

## RECORD OF PROCEEDINGS

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**Regular Meeting of the Estes Valley Board of Adjustment  
September 1, 2009, 9:00 a.m.  
Board Room, Estes Park Town Hall**

**Board:** Chair Chuck Levine, Members John Lynch, Bob McCreery, Wayne Newsom, and Al Sager; Alternate Member Bruce Grant

**Attending:** Chair Levine, Members Lynch, McCreery, and Newsom

**Also Attending:** Director Joseph, Planner Alison Chilcott, Planner Dave Shirk, and Recording Secretary Thompson

**Absent:** None

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

**1. PUBLIC COMMENT**

None

**2. CONSENT AGENDA**

Approval of minutes dated August 4, 2009

**It was moved and seconded (Newsom/Sager) to APPROVE the minutes as presented, and the motion passed unanimously.**

**3. METES & BOUNDS PARCEL LOCATED AT 189 & 191 E. RIVERSIDE DRIVE, Owner/Applicant: Minglewood, LLC – Request for variance from §1.9.D.2.a which requires unobstructed setbacks from the ground to the sky in stream and river corridors. Request is to allow the roof eave to encroach into the 10-foot setback**

Planner Chilcott reviewed the staff report. The property owner is requesting a variance to construct a portion of a roof eave in the ten-foot river setback established in EVDC §7.6.E.1.a(3) *Stream and River Corridors in the "CD" Downtown Commercial*. 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. The requested variance will allow the roof eave to encroach approximately 2.5 feet into the setback, and is needed in order to proceed with a plan to construct two stories above the existing Mountain Munchies building.

This request has been submitted to reviewing agency staff and adjacent property owners for consideration and comment. Staff received one comment in opposition to the proposed variance.

Planner Chilcott stated that staff reviewed the variance request for compliance with EVDC Section 3.6.C, which includes evaluating whether or not special circumstances and practical difficulty exist in complying with the code standards from which a variance is requested. Staff finds that special circumstances exist and practical difficulty may result from strict compliance with Code standards. The lot is much narrower than most CD-*Commercial Downtown* 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. 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. 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 public parking lot.

In determining practical difficulty, Planner Chilcott noted Staff finds that there can be a beneficial use of the property without the requested variance. The existing uses can continue. Staff finds that the variance request is not substantial. The encroachment will not further reduce pedestrian access to the river nor have any further impact on wildlife habitat.

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.

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. 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.

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. The variance would not reduce the size of the lot. The variance, if granted, represents the least deviation from the regulations that will afford relief. The proposed use of the building is permitted under the EVDC.

Staff recommends approval of the variance request with conditions. The Code Compliance condition is due to some outside storage that needs to be cleaned up.

**Public Comment:**

Paul Whyard/Applicant has had multiple variances on this property. He is in the process of gathering up materials for future construction and has been in contact with Code Enforcement Office Andrew Hart about the area.

Mr. Whyard is concerned about Greg Sievers/Public Works Project Manager comments concerning this project. Mr. Sievers believes the two existing driveway cuts, which were installed by the Town in 2004, are not of appropriate grade and will present a pedestrian hazard. Mr. Whyard disagrees with Mr. Sievers, but would like to discuss the possibility of eliminating the driveway cuts altogether. The property owner stated a fence and stairway is planned in front of the building facing Riverside for pedestrian access control, and this will prevent vehicles from trying to use the cut as a driveway. Mr. Whyard also believes it will be in the best interest of the public to remove the cuts. Director Joseph stated Condition #2 could be removed from the variance approval process and dealt with during the building permit process. Mr. Whyard has scheduled a meeting with Scott Zurn to discuss this issue. He recognizes the visibility of the location, and hopes this project will increase business for them and will allow them to hire more employees and be open year-round.

Sandy Lasson/Adjacent Property Owner stated the Whyard's have been good neighbors, but she is concerned about a tavern/lounge going in across the street from their rentals. The view has already been compromised, and will be more so with the proposed addition. She believes her property values will drop. Member Newsom stated this concern should be addressed at the Town Board level when the applicant applies for a liquor license.

