



**189/191 E. Riverside Drive
Setback Variance Request**
Estes Park Community Development Department
Town Hall, 170 MacGregor Avenue
PO Box 1200
Estes Park, CO 80517
Phone: 970-577-3721 Fax: 970-586-0249 www.estesnet.com

I. PROJECT DESCRIPTION/BACKGROUND

BOARD OF ADJUSTMENT MEETING DATE: September 1, 2009

LOCATION: The site is located at 189/191 East Riverside Drive, within the Town of Estes Park. The parcel has a metes and bounds legal description.

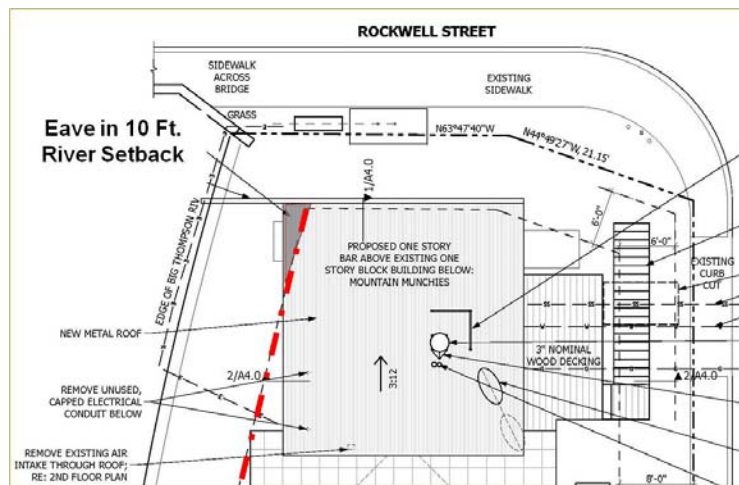
APPLICANT/PROPERTY OWNER: Paul Whyard/Minglewood, LLC

STAFF CONTACT: Alison Chilcott

APPLICABLE LAND USE CODE: Estes Valley Development Code (EVDC)

REQUEST:

The property owner is requesting a variance to construct a portion of a roof eave in a ten-foot river setback established in EVDC §7.6.E.1.a.(3) *Stream and River Corridors in the "CD" Downtown Commercial*. The portion of the eave for which a variance is requested is shown below. The red dashed line represents the ten-foot river setback.



Specifically, the owner requests a variance to EVDC Section 1.9.D.2.a *Stream and River Corridors*, which states,

Development setbacks shall be measured as the distance between the delineated stream or river corridor, as set forth in §7.6.D.2, and the furthestmost projection of a building or structure along a line at right angles to the setback line. Setbacks shall be unobstructed from the ground to the sky except as otherwise specifically allowed in §7.6.D of this Code. See Figure 1-2.

II. SITE DATA

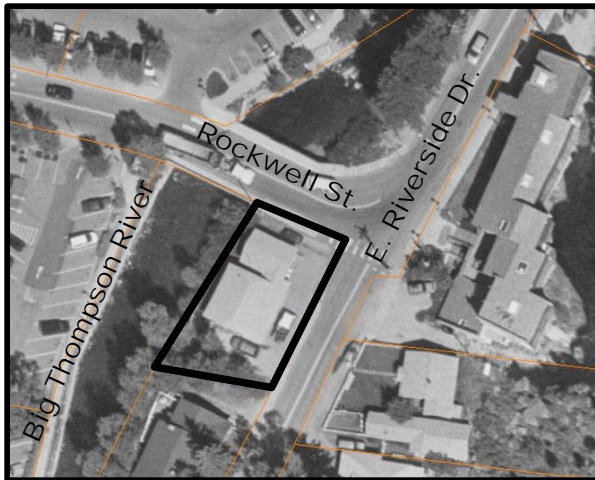
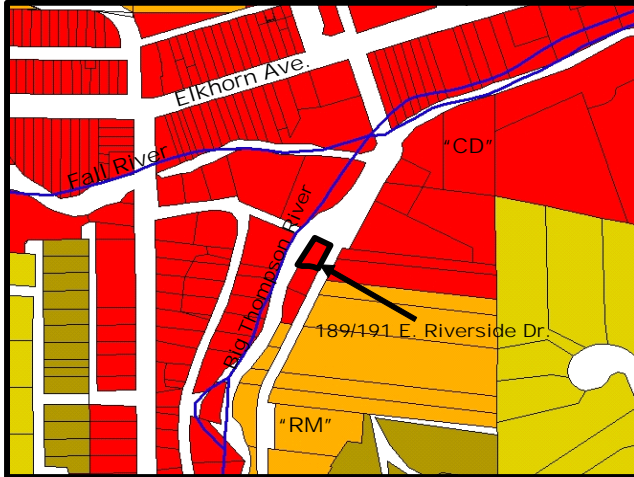
Number of Lots/Parcels	One	
Parcel Number(s)	35251-21-071	
Development Area	0.11 acres per site plan	4,792 square feet
Zoning	CD- <i>Downtown Commercial</i>	
Existing Land Use	Residential Eating/Drinking Establishment Mountain Munchies Retail (East Riverside Gallery of Glass)	
Proposed Land Use	Residential Eating/Drinking Establishment Mountain Munchies 'Tiki' Bar Retail (East Riverside Gallery of Glass)	

