut are requesting approval of a variance to encroach 7.89 feet into the required 10 feet side-yard setback to build a 66 sq. ft. entry point of home addition; as designated by the R-1 Single-Family Residential District located at 226 S. Oak Dr, Lot 51 Block 20 of the Ponderosa Heights Subdivision Unit 3, Ruidoso, New Mexico.
- d) **Variance Approval Request Case PV 2020-0597-** Donald Henexson is requesting approval of a variance of 2.5 feet into the required 10 foot rear-yard setback to cover an existing deck; as designated by the R-1 Single-Family Residential District located at 117 Black Forest Rd., Lot 1, Block 10 of the Black Forest Subdivision-Amended, Ruidoso, New Mexico.
- e) **Periodic Review Conditional Use Case CU 2018-0424-** Periodic review of Conditional Use approval of a mobile vending stand as temporary business location during re-construction of business Can't Stop Smokin' located at 416 Mechem Dr., Lot 9A, Block 2 of the Hamilton Terrace Subdivision.
- f) **Variance Approval Request Case PV 2020-0602-** Michael Davis is requesting approval of a variance to encroach 19 feet into the required 20 foot corner lot side-yard setback to construct a 506 sq. ft. garage; as designated by the R-1 Single-Family Residential District located at 100 Lost Mountain Ct., Lot 10, Block 1 of the Lost Mountain Estates Subdivision, Ruidoso, New Mexico.

7. COMMUNITY DEVELOPMENT REPORT

I certify that notice of the Public Meeting has been given in compliance with Section 10-15-1 through 10-15-4 NMSA 1978 and Resolution 2020-01. Agendas are available at Village of Ruidoso City Hall, 313 Cree Meadows Drive, Ruidoso, NM 88345. If you are an individual who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Village Clerk at Village of Ruidoso City Hall at least one week prior to the meeting or as soon as possible.

**VILLAGE OF RUIDOSO
PLANNING COMMISSION, REGULAR MEETING
313 CREE MEADOWS DRIVE
RUIDOSO, NM 88345
August 4, 2020
DRAFT**

CALL TO ORDER AND ROLL CALL:

The regular meeting was called to order by Vice-Chairman Alan Briley at 2:00 p.m. Commissioners Briley, Tondino and Byars were recorded present at Village Hall; Commissioners Kelly and Michelena were recorded present via Zoom by roll call. Commissioner Flack was recorded as absent, Village staff present was Samantha J. Mendez, Community Development Director; Zach Cook, Village Attorney; and Stephanie Warren, Short-Term Rental Administrative Assistant. There were 18 visitors present.

CERTIFICATION OF COMPLIANCE WITH RESOLUTION 2020-01:

Stephanie Warren stated the notice of the meeting was properly posted in accordance with Resolution 2020-01 and section 54-40 of the Village Municipal Code.

APPROVAL OF AGENDA:

Commissioner Byars moved to approve the agenda with removing item 6A as the case was not being heard at this time. Commissioner Tondino seconded and the motion carried with all ayes.

APPROVAL OF MINUTES:

Commissioner Tondino moved to approve the July 7, 2020 minutes. Commissioner Kelly seconded and the motion carried with all ayes.

PUBLIC INPUT: *(Limited to items not on Public Hearing Agenda and up to 3 minutes per speaker.)*

There was no Public Input.

Vice-Chairman Briley inquired if any of the Planning Commission members had or were aware of any conflicts of interest with any of the items on the agenda. The Planning Commission Members stated they did not have any conflict of interest with any of the cases being presented.

Vice-Chairman Briley asked that all in attendance who would be speaking at the meeting please stand to be sworn in.

**Quasi-Judicial Public Hearing: Variance Approval Request Case # PV 2020-0533 2717
Sudderth Dr.**

Director Mendez stated Paul Martin is requesting approval of a variance to encroach 9 feet into the required 10 feet side setback and 10 feet into the required front-yard setbacks as designated by the C-2 Community Commercial District to construct 2 uncovered decks on Lot 16A, Block A of the Navajo Subdivision located at 2717 Sudderth Drive, Ruidoso, New Mexico.

Mr. Martin stated he would be requesting to build within the setbacks to extend the existing deck and build a new deck to provide outdoor seating due to COVID not allowing indoor dining.

Commissioner Tondino asked if how that will affect the parking spots. Mr. Martin stated there would be no impact to the parking spots.

Commissioner Briley asked if he was going to the sidewalk. Mr. Martin stated that was public right-of-way and he would not. Commissioner Briley asked if there will be anything enclosing the under part of the decks. Mr. Martin stated he could so there was not any types of hazards.

Chairman Flack opened the Public Hearing at 2:09 p.m.

There was no public comment.

Chairman Flack closed the Public Hearing at 2:10 p.m.

Commissioner Tondino stated based upon the foregoing findings of fact per §54-66 of the Village Code, I move to **GRANT** the requested variance in Case #PV-2020-0533 with the conditions stated in the case report Commissioner Byars seconded the motion.

Stephanie Warren called roll to record the votes:

Commissioner Briley: Aye

Commissioner Byars: Aye

Commissioner Kelly: Aye

Commissioner Tondino: Aye

Commissioner Michelena: Aye

Motion carried all ayes.

Quasi-Judicial Public Hearing: Rezone Request Case # RZ 2020-0534 130 Starlite Rd.

Vice-Chairman Briley stated 110 Starlite LLC, is petitioning to rezone their property from a R-1 Single-Family Residential District to a C-1 Neighborhood Commercial District located at 130 Starlite Rd., Tract BB-2 Located in the SE4 Section 22 Township 11S Range 13E, Ruidoso, New Mexico.

Brian Kirchwehm and Tim Baker were present to discuss the request. Mr. Kirchwehm stated he would defer questions to Tim. Mr. Baker stated the request of rezone is to enable them to build up to 20 units of multi-family housing on the property and will be renovating the existing units for affordable housing. The current residents should qualify. Completion of construction would possibly take up to 2 years.

Vice-Chairman Briley asked Mrs. Mendez to provide the Planning and Zoning analysis. There have been over 30 comments via emails and asked that if everyone keep their mics muted and only respond when identified for the record.

Director Mendez stated the analysis performed by the department was the request was initiated by the current landowner. The public hearing was published in accordance with Village Code. The recommendation by staff is that this does follow the comprehensive plan to support housing as it is much needed and took into consideration the existing use. It is consistent with the neighborhood. We are requesting recommendation of approval to be presented to the Village Council. We have received 4 written comments within the notification area. 2 are in favor 2 are against. Director Mendez read the following received comments into the record:

#1

Village Commissioners,

My name is Les McKay and I own the property at 129 Starlite Rd. with my sister-in-law Anita Miles. This property has been in the family since it was built in 2000. The previous owners were Dr. Philip and Anna Miles, Anita's parents. We just purchased the property from them this year. As we sit directly across the street from the proposed development, we are certainly one of the most affected parties.

Let me start by saying that I am not opposed to development and I fully understand the Village needs affordable housing. I am, however, opposed to the planned rezoning of the 130 Starlite Rd. tract (3.5 acres) for many reasons. The main reason I am opposed to the proposed zoning change is that it is not the most appropriate use of this land and does very little to promote the safety and welfare of the community.

Indeed, this rezoning is completely unnecessary to meet the interests of the Village (affordable housing), Chelsea Investment Corporation (profit) and the surrounding residents (safety and harmony). The renovation and addition of some new affordable housing units with parking can be accomplished on the existing Pines at Cree Manor tract. There is plenty of room to extend the current structure on land already zoned C-1. The proposed project, in its current configuration, will most assuredly be detrimental to the health, safety and welfare of the surrounding residents and environment.

In the text that follows, I will lay out a myriad of reasons why this project is problematic. The developer's plan misses the mark in what can only be characterized as the wrong plan for the wrong plot of land in the wrong part of town. On the heels of the Wingfield Street debacle, I can understand

their eagerness for the next big deal. However, their one-sided approach fails to even hint at striking the delicate balance between maintaining the uniqueness of the village and its natural beauty and the need for affordable housing and development of available land.

Let us start with a discussion about the 3.5 acre tract this is the subject of this rezoning (Tract BB-2 also known as 130 Starlite Rd.) Based on the maps that I have seen there is a conservation easement that runs right through the middle of the 3.5 acre tract. This conservation easement takes up just under an acre of the tract leaving roughly 1 acre down the hill and about 1.5 acres up the hill near Starlite Rd. I have not been able to obtain details of that conservation easement deed. Thus, I can only assume, based on the developer's plan that it is somewhat off limits. For good reason, the developer's plans include commentary on the steepness of the slopes involved on this property as reasons for cutting in driveways to a parking lot at the horseshoe on Starlite Rd. because a looped road is not possible as it would be really long and have to incorporate switchbacks. This information together paints a pretty clear picture about the challenges of the developable land.

So, of the 3.5 acre tract, only about 1.5 acres of land is available for development. The developer's plan is to build 3 apartment buildings containing 18 to 20 units and parking lots for 40 plus cars on what amounts to the size of a residential lot for this area. The density of the proposed project is typical of California inner city infill projects. This is a development solution born elsewhere and imported here. It is completely out of place for our environment. In fact, the Ruidoso Code of Ordinances directs policymakers to "Prevent the overcrowding of land and undue concentration of population". There is simply is no intellectually honest way to square this proposed development with either the codes, the various master planning documents or the Village's vision for the community. To further illustrate the unsuitability of this tract for C-1 zoning consider that a principle in land planning and zoning is having gradual transitions (buffering) from areas containing single-family homes on large lots (all the homes in the area) to more intense uses such as C-1 (130 Starlite Rd). Some of you may opine that the Pines at Cree Manor is already C-1 and right next to your property at 129 Starlite Rd. and come to the conclusion that more C-1 is acceptable. I would counter that the Pines at Cree Manor currently sits down the hill, is not very visible from Starlite Rd. and is quite effectively screened with large pines. This stands in stark contrast to the developer's proposal of high density development at the bend on Starlite Rd. That part of Starlite, is extremely close to the bend in the road, is not down the hill, is very visible from Starlite Rd. and is not effectively screened. As you peel the layers of the onion on this project more and more challenges arise as it relates to the developable area. For example, the proposed parking lot at the bend is highly problematic. Aside from the unsightliness of having a parking lot cut into the hillside, there are substantive issues of code requirements, drainage, erosion control, loss of habitat and game trails and perhaps most importantly safety. The hill on Starlite is already rife with erosion. Excavation and dirt work will be required to cut in this proposed parking lot. This will involve digging into the hillside and somewhat undercutting the hill on which Starlite Rd. sits to create the code specified grade for both the parking lot and the driveways. This will create more erosion and drainage issues.

On the topic of drainage, the proposed new structures will essentially sit just above the outlet of the gully where all rainwater and snowmelt exits. There are not as many trees on the 130 tract as adjacent properties either due to erosion or cutting. The combination of this proposed development in conjunction with further tree removal necessary to complete the project creates the potential for even

more erosion and drainage issues. The developers have indicated that they plan to have topographic surveys and a geotechnical study conducted while they conduct due diligence over the next few months. The Village should be under no pressure to put the cart before the horse as it pertains to such a speculative deal contingent on funding variables that are completely out of the Village's control. The sensible way forward for the Village is to have all of this information prior to authorizing a zoning change.

Another issue that should be considered carefully by the Commission is the utter loss of the natural beauty on the 130 tract due to the development. The land qualified for a conservation easement at some point for a reason. Based on my knowledge of the property I suspect it was to preserve wildlife habitat. Heavy equipment will be required on this project and they most assuredly will have to operate on the conservation easement. This tract is loaded with game trails that will be utterly destroyed by this development. On any given day, gray foxes, deer and elk can be seen on these game trails. Further, this area is a known habitat for Northern Flickers and Hummingbirds. Another interesting note about this tract is that it has more floral biodiversity than adjacent areas for some reason. A prudent way forward is to conduct a wildlife impact study prior to greenlighting any zoning changes. Starlite Dr. is very steep as you enter off Paradise Canyon Dr. and remains relatively steep up to High Loop Drive. The horseshoe bend is a sharp turn but not overly so. However, when you add ice and snow conditions the picture changes drastically. The notion that the horseshoe bend on Starlite is a responsible location for a parking lot and two driveways appears highly suspect. The slope and curvature of the roadway, the elevations involved and the known inclement weather issues combine to illustrate the potential danger of this reckless design. Creating a situation whereby cars will be pulling in and out of two separate driveways at the bend on Starlite given the roadway and weather characteristics is a recipe for disaster. This configuration appears to do absolutely nothing to promote or enhance the safety and welfare of the community. As a public safety official myself, I believe this configuration to be dangerous. I encourage the Village to ask their Public Safety officials to review the design and conduct a site visit to get their opinion. This type of due diligence should be carried out prior to okaying zoning changes predicated on what may turn out to be designs that in no way contribute to the safety and welfare of the community.

Affordable housing developments best serve those that live in them by being proximate to employment opportunities, by being close to transportation, by having retail shopping in the vicinity, by having restaurants, grocery stores and entertainment, etc. This development calls for situating further development in what amounts to a single-family residential neighborhood that has none of the aforementioned items. Jobs, transportation, dining establishments, entertainment cannot be found within this general area. Perhaps these truths underscore why the Pines at Creek Manor has failed to prosper. Doubling down on failure doesn't seem like a sound strategy. Location is everything in Real Estate and the better part of valor is being able to walk away from a bad deal. I encourage you to make an honest assessment of this particular development as it relates to the location. This is not the best location for an affordable housing development and it is not the best use of land that is already under conservatory.

In conclusion, the Planning Commissioners and ultimately the Council have the duty and obligation to strike a delicate balance between maintaining the beauty of the landscape of the Village while simultaneously planning for growth which includes meeting affordable housing needs. On the heels of

the Wingfield Street Fiasco, it might be easy to consider this development a "make-up" call to use a football analogy. I encourage each of you not to take the easy way out. You weren't entrusted to do what is easy. You weren't entrusted to do what is politically expedient. You were honored with your positions because it was expected that you would engage, look at the facts, and call balls and strikes as you see them. I am confident that if each of you take an honest look at this proposed development that you will come to the conclusion that this is the wrong project on the wrong parcel of land in the wrong part of town. A vote to recommend this rezoning is a vote to obliterate the character of the Village, to import California infill density solutions into Ruidoso, New Mexico, to violate the Municipal Code, to look the other way to an untold amount of environment and wildlife destruction, and lastly to completely disregard the safety and welfare of the citizens of this community.

From one Public Servant to another, I sincerely appreciate and honor your service.

*Sincerely,
Les McKay
129 Starlite Rd.
Ruidoso, New Mexico 88345*

#2

Dear Ms. Warren,

It recently came to my attention that another attempt is being made by Chelsea Investments Corporation to develop "work force housing" in my neighborhood. I chose to build a home at 133 Coronado Drive in 2003 due to my wife's desire to be near her grandmother, a longtime resident of Ruidoso, and also my attraction to Ruidoso's climate and beautiful four seasons. Over the years I have discovered that Ruidoso offers contact with the wildlife, a nearby ski resort, and many who value its unique escape from urban living. My homes in Colorado, as well as my ranch in Granbury, Texas do not prevent my return several times each year. The prospect of looking down from my back deck and living room to an additional ramshackle building, such as Cree Manor Inn, would change my mind completely about what Ruidoso offers.

I wonder how many planners at Chelsea Investments are aware of the previous attempts to override the Conservation Easement along Starlite Dr. currently in effect for the deep arroyo. They are wanting to rezone single family homes to multi-family housing. Many years ago a horrific fire raced through the arroyo and emptied it of all vegetation and wildlife. While I have owned my home on Coronado, I have witnessed the intersection at the arroyo's junction with Paradise Canyon, Hull and Country Club waist deep in flooded waters on more than one occasion. In 2008, waters washed down these aforementioned roads and required weeks of repair to replace pavement and bridges there. Cree Manor Inn just above this intersection was not accessible due to this flooding. Is this where Corporation planners want to start over again to restrain water, ice, snow and fire? Is this where the Village of Ruidoso wants to invest more taxpayer money in clean up and rebuilding again?

Sad to say, this is not the first time the homeowners in this area (Coronado, Rim, High Loop, Wildwood, Lupine, POCO Loco, and Shannon plus others) have been threatened with development and destruction on the border of the neighborhood. In spite of it being one of the most beautiful collections of expensive (\$ 350,000- \$1,000,000) and well-kept single family homes in Ruidoso, Chelsea Corporation would like to build low-income affordable work force units at the entrance on Starlite Rd. Previously an attempt was made between 2003-2008 on Moon Mountain, the East side of the neighborhood, to build ATV tracks and recreation trails on State Trust Land with approval by the Land Commissioner. This development would have provided entry streets to the mountain coming through the neighborhood. A determined Moon Mountain Conservancy with the help of Defenders of Wildlife and Sierra Club prevented Moon Mountain's destruction. Do the residents really want to fight this incursion again? The answer is NO!

I feel the question of rezoning presents the most effective argument in the fact that compatibility is required. The Planning and Zoning Committee must agree that there is no compatibility between a 3.5 acre conservation easement in an arroyo and a commercial multi-family housing development. The latter would involve steep slope buildings, parking requirements and control of nature's flooding and icing issues year round. When can Ruidoso property owners rest assured that they do not have to fear constant changes to their investment by Village Hall actions? Is this just for an ambitious attempt to line a developer's pockets? Most of all can Ruidoso residential property owners trust that they have finally found a natural haven in the mountains to escape this fast-paced pandemic world in which we all live?

