PLANNING COMMISSION
REGULAR MEETING AGENDA

Village Hall, 313 Cree Meadows Drive, Ruidoso, NM 88345

Tuesday, June 7, 2022 – 2:00 pm

 Viewing: Members of the public that do not wish to attend in person will have the ability to view the meeting through Zoom and/or YouTube.

 Zoom: https://us06web.zoom.us/j/92959910806?pwd=RE4vNDZodFVFT0tGS2RWbk5ONUjLUT09
 Meeting ID: 929 5991 0806
 Passcode: 2584343
 Telephone: +13126266799,,92959910806#,,,,*2584343# US

 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 or by mail: 313 Cree Meadows Drive, Ruidoso, NM 88345 before June 7th 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 #2022-01

3. APPROVAL OF AGENDA

4. APPROVAL OF MINUTES
   a) Regular Meeting, April 5, 2022
   b) Regular Meeting May 3, 2022

5. PUBLIC INPUT (Limited to items not on Public Hearing Agenda and up to 3 minutes per speaker.) Written public input must be submitted by email to StephanieWarren@Ruidoso-NM.gov by mail to 313 Cree Meadows Drive, Ruidoso, NM 88345 before May 3rd at 10:00 AM. In addition, anyone wishing to speak during the meeting can do so by joining the meeting via Zoom or in Person.

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 2022-01. 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.
6. QUASI-JUDICIAL PUBLIC HEARING (all parties with standing shall have an opportunity for cross-examination.)

a) Variance Approval Case #PV 2022-211- Alejandro Armendariz is requesting to encroach 2.5 feet into the 10-foot side-yard setbacks to the east and west of the lots as designated by the R-1 Single-Family Residential District to construct a single-family dwelling. Located at 224 Second St., Lot 38, Block B of the Ruidoso Pine Lodge Subdivision

b) Variance Approval Case #PV 2022-212- Alejandro Armendariz is requesting to encroach 2.5 feet into the 10-foot side-yard setbacks to the east and west of the lots as designated by the R-1 Single-Family Residential District to construct a single-family dwelling. Located at 222 Second St., Lot 39, Block B of the Ruidoso Pine Lodge Subdivision

7. OLD BUSINESS
   a) Update on 718 Carrizo Canyon Violations

8. COMMUNITY DEVELOPMENT REPORT

9. COMMISSIONER’S COMMENTS

10. ADJOURNMENT

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 2022-01. 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.
CALL TO ORDER AND ROLL CALL:

The regular meeting was called to order by Chairman Alan Briley at 2:02 PM. Chairman Briley, Commissioners Byars, Baugh, Byars, Rigsby recorded present at Village Hall; Commissioner Michelena recorded present on Zoom; Commissioner Williams recorded present on speaker phone; Village staff present were Samantha J. Mendez, Community Development Director, and Chrysanti Alvarez STR Admin; Village staff recorded present on zoom Zach Cook and Stephanie Warren. There were 9 visitors present and on zoom.

CERTIFICATION OF COMPLIANCE WITH RESOLUTION 2022-01:

Samantha Mendez certified the notice of the meeting was properly posted in accordance with Resolution 2022-02 and section 54-40 of the Village Municipal Code.

APPROVAL OF AGENDA:

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

APPROVAL OF MINUTES:

Commissioner Byars moved to approve the minutes. Commissioner Baugh seconded. Roll was called to record votes:

Commissioner Briley: Aye
Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Rigs: Aye
Commissioner Richardson: Aye
Commissioner Byars: Aye

PUBLIC INPUT: (Limited to items not on Public Hearing Agenda and up to 3 minutes per speaker). None

QUASI-JUDICIAL PUBLIC HEARINGS:
A) Revocation of Conditional Use Approval Case #CU 2020-0786- Request revocation of Conditional Use Approval for failure to comply with listed conditions placed for Arturo Olivas to operate an automotive repair shop within a C-2 Community Commercial District located at 718 Carrizo Canyon Rd; Block 3, Lot 1 of the Hutson Subdivision 1st Addition, Ruidoso, New Mexico.

Chairman Briley abstained from participating in this portion of the hearing due to being one the complainants.

Officer Simpson stated code information. Informed commissioners of complaints received. Informed commissioners’ applicant has also moved to location and now resided on site.

Mr. Olivas stated he has issue with getting vehicles scrapped.

Commissioner Rigsby requested clarification of site layout and allotted spaces for vehicle parking spaces.

Officer Simpson explained how many spaces were allotted on map along with where building structure is.

Commissioner Baugh asked if this is a recurring issue?

Officer Simpson stated yes.

Commissioner Baugh asked if the issue was at the same location?

Officer Simpson stated yes.

Commissioner Baugh asked if Mr. Olivas has been issued notices of violation.

Officer Simpson stated yes.

Commissioner Michelena asked if Mr. Olivas was currently compliant.

Officer Simpson stated no.

Mr. Olivas stated recent flood has made issues with him being able to remove vehicles.

Commissioner Michelena asked about violation $5 status.

Officer Simpson stated the garage has two vehicles at a time with multiple vehicles in yard being worked on.

Commissioner Richardson asked how many citation/violations has Mr. Olivas received?