ADJACENT ZONING AND LAND USE

	Adjacent Zoning	Adjacent Land Use
North	CD- <i>Downtown Commercial</i>	Municipal Parking Lot
South	CD- <i>Downtown Commercial</i>	Single-Family Residential
East	CD- <i>Downtown Commercial</i>	Accommodations/High-Intensity (The Lofts) Multi-Family Residential
West	CD- <i>Downtown Commercial</i>	Municipal Parking Lot

SERVICES

Water	Town of Estes Park
Sewer	Estes Park Sanitation District
Fire Protection	Town of Estes Park
Electric	Town of Estes Park
Telephone	Qwest



III. REVIEW CRITERIA

All variance applications shall demonstrate compliance with the standards and criteria set forth in EVDC Chapter 3.6.C and all other applicable provisions of the Estes Valley Development Code.

This variance request does not fall within the parameters of staff-level review and will be reviewed by the Estes Valley Board of Adjustment.

IV. REFERRAL COMMENTS

This request has been submitted to reviewing agency staff and adjacent property owners for consideration and comment. A legal notice was also printed in the Estes Park Trail-Gazette.

Reviewing Agency Comment

The following reviewing agencies submitted written comments.

Town Building Department See Will Birchfield's memo to Alison Chilcott dated August 26, 2009.

Town Police Department See Andrew Hart's email to Dave Shirk dated August 18, 2009.

Town Public Works and Utilities Departments See Tracy Feagans' memo to Alison Chilcott dated August 21, 2009.

Town Fire Department See Derek Rosenquist's email to Alison Chilcott dated August 19, 2009.

Town Attorney See Greg White's letter to Alison Chilcott dated August 13, 2009.

Upper Thompson Sanitation District See Todd Krula's letter to Alison Chilcott dated August 12, 2009.

Public Comment

The following correspondence was received.

160 and 164 East Riverside Drive See Lee Lasson's email to Alison Chilcott dated August 26, 2009.

V. STAFF FINDINGS

Staff finds:

1. **Special circumstances or conditions exist (e.g., exceptional topographic conditions, narrowness, shallowness or the shape of the property) that are not common to other areas or buildings similarly situated and practical difficulty may result from strict compliance with this Code's standards, provided that the requested variance will not have the effect of nullifying or impairing the intent and purposes of either the specific standards, this Code or the Comprehensive Plan.**

Staff Finding:

Staff finds that special circumstances exist and practical difficulty may result from strict compliance with Code standards.

The following special circumstances exist.

- a. The lot is much narrower than most CD-*Downtown Commercial* zoned lots. Ranging in depth from a minimum of fifty-three feet to a maximum of seventy-five feet, this narrow depth combined with the river and front-yard setbacks reduces possible building depth.
- b. The proposed addition follows the existing building line and will not encroach any further into the river setback than the existing building. The existing first floor eave that encroaches into the river setback will be removed and a new eave constructed.
- c. One of the purposes of the river setback in the CD zoning district is to provide room for public pedestrian access to Fall River and the Big Thompson River. Public pedestrian access along this section of the Big Thompson River is unlikely due to the proximity of existing buildings to the river. Public pedestrian access to the Big Thompson River is provided on the opposite river bank, next to the Town public parking lot.