Cordially,

Bernardo Panna

#3

Hello Stephanie...

My name is Danny Carlson and I write to you as a resident of Cree Manor Apartments (110 Starlite Road).

I noticed in a couple of online forums that the City of Ruidoso is currently taking comments regarding the rezoning of a piece of property adjacent to Cree Manor Apartments, in order for the property to become "low income housing". For the record, I am in favor of the rezoning as well as the currently property changing to "low income housing". Despite what some people are saying, in my opinion, there would be absolutely zero impact on property taxes, crimes/safety, and threats to the habitat. If this property were to become low income housing, my understanding is there would be a lot of money put into the aesthetics and fixing it up. It would be a much needed boost to the property as well as any adjacent properties. Thank you for taking the time to read this email.

Danny Carlson

110 Starlite Road

Ruidoso, New Mexico 88345

#4

As a former 3 year resident there at Cree Manor Apartments I'd definitely agree with a do over of that property, I know its an older place and has been apart of Ruidoso for quite some time now. I've noticed that there might be some land about the area for expansion, the property itself can use some dramatic maintenance and remodeling and not sure if the owner would be able to keep up with wear and tear there any longer. I've read about the village looking into new plans to build more apartments some place, perhaps this could be an additional expansion of that? Just my thoughts. Thanks for reading. - Alvin

#5

I am a current tenant at Cree Manor and while I like living here I can see that it's an older complex that could use some TLC and I hope that the Village of Ruidoso which is already severely short of affordable housing will be able to not only retain these affordable units but add an additional 20 affordable units.

I can envision that an experienced professional team could come in and dramatically improve and expand upon what is already here, which would benefit not only the also benefit the immediate neighborhood.

Rashunda Blea

Vice-Chairman Briley stated that there has not been any site development plan that has or is coming before us at this time. This is the first time we are hearing this for affordable housing. We are to only be looking at the property and the zoning and how it relates to the zoning code.

Commissioner Kelly stated to be clear site plan and development approval will be heard at a later date? Director Mendez stated that was correct. The applicant is providing the request as it is contiguous to the current property.

Commissioner Michelena stated he would like to see the site plan before the zoning request. That would answer questions he has.

Commissioner Byars stated there are mentions of a conservation easement. Where is it and what does it effect. Director Mendez stated that it is platted and is a drainage easement. During building, there would not be any allowance to be built within that easement. The easement is on the south side of the tract of land.

Vice-Chairman Briley asked if this was at the bottom of the tract. Director Mendez stated yes; also, for clarification, this is a 5 acre tract. The information being stated in the comments is not accurate. Commissioner Tondino asked if the 5 acres included the Cree Manor. Director Mendez stated it did not.

Commissioner Byars Cree Manor is designated as C-1? Director Mendez stated yes, that is how this is not a "spot zoning" this is a contiguous zoning request. Commissioner Byars asked if the owner has both properties. Director Mendez stated yes. Commissioner Byars asked if they were to replat that into one piece of property what would happen. Director Mendez stated that if they are granted the rezone request, they will be able to dissolve the lot line and become the c-1 district. Commissioner Byars asked what would happen if they replatted without a rezone request. Director Mendez stated that they were unable to find a state statute pertaining to that and discussion was had if the requirement for the rezoning was even needed; but the Village chose to take the high road and give the surrounding neighbors the opportunity to have a voice in this matter.

Vice-Chairman Briley asked questions from the first letter. Is this a violation of Village Code? Do you find any violations of this request to the Village Code? Director Mendez stated there was not any violations. Vice Chair Briley the comment of this be putting the cart before the horse; if someone is wanting to endeavor in a commercial business, you would want to make sure the business is located within the proper zone. I think this is the proper process and not a horse before the cart; am I correct? Yes, replied Director Mendez. You cannot anticipate uses without designated the zone.

Commissioner Kelly asked that if they approve the request for the rezone and the project does not happen, what are the repercussions of that? Director Mendez stated they would have the ability to use the property as described within the code as a principal permitted use. If someone sold off the property, could they rezone it and build a single-family home? Director Mendez stated that would be upon a Conditional Use approval if it were rezoned to a C-1. Commissioner Kelly asked what if they wanted to rezone it back to R-1, Director Mendez stated they would have to go through the same process.

Commissioner Tondino asked if there were any legal issues with the request. Attorney Zach Cook stated that this was a proper application.

Vice-Chairman Briley opened the Public Hearing at 2:42 p.m. with a 5 minute per speaker limit.

Sue and Ray Alburn stated they have concerns of removing the beauty from Ruidoso and did provide a written comment.

Les MeckKay stated the rezone is not necessary. There is plenty of land to remodel and add on to the current location, no need to rezone. There is currently many driveway issues and worse with heavy machines. These projects have ruined his community in Austin Tx and does not want that to happen in Ruidoso. This is a speculative investment and does not offer amenities for the point system. There are many other properties available.

Eric Vaughn stated he was a veteran real estate agent that has sold 10 properties in the subdivision. Starlite Road leads into a well-established neighborhood with the best view; he objects to the request.

States to remodel the units, expanding is a negative impact. Concerned that it will hear real estate and property values.

Royce Piper stated she opposes the project.

W R Collier states he owned a home of 30 years and feels the road is dangerous for pedestrian and emergency vehicles; concerns of depreciated property values.

Jeff Dodd stated he has lived here 15 years and is opposed for all for mentioned comments.

Curt & Kathy stated they were opposed. The property was zoned to protect hill sides and must be kept for conservation.

Vice-Chairman Briley called for a 5-minute break, YouTube was experiencing issues.

Meeting resumed at 3:04 pm.

Don Cox stated he echoes previous comments. This is a service desert with no sidewalks and is dangerous for development. Likes to hear of the renovations but does not agree with rezone. States the rezone will not be beneficial.

Curt and Kathy resumed their comments stating concerns of parking lot placement. Location is blind to oncoming traffic and he has been closed to being involved in accidents. Feels that the area notification is inadequate; feels that the housing problem should be regionally approached. Kathy stated she read the housing plan, the city has designated R-1; Village owns steep sloped property with development cost too high, feels this is the same for this project.

Ms. Barnett wrote an opposition letter stating previous reasons. Has concerns of safety issues. Many people walk the hill in the winter and adding people to the area is extremely dangerous. The area is not suitable for housing.

Larry Lehr stated the project will destroy the habitat and will have an impact on property values. Dangerous location.

Tim Woomer stated he is not within 200 feet and agrees the notification area of 200 feet is arbitrary. This is a well-established area with large homes. Only letters in favor are the tenants; the code is for the benefit of community and cannot solely benefit the developers.

Deborah Smith stated she provided a statement.

Bryan Kirchwehm stated the property has been in use for 50+ years and has potential to house more. The current tenants are low income. Most of these comments of large homes are up hill from the

property. 99% of the traffic go down the hill not up, there are other roads to access their homes. Traffic impact to the north will be minimal. Conservation easement runs south to west on the southern edge of the existing property. No buildings will be built next to the ravine.

Director Mendez stated they do never issue building permits in easements.

Eric Vaugh asked who owns the property. Mr. Kirchwehm stated Chelsea will enter a partnership for development. Vice-Chair stated this meeting must focus on the topic as stated in the agenda.

Sue Alborn stated she feels Ruidoso will lose if development robs of wildlife and views.

Eric Vaugh stated he feels this sets a precedent and is spot zoning. Other areas should be used as housing developments.

Vice-Chairman Briley closed the Public Hearing at 3:30 p.m.

Commissioner Tondino made a motion to enter into a closed session pursuant to NMSA Section 10-15-1(H)(8) of the open meetings act to discuss the rezoning request Case RZ 2020-0534.

Commissioner Kelly seconded the motion.

Stephanie Warren called roll to record votes:

- Commissioner Briley: Aye
- Commissioner Byars: Aye
- Commissioner Michelena: Aye
- Commissioner Tondino: Aye
- Commissioner Kelly: Aye

Motion carried. Closed session began at 3:35 pm.

Close session was concluded and brought back into open session at 4:12 pm

Commissioner Tondino stated that the matters discussed in the closed meeting were limited only to those specified in the motion for closure per NMSA Section 10-15-1 (J).

Commissioner Tondino stated based upon the foregoing findings of fact per §54-65 of the Village Code, I move to **Deny** the request of Case #RZ 2020-0534 with the reasons and conditions to follow in a letter. Commissioner Kelly seconded the motion.

Stephanie Warren called roll to record the votes:

- Commissioner Briley: Aye
- Commissioner Byars: Aye
- Commissioner Kelly: Aye
- Commissioner Tondino: Aye
- Commissioner Michelena: Aye

Motion carried all ayes.

Community Development Report:

No report was given.

Commissioners Comments:

No comments made.

ADJOURNMENT:

With no further information being provided to the Planning Commission, Vice-Chairman Briley adjourned the regular meeting at 4:14 pm.

Passed and approved this ____ day of _____, 2020.

APPROVED: _____
Alan Briley, Vice-Chairman

ATTEST: _____
Stephanie Warren, Short-Term Rental Administrative Assistant

MINUTES ARE DRAFT UNTIL APPROVED AT THE NEXT REGULAR MEETING

**VILLAGE OF RUIDOSO
PLANNING COMMISSION, SPECIAL MEETING
313 CREE MEADOWS DRIVE
RUIDOSO, NM 88345
August 13, 2020
DRAFT**

CALL TO ORDER AND ROLL CALL:

The regular meeting was called to order by Chairman Mark Flack at 2:01 p.m. Commissioners Flack and Byars were recorded present at Village Hall; Commissioners Kelly, Michelena and Briley were recorded present via Zoom by roll call. Commissioner Tondino was recorded as absent, Village staff present was Samantha J. Mendez, Community Development Director; Zach Cook, Village Attorney; and Stephanie Warren, Short-Term Rental Administrative Assistant. There were 2 visitors present.

CERTIFICATION OF COMPLIANCE WITH RESOLUTION 2020-01:

Stephanie Warren stated the notice of the meeting was properly posted in accordance with Resolution 2020-01 and section 54-40 of the Village Municipal Code.

APPROVAL OF AGENDA:

Commissioner Byars moved to approve the agenda. Commissioner Michelena seconded and the motion carried with all ayes.

PUBLIC INPUT: *(Limited to items not on Public Hearing Agenda and up to 3 minutes per speaker.)*

There was no Public Input.

Chairman Flack inquired if any of the Planning Commission members had or were aware of any conflicts of interest with any of the items on the agenda. The Planning Commission Members stated they did not have any conflict of interest with any of the cases being presented.

Chairman Flack asked that all in attendance who would be speaking at the meeting please stand to be sworn in.

Quasi-Judicial Public Hearing: Conditional Use Approval Request Case # CU 2020-0550 2213 Sudderth Dr.

Director Mendez stated the applicant is requesting Conditional Use approval to place a mobile vending stand in conjunction with Tall Pines Beer and Wine Garden to provide food to customers at 2213 Sudderth Drive. "We would like to have the food truck in operation Friday-Sunday. Starting ASAP -through Labor Day to help make up finances lost due to our restrictions with COVID-19. We would rotate having the food truck between both of our locations the one here then our location in

Alamogordo. The truck would be in Alamogordo most of the time. We would like to have the truck for holiday weeks such as Thanksgiving, Christmas, Spring Break in Ruidoso since the town is busy here those times and give our locals/tourists other options especially in the evening hours when a lot of restaurant's closed and operating at a 50% capacity. Hours of operation would be 11:30 am-9 pm. We would offer a variety of food from Asian, Mexican, Italian, American styled foods. The menu would rotate weekend to weekend. As far as waste goes, we have a dump station we use in Alamogordo every week. We would appreciate your consideration with this as we are trying to keep our head above water during this difficult time as a small business owner."

Director Mendez stated there were two letters of opposition received and read the following statements:

#1

Good Morning,

I am writing as an employee at Zia Real Estate. I love where I work and the location. I like the idea of a food truck and know that it has been discussed for a long time and there is a lot to consider.

Having a food truck next door with the lack of parking spaces already will really be a hindrance to our business. We like to support our neighboring

Businesses but if the food truck is Parked in their driveway and they have limited parking I don't know where they would park other than our parking lot.

We have shared spaces with them in the past and not said anything but every parking space counts.

This creates a liability for us a well. We spoke to the Mayor yesterday and wanted you all to know this will impact us greatly.

Thank you for taking all this into consideration as you have your Zoom Meeting today. Business is really booming right now and We want everyone to succeed. We do appreciate you considering how this affects our business.

Sincerely,

Julie Gilliland

Zia Real Estate

2205 Sudderth dr.

Ruidoso, NM 88345

575-686-8920

#2

To whom it may concern;

Concerning the application from Tyler & Tamera Stucky to place a mobile vending stand in conjunction with Tall Pines Beer and Wine Garden to provide food to customers located at 2213 Sudderth Drive, Ruidoso, New Mexico.

As property owners at 2205 Sudderth Drive adjacent to the applicant's property, we ask the commissioners to please deny this application. We are requesting this denial based on but not limited to the following reasons:

1) Applicants have inadequate parking space on their property to accommodate their current business operation. It is irresponsible to expect a larger group of cliental to gather in a space that is currently inadequate under normal operating conditions and even more irresponsible under the conditions and circumstances of the current health concerns.

2)Applicants are currently refusing to carry adequate liability insurance to cover the possibilities of their customers actions causing harm or damage to themselves or others property. It would further magnify the possible liability issues by adding a mobile vending stand at their property, and the possibility of customer overflow on to public and private property creating more liability concerns for all.

3) There are to our knowledge no mobile vendors currently allowed in the midtown area of Ruidoso. It would seem a move in the wrong direction to allow any applicant to infringe upon other established property owning, tax-paying food service businesses.

4) The Village of Ruidoso Planning Commission's duty to the community should be to guard, protect and improve the quality of life in Ruidoso, with thoughtful planning, zoning and decisive actions. The denial of this application for a mobile vending stand reinforces the commissions commitment to the health and safety of Ruidoso's citizens and visitors and the economic stability of the community.

Sincerely,

Marshal and Lezlie Wier

Mr. and Mrs. Stucky stated in response to the comments made; they have insurance and that all businesses have parking issues in the district. They do tell their customers not to park at other institutions. They are losing \$5,000.00 a week and are trying to make a living. 90% of their customers come on foot and utilize the public parking. They sponsor community events and are active within the community.

Commissioner Briley asked if they served food at the establishment before COVID-9. Mrs. Stucky stated they had previously served cheese platters and allowed customers to bring in food from outside restaurants. Since COVID-19, we have stopped the cheese platters due to the shortage of personnel. We own the food truck, it's not someone from the outside and we have employees for the food truck.

Chairman Flack asked if they also owned the property. Mr. and Mrs. Stucky replied that they did.

Commissioner Briley asked Director Mendez if food trucks are part of the comprehensive plan and part of the vision for midtown. Director Mendez stated the plan does not specify mobile vending stands, but it does encourage more vibrant atmosphere within the midtown district. She also wanted to note for clarification that parking is not required within the C-3 Midtown Commercial District.

Commissioner Michelena asked if the food truck was being parked in the location where the white truck in the picture within the case study. Mr. and Mrs. Stucky stated yes. Commissioner Michelena asked what is that spot used for now? Mr. and Mrs. Stucky stated for loading and unloading.

Commissioner Michelena asked if it was a parking spot provided to customers. Mr. and Mrs. Stucky responded that it was not used for customer or employee parking.

Chairman Flack asked Director Mendez if they did approve the request will they have to come back yearly? Director Mendez stated if the use was approved, they would not need to come back yearly. Commissioner Briley asked if they could place a temporary time frame of approve. Director Mendez stated they could.

Zach Cook stated the ordinance states it is not allowed unless with a conditional use approval for the mobile vending. The conditional uses of C-3 are one being of a convenience food restaurant. There is no clear definition of convenience food restaurants. The ordinance goes on to say subject to sec 54-100 (c)(5) shall be subject to the same limitations as automobile service stations as set in the subsection. One of the conditions in the subsection shows that they must have a total site area of not less than 12,000 square feet. This site area is approx. 7,000 square feet. Chairman Flack asked if the truck would count as square footage? Zach Cook replied that the way he reads the ordinance is that mobile vending is not allowed unless the conditions of this section can be met.

Commissioner Byars stated the Village has been providing restaurants with tents and helping through this COVID crisis. They have set a precedence in trying to help and have already disregarded a lot of ordinances. Tents are in parking areas and reducing required number of spaces per establishment. With that regard, they have set the precedence to step up and help. I think this situation goes along with the step up and help set forth by the village until the governor releases the restrictions. I feel we can if the village is having disregards for other rules and regulations.

Director Mendez stated that Zach has an executive order signed by the Mayor this afternoon, that he needs to read to the Commission. Zach Cook stated he does not feel that the Village has not set a precedence for anything. Their willingness to help business is not within the norm, but what is asking to be done here is to completely disregard the way that the ordinance structure is laid out. I don't agree with it, but that is the way it reads. I cannot ignore that or ask you to ignore that. This is a conditional use application; it states it is not allowed without a conditional use approval; the conditions state they must meet those things. This is different than the Village going out and helping others with tents.

Chairman Flack stated in the past, they did not want them in Midtown, and they have been turned down. But this is not traditional times. Are you saying legally we cannot do it per the code? Zach Cook stated legally they need to follow the code. There is no precedent that is binding on previous decisions that the Mayor or Council have done in order to assist people with tents. It's not binding. There is also an issue about the wastewater. The applicant is stating they will take to Alamogordo. We cannot have burden sent upon someone else. There needs to be a solid plan.

