



**PLANNING COMMISSION  
REGULAR MEETING AGENDA**

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

**Tuesday, October 6, 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, October 6<sup>th</sup> 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/86017071385?pwd=dmRzeEp2WkJscl0xeWh1TVAwMlVxUT09>

Meeting ID: 860 1707 1385

Passcode: 724296

One tap mobile: + 1 669 900 6833

YouTube at <https://www.youtube.com/channel/UCi01gVEgmVcl-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](mailto:stephaniewarren@ruidoso-nm.gov); fax at 575-258-4367 or by mail: 313 Cree Meadows Drive, Ruidoso, NM 88345 before October 6<sup>th</sup> 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 September 1, 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](mailto:StephanieWarren@Ruidoso-NM.gov) or by fax at 575-258-4367 before October 6th 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) **Variance Approval Request Case PV 2020-0689-** Alex Valdez is requesting approval of a variance to encroach 2.3 feet into the required 20-foot rear yard setback to construct an addition on the existing structure; as designated by the R-1 Single-Family Residential District located at 104 Nopal Ln, Lot 60A, Block 22 of the Ponderosa Heights Subdivision Unit 3, Ruidoso, New Mexico.

**7. NEW BUSINESS**

- a) **Discussion and Possible Action of Appointment of Planning Commission Chairman**
- b) **Discussion and Possible Action of Appointment of Planning Commission Vice-Chairman**

**8. COMMUNITY DEVELOPMENT REPORT**

**9. COMMISSIONERS COMMENTS**

**10. ADJOURNMENT**

**VILLAGE OF RUIDOSO  
PLANNING COMMISSION, REGULAR MEETING  
313 CREE MEADOWS DRIVE  
RUIDOSO, NM 88345  
September 1, 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 and Byars were recorded present at Village Hall; Commissioners Kelly and Michelena were recorded present via Zoom by roll call. Commissioner Tondino was recorded as absent, Village staff present was Samantha J. Mendez, Community Development Director; and Stephanie Warren, Short-Term Rental Administrative Assistant. There were 11 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 Kelly seconded and the motion carried with all ayes.

**APPROVAL OF MINUTES:**

Commissioner Michelena moved to approve the August 4, 2020 minutes. Commissioner Byars seconded and the motion carried with all ayes.

Commissioner Byars moved to approve the August 13, 2020 minutes. Commissioner Kelly seconded the motion 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 stated that Chairman Flack had resigned from the Planning Commission. There are now 2 vacancies that need to be filled. Please submit any nominations to Samantha Mendez or Mayor Crawford.

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: Conditional Use Approval CU 2020-0507**

Director Mendez stated Dakota Montes is requesting a 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 known as 2637 Sudderth Drive, Ruidoso, New Mexico.

The applicant was not present for questions.

Director Mendez stated there had not been any written comments for or against the request received.

Vice-Chairman Briley asked if the building was built up to the road as shown in the map. Director Mendez stated that the current building is not built to the road as depicted. The overlays do not match up correctly on the GIS mapping software.

Vice-Chairman Briley opened the Public Hearing at 2:09 p.m.

There was no public comment.

Vice-Chairman Briley closed the Public Hearing at 2:10 p.m.

Commissioner Byars stated 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; Commissioner Michelena seconded the motion.

Stephanie Warren called roll to record the votes:

Vice-Chairman Briley: Aye

Commissioner Byars: Aye

Commissioner Kelly: Aye

Commissioner Michelena: Aye

Motion carried all ayes.

**Quasi-Judicial Public Hearing: Variance Approval Request PV 2020-0594.**

Director Mendez stated that Donald Maier is requesting approval of a variance to encroach 5.3 feet into the required 10 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 Block 12 Lot 13A of the Ponderosa Heights Subdivision Unit 2, known as 123 Spruce Drive, Ruidoso, New Mexico.

Donald Maier stated they previously bought and replatted 3 lots into the 2. It did create an irregular shape; wants to build a home and a garage for his RV for when they move here to provide care for his mother-in-law.