2. In determining "practical difficulty," the BOA shall consider the following factors:

- a. **Whether there can be any beneficial use of the property without the variance.**

Staff Finding: Staff finds that there can be a beneficial use of the property without the requested variance. The existing uses can continue.

- b. **Whether the variance is substantial.**

Staff Finding: Staff finds that the variance request is not substantial. The encroachment will not further reduce pedestrian access to the river or have any further impact on wildlife habitat. The addition to the building will encroach no further into the existing setback than the current building.

- c. **Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.**

Staff Finding: Staff finds that the essential character of the neighborhood will not be substantially altered and that adjoining properties will not suffer a substantial detriment. The proposed addition is in keeping with the style of the existing building.

Staff has received one comment in opposition to the request.

d. **Whether the variance would adversely affect the delivery of public services such as water and sewer.**

Staff Finding: This application was routed to providers of public services, such as water and sewer. No concerns were expressed about adverse impacts to the delivery of public services.

e. **Whether the Applicant purchased the property with knowledge of the requirement.**

Staff Finding: This standard addresses whether or not the Code requirements changed during current property owners' ownership of the property. For example, did the property owner purchase the property prior to adoption of the required setbacks?

This standard is not intended to address whether or not the property owner reviewed Estes Valley Development Code to determine which setbacks are applicable to his/her property.

The property owner purchased the property *with* knowledge of the river setback. Per the Larimer County Tax Assessor records, the owner purchased the property on August 12, 2004, which is after the February 1, 2000 effective date of the Estes Valley Development Code.

The applicant has made significant improvements to this property and has received a number of variances in the past to complete these improvements.

f. **Whether the Applicant's predicament can be mitigated through some method other than a variance.**

Staff Finding: The roof eave could be eliminated provided this complied with the Building Code. The property owner is concerned about maintenance problems if the eave is eliminated.

3. **No variance shall be granted if the submitted conditions or circumstances affecting the Applicant's property are of so general or recurrent a nature as to make reasonably practicable the**

formulation of a general regulation for such conditions or situations.

Staff Finding: The submitted conditions or circumstances affecting the applicant's property are not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations.

- 4. No variance shall be granted reducing the size of lots contained in an existing or proposed subdivision if it will result in an increase in the number of lots beyond the number otherwise permitted for the total subdivision, pursuant to the applicable zone district regulations.**

Staff Finding: The variance would not reduce the size of the lot.

- 5. If authorized, a variance shall represent the least deviation from the regulations that will afford relief.**

Staff Finding: The variance, if granted, represents the least deviation from the regulations that will afford relief.

- 6. Under no circumstances shall the BOA grant a variance to allow a use not permitted, or a use expressly or by implication prohibited under the terms of this Code for the zone district containing the property for which the variance is sought.**

Staff Finding: The proposed use is permitted.

- 7. In granting this variance, the BOA may require such conditions as will, in its independent judgment, secure substantially the objectives of the standards varied or modified.**

Staff Finding: If the Board chooses to approve this variance, staff has recommended conditions of approval.

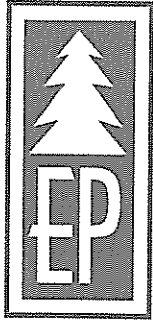
- 8. This request has been submitted to all applicable reviewing agency staff for consideration and comment. All letters and memos submitted by reviewing agency staff, referred to in Section IV of this staff report, are incorporated as staff findings.**

VI. STAFF RECOMMENDATION

Based on the forgoing, staff recommends **APPROVAL** of the requested variance with the following conditions:

1. Compliance with the application.

2. Compliance with the comments in the Town Public Works and Utilities Department memo dated August 21, 2009.
3. Any code violations shall be addressed to the Code Compliance Officer's satisfaction prior to issuance of a letter of completion/certificate of occupancy for the addition.
4. A registered land surveyor shall verify compliance with the variance and provide a stamped and signed setback certificate.



Town of Estes Park

Department of Building Safety

MEMORANDUM

To: Alison Chilcott, Planner II

From: Will Birchfield, Chief Building Official

Date: August 26, 2009

Subject: Minglewood, LLC Variance Request
189 & 191 E Riverside

The Department of Building Safety has reviewed the application for the Variance Request for the above-referenced property and has no comment at this time.

