

## RECORD OF PROCEEDINGS

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**Regular Meeting of the Estes Valley Board of Adjustment  
February 5, 2008, 9:00 a.m.  
Board Room, Estes Park Town Hall**

- Board:** Chair John Lynch, Members Cliff Dill, Chuck Levine, Wayne Newsom, and Al Sager; Alternate Member Bruce Grant
- Attending:** Chair Lynch; Members Dill and Sager
- Also Attending:** Director Joseph, Planner Chilcott, and Recording Secretary Roederer
- Absent:** Members Levine and Newsom, Alternate Member Grant

**Chair Lynch called the meeting to order at 9:00 a.m.**

**1. PUBLIC COMMENT**

None.

**2. CONSENT AGENDA**

**a. Approval of the minutes of the January 8, 2008 meeting.**

**It was moved and seconded (Sager/Dill) to approve the minutes. There being no changes or corrections, the minutes were approved as submitted.**

**3. METES AND BOUNDS PROPERTY LOCATED IMMEDIATELY NORTH OF 1895 BIG THOMPSON AVENUE, Owner/Applicant: Yakutat Land Corporation — Request for variance from Estes Valley Development Code Section 4.3, Table 4-2, to allow an existing fenced-in structure for hay storage to remain located 30.7 feet from the front property line in lieu of the required 50-foot front-yard setback in the RE-1 – *Rural Estate* zoning district, and variance from Section 7.6.E.1.a.2.b to allow the structure to remain 16.7 feet from the annual high-water mark of the stream corridor in lieu of the required 30-foot setback**

Director Joseph summarized the staff report. This is a request for variance from the setback required for the front property line and from the required stream setback to allow completion of the construction of a hay shed in the historic location used for hay storage for the commercial horse stables, Sombrero Ranches. The hay storage shed is located on an undeveloped parcel in unincorporated Larimer County, immediately north of the stables, and encroaches into the front-yard setback and stream setback. Construction of a metal framework to provide a roof over the hay was started without a building permit but halted pending resolution of this variance request. The applicant was required to request a waiver from the Larimer County Flood Plain Review Board prior to appearing before the Board of Adjustment due to the hay shed's location within the floodplain and floodway; this waiver was granted.

The primary focus of this variance request is the stream setback. A prominent reason for the required setback from streams (aside from the potential impact to the floodplain and/or floodway) is to protect the natural vegetation found along streams, which has value as wildlife habitat in addition to its scenic and aesthetic value. In planning staff's opinion, the requested variance to the stream setback, which reduces the setback from 30 feet to 16.7 feet, is substantial. Staff has determined that there can be beneficial use of the property without the requested variances, that approval of the variances would not adversely affect the delivery of public services, and that the applicant purchased the property before the adoption of the current setback standards.

The key question is whether the applicant's predicament can be mitigated through another method. Staff's opinion is that a conforming location for the hay shed could be found elsewhere on the property; however, the applicant should have the opportunity to present a persuasive argument as to the value of the proximity of the hay shed to the stables. The Board members should use their best judgment in determining whether the applicant's request represents the least deviation to afford relief and may choose to consider the historic pattern of use of the hay storage location and its proximity to the stables.

If the Board chooses to approve the requested variances, it may require conditions that secure the objectives of the Estes Valley Development Code, and staff recommends the applicant be required to restore a similar-sized area of habitat (approximately 3,000 square feet) along the stream bank to offset the loss of habitat in the hay shed location. Although use of that particular location for hay storage began years ago, stacking hay did not create a permanent footprint on the land, while construction of the hay storage shed does. If the applicant had not begun construction of the shed without a building permit, the hay storage location could easily have been moved to a conforming location, and this area could have been restored to its natural condition. Although the stream is intermittent in some locations, it is perennial in others, and it is a mapped drainage shown in the Estes Valley Development Code.

The variance request was routed to all applicable reviewing agency staff and to neighboring property owners for consideration and comment. No comments were received.