Vice-Chairman Briley asked what his hardship was. Donald Maier stated that the lot is steep and this RV makes wide turns. He could reconstruct the driveway but does not want to have to remove all the full-grown trees in the area. Mr. Maier provided pictures of the property for the Planning Commission to review.

Director Mendez stated there had not been any written comments received in favor or against the request.

Vice-Chairman Briley opened the Public Hearing at 2:17 p.m.

There was no public comment

Vice-Chairman Briley closed the Public Hearing at 2:18 p.m.

Commissioner Byars 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-2020-0594 with the conditions stated in the case report; Commissioner Kelly seconded the motion.

Stephanie Warren called roll to record the votes:

Vice-Chairman Briley: Aye  
Commissioner Byars: Aye  
Commissioner Kelly: Aye  
Commissioner Michelena: Aye

Motion carried all ayes.

**Quasi-Judicial Public Hearing: Variance Approval Request PV 2020-0598.**

Director Mendez stated that 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 Block 20, Lot 51 of the Ponderosa Heights Subdivision Unit 3, known as 226 S. Oak Drive, Ruidoso, New Mexico.

Tom Lahut stated that they wish to expand the current structure and replace the deck to create a mudroom.

Commissioner Byars asked if they are only enclosing the landing, the site plan shows that the deck is existing. Mr. Lahut stated yes.

Director Mendez stated there have not been any written comments received in favor or against the request.

Vice-Chairman Briley opened the Public Hearing at 2:22 p.m.

There was no public comment

Vice-Chairman Briley closed the Public Hearing at 2:23 p.m.

Commissioner Kelly asked if the encroachment exists, why are we hearing the request. Director Mendez stated because the type of structure encroaching is changing from the deck to an enclosed structure.

Commissioner Byars 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-2020-0598 with the conditions stated in the case report; seconded by Commissioner Michelena.

Stephanie Warren called roll to record the votes:

- Vice-Chairman Briley: Aye
- Commissioner Byars: Aye
- Commissioner Kelly: Aye
- Commissioner Michelena: Aye

Motion carried all ayes.

**Quasi-Judicial Public Hearing: Variance Approval Request PV 2020-0598.**

Director Mendez stated that 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 Block 10 Lot 1 of the Black Forest Subdivision-Amended; known as 117 Black Forest Rd., Ruidoso, New Mexico.

Director Mendez stated that there was one comment received; she read the following submitted comment:

*To whom it may concern:*

*I am the property owner at 115 Black Forest Road downhill from Donald Henexson 127 Black Forest road . I would like to have noted that a current drainage issue with this property and the owner has not been resolved and that by adding a covering to the deck may create a larger drainage problem that could possibly do damage to my property, which is downhill from him. I have attempted to resolve the drainage issue with Mr. Henexson and was met with resistance. The issue is a 4 inch drain pipe from his gutters under his deck that is aimed directly downhill at my house. It is evident that he is not concerned with anyone around him by the fact the he allows contractors working on his house to park in my driveway without permission.*

*My concern that I need to voice is if the covering is added to c'eck then he also needs to add proper drainage away from the downhill slope towards my house. Thank*

*I have owned this house for many years and until he built here, I had never had issues.*

*Please consider my concerns in your decision of the variance approval.*

*Thank you,*

*Ima lee Mellard*

Donald Henexson stated he has been told about drainage problems and it used to be a PVC pipe that he has changed out. The mountain slopes to her property and does currently mitigate any water issues and maintains the maintenance of his property to mitigate her concerns as best as the terrain allows; he wishes to cover the existing deck to shelter the deck from the sun and snow and would like to be able to utilize the deck more.

Vice-Chairman Briley opened the Public Hearing at 2:34 p.m.

Ima Lee stated she has been told that the drainage issued is for the building department to address. She would like to see the drainage be put down Mr. Henexson driveway and not toward her house. She understands the applicants need and hopes that her drainage concern is addressed.