Officer Simpson stated this time was the first time a notice of violation was issued.

The Public Hearing opened at 2:05 PM. No letters or emails were added to the record.

None provided
Chairman Briley closed the public hearing at 2:25 PM.

Commissioner Michelena stated his concern was how much work Mr. Olivas is doing outside.

Director Mendez stated her recommendation is to do a periodic review of every 90 days since Mr. Olivas is compliant as of this day to keep his business operational.

Commissioner Baugh asked Mr. Olivas if he understood conditional use.

Commissioner Michelena asked if it were possible for a shorter review period.

Commissioner Byars stated he would like to see something more like every 30 days for the next 90 days and if that’s good then every 90 days for the next year.

Commissioner Michelena stated he thinks that is a good idea.

Commissioner Byars moved based upon the foregoing finds 54-68 & 54-100 extend the conditional use with the addition of inspection every 30 days for 90 days then every 90 days after for one year Case CU2020-0786. Commissioner Baugh seconded motion.

Roll was called to record votes:

Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Rigs: Aye
Commissioner Richardson: Aye
Commissioner Byars: Aye

Motion carried with all ayes. Chairman Briley abstaining.

Mr. Olivas asked what he needs to do change the number of vehicles that can be parked in front of his show.

Commissioner Byars stated he was in compliance today.

Mr. Olivas stated he was worried about having to run off people because there is already someone parked on premises.

Chairman Briley asked code enforcement to explain the definition of parking.

Officer Simpson provided definition as well as an example and to utilize the 8 spaces he currently has.

Director Mendez invited Mr. Olivas to apply for an amendment to his current site plan.
B. Variance Approval Request Case #PV 2022-23- Bryan Lewis is requesting approval to encroach 13 feet into the required 20-foot corner side-yard setbacks as designated by the M-1 Low-Density Mobile Home District to construct a 13’x25’ addition on the current home located at 339 Brady Canyon; Lot 13 Block 22 of the Ponderosa Heights Subdivision, Ruidoso, New Mexico.

Commissioner Williams dropped out of meeting at 2:34pm

Chairman Briley swore in Mr. Lewis at 2:35pm

Mr. Lewis explained the layout of property and why they would like the variance due to the amount of excavating that would have to be done in order to add on to home.

Chairman Briley asked Director Mendez to explain corner lot setbacks.

Director Mendez stated they are for traffic to be able to see. This particular property (during site visit) the right of way is extremely large and do not see an issue with blocking any vision for this intersection.

Chairman Briley asked what the hardship is for this property is.

Mr. Lewis stated time and Money

The public hearing opened at 2:39pm. No letters or emails were recorded.

Director Mendez the staff recommendation is based on the lot being very steep not based on time or money.

Chairman Briley stated he understood. Closed public hearing at 2:41pm

Commissioner Rigsby stated based upon the foregoing findings of fact per §54-97, § 54-66 and §54-140 of the Village Code, I move to Grant the requested variance PV2022-23 with the conditions stated in the case report. Commissioner Byars seconded motion.

Roll was called to record votes:

Commissioner Briley: Aye
Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Rigsby: Aye
Commissioner Richardson: Aye
Commissioner Baugh: Aye
Motion carried with all ayes.

E) Variance Approval Request Case #PV 2022-52- Terry Kroll is requesting approval to encroach 16.89 feet into the required 20-foot front yard setback as designated by the R-1 Single-Family Residential District to construct a 20’x20’ carport located at 110 Niblic Ct; Lot 8, Block 13 of the Golf Course Estates Subdivision, Ruidoso, New Mexico.

Chairman Briley swore in Mr. Kroll at 2:44pm

Mr. Kroll showed photos of what is currently there and explained what he would like to do.

Chairman Briley asked Mt. Kroll if he had a survey done when he purchased the property.

Mr. Kroll stated there was an existing survey and he thought where the driveway is and where the street is. He found out later that it was different. Then explained the carport would not stick out any further than the existing garages.

Chairman Briley asked for additional clarification of the photos.

Mr. Kroll stated it would come out about a foot and a half more and there is still about 20 feet left.

The public hearing opened at 2:47pm. No letters or emails were recorded.

Closed public hearing at 2:47pm

Commissioner Baugh stated based upon the foregoing findings of fact per §54-92, §54-66 and 54-140 of Village Code moved to grant the variance of PV 2022-52 with the conditions stated.

Commissioner Michelena seconded the motion. Director Mendez called roll to record votes:

Commissioner Briley: Nay
Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Rigsby: Aye
Commissioner Richardson: Aye
Commissioner Baugh: Aye

Motion carried with 5 ayes 1 nay.
PUBLIC HEARINGS
A) Ordinance Amendments to Chapter 22, Article II.-Building Codes: Recommendation to amend and revise this section.

Director Mendez stated the code needs to be updated to stay in line with what the state is enforcing for plumbing and mechanical to go from the 2015 codes to the 2021 codes. Informed there is now 2 inspectors for plumbing and mechanical.

Commissioner Byars asked if the current permits would be held the change.

Director Mendez stated no they will not. Only the permits that are pulled when the code becomes in effect 30 days after the Village Council adopts in. Next Council meeting is in May so it will be early June for this to be in effect for new permits.