Director Mendez asked Zach to read the Executive Order. Zach read the order as follows:

Village of Ruidoso Office of the Mayor Executive Order 2020-11. Providing direction to the Planning Commissioners when considering applications for variances and other approvals from businesses adversely impacted by the COVID-19 outbreak. Whereas the Planning Commission is established to promote the general welfare of the Village and to secure efficiency, economy and concerted effort in the growth and development of the Village; and whereas the Planning Commission may vary or adjust the strict application of the requirements of the zoning code when strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the applicant's land or buildings; and whereas the Village of Ruidoso is committed to limiting the hardship and exposure of economic catastrophe resulting from the COVID-19 outbreak; and whereas the Village of Ruidoso acknowledges that our courts have held that consideration of profits is not sufficient justification in itself for the granting of applications; and whereas assisting businesses inside the Village of Ruidoso that are struggling to maintain their already existing offerings of goods and services is a sufficient justification for granting variances when our businesses may have to close as a result of the socioeconomic conditions caused by the COVID-19 outbreak. Now therefore, I, Lynn D. Crawford, Mayor of the Village of Ruidoso, New Mexico, do hereby direct the Planning Commission as follows:

A. The Planning Commission may give consideration to the negative socioeconomic impact of the COVID-19 outbreak when evaluating applications in an effort to protect the applicant's existing business operations while adhering to COVID-19 Safe Practices and the Public Health Orders. Such consideration is limited to the temporary easing of restrictions on out-door patios, parking areas, and set-backs; and shall not provide for permanent improvements to the affected property.

B. The negative socioeconomic effects of the COVID-19 outbreak shall not be a justification for granting applications that seek to expand the current business operations in an effort to expand into new enterprises. Executed on this 13th day of August, 2020 in Ruidoso, New Mexico.

Chairman Flack and Commissioner Briley asked if this is a new business since previous food served was a cheese platter?

Mrs. Stucky stated the food truck is approved by the Environmental Department. They get inspections just as a restaurant. Mr. Stucky stated that there is a food truck in front of Sacred Grounds, and there was a waiver to help Can't Stop Smokin'. We are paying taxes, not creating new traffic. Asked after 5 where is there places to eat. After 6 there is no places to eat in downtown. There are customers in town, but no one is open. Send all of the business elsewhere to other businesses. This will help a demand that is needed there.

Director Mendez stated that Can't Stop Smokin' was tied to a permanent business, and the Ponder's was placed permanently.

Mr. Stucky stated they can put their there too permanently if they have to.

Chairman Flack asked if Will Ponders was part of the midtown district. They were a C-2 when approved with parking lot conditions.

Commissioner Byars stated that the square footage is the only thing making this unable to be approved. Zach Cook stated to grant this would be completely disregarding the ordinance. If you feel the policy should include the food trucks, there are ways to change it. But due to the ordinance as written this application conforms to the ordinance.

Chairman Flack asked if they granted it and in 2 weeks someone else wants to and so on its that what we're not trying to set ourselves up for a discrimination case.

Commissioner Briley asked that mobile vending is allowed, but Zach is saying it is not. Zach stated it is allowed as a conditional use when they meet the requirements.

Director Mendez stated her concern is of the disposal of wastewater. The proposal at this time is not sufficient. If approved that would need to be changed.

Commissioner Briley stated he agrees this is a hardship and is wondering if the applicant can be committable to a timeframe like 6 months to see how the pandemic is going. Set it as a temporary situation. Mr. Stucky stated he would have no problem with that. Their operation is bigger in Alamogordo than Ruidoso, this would not be its permanent placement. Mrs. Stucky stated they are trying to make up funds that are being lost. Everyone is changing what they are doing to make money and put extras in parking lots, we need to make a living at the same time.

Director Mendez stated she would like to retract the statement of time frame, that would allow itinerant vendors and itinerant vendors are prohibited. The conditional use will be granted to Tall Pines and not allowed with timeframes.

Commissioner Byars stated he is in a quandary wanting to help and his oath to the position. At this point I see the law does not allow; I don't see how I can go against even though I want to. Maybe we need to go to the mayor and ask to give an order overriding this; I don't see how to proceed.

Chairman Flack stated he does not like mobile food in midtown, it has been stated as a community that it is not wanted in midtown. I'm afraid of a negative chain reaction. I would love to help but agree with Commission Byars.

Mrs. Stucky asked how they can become like Sacred Grounds and have theirs there all the time. Chairman Flack stated they were in a C-2 district. Director Mendez stated your lot does not meet the minimum square footage and the other location does. Mr. Stucky states there needs to be more done; this is a disservice to the community. Need to be proactive and not reactive. There was talk before that they wanted town more lively.

Commissioner Briley stated he is torn, does not think it meets the spirit of the code, but wants to help. Maybe table this and look into the order and codes to do due diligence to make this work. Zach Cook

stated he has been doing it all day and could not find another way. Everyone in the room wants to help.

Chairman Flack opened the Public Hearing at 2:44 p.m.

There was no public comment.

Chairman Flack closed the Public Hearing at 2:45 p.m.

Commissioner Briley stated based upon the foregoing findings of fact per §54-68 and § 54-101 of the Village Code, I move to **DENY** the requested conditional use approval for Case #CU-2020-0550 on the basis that it does not meet the requirements of the current code. Commissioner Michelena seconded the motion.

Stephanie Warren called roll to record the votes:

Commissioner Briley: Aye
Commissioner Byars: Aye
Commissioner Kelly: Aye
Commissioner Michelena: Aye
Commissioner Flack: Aye

Motion carried all ayes, request was denied.

ADJOURNMENT:

With no further information being provided to the Planning Commission, Chairman Flack adjourned the regular meeting at 2:48 pm.

Passed and approved this ____ day of _____, 2020.

MINUTES ARE DRAFT UNTIL APPROVED AT THE NEXT REGULAR MEETING

APPROVED: _____
Mark Flack, Chairman

ATTEST: _____
Stephanie Warren, Short-Term Rental Administrative Assistant



Planning Commission

Village Hall- 313 Cree Meadows Drive, Ruidoso, New Mexico 88345

Case Report – Conditional Use Request #CU-2020-0507

Subject Property: 2637 Sudderth Dr
Zoning: C-2 Community Commercial District
Subdivision: Ruidoso Springs Subdivision

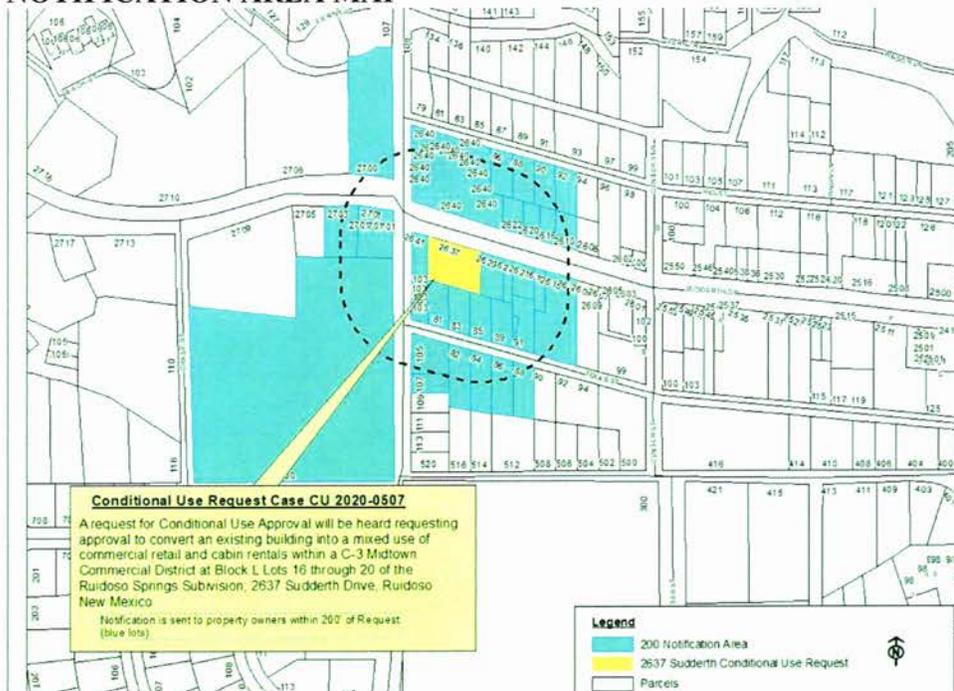
Legal Description: Block L, Lots 16-20
Applicant: Dakota Montes
Hearing Date: September 1, 2020 at 2:00 p.m.

Applicable Sections of Village Code:

- Sec. 54-101. - C-3 Midtown Commercial District.
- Sec. 54-68. - Conditional use permit approval.

I. REQUEST: The applicant is requesting Conditional Use approval to convert an existing building into a mixed use of commercial retail and cabin rentals to be used as Short-Term Rental within a C-3 Midtown Commercial District. Conditional Use Approval is contingent upon the purchase of the subject property

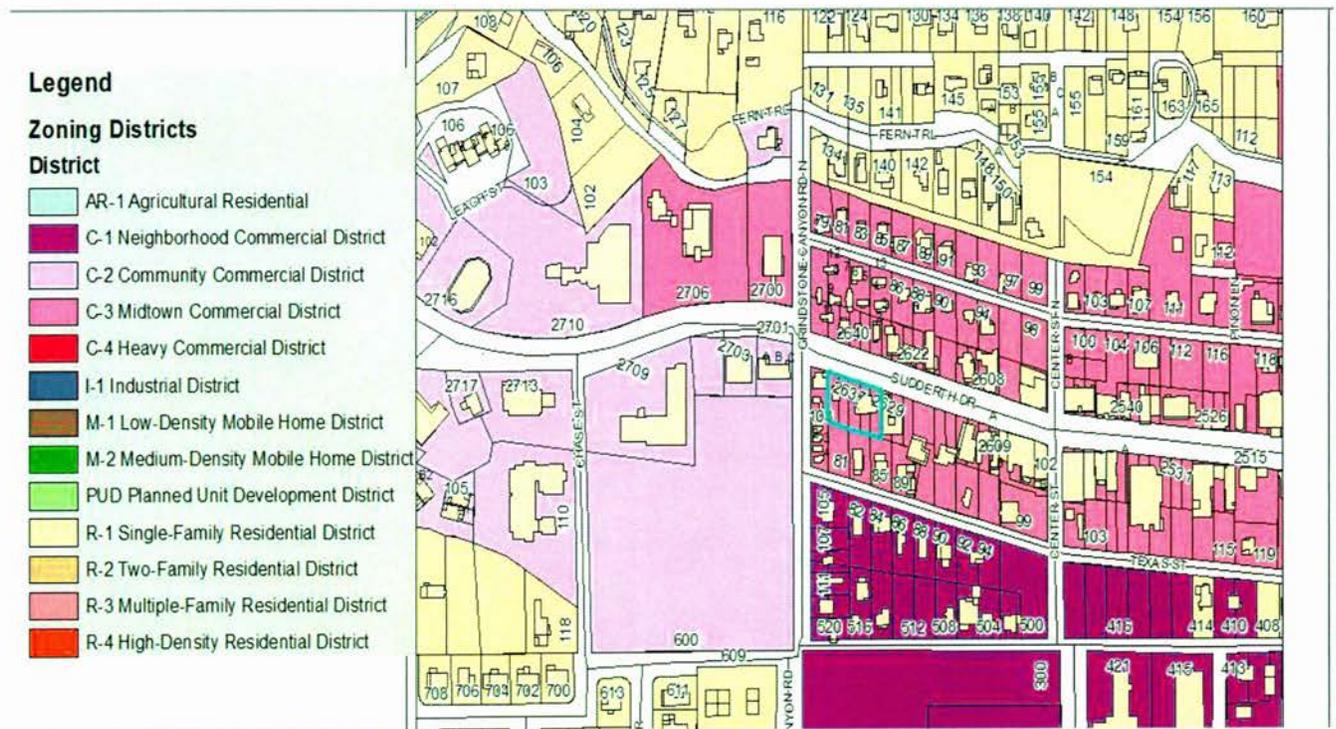
II. NOTIFICATION AREA MAP



III. SITE DATA

Direction	Zoning	Existing Land Use
North	C-3	Midtown Commercial District- Commercial Cabin Rentals
East	C-3	Midtown Commercial District- Commercial Retail
South	C-3	Midtown Commercial District- Residential Homes
West	C-2	Community Commercial District- Realtor/Lawyer Offices

IV. AREA ZONING MAP



V. Current Structure Street View

Aerial View from Google Maps



Street View from Google Maps



VI. ANALYSIS

Sec. 54-101. - C-3 midtown commercial district.

- (a) *Purpose.* The purpose of the C-3 midtown commercial district is to allow the development of commercial retail and service establishments with carefully integrated multiple-family residential, entertainment and public parking facilities in the "Midtown" area of the village. The district encourages development to take place in an intensive fashion to facilitate pedestrian circulation and to maximize the use of valuable locations and existing infrastructure and building stock. Merchandise which is offered for sale in the C-3 district may be displayed as follows:
- (b) *Principal permitted uses.* Principal permitted uses in the C-3 district are as follows:
- (23) Retail sales and services.
- (c) *Conditional uses.* The following conditional uses may be allowed in the C-3 midtown commercial district:
- (3) Multiple-family structures containing four or more dwelling units as part of a mixed commercial/residential use structure where the residential use cannot be located on the ground floor.
- (8) Hotels and motels, and cabin rental, detached or semidetached, and including incidental rental offices, pools, spas and related recreational facilities for use of guests only, and also including recreational equipment rental and sales available primarily for guests, which activity shall be under the same proprietorship.

(Code 1985, § 10-4-10; Ord. No. 96-16, 11-26-96; Ord. No. 97-09, § 1, 7-29-97; Ord. No. 97-12, § 2, 7-29-97; Ord. No. 2000-07, 5-30-00; Ord. No. 2003-08, 10-14-03; Ord. No. 2011-02, §§ IV, V, 1-25-11; Ord. No. 2011-08, 3-29-11; Ord. No. 2011-11, 6-12-11; Ord. No. [2019-02](#), 3-12-19)

The Planning Commission has the following options:

1. **Approval** of Conditional Use Request, with reasons stated in the motion, granting the requested conditional use.
2. **Require modifications** to Conditional Use Request, and have it returned for Planning Commission review at the next meeting.
3. **Deny** the request of Conditional Use Request with reasons and conditions.

Approval of a conditional use requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.

V. Facts and Recommendations

The determination of appropriateness for granting or denying a conditional use application rests only with the consistency with applicable statutes, codes and policies and with the Commission's analysis of the impacts to the surrounding properties and the community at-large.

This application is in line with the Comprehensive Plan. One of the goals is to diversity our economy by supporting local and new businesses to build tourist economy and serve residents.

Upon review of the application and existing conditions, staff finds that the proposed request for condition use appears to be consistent with the Village Code and hereby recommends the following conditions. It also goes on to state short term rentals ultimately serve as a necessary asset to the tourism industry as alternative hotel space. The rentals themselves do serve as an economy.

1. Granting of the Conditional Use Approval is contingent upon the purchase of the subject property.
2. Applicant must obtain building permits and ensure that all current building codes relating to the structure and firewalls for the mixed use within the structure are and have been met.
3. Applicant must obtain Short-Term Rental Permits per unit to be used as a Short-Term Rental and meet all safety requirements per section 54-106 of the Village Municipal Code.
4. The applicant shall make no substantial changes in plans without the Planning Commission approval.
5. By accepting approval of this Conditional Use, Applicant agrees to comply in a timely manner with standards and conditions set. Failure to comply may lead to Court enforcement.

Suggested Motion:

"Based upon the foregoing findings of fact per §54-68 and § 54-101 of the Village Code, I move to **GRANT** the requested conditional use approval for Case #CU-2020-0507 with the conditions stated in the case report."

Prepared & Submitted by:

Samantha J. Mendez
Community Development Director

#

By signing below, the Owner/Applicant agrees to comply with all the conditions adopted by the Planning and Zoning Commission ("the Commission") at its hearing on this application. The Owner/Applicant further agrees that it will make no changes to the plans as presented to the Commission without prior approval from village staff or the Commission. Failure to comply with the application as approved by the Commission may result in Court action or revocation of approval.

Owner/ Applicant

Date



Planning Commission
Zoom at Village Hall- 313 Cree Meadows Drive, Ruidoso, New Mexico 88345
Case Report– Variance Request #PV-2020-0594

Case #PV- 2020-0594– Variance Request
Subject Property: 123 Spruce Dr.
Zoning: M-1 Low-Density Mobile Home

Subdivision: Ponderosa Heights Unit 2
Legal Description: Block 12 Lot 13A
Applicants/Owners: Donald Maier
Hearing Date: September 1, 2020 at 2:00 p.m.