Vice-Chairman Briley closed the Public Hearing at 2:36 p.m.

Vice-Chairman Briley asked where the pictures in the case study were taken. Stephanie Warren replied they were taken on the road down by the neighbor's house that commented on the drainage to be able to get a picture of the current structure.

Commissioner Michelena 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-2020-0597 with the conditions stated in the case report; Commissioner Byars seconded the motion.

Stephanie Warren called roll to record the votes:

Vice-Chairman Briley: Aye  
Commissioner Byars: Aye  
Commissioner Kelly: Aye  
Commissioner Michelena: Aye

Motion carried all ayes.

**Quasi-Judicial Public Hearing: Periodic Review of Conditional Use Case CU 2018-0424.**

Director Mendez stated that this is the periodic review of the approved Conditional Use for the mobile vending stand as a temporary business location during re-construction of the business Can't Stop Smokin' and to get an update on the construction of the business. This request was approved in 2018 and there has yet to be progress on the reconstruction of the business.

Pete Schiavone stated that the purpose of the foundation staying in the stage it is in is to keep and has been approved to use for the rebuild. He does not have a timeline. He has a restaurant in Alamogordo that many Ruidoso residents come to. They are keeping the area clean and maintained. The fire put a lot of restructuring requirements.

Vice-Chairman Briley asked about needing the mobile vending. Mr. Schiavone stated that is not a main concern. He may only want to use it on large weekends but is not a big deal as they have the location in Alamogordo.

Director Mendez stated there was 1 comment received and read the following:

*As the owner of the property next to Can't Stop Smoking the following comments are made to address the real and ongoing problems next door to us.*

- 1. The property is and had been an eye sore and unsafe since early 2018 when it burned - 2 1/2 years ago*
- 2. Each day we leave our residence we have to look at the problem and unsightly burned out substructure next door, and the burned-out fence and scrubs on our property*
- 3. When their property burned it also burned down my fence and landscaping scrubs and we would like it replaced by Can't Stop Smoking as soon as possible.*

*Thank you for your help in getting this property next to us cleaned up or rebuilt, and having our property returned to the shape it was before*

*Can't Stop Smoking burned our property down.*

*Ralph and Pam Rush*

Vice-Chairman Briley opened the Public Hearing at 2:46 p.m.

Pete Schiavone stated he understands the complaints and is trying to maintain the property. He wants to rebuild. The foundation has value and does not want to remove it. It has been taking time dealing with insurance.

Vice-Chairman Briley closed the Public Hearing at 3:06 p.m.

Vice-Chairman Briley asked if this hearing was only for the continuance of the mobile vending. Director Mendez stated yes and they were wishing for a rebuild update for the blighted property. Whether the mobile vending is continued to be approved or denied, the applicant needs to rebuild or other avenues by the Village can be taken for compliance.

Commissioner Michelena asked about the 30-day timeframe to begin construction if they deny the request to keep the food truck? Director Mendez stated that if the Commission chooses to deny the use, the processing will be done administratively.

Pete Schiavone stated that there is no merit to have a mobile vending operation and to put a timeframe on the reconstruction of the building.

Vice-Chairman Briley stated that the approval needs to have teeth to progress the building.

Pete Schiavone stated he needs more time. He wants to rebuild and the reconstruction is not a small task.

Director Mendez stated Code Enforcement Officer Bobby Simpson was joining the meeting to make a statement. Officer Simpson stated that a point was taken when granted the Conditional Use. It was pursuant to the rebuilding of the business per that agreement.

Pete Schiavone stated yes, but things changed and insurance took long. Now that is done and he can move forward. He has kept his focus on his other businesses.

Commissioner Kelly asked if he does not need or use the trailer, what are the options?

Vice-Chairman Briley stated the recommendations are made by the staff. The staff wants progress; this is only for the Conditional Use continuance.

Commissioner Byars asked what Mr. Schiavone was doing about the damage to the neighboring property as stated in the comment received. He feels it should be replaced by the applicant in good faith.