Public hearing opened at 2:52
Public hearing closed at 2:52

Commissioner Michelena motioned recommend Ordinance Amendments to Chapter 22, Article II.-Building Codes: Recommendation to amend and revise this section. Commissioner Rigsby seconded motion.

Roll was called to record votes:
Commissioner Briley: Aye
Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Rigs: Aye
Commissioner Richardson: Aye
Commissioner Baugh: Aye
Motion carried with all ayes.

B) Ordinance Amendments to Chapter 54, Section §54-327-Basis for establishing areas of special flood hazard: Recommendation to amend and revise this section.

Director Mendez stated we would like to add the LIDAR Data that’s provided by FEMA. Then explained what LIDAR Data is.

Commissioners all stated that this would be a savings to the public.

Commissioner Rigsby asked how often the data is updated.

Director Mendez stated it is not done very often due to the cost.
Commissioner Rigsby motioned to recommend Ordinance Amendments to Chapter 54, Section §54-327-Basis for establishing areas of special flood hazard: Recommendation to amend and revise this section. Commissioner Byars & Michelena seconded motion.

Roll was called to record votes:
Commissioner Briley: Aye
Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Rigs: Aye
Commissioner Richardson: Aye
Commissioner Baugh: Aye
Motion carried with all ayes.

C) Ordinance Amendments to Chapter 54, Division 5-Signs: Recommendation to amend and revise this section.

Director Mendez stated during COVID the Mayor put an executive order out for code enforcement to not enforce any type of signage which turned into a free for all. Now that businesses are fully opened, we feel it is time to bring forth this updated sign ordinance for our community.

Chairman Briley asked about Section §54-126 C - placement in right or way stating the Village would be better served to change the wording to prohibited in right of way then reference the DOT as to not make it seem allowable through the Village but not DOT.

Director Mendez stated – prohibited in the Mechem and Sudderth right of way per NM DOT then state that section of the code.

Chairman Briley stated there is a lot of new definitions. Then asked if there was any emphasis to where we understand the larger changes or what's going to happen?

Director Mendez stated no, we are just trying to provide clarification and clear direction to code enforcement so there isn’t gray area when trying to enforce it.

Chairman Briley asked about banner signs and tennis courts.

Director Mendez stated not for profit are not charged the fee but for profit are allowed (gave examples) and pay the fee.
Commissioner Rigsby proposed an amendment to the recommendation to section §54-190 & 191 section 61 (7) civic and quasi-public off tournament with some references to lodgers’ tax funds should be capitalized because it is a proper noun. Director Mendez thanked him for catching that and stated she will have it changed throughout. Commissioner Rigsby stated he noticed that the other recommendations had a date and this one does not. Will a date be included in the whereas statement?

Director Mendez stated it can be added in.

Chairman Briley asked if there have been complaints or is this mainly due to clear direction to code enforcement?

Director Mendez stated the revisions are for code enforcement.

Chairman Briley asked if the blade, curly-que, flags are allowed by permit?

Director Mendez stated they are temporary with permit.

Commissioner Rigsby stated he saw, somewhere in the verbiage, he wanted to add something to what the condition the sign would be.

Director Mendez asked if he meant the sign needed to be in a well-maintained condition?

Commissioner Rigsby stated yes.

Chairman Briley stated maybe it should be in the prohibited, those that are old, flappy and torn.

Director Mendez stated that language can be added.

Commissioner Rigsby asked about the permitting process for temporary signs dictating how long the sign would be displayed.

Director Mendez stated yes, they are allowed 2 weeks (from the start date), admin notifies code enforcement of permitted signs.

Commissioner Rigsby asked if there is a difference in fees for permanent versus temporary signs?

Director Mendez stated yes.

Chairman Briley stated there should be something in the code for dilapidated signs.

Commissioner Byars stated the other side of that would be signs for business that no longer exist but the signs are painted but has been there for the past 50 yrs.
Director Mendez stated typically businesses that are no longer in business take their signage down.

Chairman Briley stated in Chapter §54-195 there is violation fee for second and third. Is the fine amount at the discretion of the judge? Director Mendez stated the fees are significantly less and could be stricken from this.

Chairman Briley stated it was just a suggestion.

Commissioner Rigsby asked if there was going to a limit on the number of signs in the midtown commercial district?

Director Mendez stated the steering committee recommended 2 maximum for anyone outside C3. Chairman Briley asked about midtown.

Director Mendez stated they do not want them at all in C3 and they are only allowed temporarily not permanently.

Public hearing opened at 3:15pm

Public hearing closed at 3:15pm

Commissioner Michelena asked about Chapter §54-192. Can some sort of wattage (light usage) and dark sky be added?

Director Mendez states there is one with the dark-sky and Officer Simpson has worked hard to enforce it.

Chairman Briley asked if the illumination can be on 24hrs?

Director Mendez stated yes, depends on brightness.

Commissioner Michelena motioned recommend Ordinance Amendments to Chapter 54, Division 5-Signs: Recommendation to amend and revise this section. Commissioner Rigsby seconded motion.

Chairman Briley asked for a motion for comments made during this meeting be put into written form for Council. Commissioner Michelena motioned. Commissioner Rigsby seconded.