Alison Chilcott

From: Dave Shirk
Sent: Tuesday, August 18, 2009 10:48 AM
To: Alison Chilcott
Subject: FW: Czarnowski, Widawski & Minglewood, Attys at Law

FYI-

From: Andrew Hart
Sent: Tuesday, August 18, 2009 10:35 AM
To: Dave Shirk
Subject: Czarnowski, Widawski & Minglewood, Attys at Law

Dave –

I have made variance review/BOA hearing site visits to:

1) 2180 Blue Spruce Dr (Czarnowski)
No violations observed

2) 205 Park Lane (Widawski)
Only violation observed involves a small scattering of mullen (noxious weeds).

✓ 3) 189 & 191 E. Riverside Drive (Minglewood, LLC)
I spoke with Paul re: outside storage of construction materials beside the buildings. He has some screened storage on the south side of the building that needs to remain screened. I'll confirm if he is in the CD or not, my map is too small to determine this....That will affect his outdoor storability.... He said that he will clean up the exterior of the buildings.

Let me know if you have any questions,
Andrew

Andrew M. Hart
Estes Park Police Department
(970) 586-4000
ahart@estes.org

Alison Chilcott

From: Tracy Feagans
Sent: Thursday, August 20, 2009 4:19 PM
To: Alison Chilcott; Bob Goehring; Scott Zurn
Cc: Reuben Bergsten; Jeff Boles; Cliff Tedder; Greg Sievers
Subject: Combined comments from Minglewood Variance Request at 189 & 191 E. Riverside Dr.
Attachments: combined-Minglewood LLC Variance Request at 189 191 E. Riverside Dr.doc

Alison,

Please see attached comments from Public Works, L&P and Water departments on the Minglewood Variance Request at 189 & 191 E. Riverside Drive.

Tracy Feagans
970-577-3588
Town of Estes Park
Public Works & Utilities Department
PO Box 1200
170 MacGregor Avenue
Estes Park, CO 80517
tfeagans@estes.org
www.estesnet.com



ESTES PARK
COLORADO

Town of Estes Park Public Works & Utilities

Room 100, Town Hall
P.O. Box 1200, Estes Park, CO 80517

Memo

To: Planner Alison Chilcott, Bob Goehring, Jeff Boles, Todd Steichen, Reuben Bergsten, Scott Zurn and Greg Sievers

From: Tracy Feagans

Date: August 21, 2009

Re: Minglewood, LLC Variance Request 189 & 191 E. Riverside Dr.

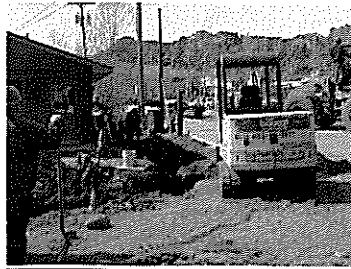
Background:

The Public Works and Utilities Departments have enclosed progress comments regarding the submittals received to date and remain general as the submittals are not complete and construction drawings for the public improvements have not been submitted. It is important to note that these Departments reserve the right to make additional comments and revise comments as more detail is provided in the subsequent submittals and development plans.

Water: No Comments.

Engineering:

- 1) The proposed construction includes a staircase to be located within the setback, and within the existing driveway cut. The existing driveway cut was constructed with public money by the Public Works Department during the 2004 roadway reconstruction project. At that time there was parking on-site for the Barber Shop. Due to this new proposal the existing slopes and curb cut are not at appropriate grades and will constitute a pedestrian hazard. Therefore, the curb cut shall be removed and replaced with this project, to safe grades.
- 2) There is also a drainage easement and culvert under the north side of this building that is not shown. See attached photo.



Light & Power: The Light and Power Department has reviewed the Application for the above referenced property to be reviewed by the Estes Valley Board of Adjustment on September 1, 2009, and has the following comments:

- 1) An increase in required electrical load, i.e. appliances and light fixtures, etc. from currently installed service will require resizing of transformers and wiring. This detail has been discussed and agreed upon between the Town of Estes Park and the property owner (Paul Whyard). (see attached memorandum dated 6-17-09)
- 2) Any relocation or upgrade of existing facilities will be accomplished at the project owners request and expense.
- 3) Each and every meter socket will need to be permanently marked with the specific address and or unit number prior to hook-up by the utility.