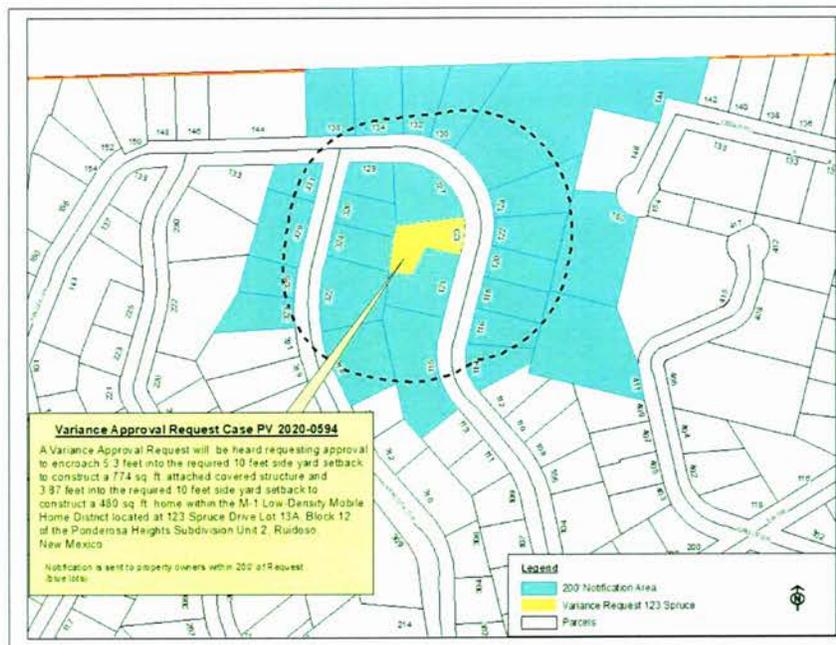
Applicable Sections of Village Code:

- Sec. 54-97. – M-1 Low-Density Mobile Home District.
- Sec. 54-140. - Setback and height encroachments, limitations and exceptions.
- Sec. 54-66. Variances.

I. SITE DATA

Direction	Zoning	Existing Land Use
North	M-1	Low-Density Mobile Home District
East	M-1	Low-Density Mobile Home District
South	M-1	Low-Density Mobile Home District
West	M-1	Low-Density Mobile Home District

II. NOTIFICATION AREA MAP





- III. **REQUEST:** Donald Maier is requesting approval of a variance to encroach 5.3 feet into the required 10 feet left-side yard setback to construct a 774 sq. ft. attached covered structure and 3.87 feet into the required 10 feet left side-yard setback to construct a 480 sq. ft. home

Statement Provided by Applicant:

Samantha Mendez
Stephanie Warren
Village Planners
Village of Ruidoso, New Mexico

Dear Ms. Mendoza and Ms Warren:

I want to thank you for your time in reviewing this application and hope you find it complete. Please let me know if you need additional information or details to help in making a favorable recommendation. Below is some history and reasoning for this request.

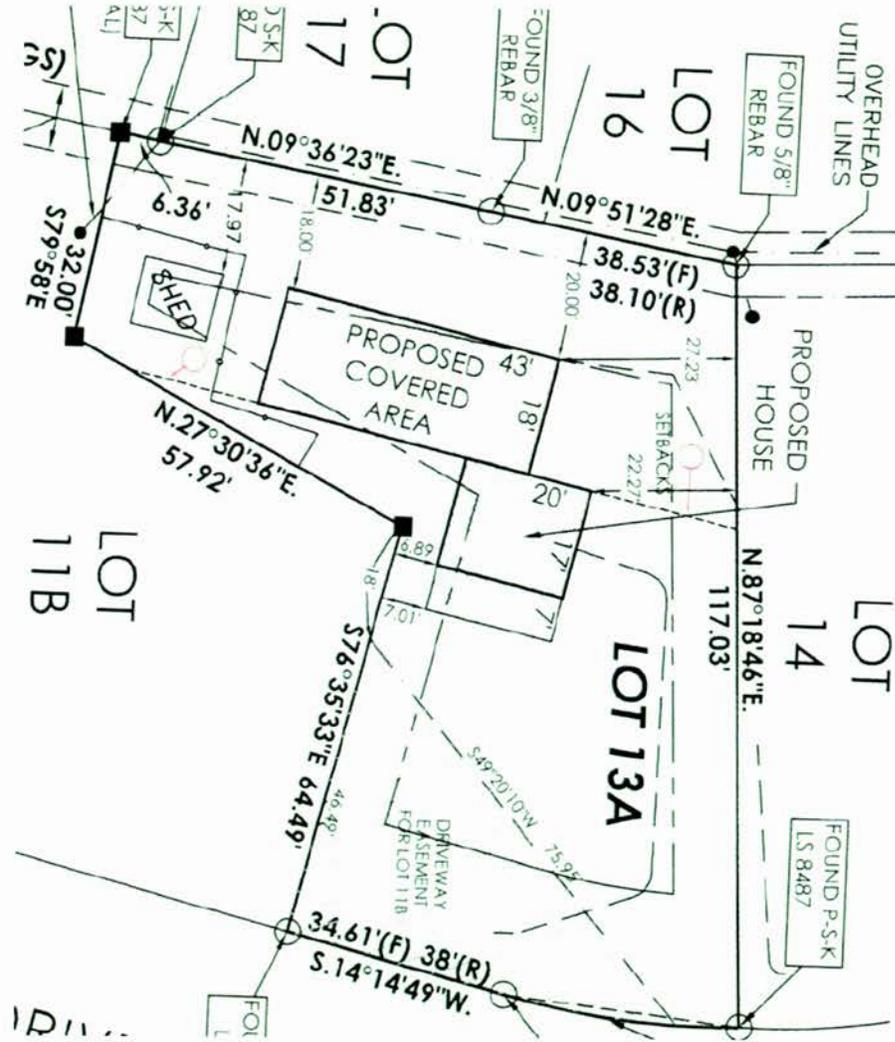
We purchased this property almost 3 years ago with the intention of making it livable for my mother-in-law, she was living in a mobile home off Highway 70 which had access issues. Originally this property was 3 lots, which not long before I purchased had 2 homes on it straddling the 3 lots. Approximately two years ago we changed this property from 3 lots into 2 trying to increase the size and get closer to the village recommended minimum lot requirement. Due to the placement of the current house it was difficult to redesign the lot to to make it an ideal future buildable location. In addition to the shape, the lot slopes from proposed covered area to the street dropping in excess of 15 feet. There is additional building area as seen on photos 2 and 3 however this would entail removing most of the trees which we believe would distract from the one of the things that is so special with regards to Ruidoso. We have made many improvements to the both properties that make them a pleasant addition to the neighborhood as well as control runoff.

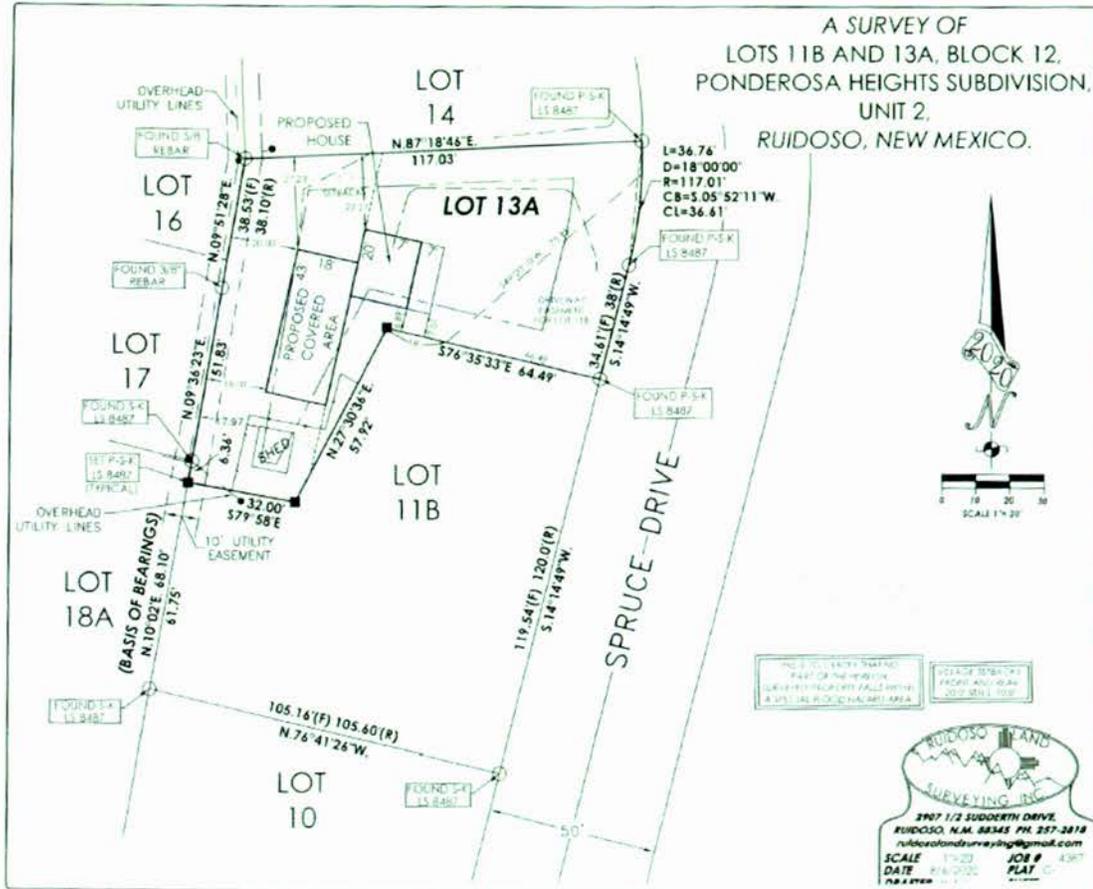
One of main reasons we purchased this property was it had a pad in which we could park our motorhome when we visited and assisted my mother-in-law with medical issues. With her deteriorating health and now the current virus, it is changing our plans as it appears we will be needing to spend more time in Ruidoso than originally expected. It is for this reason that we are requesting to build a small home and covered area to place our motorhome while we are not traveling.

Again we want to thank you for your consideration of this request and would be happy to answer any additional questions you may have. We know granting these requests may be a difficult decision however we greatly appreciate your thoughtful consideration. Thank you for your time and look forward to hearing from you.

Sincerely
Don Maier

IV. Site Plan.





Area Pictures Provided by Applicant:



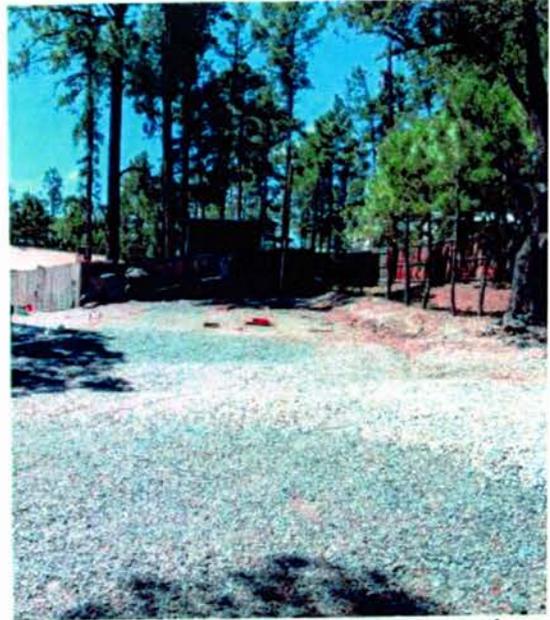
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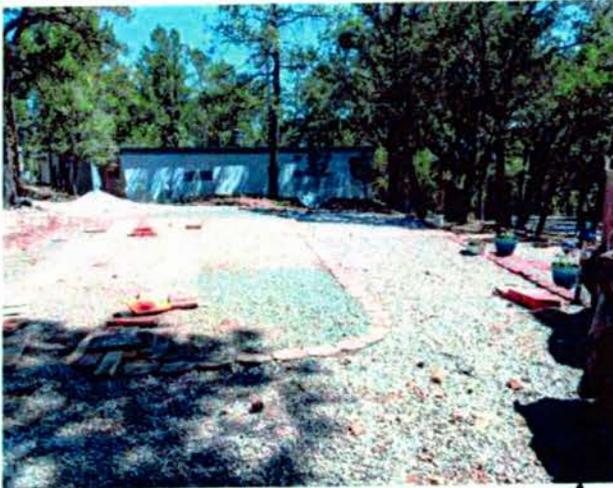
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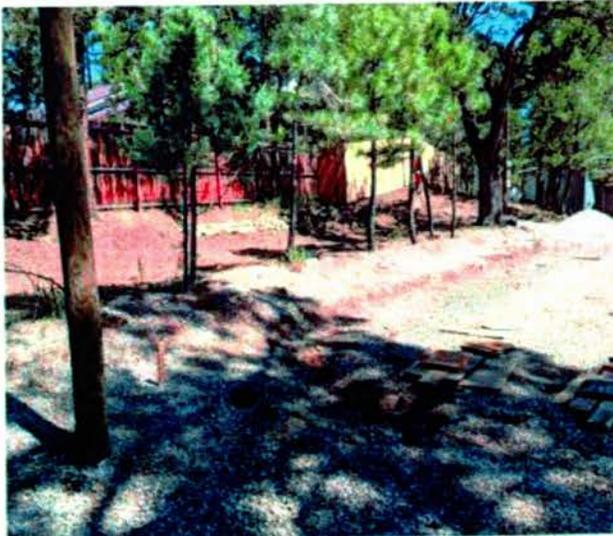
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V. ANALYSIS

Setbacks:	Per Code:	Proposed:	Variance:
North Rear Yard	10'	20'	0'
West Side Yard	10'	4.7'/6.89'	5.3'/3.87'
East Side Yard	10'	22.27'	0'
South Front Yard	20'	46'	0'

Sec. 54-97. - M-1 low-density mobile home district.

- (a) *Purpose; maximum density.* The purpose of the M-1 low-density mobile home district is to promote affordable housing and to make economical use of the land by allowing the development of mobile home subdivisions at gross residential densities of not more than five units per acre.
- (c) *Principal permitted uses.* Principal permitted uses in the M-1 district are:
 - (1) Mobile homes.
 - (2) Single-family detached dwellings.
- (e) *Permitted accessory uses.* Permitted accessory uses in the M-1 district are: All accessory uses permitted in the R-1 district.
- (g) *Setbacks, yards and heights.* Setback, yard and height requirements for the M-1 district are as follows:
 - (1) *Minimum setbacks from property lines.* Minimum setbacks from property lines are as follows:

Use	Front (feet)	Interior Side (feet)	Corner Side (feet)	Rear (feet)
Mobile home	20	10	20	10
Single-family dwelling	20	10	20	10
Schools and civic, cultural and religious institutions	50	50	50	50
Structures accessory to mobile homes and single-family dwellings	20	10	20	10
Structures for all other principal, conditional or other uses	20	10	20	20

- (h) *Encroachments into yards.*



- (2) *Covered patios, decks, porches or carports.* Covered patios, decks, porches or carports shall not be permitted encroachments in any setbacks, except as provided under section 54-140.
- (3) *Roof projections into required side yards.* A house or garage roof may not be constructed closer than two feet to a side property line.

Sec. 54-140. - Setback and height encroachments, limitations and exceptions.

The following shall be considered as permitted encroachments on setback and height requirements, except as otherwise provided in this article:

- (1) *Permitted encroachments in any yards.* The following are permitted in any yards: posts, off-street open parking spaces, sills, pilasters, lintels, cornices, eaves, gutters, awnings, open terraces, service station pump islands, open canopies, steps, flagpoles, ornamental features, open fire escapes, sidewalks and fences, except as otherwise provided in this article; also, yard lights and nameplate signs in residential districts, trees, shrubs, plants, floodlights or other sources of light illumination, and authorized lights or light standards for illuminating parking areas, loading areas or yards for safety and security reasons, provided the direct source of light is not visible from the public right-of-way or adjacent residential property.
- (2) *Permitted encroachments in side and rear yards.* Balconies eight feet above grade may extend into the yards to within five feet of a lot line, provided the balconies do not extend over nonresidential driveways. Detached outdoor picnic shelters, open arbors and trellises may extend to within five feet of a side or rear lot line, except that no such structures shall exceed 500 square feet. Recreational equipment, picnic tables and apparatus needed for the operation of active and passive solar energy systems are permitted encroachments.
- (3) *Permitted encroachments in rear yards.* The following are permitted in rear yards: laundry drying equipment; patios; covered porches; breezeways and detached outdoor living rooms may extend 20 feet into the rear yard but not closer than ten feet to the rear lot line.
- (4) *Exemptions from height limitations.* Height limitations shall not apply to church spires, belfries, cupolas and domes, monuments, chimneys and smokestacks, flagpoles, public and private utility facilities, transmission towers of commercial and private radio broadcasting stations, television antennas, parapet walls extending no more than four feet above the limiting height of the building (except as otherwise provided in this article), and solar energy collectors and equipment used for the mounting or operation of such collectors.
- (5) *Exemption from building setback requirements for buildings with party walls.* Subject to regulations in section 22-31 and as required by other applicable sections of this article or this Code, buildings may be excluded from side and rear setback requirements provided party walls are used and if the adjacent buildings are constructed as an integral unit.
- (6) *Covered decks, porches and breezeways in front yards.* Covered decks, porches and breezeways in R-1, R-2, M-1 and M-2 districts may extend into the front yard, but not closer than 15 feet to the front property line, provided that they are not enclosed.



Sec. 54-66. Variances.

- (a) Generally. The planning commission may vary or adjust the strict application of the requirements of this article in the case of, shallow or steep lot or other physical condition applying to a lot or building where strict application of this article would result in practical difficulty or unnecessary hardship that would deprive the owner of reasonable use of the property involved.