Roll was called to record votes:
Commissioner Briley: Aye
Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Rigs: Aye
Commissioner Richardson: Aye
Commissioner Baugh: Aye

Motion carried with all ayes.

D) Resolution for Amendments to Chapter 22, Section 22-34-Permit Fees; expiration of permit: Recommendation to amend and revise this section.

Chairman Briley explained why he is vocal about fees due to prices on everything going up and asked if the raise in prices were across the board?

Director Mendez stated yes, we go up annually with the state on our building evaluation charts, this year they went up 15%. We are at 95% but not at the full 100% the state charges. Then asked if the board would like to recommend that we do not in crease the full 15%, we can do that as well. This is something we do each year.

Chairman Briley asked if there have been complaints.

Director Mendez stated there have not been any, the costs get passed on to the homeowner or whoever they are building for. With the cost of gas going up there has been a hit to the department budget and there is an increase in material price as well. This is a staff recommendation, if the board would like to wait on this, we can, due to inflation on other areas.

Chairman Briley asked if someone doesn’t go through with the building they were permitted for, are the fees refundable?

Director Mendez stated no.

Commissioner Byars asked who came up with the pricing?

Director Mendez stated the state.

Chairman Briley asked if there was any public input or questions.

No-one responded

Commissioner Rigsby asked why the fees are only going up 95%

Director Mendez stated this has been the way it’s been done.

Commissioner Michelena asked if this is only relating to the building fees section of this?

Director Mendez stated yes.

Commissioner Rigsby motioned to delete the “whereas” statement.

Director Mendez stated yes it will be deleted
Commissioner Baugh motioned to adopt Resolution for Amendments to Chapter 22, Section 22-34-Permit Fees; expiration of permit: Recommendation to amend and revise this section. Commissioner Rigsby seconded the motion.

Roll was called to record votes:

Commissioner Briley: Aye
Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Rigs: Aye
Commissioner Richardson: Aye
Commissioner Baugh: Aye

Motion passed with all ayes.

**8. COMMUNITY DEVELOPMENT REPORT**

Director Mendez discussed the report along with all of the commissioners’ comments and questions.

Director Mendez stated the packet has an additional that Commissioner Tondino requested be provided, update on the department as a whole (packet included manager’s report, CDGB update for the town & country project). Workforce house was denied the nine percent tax credit application for apartments. We are now going a different route and looking at expanding the number of dwellings on 603 Michelina or Michael J’s by pivoting and still provide housing quickly to the community. Re-addressing off US HWY 70 with sequential addresses, next will be Sudderth Drive. Over 1000 short-term rentals. 1,177 Building Permits issued within the last year. Just over $17 million in improvements for new construction. Business Registration numbers in packet. 12 Cannabis dispensaries.

Commissioner Rigsby asked if there was a reason we were denied on the tax break?

Director Mendez stated only 2 applicants were funded.

Commissioner Rigsby asked how he could get occupancy numbers? From the lodgers tax?

Director Mendez explained the process to Commissioner Rigsby.

Chairman Briley welcomed the new board member and asked them to tell al little about themselves.

Commissioner Byars adjourned the meeting at 3:55pm

**MINUTES ARE DRAFT UNTIL APPROVED AT THE NEXT REGULAR MEETING**

Passed and approved this _____ day of ________________, 2022.
APPROVED: ______________________________

Alan Briley, Chairman

ATTEST: ________________________________

Samantha J. Mendez, Community Development Director
CALL TO ORDER AND ROLL CALL:

The regular meeting was called to order by Chairman Alan Briley at 2:00 PM. Chairman Briley, Commissioners Briley, Byars, Richardson, Rigsby and Williams were recorded present at Village Hall; Commissioners Baugh and Michelena were recorded present on Zoom; Village staff present were Samantha J. Mendez, Community Development Director, Zach Cook, Village Attorney and Stephanie Warren GIS Coordinator/Planner. There were 8 visitors present in person and on zoom.

CERTIFICATION OF COMPLIANCE WITH RESOLUTION 2022-01:

Stephanie Warren certified the notice of the meeting was properly posted in accordance with Resolution 2022-01 and section 54-40 of the Village Municipal Code.

APPROVAL OF AGENDA:

Commissioner Williams moved to approve the agenda. Commissioner Byars seconded the motion. Mrs. Warren called roll to record votes:

Commissioner Baugh: Aye
Commissioner Briley: Aye
Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Richardson: Aye
Commissioner Rigsby: Aye
Commissioner Williams: Aye

Motion carried with all ayes.

APPROVAL OF MINUTES:

Chairman Briley stated the minutes from April 3, 2022, were not formatted correctly and would like the roll calls to be shown on every item and not just showing the motioned carried. As members were present on zoom the record must show roll was called.

Director Mendez stated the minutes would be corrected and brought back on the June meeting for approval.
PUBLIC INPUT: (Limited to items not on Public Hearing Agenda and up to 3 minutes per speaker). None

Quasi-Judicial Public Hearings:

A) **Conditional Use Request Case #P2022-92** - Pov Chin is requesting approval of Conditional Use to develop an automobile service station in the C-2 Community Commercial District, located at 1201 Mechem Dr, Lot 1A-2A, Block 3 of the Airport West Subdivision.