**Public Comment:**

Lonnie Sheldon/Van Horn Engineering was present to represent the applicant. He confirmed that the stream is a "good-sized creek" when it flows. He provided information on evidence submitted to the Larimer County Flood Plain Review Board, which approved a waiver for the location of the hay storage shed. He contended the only change to the use of this historic location for hay storage is the addition of a roof over the hay. Use of this location is necessary to provide room for large trucks to deliver the hay and turn around, as well as for fork lifts used to move the hay to the horses. The applicant would prefer to use the well-worn paths already established on the site. The property owner has stated the location has been used for hay storage for approximately 45 years, well predating floodplain mapping. The applicant would have to move the location of the hay storage over 300 feet to the north to comply with the required setbacks due to the location of the property line and the creek; this would create a hardship for the applicant. Mr. Sheldon stated the applicant is willing to comply with the recommended conditions of approval; however, Mr. Sheldon questioned the rational between the requested variances and the requirement to revegetate an equivalent area of land. If the requested variances are not approved, the applicant will not move the hay stack (no approval is required for the hay stack alone).

Discussion continued between the Board members, planning staff, and Mr. Sheldon and is summarized as follows:

In lieu of revegetation, Chair Lynch suggested the applicant be required to clean up the appearance of the hay storage area. Director Joseph stated his desire to have a nexus between the purpose of the required stream setback (to protect native vegetation) and the proposed condition of approval (revegetation of an equivalent area of habitat along the stream). The purpose of the condition is to mitigate the adverse impacts of creating a permanent structure for storing the hay in its present location. In staff's opinion, the only reason provided by the applicant to perpetuate the adverse impact to the stream corridor is for the applicant's convenience and the fact that construction was begun without a building permit. Mr. Sheldon contended that the applicant would have to bring in top soil, seed, mulch, and monitor the site of revegetation, which is unreasonable in light of the variance requested. Following further discussion, including the benefits of cleaning up the appearance of the site, Member Sager moved to approve the requested variances with the condition that the applicant prepare a reasonable restoration plan for revegetation along the stream, which should be submitted prior to approval of the building permit. Mr. Sheldon agreed to the condition on behalf of the applicant. Director Joseph stated the condition should include successful implementation of the revegetation plan.

**It was moved and seconded (Sager/Dill) to approve the variance request for the Metes and Bounds property located immediately north of 1895 Big Thompson Avenue to allow an existing fenced-in structure for hay storage to remain located 30.7 feet from the front property line in lieu of the required 50-foot front-yard setback and to allow the structure to remain 16.7 feet from the annual high-water mark of the stream corridor in lieu of the required 30-foot setback, with the findings and conditions recommended by staff, and the motion passed unanimously with two absent.**

**CONDITIONS:**

1. Compliance with the submitted application.
2. The applicant shall successfully revegetate and restore an area of 3,000 square feet along the stream, thus returning a presently non-vegetated stream bank area to a naturally vegetated condition in order to offset the long-term loss under the footprint of the shed as proposed. The applicant shall prepare this restoration plan for staff approval prior to issuance of a building permit for the structure.

**4. LOT 1A, AMENDED PLAT OF LOTS 1, 2, & 3, PROSPECT VILLAGE SUBDIVISION, 460 Prospect Village Drive, Owner: Edward J. & Gisela Grueff, Applicant: Bret & Jan Freedman — Request for variance from Estes Valley Development Code Section 4.4, Table 4-5, to allow stairs to be constructed within the required 15-foot side-yard setback by up to four feet; variance from Section 7.5.G.2.b(2) to allow one parking space to encroach into the required eight-foot side-yard landscape buffer by seven feet; and variance from Section 7.5.G.2.b(3) to allow the parking lot and landscape buffer to be 40 feet from the annual high-water mark of the Big Thompson River in lieu of the required 50-foot setback/landscape buffer**

Chair Lynch recused himself in order to avoid the appearance of a conflict of interest. Member Dill acted as Chair for this agenda item. Director Joseph stated that so long as the meeting is opened with a quorum of three members, action may be taken on an item.

Planner Chilcott summarized the staff report. The applicant has submitted a development plan application (#08-03), which will be reviewed by the Estes Valley Planning Commission at their February 19, 2008 meeting, to develop a two-story, 2,000-square-foot real estate office with a 450-square-foot garage and ten parking spaces on an undeveloped lot. The lot is zoned CO – *Commercial Outlying*, is located behind the Estes Park Brewery, and is approximately ½-acre in size. The Big Thompson River runs through the site.