Granting of variances shall be done in accord with the requirements and procedures established in this article. Variances may only be granted for hardships related to the physical characteristics of land and should normally be limited to regulations pertaining to height or width of structures or the size of yard and open spaces where a departure from the literal interpretation of this article will not be contrary to the public interest or establish a precedent that would undermine the purpose and intent of this article as described in section 54-32. Use variances shall not be permitted. No variance or adjustment in the strict application of any provisions of an ordinance may be granted unless:

- (1) Special circumstances or conditions, fully described in the Planning Commission's findings, are peculiar to the land or building for which the adjustment is sought and do not apply generally to land or buildings in the neighborhood and have not resulted from any act of the applicant after the adoption of this article. Substandard lot size shall be considered a special circumstance in accordance with section 54-143(j);
- (2) For reasons fully set forth in the planning commission's findings, the circumstances or conditions are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of the land or building, the granting of the variance is necessary for the reasonable use thereof and the variance as granted is the minimum adjustment that will accomplish this purpose; and
- (3) The granting of the variance is in harmony with the purpose and intent of this article and will not be harmful to the neighborhood or otherwise detrimental to the public welfare.

Approval of a variance requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.

Sec. 54-66 (d) Review and decision by planning commission.

In considering applications for variance, the planning commission shall consider the effect of the proposed variance upon the health, safety and welfare of the community, traffic conditions, light and air, danger of fire, risk to the public safety, and the safety and the effect on values of property in the surrounding area.

The planning commission shall hear oral or written statements from the applicant, the public, village staff or its own members. If the planning commission determines by motion that the special conditions applying to the structure or land in question are peculiar to such property or the immediately surrounding area and do not apply generally to other land or



structures in the district in which the land is located, that granting the proposed variance will not in any way impair health, safety or welfare or in any other respect be contrary to the intent of this article and the village comprehensive plan, and that the granting of such variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable hardship or difficulty, the planning commission may grant such variance and impose conditions and safeguards therein.

A variance shall not be approved except upon the affirmative vote of two-thirds of all the members of the planning commission present. The planning commission shall be **required to make findings supporting its decision** based on subsections (a) through (d) of this section.

The Planning Commission has the following options:

1. **Approval** of the Variance request, with reasons stated in the motion, granting the requested conditional use.
2. **Require modifications** to the Variance request, and have it returned for Planning Commission review at the next meeting.
3. **Deny** the request of the Variance request with reasons and conditions.

Approval of a variance requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.



If the Planning Commission votes to approve this application, staff recommends that the following conditions of approval be imposed:

1. Applicant must complete and return necessary Variance Agreement prior to any construction including an improvement survey that notates the variance that was approved on the face of the plat. Failure to complete and record variance agreement within six (6) months from approval will void the approval of Case #PV-2020-0594. Plat must be record in the office of the Lincoln County Clerk.
2. Applicant must obtain necessary permits to begin construction within six (6) months of Planning Commission approval and construction must comply with Village Code and applicable state standards and be completed within one (1) year of the issuance of the building permit.
3. Granting of the variance relief does not confer any authorization for additional variances nor the improvement upon the portion of the dwelling granted relief to encroach within this application. All additional improvements within encroachments would require future variance relief from the Planning Commission.
4. Applicant shall make no substantial changes in plans without Planning Commission approval.
5. By accepting approval of this Variance Agreement, Applicant agrees to comply in a timely manner with standards and conditions set. Failure to comply may lead to Court enforcement.

V. STAFF FINDINGS & RECOMMENDATION

Variance requests require findings in 3 parts to determine whether the application meets the criteria necessary to grant the requested relief.

1. First, staff finds that in accordance with §54-66(a)(1) “Variances” **special conditions or circumstances are present that are peculiar to the property.**
2. Additionally, staff finds that in accordance with §54-66(a)(2) “Variances” the circumstances or conditions are such that the **strict application of the provisions of this article would deprive the applicants of the reasonable use of the land or building,** the granting of the variance is necessary for the reasonable use thereof.
3. Finally, staff finds that the granting of this **variance would not adversely impact the health, safety, welfare, property values or neighborhood character** and is therefore in accord with §54-66 and §54-97 of the Village Code.



As a result of these findings, there is sufficient evidence to recommend that the applicant be granted relief and therefore staff recommends granting approval as requested of a variance in Case #PV-2020-0594 with the conditions attached.

Suggested Motion:

“Based upon the foregoing findings of fact per §54-66 of the Village Code, I move to **GRANT** the requested variance in Case #PV-2020-0594 with the conditions stated in the case report.”

Prepared & Submitted by:

Samantha J. Mendez
Community Development Director

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By signing below, the Owner/Applicant agrees to comply with all the conditions adopted by the Planning and Zoning Commission ("the Commission") at its hearing on this application. The Owner/Applicant further agrees that it will make no changes to the plans as presented to the Commission without prior approval from village staff or the Commission. Failure to comply with the application as approved by the Commission may result in Court action or revocation of approval.

_____/_____/_____
Owner/ Applicant



Planning Commission
Zoom at Village Hall- 313 Cree Meadows Drive, Ruidoso, New Mexico 88345
Case Report– Variance Request #PV-2020-0598

Case #PV- 2020-0598– Variance Request
Subject Property: 226 S. Oak Dr.
Zoning: R-1 Single-Family Residential

Subdivision: Ponderosa Heights Unit 3
Legal Description: Block 20 Lot 51
Applicants/Owners: Thomas & Lisa Lahut
Hearing Date: September 1, 2020 at 2:00 p.m.

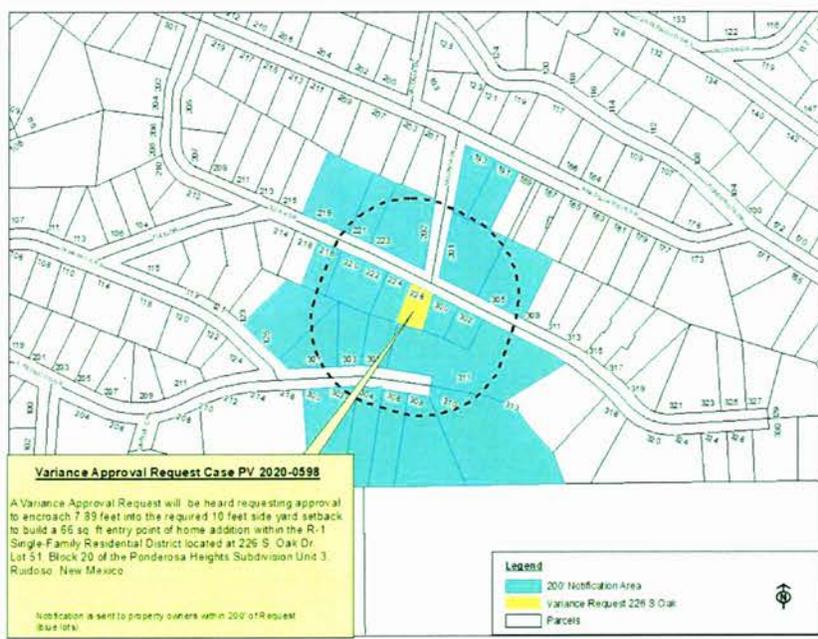
Applicable Sections of Village Code:

- Sec. 54-92. – R-1 Single-Family Residential District.
- Sec. 54-140. - Setback and height encroachments, limitations and exceptions.
- Sec. 54-66. Variances.

I. SITE DATA

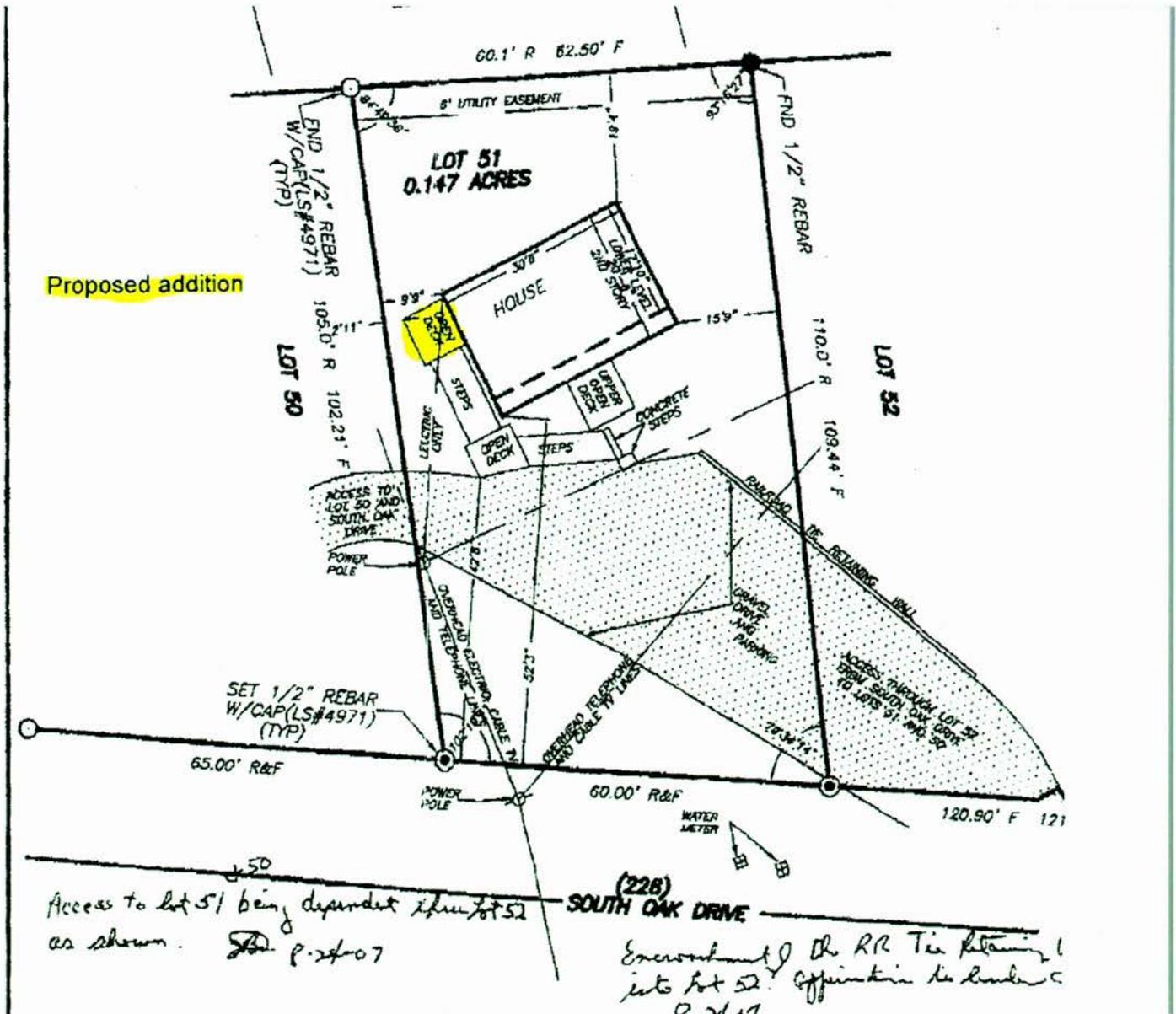
Direction	Zoning	Existing Land Use
North	R-1	Single-Family Residential District
East	R-1	Single-Family Residential District
South	R-1	Single-Family Residential District
West	R-1	Single-Family Residential District

II. NOTIFICATION AREA MAP



III. **REQUEST:** Thomas & Lisa Lahut are requesting approval of a variance to encroach 7.89 feet into the required 10 feet side-yard setback to build a 66 sq. ft. entry point of home addition

IV. **Site Plan.**



Pictures Taken at Property Location from Street:







V. ANALYSIS

Setbacks:	Per Code:	Proposed:	Variance:
North Rear Yard	20'	19.4'	0'(existing)
West Side Yard	10'	2.11'	7.89'
East Side Yard	10'	15.9'	0'
South Front Yard	20'	52.3'	0'

Sec. 54-92. - R-1 single-family residential district.

- (a) *Purpose; maximum density.* The purpose of the R-1 single-family residential district is to provide for the development, at a low density, of single-family detached dwellings and directly related complementary uses. The district is intended to be strictly residential in character with a minimum of disturbance due to traffic or overcrowding.
- (b) *Principal permitted uses.* Principal permitted uses in the R-1 district are:
 - (1) Single-family dwellings.
 - (2) Public parks.
- (e) *Development requirements.*
 - (1) Development requirements for the R-1 district are as follows:
 - b. Minimum lot width: 75 feet.
 - c. Minimum lot depth: 100 feet.
 - d. Minimum front setback: 20 feet.
 - e. Minimum side setback: 10 feet.
 - f. Minimum corner side setback: 20 feet. Street side(s)
 - g. Minimum rear setback: 20 feet.
 Exceptions:
 - 1. Accessory structures may have a 10-foot rear setback.
 - 2. Corner lots minimum set back: 10 feet
- (f) *Encroachments into yards.*
 - (1) *Open decks.* Open decks shall be permitted to extend into the front, rear and side yard setback a distance of not more than ten feet in the case of front yards and not closer than ten feet to the property line in the case of side yards and rear yards.
 - (2) *Covered patios, decks, porches or carports.* Covered patios, decks, porches or carports shall not be permitted encroachments on any setbacks, except as provided under section 54-140.
 - (3) *Roof projections into required side yards.* A house or garage roof may not be constructed closer than two feet to a side property line.



Sec. 54-140. - Setback and height encroachments, limitations and exceptions.

The following shall be considered as permitted encroachments on setback and height requirements, except as otherwise provided in this article:

- (1) *Permitted encroachments in any yards.* The following are permitted in any yards: posts, off-street open parking spaces, sills, pilasters, lintels, cornices, eaves, gutters, awnings, open terraces, service station pump islands, open canopies, steps, flagpoles, ornamental features, open fire escapes, sidewalks and fences, except as otherwise provided in this article; also, yard lights and nameplate signs in residential districts, trees, shrubs, plants, floodlights or other sources of light illumination, and authorized lights or light standards for illuminating parking areas, loading areas or yards for safety and security reasons, provided the direct source of light is not visible from the public right-of-way or adjacent residential property.
- (2) *Permitted encroachments in side and rear yards.* Balconies eight feet above grade may extend into the yards to within five feet of a lot line, provided the balconies do not extend over nonresidential driveways. Detached outdoor picnic shelters, open arbors and trellises may extend to within five feet of a side or rear lot line, except that no such structures shall exceed 500 square feet. Recreational equipment, picnic tables and apparatus needed for the operation of active and passive solar energy systems are permitted encroachments.
- (3) *Permitted encroachments in rear yards.* The following are permitted in rear yards: laundry drying equipment; patios; covered porches; breezeways and detached outdoor living rooms may extend 20 feet into the rear yard but not closer than ten feet to the rear lot line.
- (4) *Exemptions from height limitations.* Height limitations shall not apply to church spires, belfries, cupolas and domes, monuments, chimneys and smokestacks, flagpoles, public and private utility facilities, transmission towers of commercial and private radio broadcasting stations, television antennas, parapet walls extending no more than four feet above the limiting height of the building (except as otherwise provided in this article), and solar energy collectors and equipment used for the mounting or operation of such collectors.
- (5) *Exemption from building setback requirements for buildings with party walls.* Subject to regulations in section 22-31 and as required by other applicable sections of this article or this Code, buildings may be excluded from side and rear setback requirements provided party walls are used and if the adjacent buildings are constructed as an integral unit.
- (6) *Covered decks, porches and breezeways in front yards.* Covered decks, porches and breezeways in R-1, R-2, M-1 and M-2 districts may extend into the front yard, but not closer than 15 feet to the front property line, provided that they are not enclosed.



Sec. 54-66. Variances.

- (a) Generally. The planning commission may vary or adjust the strict application of the requirements of this article in the case of, shallow or steep lot or other physical condition applying to a lot or building where strict application of this article would result in practical difficulty or unnecessary hardship that would deprive the owner of reasonable use of the property involved.

Granting of variances shall be done in accord with the requirements and procedures established in this article. Variances may only be granted for hardships related to the physical characteristics of land and should normally be limited to regulations pertaining to height or width of structures or the size of yard and open spaces where a departure from the literal interpretation of this article will not be contrary to the public interest or establish a precedent that would undermine the purpose and intent of this article as described in section 54-32. Use variances shall not be permitted. No variance or adjustment in the strict application of any provisions of an ordinance may be granted unless:

- (1) Special circumstances or conditions, fully described in the Planning Commission's findings, are peculiar to the land or building for which the adjustment is sought and do not apply generally to land or buildings in the neighborhood and have not resulted from any act of the applicant after the adoption of this article. Substandard lot size shall be considered a special circumstance in accordance with section 54-143(j);
- (2) For reasons fully set forth in the planning commission's findings, the circumstances or conditions are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of the land or building, the granting of the variance is necessary for the reasonable use thereof and the variance as granted is the minimum adjustment that will accomplish this purpose; and
- (3) The granting of the variance is in harmony with the purpose and intent of this article and will not be harmful to the neighborhood or otherwise detrimental to the public welfare.

Approval of a variance requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.

Sec. 54-66 (d) Review and decision by planning commission.

In considering applications for variance, the planning commission shall consider the effect of the proposed variance upon the health, safety and welfare of the community, traffic conditions, light and air, danger of fire, risk to the public safety, and the safety and the effect on values of property in the surrounding area.

The planning commission shall hear oral or written statements from the applicant, the public, village staff or its own members. If the planning commission determines by motion



that the special conditions applying to the structure or land in question are peculiar to such property or the immediately surrounding area and do not apply generally to other land or structures in the district in which the land is located, that granting the proposed variance will not in any way impair health, safety or welfare or in any other respect be contrary to the intent of this article and the village comprehensive plan, and that the granting of such variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable hardship or difficulty, the planning commission may grant such variance and impose conditions and safeguards therein.