Director Mendez stated that the applicant is requesting approval to develop an automobile service station. They did have a hearing last year and have waited the required time to reapply. Any information that was presented during the last case for the new members cannot be reused. We ask that you have an open mind as this is a new case, with the fact the previous was denied, the past case is not germane.

Chairman Briley swore in all members present and on zoom wishing to speak on behalf of this item.

Justin Crable and Brian Ashburn approached the front as the representatives for Allsup’s.

Mr. Crable stated this is a brand-new prototype that all Allsup’s are developing in select markets of the southwest. This will be 5,630 square feet and will have 8 fuel dispensing stations. There will not be any diesel. We have been working with DOT on access and have received approval of three access points. We have been approved for drainage and grading. We are waiting for the final driveway approval. We are hoping for approval today, we would like to begin construction soon and have an anticipated opening date of early December.

Chairman Briley asked if there were any questions from the Commissioners.

Commissioner Richardson asked if this will be the same as the one that was opened in Hondo. Mr. Crable stated it was, but not to the same size scale. Commissioner Richardson stated that Allsup’s has 4 locations within our village already and asked if the representatives have seen the stores and if they are happy with them. Mr. Crable stated they are happy with 2/3’s of them. Commissioner Richardson stated he would like to see the other stores have a better street appearance and would ask that they take pride in our community as the way other property owners and business owners do, he has concerns that if a new location is developed, the deteriorating appearances of the other locations will only progress. Mr. Crable stated they have spent one million dollars in renovations to those locations since the last hearing. Commissioner Richardson asked if there has been a traffic study, Mr. Crable stated there has and they have changed the driveway layout to accommodate traffic. Commissioner Richardson would like noise and light reductions and screening. Does not want accumulation of materials left outside like there is present at the other locations.

Commissioner Baugh stated he has concerns of the driveways being so close to the intersection. Recommends watching the grade and sidewalk codes and ensure they are following drainage requirements. Mr. Crable stated that all development and building requirements will be followed. Commissioner Baugh asked if they will be 24 hours operational location. Mr. Crable stated they will not if not allowed to. Chairman Briley stated the code requires them to be closed from 10:00 pm to 7:00 am.

Commissioner Rigsby asked if they have conducted a marketing study to ensure that a 5th location is needed. Mr. Crable stated that they would not be presenting the request if it did not meet criteria. Commissioner Rigsby asked what the difference of this location is compared to the Hondo location. Mr. Crable stated that the Hondo location is a travel center to provide more restrooms, brighter in and out of the stores, provides more groceries.
Commissioner Rigsby asked if the same fare and foods would be provided at this location same as the others. Mr. Crable stated it would.

Commissioner Williams stated she has questions on signage and lighting. Mr. Crable stated they would comply with all lighting regulations by the state and village to mitigate anticipated effects to the neighborhood.

Commissioner Baugh asked if their feasibility study showed negative impacts anticipated to their current locations and are there plans on closing any of the. Mr. Crable and Ashburn stated they did not have the particulars of the study, but if other stores do not perform at the rates they are now, it may be looked into closing a location.

Commissioner Rigsby stated the plans show electric car charging stations, concerns of location and impact to parking requirements. Mr. Crable stated they are simply place holders for future development, no pumps will be removed; the would be placed in current parking locations depicted on the site plan.

Chairman Briley stated as he is an employee of the NM DOT, he can attest they are being assessed.

The Public Hearing opened at 2:34 PM.

Jonathan Tondino stated his concerns of negative impacts to the residences in the area. He stated his concerns of noise, lights, and additional traffic. He appreciated the time restrictions and stated he has had received feedback from others in the area that they were unhappy with the property being developed into another Allsup’s store.

Shane Barnett stated he is the owner of the business next door. He stated his concerns of the corporation developing another location next to his business impacting his livelihood negatively. He stated he does not want to see Ruidoso become commercialized, keep the Village local. He supports growth, but Ruidoso needs to continue being small town America, not corporate America.

It was discussed that this is a quasi-judicial hearing, and the applicants could answer or questions anyone that made a comment. The applicant did not have any additional commenting for the public speakers.

Chairman Briley closed the public hearing at 2:41 PM.

Chairman Briley asked if there were any further questions of the Commission.

Commissioner Williams asked if this was the same application as last time. Mr. Crable stated yes, the current code does not have a definition to support gas sales and convenience stores. He stated he disagrees with the application but had to apply as the code reads.

Commissioner Rigsby questioned if there is 50 feet between the store and the residential district. Director Mendez replied there was. Commissioner Rigsby questioned if the meet the distance requirements for the pumps, Director Mendez stated they do.

Commissioner Byars asked if this is consistent with the Master Plan; Director Mendez stated it was. One of the main goals of the plan is economic development and the development of vacant land; it is in line with the MRA plan as well. Commissioner Byars asked if there would be any anticipated drainage changes, Director Mendez stated she did not anticipate them, but it would be reviewed during the building permit process. Commissioner Byars asked about detention and retention ponds, Director Mendez stated they may not be a requirement of the building permit.