Pete Schiavone stated he had not talked to Mr. Rush, the insurance payment did not cover the neighbors property. He could put up a chain-link fence if he is required to do so.

Director Mendez stated that is more of a Civil matter and the Village does not enforce civil matters. The staff would like the blighted property cleaned. The truck is no longer being used and should be denied.

Officer Simpson stated they will address the blight with the new ordinance and require the property to become in compliance.

Commissioner Kelly asked what a reasonable timeframe to rebuild was. Pete Schiavone stated not before 6 months; then he will know more that. It will not be happening immediately.

Vice-Chairman Briley stated if this is denied will you abandon the reconstruction of the business? Pete Schiavone stated he does not need the vending unit and plans to rebuild. Vice-Chairman Briley stated that was the same statement made 6 months ago; will you continue to drag your feet with construction if denied? Pete Schiavone stated that if he is not able to begin construction in 6 months he will demo the standing foundation and sell the property.

Commissioner Briley stated 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; seconded by Commissioner Kelly.

Stephanie Warren called roll to record the votes:

Vice-Chairman Briley: Aye  
Commissioner Byars: Aye  
Commissioner Kelly: Aye  
Commissioner Michelena: Aye

Motion carried all ayes.

**Quasi-Judicial Public Hearing: Variance Approval Request PV 2020-0602**

Director Mendez stated that 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 Block 1 Lot 10 of the Lost Mountain Estates Subdivision known as 100 Lost Mountain Court.

Mike Davis stated there is a huge elevation change and the road is steep. They have moved here permanently and will be removing the railroad ties and would like to build a garage. The garage is lower than the road using a hip roof to bring grade down to 4 or 5 feet from the top of the retaining wall. There is no other location to build the garage.

Commissioner Kelley stated the pictures show the trees are more of an obstruction than the garage may be.

Vice-Chairman Briley opened the Public Hearing at 3:17 p.m.

Director Mendez stated there was 1 comment received and read the following:

*Ms. Mendez;*

*We are in receipt of the notice by the Village of Ruidoso for a variance to construct a garage at 100 Lost Mountain Court. Per the instructions of the letter we received, we are replying via email to [stephaniewarren@ruidoso-nm.gov](mailto:stephaniewarren@ruidoso-nm.gov) with our reply as we are a property owner within 200 feet of the subject residence. We are the owners of the property at 106 Lost Mountain Court. We have no objection to the request for a variance and recommend the Village of Ruidoso issue the variance.*

*Thank you for the notification,  
Rick and Sydney Reynolds*

Vice-Chairman Briley closed the Public Hearing at 3:18 p.m.

Commissioner Michelena asked how much farther than the railroad ties will the garage go? Mike Davis replied to the edge of the existing driveway.

Vice-Chairman Briley asked what the requirements are for building on a corner lot. Director Mendez stated 20 feet from both property lines that abut roads.

Mike Davis stated he has 13 feet of right-of-way before the pavement.

Vice-Chairman Briley stated ordinances are strict on keeping a clean line of sight.

Director Mendez stated the trees may hinder, the roof line may or may not. Per ordinance there is no relief to build within the required set backs and recommends denial; she did not see any other buildable locations while doing a site visit.

Commissioner Byars stated based upon the foregoing findings of fact per §54-66 of the Village Code, I move to **APPROVE** the requested variance in Case #PV-2020-0602 with the conditions stated in the case report; seconded by Commissioner Kelley.

Stephanie Warren called roll to record the votes:

Vice-Chairman Briley: No

Commissioner Byars: Aye

Commissioner Kelly: Aye

Commissioner Michelena: Aye

Motion carried with 3 Ayes and 1 No vote.

**Community Development Report:**

Director Mendez stated that the property at 2511 Sudderth under the process of the Clean and Lien Ordinance has shown improvements. The Village will continue addressing blighted properties to gain compliance. The Metropolitan Development is in the draft stages and anticipates to be presented in October. Chelsea Investments will be doing an update to Council about the Cree Manor costs; it may not continue as the cost of the project may be too high.