In order to construct the building and associated parking as proposed on the development plan, the applicant is requesting approval of three variances:

1. Variance from Estes Valley Development Code (EVDC) Table 4-5 in order to build fire-escape stairs eleven feet from the side property line in lieu of the 15-foot setback required in the CO–*Commercial Outlying* zoning district;
2. Variance from Section 7.5.G.2.b(2) in order to construct one parking space one foot from the side property line in lieu of the requirement to provide an eight-foot-wide planting area between all parking areas and side and rear property lines;
3. Variance from Section 7.5.G.2.b(3) in order to construct the parking lot 40 feet from the river in lieu of the requirement that all parking lots shall be separated from the high-water mark of river banks by a minimum of 50 feet.

In considering whether special circumstances or conditions exist, planning staff finds that there are special circumstances associated with this property—the required setbacks from property lines and the river leave a small building area on the lot, and a portion of the ½-acre lot lies within a flagpole that can only serve as a driveway entrance. The applicant has worked to provide a design that saves existing trees, which further reduces the buildable area of the lot. Practical difficulty may result from strict compliance with EVDC standards.

Beneficial use of the property could occur without the requested variances. A smaller-scale development could be proposed that would comply with the setbacks.

Staff finds the variance requests are not substantial. Approximately 68 square feet of stairs will encroach into the 15-foot side-yard setback. One 17.5-foot-long parking space will encroach into the eight-foot planting area. The requested variance to the river setback would allow a small portion of the parking lot to encroach into the setback. Although there is a platted 30-foot-wide river setback, there is question whether this applies to the parking lot or only to buildings and structures. A stormwater-quality pond is proposed to filter runoff from the parking lot before it enters the river.

The essential character of the neighborhood will not be substantially altered, and the variances, if granted, represent the least deviation from the regulations that will afford relief. The applicant proposes a two-story building, which reduces the footprint on the lot,

and the building is stepped back to meet the river setback requirement and reduce impact to the site. Office use is a permitted use in the CO zoning district.

The variance request was routed to all applicable reviewing agency staff and to neighboring property owners for consideration and comment. Comments were received from Town of Estes Park Light and Power Department and Upper Thompson Sanitation District. No comments in support or opposition to the requested variances were received from neighboring property owners.

Approval of the requested variances will not affect the delivery of public services. Upper Thompson Sanitation District desires to ensure access to the sewer main adjacent to the Big Thompson River. This concern can be addressed with the development plan review.

Planning staff recommends approval of the requested variances with three conditions of approval.

**Public Comment:**

Joe Coop/Van Horn Engineering was present to represent the applicant. He stated the applicant had originally wanted to construct a single-story building but had altered the plans to better fit the lot. The proposal minimizes impervious coverage, and the applicant has made a good effort to minimize impact on the site.

Lon Kinnie, neighboring property owner, raised questions regarding whether the applicant would be required to extend existing curb and gutter beyond his driveway, whether the Town would require upgrades to Prospect Village Drive (a private road), and who would pay for any required upgrades. Director Joseph stated that all property owners along this private road have a collective responsibility to maintain shared access in a reasonably functional condition. These issues are not pertinent to the variance requests and should be brought forward during review of the development plan.

Member Sager stated there are reasons for all three variance requests, and the requests are acceptable to him.

**It was moved and seconded (Sager/Dill) to approve the variance request for Lot 1A, Amended Plat of Lots 1, 2, & 3, Prospect Village Subdivision, to allow stairs to be constructed within the required 15-foot side-yard setback by up to four feet; to allow one parking space to encroach into the required eight-foot side-yard landscape buffer by seven feet; and to allow the parking lot and landscape buffer to be 40 feet from the annual high-water mark of the Big Thompson River in lieu of the required 50-foot setback/landscape buffer, with the findings and conditions recommended by staff, and the motion passed unanimously with two absent and with Chair Lynch abstaining.**

**CONDITIONS:**

1. Compliance with the submitted application.
2. Planning Commission approval of the development plan application.
3. A registered land surveyor shall set the survey stakes prior to construction, shall verify compliance with the variances, and shall provide a setback certificate.

**5. REPORTS**

None.

**There being no further business, Chair Lynch adjourned the meeting at 10:11 a.m.**

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John Lynch, Chair

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Julie Roederer, Recording Secretary