Commissioner Richardson asked if they would continue to rejuvenate the existing properties, Mr. Crable stated they would and would like to see more upgrades to the inside and outside appearances.
Chairman Briley stated he had questions on landscaping and the site plan. Attorney Cook stated this is discussion limited to the use, the site plan discussion will be the next case and would advise the Commission to keep questions and comments to the use only.

Chairman Briley asked if there is a strict light ordinance. Director Mendez stated the Village does have a dark sky ordinance that is enforced. Chairman Briley asked if they could dim or turn off any outdoor lighting when they were not in operation, Mr. Crable stated they could dim as needed to ensure security and ordinances were being met. Chairman Briley stated the NM DOT are not drainage engineers and asked Director Mendez if the Village has development codes for drainage; Director Mendez stated they do. The current culvert may not have been addressed to support 2 developed lots as they are in an undeveloped state at this time.

Attorney Cook stated for clarification the non-operational hours from 10pm to 7am is not made up by the staff, that is derived specifically from the code as stated if 54-100 C 2 F that it is contiguous to residential properties. Director Mendez stated that tis part of the code is unclear, it is talking about service stations, but the applicant is proposing retail sales that happens to have gas islands creating them to fall under the service station. If you would like to decide amongst yourselves if they fall within the 10 pm to 7am requirement.

Commissioner Rigsby asked how deep the storage tanks for the fuel will be. Mr. Crable stated 20 feet. Commissioner Williams asked if they will be able to dig deep enough to meet that. Mr. Crable and Mr. Ashburn stated yes, they have analyzed by core samples. They will meet all environmental requirements for fuel storage tanks.

Chairman Briley asked Director Mendez the definition of excessive; Director Mendez stated the Code Enforcement officer(s) will use their appropriate discretion; staff can only provide what is written in the code. Director Mendez stated they would not be accumulating materials like an actual mechanic shop would. You as the Commission have the opportunity to use your discretion as staff, we have to make recommendations based as the code reads.

Commissioner Rigsby stated based upon the foregoing findings of fact per §54-68 and § 54-100 of the Village Code, I move to GRANT the requested conditional use approval for Case #CU-2022-92 with the conditions as stated in the case report.

Commissioner Michelena seconded the motion. Mrs. Warren called roll to record votes:

Commissioner Baugh: Aye
Commissioner Briley: Aye
Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Richardson: Aye
Commissioner Rigsby: No
Commissioner Williams: Aye

Motion carried with 6 positive and 1 negative recording.
B) Commercial Site Plan Case #SP 2022-100- Pov Chin is requesting approval of Commercial Site Plan to develop an automobile service station in the C-2 Community Commercial District, located at 1201 Mechem Dr, Lot 1A-2A, Block 3 of the Airport West Subdivision.

Chairman Briley stated this is now the site plan and gives us the opportunity to get more into the details of what is being built. Chairman Briley stated that he does not see any additional staff recommendations for this case, Director Mendez stated we didn’t have any additional recommendations to meet the minimum requirements of the code, but if it is seen to be something to add, we can add the conditions to the motion. Chairman Briley asked how many parking spots are be proposed. Mr. Crable stated they are 23 required, they have placed 24.

Mr. Crable went over the proposed site plan and design locations for parking and landscaping. It was asked if the dumpster locations would be screened, Mr. Crable stated they could build an enclosure for the dumpsters if required.

Chairman Briley stated he had questions of the sign. Mr. Crable stated the sign engineer is not present today for the meeting. Mrs. Warren stated the Planning Department does a permit and review of the location, size, and types of building/ground signs. They will be required to follow the ordinance that provides a formula of the frontage square feet of the building time 0.076 to provide the square footage of signs allowed. It is an extensive review that is done to ensure that all placement and installation meets the ordinance.

It was discussed that the pumps lights and sign lights be dampened or turned off when the business is closed from the 10pm to 7am. Mr. Crable stated they would dim them to follow security and requirements of the Commission.

Chairman Briley opened the public hearing at 3:22 pm.

There were no further public comments.

Chairman Briley closed the public hearing at 3:23 pm.

Commissioner Rigsby asked if there will be safeguards on the retaining wall. Mr. Crable stated they will be working with their engineering team and will change their fencing plans to meet the requirements of the Commission and building codes. Commissioner Rigsby discussed his concerns of the drop off of the retaining wall being quite steep.

Commissioner Michelena stated he feels that they will take proper precautions to ensure fences are built appropriately.

Chairman Briley stated he feels in the front corner of the property would be suitable for using as a detention area for drainage and could be beneficial for containment if fuel spills. It releases into a 24-inch pipe, would recommend some draining calculation to the size of a swale retention pond.

The Commission asked if there would be any further requirements of the DOT if they approved the driveways and then find a traffic issue. Chairman Briley stated a permit would not be issued if that was anticipated.

Chairman Briley made a motion based upon the foregoing findings of fact per §54-68 and § 54-100 of the Village Code, I move to GRANT the requested site plan and concept approval for Case #CU-2022-100 with the conditions as stated in the case report including the following additional requirements of one parking space be properly screened to store additional pallets, crates etc; the southeast corner shall have a retention detention type of pond in accordance to monitor the outflow to the 24-inch culvert; a sturdy six-foot fence other than a privacy
fence would be more acceptable; to finish obtaining your traffic permits. Seconded by Commissioner Michelena. Mrs. Warren called roll to record votes:

Commissioner Baugh: No
Commissioner Briley: Aye
Commissioner Byars: Aye
Commissioner Michelena: Aye
Commissioner Richardson: Aye
Commissioner Rigsby: No
Commissioner Williams: Aye

Motion carried with 5 positive and 2 negative recording.