**Commissioners Comments:**

No comments made.

**ADJOURNMENT:**

With no further information being provided to the Planning Commission, Vice-Chairman Briley adjourned the regular meeting at 3:28 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**



**Planning Commission**

**Zoom at Village Hall- 313 Cree Meadows Drive, Ruidoso, New Mexico 88345**  
**Case Report– Variance Request #PV-2020-0689**

**Case #PV- 2020-0689–** Variance Request  
**Subject Property:** 104 Nopal  
**Zoning District:** R-1 Single-Family Residential  
**Hearing Date:** October 6, 2020 at 2:00 p.m.

**Subdivision:** Ponderosa Heights Unit III  
**Legal Description:** Block 22 Lot 60A  
**Applicants/Owners:** Alex Valdez

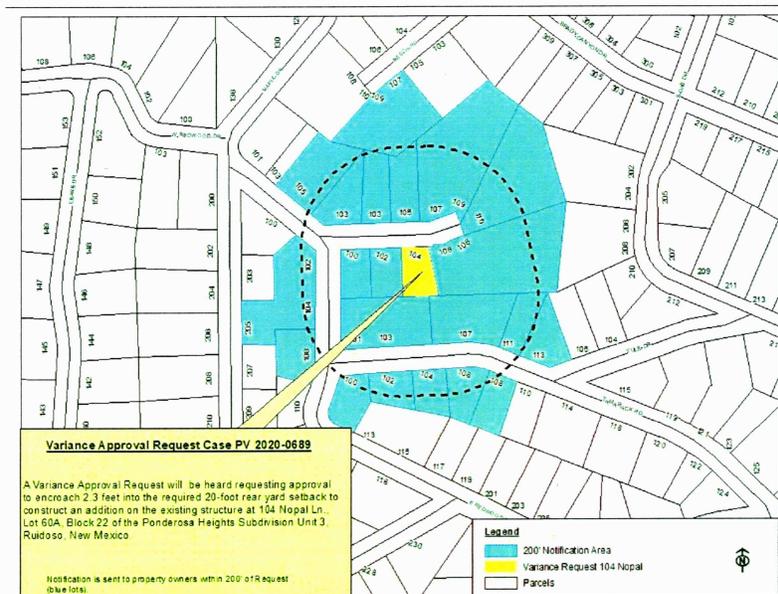
**Applicable Sections of Village Code:**