Member Lynch wants to make sure the storage issue is addressed and a time frame is given.

Planner Chilcott stated the proposed fence will need to comply with the Site Visibility Triangle in the EVDC that is used to determine the safety of intersections.

It was moved and seconded (Lynch/Sager) to **APPROVE** the request for a variance from EVDC §1.9.D.2.a. to allow the roof eave to encroach into the 10-foot setback in the stream corridor with conditions.

**CONDITIONS:**

1. Compliance with the application.
2. 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.
3. A registered land surveyor shall verify compliance with the variance and provide a stamped and signed setback certificate.

The motion passed unanimously.

4. **LOT 4, BLOCK 2, FALL RIVER ESTATES, 2180 Blue Spruce Court, Owner/Applicant: Kenneth and Patricia Czarnowski – Request for variance from EVDC §4.3.C.5, Table 4-2, which requires a 25-foot minimum side-yard setback in the D-1 Estate zoning district to allow a storage room and deck addition 10 feet from the side property line**

Planner Chilcott reviewed the staff report. The property owners are requesting a variance to construct an “attached 10 foot by 22 foot walk-out all concrete, fire resistant storage room addition to the west side of the garage. The flat roof would also be utilized as a deck.”

Planner Chilcott stated that staff reviewed the variance request for compliance with EVDC Section 3.6.C, which includes evaluating whether or not special circumstances and practical difficulty exist in complying with the code standards from which a variance is requested. Staff finds that special circumstances exist and practical difficulty may result from strict compliance with Code standards. This request has been submitted to reviewing agency staff and adjacent property owners for consideration and comment.

Planner Chilcott stated the special circumstances are related to the small size of the lot in the E-1 Estate zoning district. The lot is 0.46 acres, and E-1 has a minimum lot size of one acre for new lots and twenty-five foot setbacks. This lot is significantly undersized for the zoning district. The house was constructed in 1977, prior to the adoption of the EVDC. Portions of the existing house are within the twenty-five foot side-yard setback. A drainage swale runs through the eastern side of the property, which could impact drainage if the project was built on the east side of the house.

In determining practical difficulty, Planner Chilcott noted the variance request is not substantial. If this lot were zoned E-Estate, the proposed addition would comply with the setback. Staff finds that the essential character of the neighborhood would not be substantially altered and that adjoining properties would not suffer a substantial detriment.

Staff has received a letter of support from the Fall River Estates Architectural Control Committee. This letter noted that “A detached structure would not conform to the Associations’ covenants and would be opposed by this Committee.” A detached structure would have more impact on the character of the neighborhood and would result in more land disturbance. No other comments were received.

Staff recommends approval of the variance request with conditions.

**Public Comment:**

Member Sager questioned the accuracy of the address, noting the street sign says Blue Spruce Drive, and the application indicated Blue Spruce Court. Planner Chilcott indicated she is working with the Building Department on this issue.

Member Levine believes Town Attorney Greg White's comment should be a condition of approval.

Kenneth Czarnowski/Applicant appreciates the acknowledgement of the incorrect address as well as the thoroughness of staff with this application. He agrees with the conditions of approval.

It was moved and seconded (Sager/Newsom) to **APPROVE** the request for a variance from EVDC §4.3.C.5, Table 4-2 to allow construction of a storage room and deck addition 10 feet from the side property line with the following conditions.

**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. A registered land surveyor shall set the survey stakes for the foundation forms. After the footings are set, and prior to pouring the foundation, the surveyor shall verify compliance with the variance and provide a stamped and signed setback certificate.
4. A detailed grading and drainage plan shall be submitted for staff review and approval with the building permit application.
5. Compliance with the comments in the memo from Town Attorney Greg White dated August 13, 2009

**The motion passed unanimously**

**5. REPORTS**

None.

**There being no further business, Chair Levine adjourned the meeting at 9:38 a.m.**

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Chuck Levine, Chair

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Karen Thompson, Recording Secretary