COMMUNITY DEVELOPMENT REPORT:

Director Mendez stated that there was a review of the 718 Carrizo Property. The Gavilan property is still in violation of nuisance storage, but the 718 Carrizo Canyon property appears to be partially compliant, Officer Simpson feels that there would be substantial progress made. An update will be provided next month. Director Mendez stated the month of March was provided for the Community Development Department for their review. Director Mendez stated there was an executive order being issued to help property owners affected by the McBride fire with the fees of demolition and rebuilding properties being executed by the Mayor being waived.

Chairman Briley asked if there is an anticipated abundance of requests going to have to be heard for properties rebuilding. Mrs. Warren stated if they have seen any non-conforming structures previously, those structures per the code would be allowed to be re-erected without a hearing. The uses could not expand the previously built footprint. If they were unable to keep what was previously existing, they would need to meet requirements per the code. Only if that was unobtainable would they come in for a hearing.

COMMISSIONER’S COMMENTS:

Commissioner Rigsby asked if there was an update on providing him about vacancies and occupancy of the short-term rentals. Director Mendez said that request was not feasible to provide with our software. It does not track such requested information.

Commissioners expressed concerns of how the notifications of the emergency were disrupted by the power outage and cellphone outages. Anticipates that those concerns will be addressed in case of future emergency situations.

Commissioner Baugh stated he would like on the record his reasoning for voting no on the site-plan; he has appeared before many commissions on construction projects and the burden is always on the person requesting. Our engineers were always present with us, so in the event there were questions they were present to answer. I do not feel that the applicant was prepared as there were numerous questions what we wanted answers to and received a “we’ll get back to you” response that I wasn’t comfortable with.
Commissioner Rigsby stated that his reasoning for voting no on the conditional use was based off of factors of concern over retail space that size in that location. Does not feel that it was a low-intensity retail and thought that was more of a community market per the conditions for what it was supposed to be for. Also, I was concerned about the fares being sold with the intention wasn’t as they stated on record and would like to have a grocery store within to provide healthy food to that part of the community; along with crime that has occurred on other properties he considered that to be consistent with the other four locations and potential hazards in that manner. As for the site plan I did not feel they have the necessary details specifically on the 17-foot retaining wall and preventing accidents off of bonanza drive.

ADJOURNMENT:

Commissioner Briley adjourned the meeting at 3:54 PM.

MINUTES ARE DRAFT UNTIL APPROVED AT THE NEXT REGULAR MEETING

Passed and approved this _____ day of ________________, 2022.

APPROVED: __________________________________________

                     Alan Briley, Chairman

ATTEST: __________________________________________

                     Samantha J. Mendez, Community Development Director
Planning Commission  
Village Hall – 313 Cree Meadows Drive, Ruidoso, New Mexico 88345

Case Report – Variance Request #PV-2022-211

**Subject Property:** 224 Second St.  
**Zoning:** R-1 Single-Family Residential District  
**Subdivision:** Ruidoso Pine Lodge  
**Legal Description:** Lot 38, Block B  
**Applicant:** Alejandro Armendariz  
**Hearing Date:** June 7, 2022

**Applicable Sections of Village Code:**
- Sec. 54-92. – R-1 Single-Family Residential District
- Sec. 54-140. – Setback and height encroachments, limitation, and exceptions.
- Sec. 54-66. – Variances.

I. **REQUEST:** The applicant is requesting approval of a variance to encroach 2.5-feet into the required 10-foot side-yard setbacks as designated by the R-1 Single-Family Residential District to construct a new single-family dwelling located at 224 Second Street; Lot 38, Block B, of the Ruidoso Pine Lodge Subdivision, Ruidoso, New Mexico 88345.

II. **NOTIFICATION AREA MAP**
### III. SITE DATA

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IV. AREA ZONING MAP

Zoning Districts
- AR-1 Agricultural Residential
- C-1 Neighborhood Commercial District
- C-2 Community Commercial District
- C-3 Midtown Commercial District
- C-4 Heavy Commercial District
- I-1 Industrial District
- M-1 Low-Density Mobile Home District
- M-2 Medium-Density Mobile Home District
- PUD Planned Unit Development District
- M-PUD Mixed Use Planned Unit Development District
- R-1 Single-Family Residential District
- R-2 Two-Family Residential District
- R-3 Multiple-Family Residential District
- R-4 High-Density Residential District
V. Current Structure Street View