A variance shall not be approved except upon the affirmative vote of two-thirds of all the members of the planning commission present. The planning commission shall be **required to make findings supporting its decision** based on subsections (a) through (d) of this section.

The Planning Commission has the following options:

1. **Approval** of the Variance request, with reasons stated in the motion, granting the requested conditional use.
2. **Require modifications** to the Variance request, and have it returned for Planning Commission review at the next meeting.
3. **Deny** the request of the Variance request with reasons and conditions.

Approval of a variance requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.



If the Planning Commission votes to approve this application, staff recommends that the following conditions of approval be imposed:

1. Applicant must complete and return necessary Variance Agreement prior to any construction including an improvement survey that notates the variance that was approved on the face of the plat. Failure to complete and record variance agreement within six (6) months from approval will void the approval of Case #PV-2020-0598. Plat must be record in the office of the Lincoln County Clerk.
2. Applicant must obtain necessary permits to begin construction within six (6) months of Planning Commission approval and construction must comply with Village Code and applicable state standards and be completed within one (1) year of the issuance of the building permit.
3. Granting of the variance relief does not confer any authorization for additional variances nor the improvement upon the portion of the dwelling granted relief to encroach within this application. All additional improvements within encroachments would require future variance relief from the Planning Commission.
4. Applicant shall make no substantial changes in plans without Planning Commission approval.
5. By accepting approval of this Variance Agreement, Applicant agrees to comply in a timely manner with standards and conditions set. Failure to comply may lead to Court enforcement.

V. STAFF FINDINGS & RECOMMENDATION

Variance requests require findings in 3 parts to determine whether the application meets the criteria necessary to grant the requested relief.

1. First, staff finds that in accordance with §54-66(a)(1) “Variances” **special conditions or circumstances are present that are peculiar to the property.**
2. Additionally, staff finds that in accordance with §54-66(a)(2) “Variances” the circumstances or conditions are such that the **strict application of the provisions of this article would deprive the applicants of the reasonable use of the land or building**, the granting of the variance is necessary for the reasonable use thereof.
3. Finally, staff finds that the granting of this **variance would not adversely impact the health, safety, welfare, property values or neighborhood character** and is therefore in accord with §54-66 and §54-92 of the Village Code.



As a result of these findings, there is sufficient evidence to recommend that the applicant be granting relief and therefore staff recommends granting approval as requested of a variance in Case #PV-2020-0598 with the conditions attached.

Suggested Motion:

“Based upon the foregoing findings of fact per §54-66 of the Village Code, I move to **GRANT** the requested variance in Case #PV-2020-0598 with the conditions stated in the case report.”

Prepared & Submitted by:

Samantha J. Mendez
Community Development Director

#

By signing below, the Owner/Applicant agrees to comply with all the conditions adopted by the Planning and Zoning Commission ("the Commission") at its hearing on this application. The Owner/Applicant further agrees that it will make no changes to the plans as presented to the Commission without prior approval from village staff or the Commission. Failure to comply with the application as approved by the Commission may result in Court action or revocation of approval.

_____ / _____ / _____
Owner/ Applicant



Planning Commission

Zoom at Village Hall- 313 Cree Meadows Drive, Ruidoso, New Mexico 88345

Case Report– Variance Request #PV-2020-0597

Case #PV- 2020-0597– Variance Request
Subject Property: 117 Black Forest Rd.
Zoning: R-1 Single-Family Residential

Subdivision: Black Forest- Amended
Legal Description: Block 10 Lot 1
Applicants/Owners: Donald Henexson
Hearing Date: September 1, 2020 at 2:00 p.m.

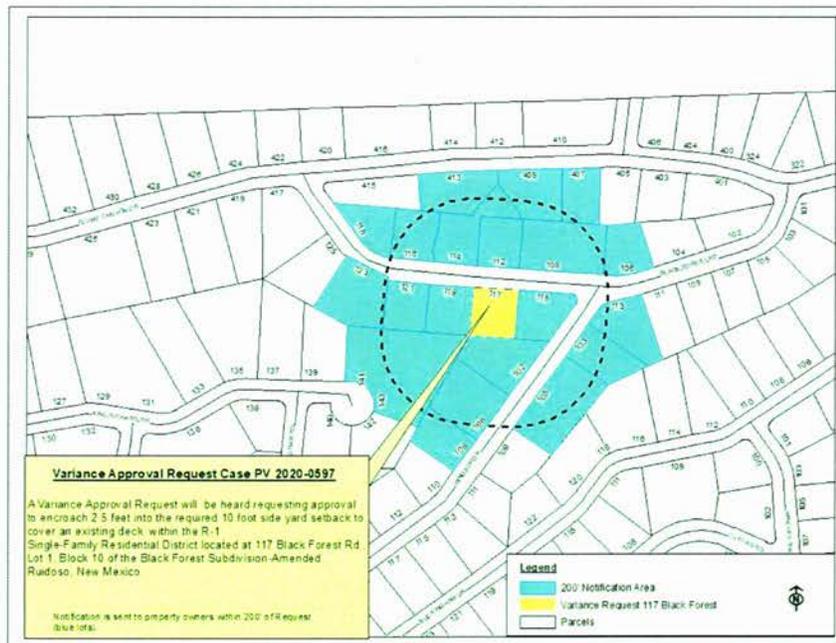
Applicable Sections of Village Code:

- Sec. 54-92. – R-1 Single-Family Residential District.
- Sec. 54-140. - Setback and height encroachments, limitations and exceptions.
- Sec. 54-66. Variances.

I. SITE DATA

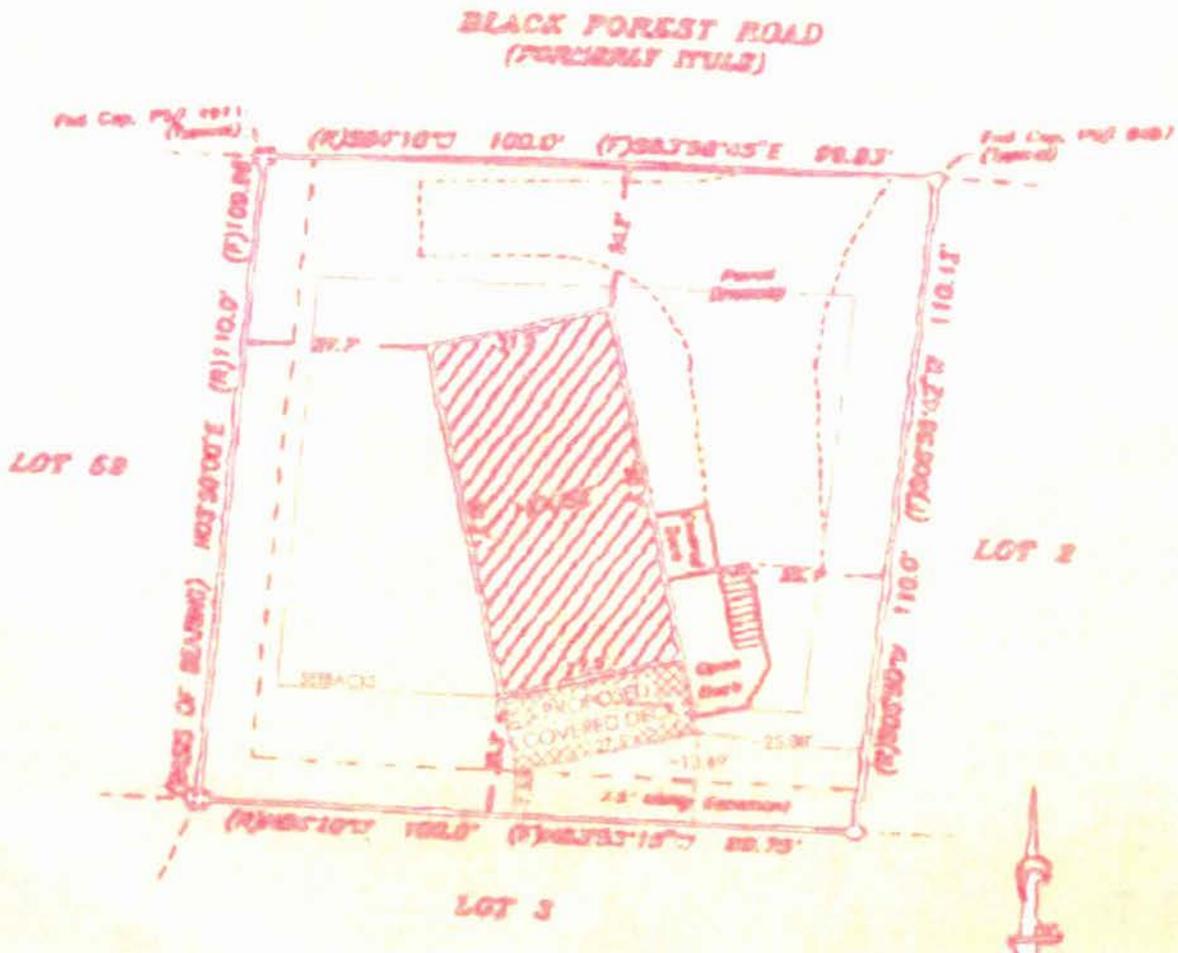
Direction	Zoning	Existing Land Use
North	R-1	Single-Family Residential District
East	R-1	Single-Family Residential District
South	R-1	Single-Family Residential District
West	R-1	Single-Family Residential District

II. NOTIFICATION AREA MAP



III. **REQUEST:** Donald Henexson is requesting approval of a variance of 2.5 feet into the required 10-foot rear-yard setback to cover an existing deck

IV. **Site Plan.**



Pictures Taken at Property Location from Street:







V. ANALYSIS

Setbacks:	Per Code:	Proposed:	Variance:
North Front Yard	20'	20+'	0'
West Side Yard	10'	80+'	0'
East Side Yard	10'	25.08'	0'
South Rear Yard	10'	7.52'	2.5'

Sec. 54-92. - R-1 single-family residential district.

- (a) *Purpose; maximum density.* The purpose of the R-1 single-family residential district is to provide for the development, at a low density, of single-family detached dwellings and directly related complementary uses. The district is intended to be strictly residential in character with a minimum of disturbance due to traffic or overcrowding.
- (b) *Principal permitted uses.* Principal permitted uses in the R-1 district are:
 - (1) Single-family dwellings.
 - (2) Public parks.
- (e) *Development requirements.*
 - (1) Development requirements for the R-1 district are as follows:
 - b. Minimum lot width: 75 feet.
 - c. Minimum lot depth: 100 feet.
 - d. Minimum front setback: 20 feet.
 - e. Minimum side setback: 10 feet.
 - f. Minimum corner side setback: 20 feet. Street side(s)
 - g. Minimum rear setback: 20 feet.
 Exceptions:
 - 1. Accessory structures may have a 10-foot rear setback.
 - 2. Corner lots minimum set back: 10 feet
- (f) *Encroachments into yards.*
 - (1) *Open decks.* Open decks shall be permitted to extend into the front, rear and side yard setback a distance of not more than ten feet in the case of front yards and not closer than ten feet to the property line in the case of side yards and rear yards.
 - (2) *Covered patios, decks, porches or carports.* Covered patios, decks, porches or carports shall not be permitted encroachments on any setbacks, except as provided under section 54-140.
 - (3) *Roof projections into required side yards.* A house or garage roof may not be constructed closer than two feet to a side property line.



Sec. 54-140. - Setback and height encroachments, limitations and exceptions.

The following shall be considered as permitted encroachments on setback and height requirements, except as otherwise provided in this article:

- (1) *Permitted encroachments in any yards.* The following are permitted in any yards: posts, off-street open parking spaces, sills, pilasters, lintels, cornices, eaves, gutters, awnings, open terraces, service station pump islands, open canopies, steps, flagpoles, ornamental features, open fire escapes, sidewalks and fences, except as otherwise provided in this article; also, yard lights and nameplate signs in residential districts, trees, shrubs, plants, floodlights or other sources of light illumination, and authorized lights or light standards for illuminating parking areas, loading areas or yards for safety and security reasons, provided the direct source of light is not visible from the public right-of-way or adjacent residential property.
- (2) *Permitted encroachments in side and rear yards.* Balconies eight feet above grade may extend into the yards to within five feet of a lot line, provided the balconies do not extend over nonresidential driveways. Detached outdoor picnic shelters, open arbors and trellises may extend to within five feet of a side or rear lot line, except that no such structures shall exceed 500 square feet. Recreational equipment, picnic tables and apparatus needed for the operation of active and passive solar energy systems are permitted encroachments.
- (3) *Permitted encroachments in rear yards.* The following are permitted in rear yards: laundry drying equipment; patios; covered porches; breezeways and detached outdoor living rooms may extend 20 feet into the rear yard but not closer than ten feet to the rear lot line.
- (4) *Exemptions from height limitations.* Height limitations shall not apply to church spires, belfries, cupolas and domes, monuments, chimneys and smokestacks, flagpoles, public and private utility facilities, transmission towers of commercial and private radio broadcasting stations, television antennas, parapet walls extending no more than four feet above the limiting height of the building (except as otherwise provided in this article), and solar energy collectors and equipment used for the mounting or operation of such collectors.
- (5) *Exemption from building setback requirements for buildings with party walls.* Subject to regulations in section 22-31 and as required by other applicable sections of this article or this Code, buildings may be excluded from side and rear setback requirements provided party walls are used and if the adjacent buildings are constructed as an integral unit.
- (6) *Covered decks, porches and breezeways in front yards.* Covered decks, porches and breezeways in R-1, R-2, M-1 and M-2 districts may extend into the front yard, but not closer than 15 feet to the front property line, provided that they are not enclosed.



Sec. 54-66. Variances.

- (a) Generally. The planning commission may vary or adjust the strict application of the requirements of this article in the case of, shallow or steep lot or other physical condition applying to a lot or building where strict application of this article would result in practical difficulty or unnecessary hardship that would deprive the owner of reasonable use of the property involved.

Granting of variances shall be done in accord with the requirements and procedures established in this article. Variances may only be granted for hardships related to the physical characteristics of land and should normally be limited to regulations pertaining to height or width of structures or the size of yard and open spaces where a departure from the literal interpretation of this article will not be contrary to the public interest or establish a precedent that would undermine the purpose and intent of this article as described in section 54-32. Use variances shall not be permitted. No variance or adjustment in the strict application of any provisions of an ordinance may be granted unless:

- (1) Special circumstances or conditions, fully described in the Planning Commission's findings, are peculiar to the land or building for which the adjustment is sought and do not apply generally to land or buildings in the neighborhood and have not resulted from any act of the applicant after the adoption of this article. Substandard lot size shall be considered a special circumstance in accordance with section 54-143(j);
- (2) For reasons fully set forth in the planning commission's findings, the circumstances or conditions are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of the land or building, the granting of the variance is necessary for the reasonable use thereof and the variance as granted is the minimum adjustment that will accomplish this purpose; and
- (3) The granting of the variance is in harmony with the purpose and intent of this article and will not be harmful to the neighborhood or otherwise detrimental to the public welfare.

Approval of a variance requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.

Sec. 54-66 (d) Review and decision by planning commission.

In considering applications for variance, the planning commission shall consider the effect of the proposed variance upon the health, safety and welfare of the community, traffic conditions, light and air, danger of fire, risk to the public safety, and the safety and the effect on values of property in the surrounding area.

The planning commission shall hear oral or written statements from the applicant, the public, village staff or its own members. If the planning commission determines by motion that the special conditions applying to the structure or land in question are peculiar to such



property or the immediately surrounding area and do not apply generally to other land or structures in the district in which the land is located, that granting the proposed variance will not in any way impair health, safety or welfare or in any other respect be contrary to the intent of this article and the village comprehensive plan, and that the granting of such variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable hardship or difficulty, the planning commission may grant such variance and impose conditions and safeguards therein.

A variance shall not be approved except upon the affirmative vote of two-thirds of all the members of the planning commission present. The planning commission shall be **required to make findings supporting its decision** based on subsections (a) through (d) of this section.

The Planning Commission has the following options:

1. **Approval** of the Variance request, with reasons stated in the motion, granting the requested conditional use.
2. **Require modifications** to the Variance request, and have it returned for Planning Commission review at the next meeting.
3. **Deny** the request of the Variance request with reasons and conditions.

Approval of a variance requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.



If the Planning Commission votes to approve this application, staff recommends that the following conditions of approval be imposed:

1. Applicant must complete and return necessary Variance Agreement prior to any construction including an improvement survey that notates the variance that was approved on the face of the plat. Failure to complete and record variance agreement within six (6) months from approval will void the approval of Case #PV-2020-0597. Plat must be record in the office of the Lincoln County Clerk.
2. Applicant must obtain necessary permits to begin construction within six (6) months of Planning Commission approval and construction must comply with Village Code and applicable state standards and be completed within one (1) year of the issuance of the building permit.
3. Granting of the variance relief does not confer any authorization for additional variances nor the improvement upon the portion of the dwelling granted relief to encroach within this application. All additional improvements within encroachments would require future variance relief from the Planning Commission.
4. Applicant shall make no substantial changes in plans without Planning Commission approval.
5. By accepting approval of this Variance Agreement, Applicant agrees to comply in a timely manner with standards and conditions set. Failure to comply may lead to Court enforcement.

V. STAFF FINDINGS & RECOMMENDATION

Variance requests require findings in 3 parts to determine whether the application meets the criteria necessary to grant the requested relief.