- Sec. 54-92. – R-1 Single-Family Residential District.
- Sec. 54-66- Variances

**I. SITE DATA**

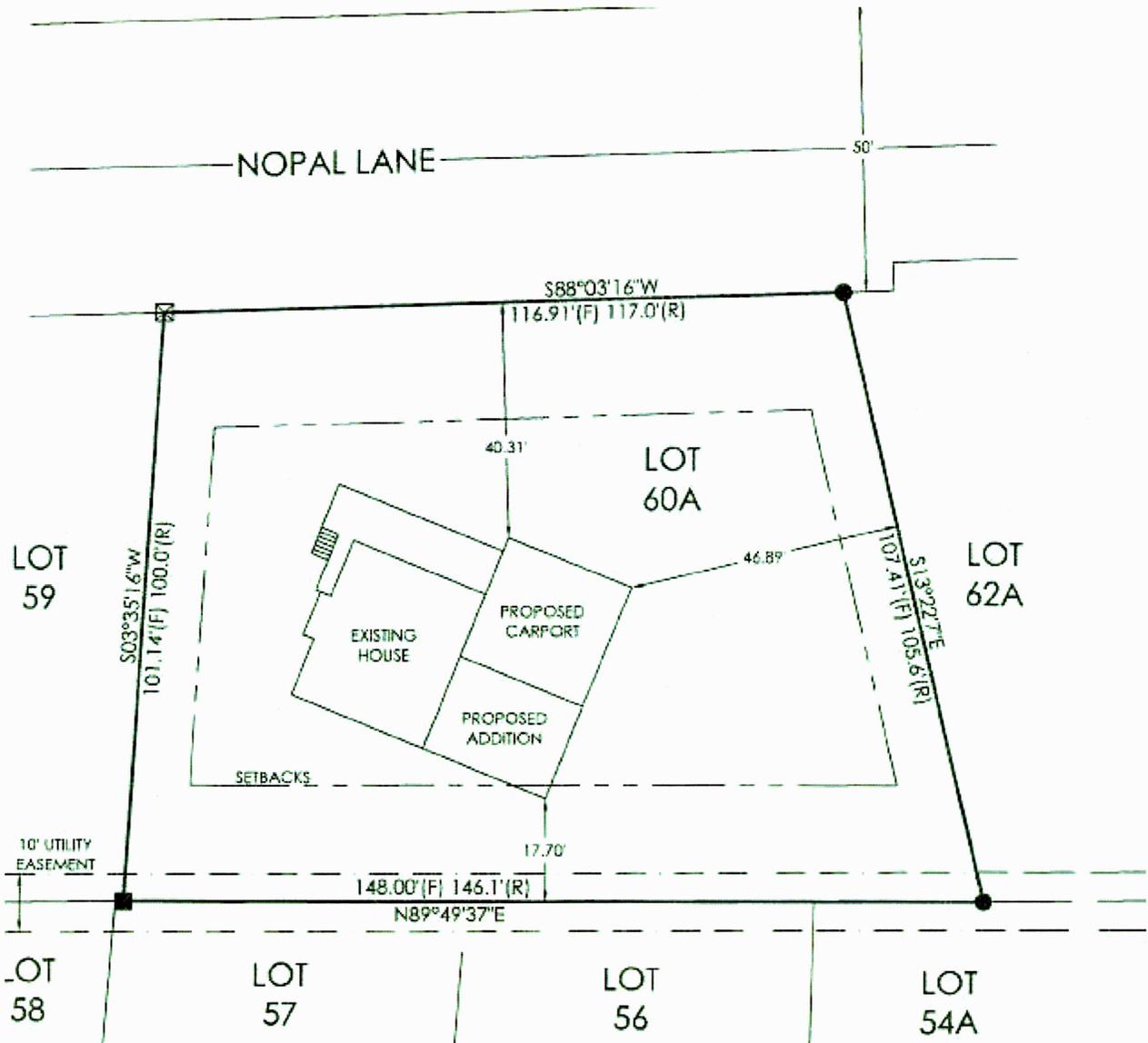
Direction	Zoning	Existing Land Use
North	R-1	Single-Family Residential District
East	R-1	Single-Family Residential District
South	R-1	Single-Family Residential District
West	R-1	Single-Family Residential District

**II. NOTIFICATION AREA MAP**



III. **REQUEST:** Alex Valdez is requesting approval of a variance to encroach 2.3-feet into the required 20-foot rear yard setback to construct an addition on the existing structure.

IV. **Site Plan.**



Street view facing proposed building site:



Street view from driveway:



Street view to rear yard:



**V. ANALYSIS**

Setbacks:	Per Code:	Proposed:	Variance:
North Rear Yard	20'	17.70'	2.3'
West Side Yard	10'	40+'	0'
East Side Yard	10'	46+'	0'
South Front Yard	20'	40+'	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. 54-66. 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-2020-0689. 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 not 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. Staff finds that the granting of this **variance would not potentially adversely impact the health, safety, welfare of customers to the neighboring financial institution** and is therefore in accord with §54-66 and §54-92 of the Village Code.
4. Finally, as a result of these findings, the location of the proposed structure does not have any hardships pertaining to the land and shall be required to meet the setbacks as designated by the R-1 Single-Family Residential District requirements. Applicant can redesign the layout of proposed construction to meet such requirements as designated by code; staff recommends denial of the requested variance in Case #PV-2020-0689.



**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-2020-0689 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