Street View from Brady Canyon

Aerial View from Google Maps
VI. ANALYSIS
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:
   a. Subject to subsection aa. below, minimum lot area: 10,000 square feet. See section 54-66 for lots less than 10,000 square feet.
      1. Resubdivision. Resubdivision of previously subdivided or platted land shall be as provided herein. The provisions of this subsection shall apply to any land, regardless of size, identified as a lot, tract or similar term and described by lot or tract number or letter, block number or letter, street address or similar means.
         a. Reserved.
         b. The planning commission and village council shall consider the size of adjoining lots, the effects of the resubdivision on those adjoining lots, the availability of village utilities and the capacity to provide utility service to the newly created lots, and other pertinent factors in determining the actual sizes of the lots to be allowed. Adjoining lots shall include those lots separated from the subject lots by a street or alley.
         c. The provisions herein shall not apply to:
         d. Tracts of land described only by metes and bounds;
         e. Those cases where all of the land in a previously platted subdivision is owned by a single person and an application for replat of the entire subdivision is submitted pursuant to subsection 54-284(d)(1).
         f. Nothing herein shall be construed to prevent the replatting of smaller lots into larger lots or otherwise replatting contiguous or adjacent lots where there is no increase in the number of lots after the replat as otherwise provided by this Code.

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
h. **Maximum height:** 35 feet.
i. **Schools and civic, cultural and religious institutions,** including their accessory structures, shall have setbacks of 50 feet on all sides.
Sec. 54-140. Setback and height encroachments, limitations and exceptions.

(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 an irregular, narrow, 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. 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 subsequent to the adoption of this article. Nonconforming lot size shall be considered a special circumstance in accordance with subsection 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.

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 Variances request, with reasons stated in the motion, granting the requested 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 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.

V. STAFF RECOMMENDATION

The determination of appropriateness for granting or denying a variance 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.

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 as lots are smaller than set forth by the municipal code and hereby recommends the following conditions.

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 2022-211. Plat must be recorded 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 the 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.

Suggested Motion:
“Based upon the foregoing findings of fact per §54-92, §54-66 and § 54-140 of the Village Code, I move to GRANT the requested variance for Case #PV-2022-211 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 Case Report – #PV-2022-211
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
Village Hall – 313 Cree Meadows Drive, Ruidoso, New Mexico 88345

Case Report – Variance Request #PV-2022-212

Subject Property: 222 Second St.
Zoning: R-1 Single-Family Residential District
Subdivision: Ruidoso Pine Lodge

Legal Description: Lot 38, Block B
Applicant: Alejandro Armendariz
Hearing Date: June 7, 2022

Applicable Sections of Village Code:
- Sec. 54-92. – R-1 Single-Family Residential District
- Sec. 54-140. – Setback and height encroachments, limitation, and exceptions.
- Sec. 54-66. – Variances.

I. REQUEST: The applicant is requesting approval of a variance to encroach 2.5-feet into the required 10-foot side-yard setbacks as designated by the R-1 Single-Family Residential District to construct a new single-family dwelling located at 224 Second Street; Lot 38, Block B, of the Ruidoso Pine Lodge Subdivision, Ruidoso, New Mexico 88345.

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![Site Map Diagram]

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Case Report – #PV-2022-211
IV. AREA ZONING MAP

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- C-3 Midtown Commercial District
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V. Current Structure Street View

Street View from Brady Canyon

Aerial View from Google Maps
VI. ANALYSIS
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:
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(2) Public parks.

(e) Development requirements.

(1) Development requirements for the R-1 district are as follows:
   a. Subject to subsection aa. below, minimum lot area: 10,000 square feet. See section 54-66 for lots less than 10,000 square feet.
   1. Resubdivision. Resubdivision of previously subdivided or platted land shall be as provided herein. The provisions of this subsection shall apply to any land, regardless of size, identified as a lot, tract or similar term and described by lot or tract number or letter, block number or letter, street address or similar means.
      a. Reserved.
   b. The planning commission and village council shall consider the size of adjoining lots, the effects of the resubdivision on those adjoining lots, the availability of village utilities and the capacity to provide utility service to the newly created lots, and other pertinent factors in determining the actual sizes of the lots to be allowed. Adjoining lots shall include those lots separated from the subject lots by a street or alley.
   c. The provisions herein shall not apply to:
   d. Tracts of land described only by metes and bounds;
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   f. Nothing herein shall be construed to prevent the replatting of smaller lots into larger lots or otherwise replatting contiguous or adjacent lots where there is no increase in the number of lots after the replat as otherwise provided by this Code.
   b. Minimum lot width: 75 feet.
   c. Minimum lot depth: 100 feet.
   d. Minimum front setback: 20 feet.
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   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
   h. Maximum height: 35 feet.
   i. Schools and civic, cultural and religious institutions, including their accessory structures, shall have setbacks of 50 feet on all sides.
Sec. 54-140. Setback and height encroachments, limitations and exceptions.

(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.

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(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.

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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 an irregular, narrow, 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. 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 subsequent to the adoption of this article. Nonconforming lot size shall be considered a special circumstance in accordance with subsection 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.

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 Variances request, with reasons stated in the motion, granting the requested 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 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.

**V. STAFF RECOMMENDATION**

The determination of appropriateness for granting or denying a variance 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.

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 as lots are smaller than set forth by the municipal code and hereby recommends the following conditions.

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 2022-211. Plat must be recorded 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 the 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.

**Suggested Motion:**

“Based upon the foregoing findings of fact per §54-92, §54-66 and § 54-140 of the Village Code, I move to **GRANT** the requested variance for Case #PV-2022-211 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 Case Report – #PV-2022-211
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