1. First, staff finds that in accordance with §54-66(a)(1) “Variances” **special conditions or circumstances are present that are peculiar to the property.**
2. Additionally, staff finds that in accordance with §54-66(a)(2) “Variances” the circumstances or conditions are such that the **strict application of the provisions of this article would deprive the applicants of the reasonable use of the land or building**, the granting of the variance is necessary for the reasonable use thereof.
3. Finally, staff finds that the granting of this **variance would not adversely impact the health, safety, welfare, property values or neighborhood character** and is therefore in accord with §54-66 and §54-92 of the Village Code.



As a result of these findings, there is sufficient evidence to recommend that the applicant be granting relief and therefore staff recommends granting approval as requested of a variance in Case #PV-2020-0597 with the conditions attached.

Suggested Motion:

“Based upon the foregoing findings of fact per §54-66 of the Village Code, I move to **GRANT** the requested variance in Case #PV-2020-0597 with the conditions stated in the case report.”

Prepared & Submitted by:

Samantha J. Mendez
Community Development Director

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By signing below, the Owner/Applicant agrees to comply with all the conditions adopted by the Planning and Zoning Commission ("the Commission") at its hearing on this application. The Owner/Applicant further agrees that it will make no changes to the plans as presented to the Commission without prior approval from village staff or the Commission. Failure to comply with the application as approved by the Commission may result in Court action or revocation of approval.

_____ / _____ / _____
Owner/ Applicant



Village Hall
313 Cree Meadows Drive
Case Report – Periodic Review Conditional Use Case #CU-2018-0424

Case #CU-2018-0424– Periodic Review of
Conditional Use Approval

Subject Property: 418 Mechem Drive

Zoning: C-2- Community Commercial District

Subdivision: Hamilton Terrace Subdivision

Legal Description: Block 2 Lot 9A

Applicants: Pete Schiavone, owner Can't Stop
Smokin'

Planning Commission Hearing Date:
September 1, 2020 at 2:00 p.m.

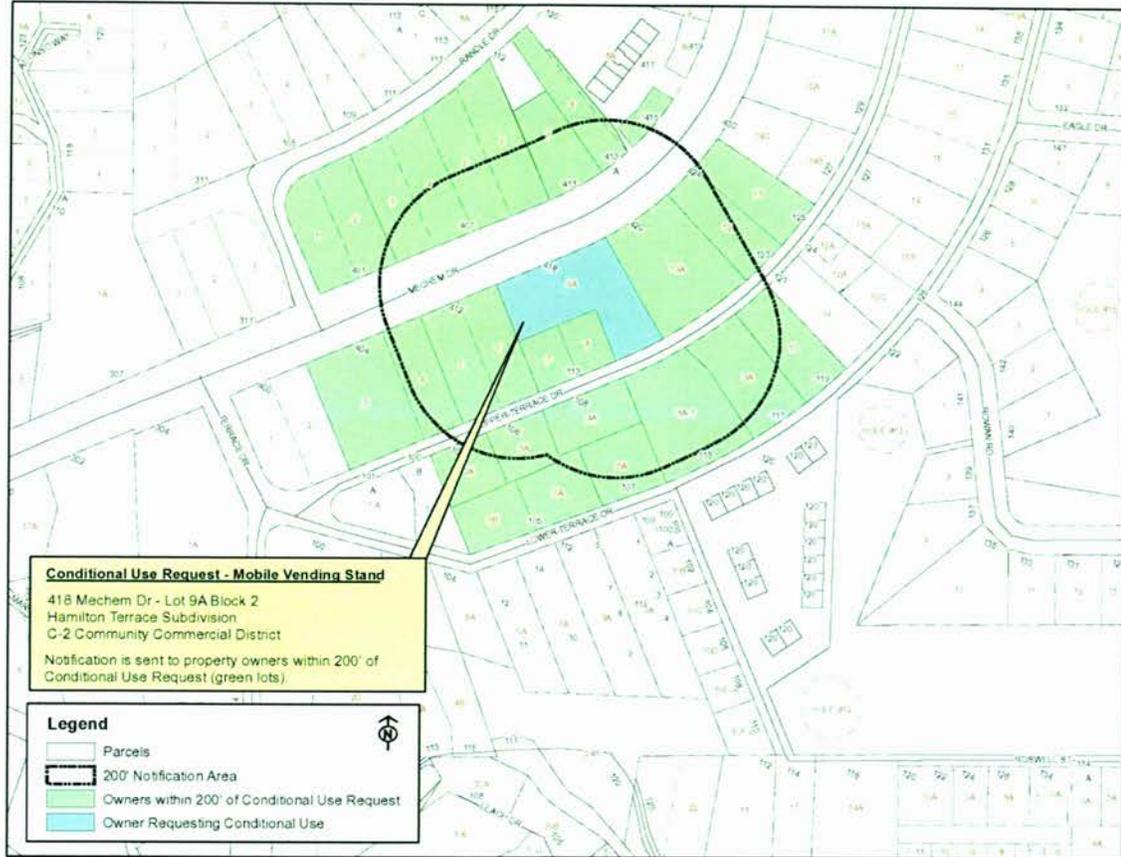
Applicable Sections of Village Code:

- §54-68- Conditional Use Permit Approval
- §54-150- Approved Structures

I. SITE DATA

Direction	Zoning	Existing Land Use
North	C-2	Community Commercial District
East	R-2, R-4	Two-Family and Multiple-Family Residential District
South	C-2	Community Commercial District
West	C-2	Community Commercial District

II. NOTIFICATION AREA MAP



- III. **REQUEST:** This is a periodic review to allow the continuance of the mobile vending operation. Applicant is presenting his construction plan time-line and future development of the current property. This review process will allow the review of the previous approval and to continue or set any further conditions or time frame limitations to the mobile vending stand operation.

IV. ANALYSIS

Sec. 54-91. – General districts defined; permitted and conditional uses.

c) A conditional use is a use which is of an unusual or unique character and which may be offensive or incompatible in some cases within a zoning district. A conditional use requires review and approval by the planning commission to determine impacts of the use on the surrounding area. See [section 54-68](#) for procedures governing a conditional use permit.

Sec. 54-68. – Conditional use permit approval.

*(a) **Generally.** Certain uses, (as defined in [section 54-91\(c\)](#)), may, under certain circumstances, be acceptable. When such circumstances exist, a conditional use permit may be granted. The permit may be issued for a specified period of time, with automatic cancellation at the end of that time unless it is renewed, or conditions may be applied to the issuance of the permit and periodic review may be required. The permit shall be granted for a particular use and not for a particular person.*

*(b) **Application.** The person applying for a conditional use permit shall fill out and submit to the planning administrator the appropriate form, together with the required fee. The request for a conditional use permit shall follow the procedures and applicable requirements of [section 54-67](#) which pertain to site plan review.*

*(c) **Notice of hearing.** Notice of any public meeting at which the conditional use will be reviewed shall be accomplished as set forth in [section 54-40](#).*

*(d) **Review and decision by planning commission.***

(1) No conditional use permit shall be given for a use which is not listed in this article as a conditional use in the particular district in which it is proposed to be located. The planning commission shall consider the effect of the proposed use upon the health, safety and general welfare of occupants of surrounding lands, existing and anticipated traffic conditions, including parking facilities, on adjacent streets and land, the impact upon the natural environment, and the effect of the proposed use upon the comprehensive plan. The planning commission may grant the application by motion, imposing such conditions and safeguards as it deems necessary, or it may deny the application. In reviewing conditional uses in residential areas, the planning commission shall consider particularly the response of adjoining property owners.

(2) Approval of conditional use permits shall require a two-thirds vote of the members of the planning commission present. If approved, the commission shall be required to make findings supporting its decision. If an application is denied, the denial shall constitute a finding that the applicant has not shown that the conditions required for approval exist. No application for a conditional use permit which has been denied wholly or in part shall be resubmitted for a period of six months from the date of the order of denial, except on grounds of new evidence or proof of change of conditions found to be valid by the planning commission.

Sec. 54-150. - Approved structures.

- (a) Use of property permitted by this article shall be conducted from or within a permanent structure conforming to the requirements in [section 22-31](#)(a) of the Ruidoso Code for the use or uses to be conducted in the respective zone district, **unless approved as a mobile vending stand pursuant to subsection (b) of this section** or unless approved under subsection [54-100](#)(c)(24) allowing use of fiber or membrane tent in a C-2 zone district.

(b) Mobile vending stands are expressly prohibited except when licensed and approved in C-2 and C-3 zone districts as a conditional use or where use is temporary and operated in connection with special community and civic events which have been licensed and approved by the village under [section 26-69](#) and the operation is limited to the approved location and jurisdiction for such event.

The Planning Commission has the following options:

1. **Approval** of Continuation of the Conditional Use Case #CU 2018-0424, with reasons stated in the motion.
2. **Approval in part and denial in part** of with reasons stated.
3. **Require modifications** to #CU 2018-0424, and have it returned for Planning Commission review at the next meeting.
4. **Deny** the entire request of #CU 2018-0424 with reasons and conditions.

V. STAFF FINDINGS & RECOMMENDATION

The determination of appropriateness for granting or denying a conditional use application rests only with the consistency with applicable statutes, codes and policies and with the Commission's analysis of the impacts to the surrounding properties and the community at-large.

1. Planning Commission approval as a conditional use is a listed Conditional Use with in a C-2 Zone.
2. Applicant must obtain building permits and commence construction of primary business Can't Stop Smokin' within 30 days from the date of this hearing.
3. That there will be adequate parking provided.
4. The use is consistent with the permissive uses of the zoning district and would not intensify safety impacts of the property any more so than the existing uses of adjacent properties.
5. Applicant must complete the reconstruction of the primary business Can't Stop Smokin' within 1 year.

6. A periodic review of progress and continuance of the conditional use required every 6 months.
7. By accepting approval of this Conditional Use, Applicant agrees to comply in a timely manner with standards and conditions set. Failure to comply may lead to Court enforcement.

Upon review of the application and existing conditions, staff finds that the request for conditional use of a mobile vending stand continuance should be DENIED as the applicant has not continued the use of the mobile vending stand as previously stated would be done in the December 3, 2019 periodic review hearing, nor does the property maintain an active building permit for the completion of the restaurant which was the basis for the original approval granted on July 20, 2018.

Suggested Motion:

“Based upon the foregoing findings of fact per §54-68 and in accordance with §54-150 of the Village Code, I move to DENY the continuance of the conditional use approval Case# CU 2018-0424 and applicant must obtain building permits and commence construction of primary business Can’t Stop Smokin’ within 30 days from the date of this hearing on the property to include the conditions contained within the case report.”

Prepared & Submitted by:
Samantha J. Mendez
 Community Development Director

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By signing below, the Owner/Applicant agrees to comply with all the conditions adopted by the Planning and Zoning Commission ("the Commission") at its hearing on this application. The Owner/Applicant further agrees that it will make no changes to the plans as presented to the Commission without prior approval from village staff or the Commission. Failure to comply with the application as approved by the Commission may result in Court action or revocation of approval.

_____ / ____ / _____
 Owner/ Applicant



Planning Commission

Zoom at Village Hall- 313 Cree Meadows Drive, Ruidoso, New Mexico 88345
Case Report– Variance Request #PV-2020-0602

Case #PV- 2020-0602– Variance Request
Subject Property: 100 Lost Mountain Court
Zoning District: R-1 Single-Family Residential

Subdivision: Lost Mountain Estates
Legal Description: Block 1 Lot 10
Applicants/Owners: Michael Davis
Hearing Date: September 1, 2020 at 2:00 p.m.

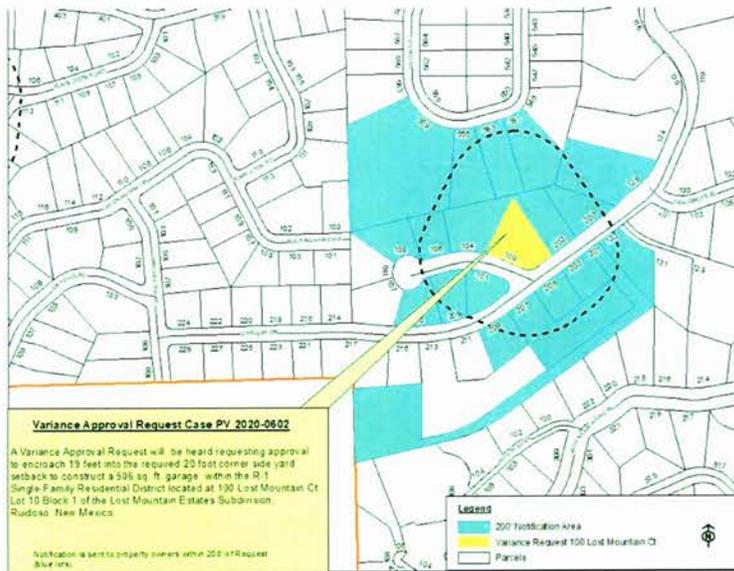
Applicable Sections of Village Code:

- Sec. 54-92. – R-1 Single-Family Residential District.
- Sec. 54-140 - Setback and height encroachments, limitations and exceptions.
- Sec. 54-66- Variances
- Sec. 54-144- Miscellaneous Performance Requirements

I. SITE DATA

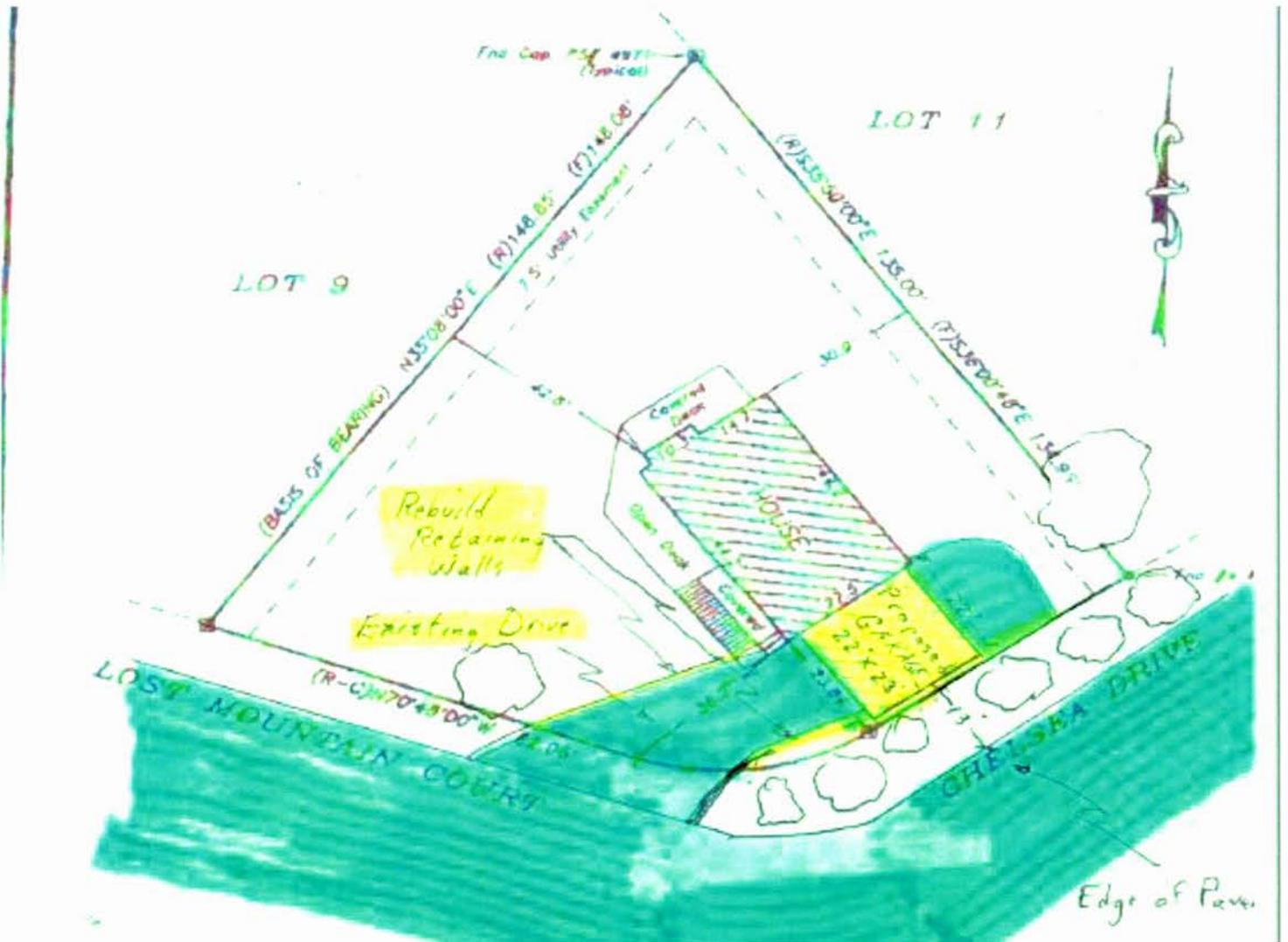
Direction	Zoning	Existing Land Use
North	R-1	Single-Family Residential District
East	R-1	Single-Family Residential District
South	R-1	Single-Family Residential District
West	R-1	Single-Family Residential District