Town of Estes Park

MEMO

To: Paul Whyard

From: Todd Steichen

Date: 6-17-09

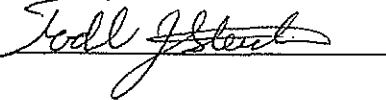
Re: Electric power constraints 189 & 191 East Riverside Dr.

BACKGROUND: As stated on the variance request dated 6-13-07 the availability of usable power is marginal in the area. The electric loads cannot exceed the present day services without creating major low voltage problems. It would be expensive for the owner of the project to correct the situation.

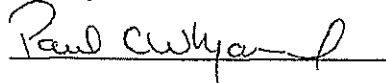
RECOMMENDATION: As long as the owner is not increasing the size of their current electrical service everything should be ok. The existing transformer & wire sizes are sufficient to supply power to the existing services.

If the owner does increase the size of their current services then the owner will be responsible for the upgrading of facilities.

Light & Power Department



Property Owner





Alison Chilcott

From: Derek Rosenquist
Sent: Wednesday, August 19, 2009 10:39 AM
To: Alison Chilcott; minglewood@q.com
Subject: variance request 3063 riverside

No comment from the Fire Department

Derek Rosenquist
Training Captain
Estes Park Volunteer Fire Department
970-577-3690

GREGORY A. WHITE
Attorney at Law

North Park Place
1423 West 29th Street
Loveland, Colorado 80538

970/667-5310
Fax 970/667-2527

August 13, 2009

ALISON CHILCOTT, PLANNER II
COMMUNITY DEVELOPMENT DEPT
TOWN OF ESTES PARK
PO BOX 1200
ESTES PARK, CO 80517

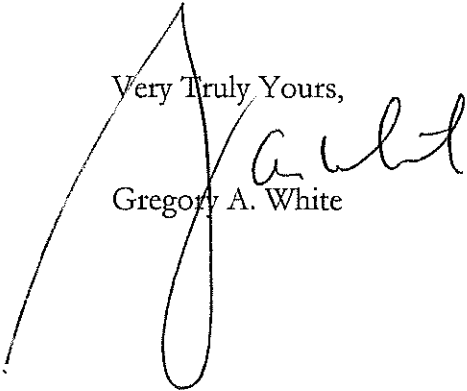
Re: Variance Request – Minglewood, LLC

Dear Ms. Chilcott:

I have no comment.

If you have any questions, please do not hesitate to give me a call.

Very Truly Yours,


Gregory A. White

GAW/ldr

CC: Paul Whyard
P O Box 1872
Estes Park, CO 80517

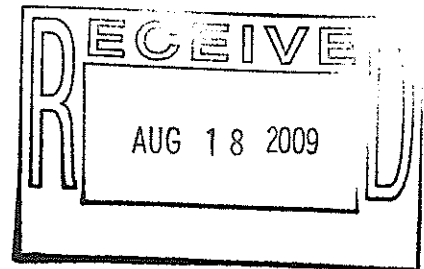


P.O. Box 568
Estes Park, Colorado 80517
(970)-586-4544
(970) 586-1049 Fax

August 12, 2009

Alison Chilcott, Planner II
Town of Estes Park
P.O. Box 1200
Estes Park, CO 80517

Re: Variance Request
Minglewood, LLC
Metes & Bounds, 3063-Riverside
189 & 191 E. Riverside Drive



Dear Alison,

The Upper Thompson Sanitation District submits the following comments for the above referenced property:

1. The District has no objection to the proposed variance request.

If you have any questions or need further assistance, please do not hesitate to contact me.

Thank you,

Todd Krula
Lines Superintendent

cc: Paul Whyard
PO Box 1872
Estes Park, CO 80517

Alison Chilcott

From: Lee Lasson [lee@on-line.com]
Sent: Wednesday, August 26, 2009 5:01 PM
To: Alison Chilcott
Subject: 189 & 191 E. Riverside Dr.

Hi Allison,

I have property across the street from the Minglewood LLC on East Riverside.

I see on the Website, Staff Report and Comments are to be posted today. Has the comment period ended? If not, I'm against the variance and that is my comment.

Thank you,

Lee Lasson
164 and 160 East Riverside Dr.
Estes Park, CO 80517
970-586-4760

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