II. NOTIFICATION AREA MAP

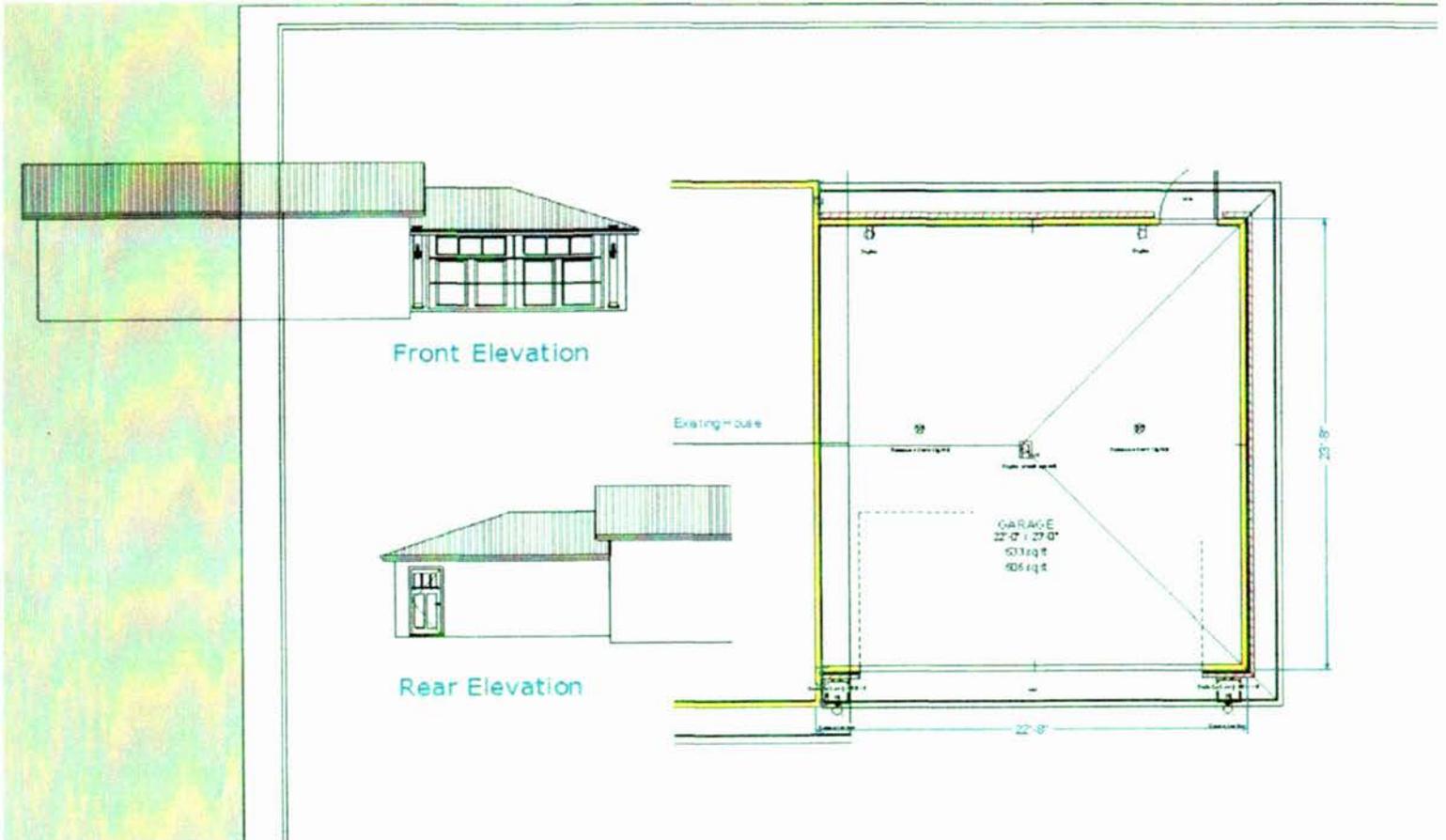


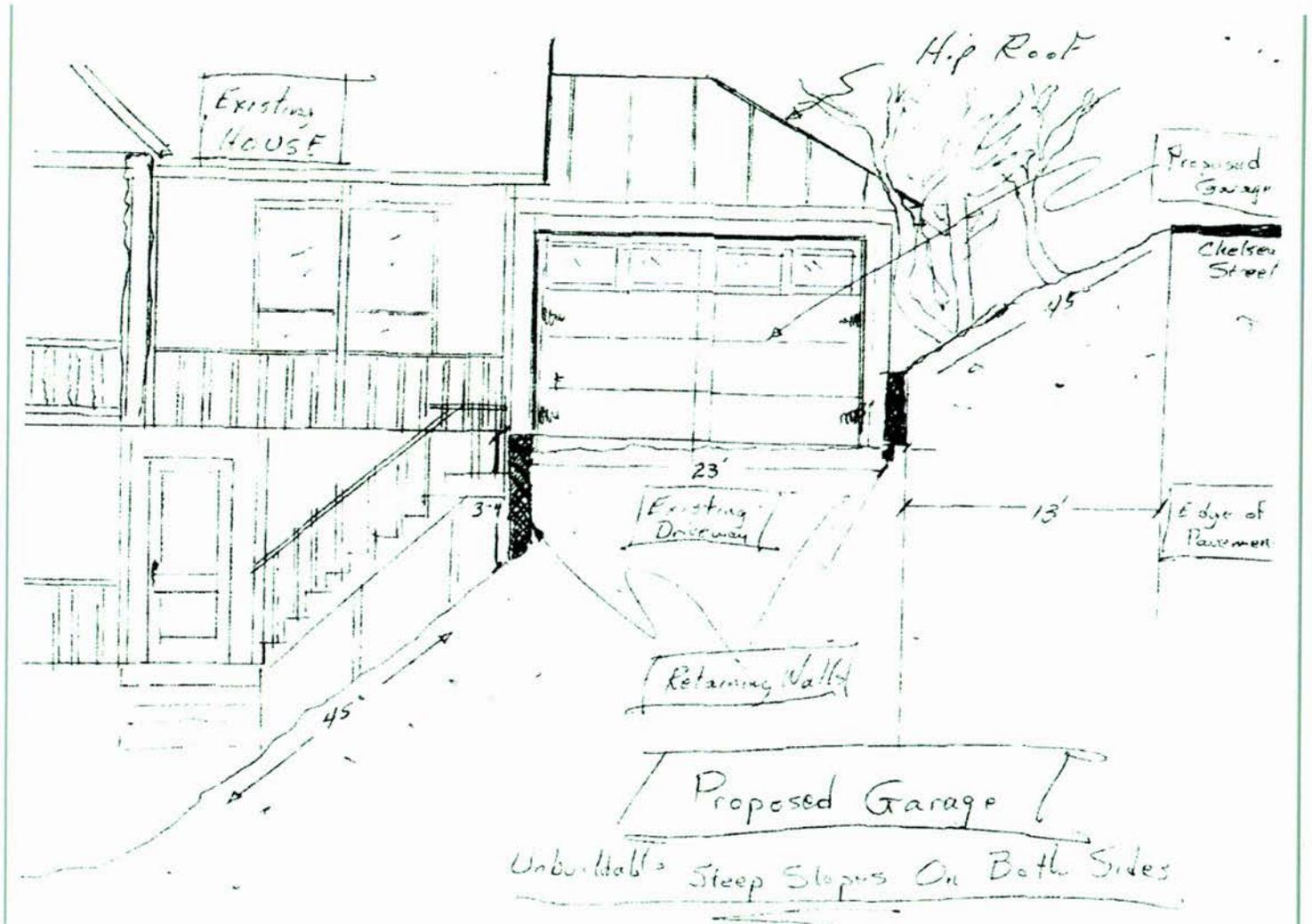
III. **REQUEST:** Michael Davis is requesting approval of a variance to encroach 19 feet into the required 20-foot corner lot side-yard setback to construct a 506 sq. ft. garage

IV. **Site Plan.**



Building proposals provided by applicant:





Street view at stop sign:



V. ANALYSIS

Setbacks:	Per Code:	Proposed:	Variance:
North Rear Yard	20'	60+'	0'
West Side Yard	10'	90+'	0'
East Side Yard	10'	1'	9'
South Side Yard	20'	24.61'	0'

Sec. 54-92. - R-1 single-family residential district.

(a) *Purpose; maximum density.* The purpose of the R-1 single-family residential district is to provide for the development, at a low density, of single-family detached dwellings and directly related complementary uses. The district is intended to be strictly residential in character with a minimum of disturbance due to traffic or overcrowding.

(e) *Development requirements.*

(1) Development requirements for the R-1 district are as follows:

b. Minimum lot width: 75 feet.



- c. Minimum lot depth: 100 feet.
- d. Minimum front setback: 20 feet.
- e. Minimum side setback: 10 feet.
- f. **Minimum corner side setback: 20 feet. Street side(s)**
- g. Minimum rear setback: 20 feet.

Exceptions:

- 1. Accessory structures may have a 10 foot rear setback.
- 2. Corner lots minimum set back: 10 feet

(f) *Encroachments into yards.*

- (1) *Open decks.* Open decks shall be permitted to extend into the front, rear and side yard setback a distance of not more than ten feet in the case of front yards and not closer than ten feet to the property line in the case of side yards and rear yards.
- (2) *Covered patios, decks, porches or carports.* Covered patios, decks, porches or carports shall not be permitted encroachments on any setbacks, except as provided under section 54-140.
- (3) *Roof projections into required side yards.* A house or garage roof may not be constructed closer than two feet to a side property line.

Sec. 54-140. - Setback and height encroachments, limitations and exceptions.

The following shall be considered as permitted encroachments on setback and height requirements, except as otherwise provided in this article:

- (1) *Permitted encroachments in any yards.* The following are permitted in any yards: posts, off-street open parking spaces, sills, pilasters, lintels, cornices, eaves, gutters, awnings, open terraces, service station pump islands, open canopies, steps, flagpoles, ornamental features, open fire escapes, sidewalks and fences, except as otherwise provided in this article; also, yard lights and nameplate signs in residential districts, trees, shrubs, plants, floodlights or other sources of light illumination, and authorized lights or light standards for illuminating parking areas, loading areas or yards for safety and security reasons, provided the direct source of light is not visible from the public right-of-way or adjacent residential property.
- (2) *Permitted encroachments in side and rear yards.* Balconies eight feet above grade may extend into the yards to within five feet of a lot line, provided the balconies do not extend over nonresidential driveways. Detached outdoor picnic shelters, open arbors and trellises may extend to within five feet of a side or rear lot line, except that no such structures shall exceed 500 square feet. Recreational equipment, picnic tables and apparatus needed for the operation of active and passive solar energy systems are permitted encroachments.
- (3) *Permitted encroachments in rear yards.* The following are permitted in rear yards: laundry drying equipment; patios; covered porches; breezeways and detached outdoor living rooms may extend 20 feet into the rear yard but not closer than ten feet to the rear lot line.
- (4) *Exemptions from height limitations.* Height limitations shall not apply to church spires, belfries, cupolas and domes, monuments, chimneys and smokestacks, flagpoles, public and private utility facilities, transmission towers of commercial and private radio broadcasting stations, television antennas, parapet walls extending no more than four feet above the limiting height of the building (except as otherwise provided in this article), and solar energy collectors and equipment used for the mounting or operation of such collectors.
- (5) *Exemption from building setback requirements for buildings with party walls.* Subject to regulations in section 22-31 and as required by other applicable sections of this article or this



Code, buildings may be excluded from side and rear setback requirements provided party walls are used and if the adjacent buildings are constructed as an integral unit.

- (6) *Covered decks, porches and breezeways in front yards.* Covered decks, porches and breezeways in R-1, R-2, M-1 and M-2 districts may extend into the front yard, but not closer than 15 feet to the front property line, provided that they are not enclosed.

Sec. 54-66. Variances.

- (a) Generally. The planning commission may vary or adjust the strict application of the requirements of this article in the case of, shallow or steep lot or other physical condition applying to a lot or building where strict application of this article would result in practical difficulty or unnecessary hardship that would deprive the owner of reasonable use of the property involved.

Granting of variances shall be done in accord with the requirements and procedures established in this article. **Variances may only be granted for hardships related to the physical characteristics of land and should normally be limited to regulations pertaining to height or width of structures or the size of yard** and open spaces where a departure from the literal interpretation of this article will not be contrary to the public interest or establish a precedent that would undermine the purpose and intent of this article as described in section 54-32. **Use variances shall not be permitted.** No variance or adjustment in the strict application of any provisions of an ordinance may be granted unless:

- (1) Special circumstances or conditions, fully described in the Planning Commission's findings, are peculiar to the land or building for which the adjustment is sought and do not apply generally to land or buildings in the neighborhood and have not resulted from any act of the applicant after the adoption of this article. Substandard lot size shall be considered a special circumstance in accordance with section 54-143(j);
- (2) For reasons fully set forth in the planning commission's findings, the circumstances or conditions are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of the land or building, the granting of the variance is necessary for the reasonable use thereof and the variance as granted is the minimum adjustment that will accomplish this purpose; and
- (3) The granting of the variance is in harmony with the purpose and intent of this article and will not be harmful to the neighborhood or otherwise detrimental to the public welfare.

Approval of a variance requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.

Sec. 54-66 (d) Review and decision by planning commission.

In considering applications for variance, the planning commission shall consider the effect



of the proposed variance upon the health, safety and welfare of the community, traffic conditions, light and air, danger of fire, risk to the public safety, and the safety and the effect on values of property in the surrounding area.

The planning commission shall hear oral or written statements from the applicant, the public, village staff or its own members. If the planning commission determines by motion that the special conditions applying to the structure or land in question are peculiar to such property or the immediately surrounding area and do not apply generally to other land or structures in the district in which the land is located, that granting the proposed variance will not in any way impair health, safety or welfare or in any other respect be contrary to the intent of this article and the village comprehensive plan, and that the granting of such variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable hardship or difficulty, the planning commission may grant such variance and impose conditions and safeguards therein.

A variance shall not be approved except upon the affirmative vote of two-thirds of all the members of the planning commission present. The planning commission shall be **required to make findings supporting its decision** based on subsections (a) through (d) of this section.

Sec. 54-144. - Miscellaneous performance requirements.

(e) **Clear sight triangles.**

- (1) An area of unobstructed vision at street intersections, entrances and exits, permitting a vehicle driver to see approaching vehicles to the right or left, shall be maintained. Nothing over 30 inches in height, measured from the street centerline grade, shall be permitted to obstruct a sight line triangle area. The sight line triangle shall be bounded by lines measured 30 feet along the front and side street lines of a corner lot from the intersection of the property lines of such lot and a line connecting points 30 feet distant from the intersection of the property lines of such lot. Any existing trees located within the clear sight triangle may be allowed to remain if all branches are trimmed to a height of eight feet.
- (2) No post or column within the designated triangle shall exceed 12 inches in thickness at its greatest cross-sectional dimension.



The Planning Commission has the following options:

1. **Approval** of the Variance request, with reasons stated in the motion, granting the requested conditional use.
2. **Require modifications** to the Variance request, and have it returned for Planning Commission review at the next meeting.
3. **Deny** the request of the Variance request with reasons and conditions.

Approval of a variance requires a **2/3 majority vote** of those members of the Planning Commission present. The reasons for either approval or rejection must be stated in the findings of fact and motion.

If the Planning Commission votes to approve this application, staff recommends that the following conditions of approval be imposed:

1. Applicant must complete and return necessary Variance Agreement prior to any construction including an improvement survey that notates the variance that was approved on the face of the plat. Failure to complete and record variance agreement within six (6) months from approval will void the approval of Case #PV-2020-0602. Plat must be record in the office of the Lincoln County Clerk.
2. Applicant must obtain necessary permits to begin construction within six (6) months of Planning Commission approval and construction must comply with Village Code and applicable state standards and be completed within one (1) year of the issuance of the building permit.
3. Granting of the variance relief does not confer any authorization for additional variances nor the improvement upon the portion of the dwelling granted relief to encroach within this application. All additional improvements within encroachments would require future variance relief from the Planning Commission.
4. Applicant shall make no substantial changes in plans without Planning Commission approval.
5. By accepting approval of this Variance Agreement, Applicant agrees to comply in a timely manner with standards and conditions set. Failure to comply may lead to Court enforcement.



V. **STAFF FINDINGS & RECOMMENDATION**

Variance requests require findings in 3 parts to determine whether the application meets the criteria necessary to grant the requested relief.

1. First, staff finds that in accordance with §54-66(a)(1) “Variances” **special conditions or circumstances are present that are peculiar to the property.**
2. Additionally, staff finds that in accordance with §54-66(a)(2) “Variances” **the circumstances or conditions are such that the strict application of the provisions of this article would not deprive the applicants of the reasonable use of the land or building, the granting of the variance is not necessary for the reasonable use thereof.**
3. Finally, staff finds that the granting of this **variance would could potentially adversely impact the health, safety, welfare of customers to the neighboring financial institution** and is therefore in not in accord with §54-66 and §54-92 of the Village Code.

As a result of these findings, the location of the proposed structure violates section 54-144 (e) of the municipal code and does not adhere to the corner lot setbacks as designated by the R-1 Single-Family Residential District requirements; staff recommends denial of the requested variance in Case #PV-2020-0602.



Suggested Motion:

“Based upon the foregoing findings of fact per §54-66 of the Village Code, I move to **DENY** the requested variance in Case #PV-2020-0602 with the conditions stated in the case report.”

Prepared & Submitted by:

Samantha J. Mendez
Community Development Director

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By signing below, the Owner/Applicant agrees to comply with all the conditions adopted by the Planning and Zoning Commission ("the Commission") at its hearing on this application. The Owner/Applicant further agrees that it will make no changes to the plans as presented to the Commission without prior approval from village staff or the Commission. Failure to comply with the application as approved by the Commission may result in Court action or revocation of approval.

_____/_____/_____
Owner/ Applicant