



Town of Blue River

Memorandum

TO: Mayor Decicco & Members of the Board of Trustees

FROM: Town Manager Michelle Eddy;

DATE: April 30, 2024

SUBJECT: **Variance Request 0034 Rustic**

Variance Request

The owner of 0034 Rustic Terrace has requested and applied for a variance request to allow for an addition to be placed onto their existing home. The home was built in 1988. The home currently does not meet set back requirements, requiring the variance request. Set back requirements state structures must be 25' from the front and back property lines and 15' on the sides. As there is a platted road easement on the property, structures must measure off of the road easement. The current structure is currently non-conforming.

The application and required public notice requirements have been found to be complete and in conformance with Town Code.

Planning & Zoning Commission

The application was presented to the Planning and Zoning Commission in a public hearing held April 9, 2024. There was one member of the public present to speak on the project. Minutes of the meeting are included in this memo. The Planning and Zoning Commission recommended approval.

Land Use Code

16-B(b) Chapter 16B – Design or Development Variance. Variance Authorized. An owner of property may request a variance for any design or development standard or requirement imposed upon the property by Chapter 16B (e.g., to allow a berm to exceed the maximum berm height or to allow an otherwise prohibited structure to be located outside of the buildable area). This Article applies to any application for a variance to standards or requirements of Chapter 16B

Sec. 16-4-30. Nonconforming Use of Building or Structure. The use of a building, structure, or land undertaken and existing lawfully on the effective date of the Land Use Code, or any later amendment of the Code, but which use does not conform to the use regulations of the zone district in which the use is located, shall be a nonconforming use. A nonconforming use may continue so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following provisions: (a) Alteration or Reconstruction of a Building or Structure Occupied by a Nonconforming Use. No building or structure occupied by a nonconforming use shall be reconstructed or structurally altered in any manner unless the use of the building or structure is changed to a use permitted in the zone district in which the building or structure is located. Customary repair and maintenance are permitted. (b) Change, Enlargement, or Expansion of Nonconforming Use. A nonconforming use of a building, structure, or land shall not be changed

to another nonconforming use, or physically enlarged, expanded, or relocated to a part of the land that was not occupied by the use at the time it became nonconforming.

Sec. 16-4-40. Nonconforming Building or Structure. A building or structure existing lawfully on the effective date of this Land Use Code, or any later amendment of the Code, but which building or structure does not conform to the required minimum setback, maximum building height, encroaches on land outside of the applicable buildable area, design requirements, or other dimensional, size, or character regulations of the zone district in which the building or structure it is located, shall be a nonconforming building or nonconforming structure. A nonconforming building or structure may continue to be used or occupied by a use permitted in the zone district in which it is located so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following provisions: (a) Maintenance and Repair. Ordinary repairs, or repair or replacement of non-bearing walls, fixtures, wiring, residential driveways or plumbing may be performed on a nonconforming structure or building or on any portion provided, however, no structural parts shall be replaced except when required by law to restore such building or structure to a safe condition or to make the building or structure conform to the regulations of the zone district in which it is located. (b) Enlargements or Extensions. A nonconforming building or structure shall not be enlarged or extended unless: (1) The original building or structure is made to conform to the regulations of the zone district in which it is located; or (2) The proposed enlargement or extension is in compliance with the regulations of the zone district in which it is located, and will not increase any existing nonconformity in any other portion of the building or structure; or (3) The building extension will result in a significant reduction of a nonconforming condition as determined administratively by the Planning Commission.

(d) Board of Adjustment Public Hearing. All applications for a variance shall require a public hearing before the Board of Adjustment. The following process shall apply: (1) The Town Manager shall set the date and time of a public hearing to be held by the Board of Adjustment. (2) Public notices of the public hearing required by this Article shall be made in accordance with Section 16-7-50. (3) At the public hearing, the Board of Adjustment shall review the application for conformance with this Article, the Municipal Code, state law, and the applicable review standards for the application. (4) Any public hearing or other action of the Board of Adjustment may be continued or postponed at any time indefinitely or to a specified date and time in order to permit preparation of additional information for further review by the Board. (5) The Board of Adjustment shall conduct a public hearing and shall, at the conclusion of the hearing, approve, approve with conditions, deny the application, or continue the matter to a date certain. (6) Notwithstanding the imposition by the Board of Adjustment of other express of specific condition of approval, all approvals shall be conditioned upon the payment in full of all fees and charges for the review and processing of the application. Town of Blue River, Colorado Land Use Code Page 47 Copyright © 2023 Robert C. Widner Execution and recordation of any final approved resolution or ordinance shall not be completed by the Town unless and until all fees and charges are paid in full. (7) The Owner for any zoning variance shall bear the burden of presenting sufficient competent evidence at the public hearing to support the standards for approval set forth by this Article. Any decision by the Board to approve, conditionally approve, or deny an application shall be based upon consideration of all evidence presented during the public hearing. Where evidence presented is contradictory, the Board shall weigh such evidence and judge the credibility and sufficiency of the evidence prior to rendering a decision. A finding by the Board of Adjustment that the application or evidence fails to meet one or more of the criteria for review shall require denial of the application. (8) The Board of Adjustment may impose reasonable conditions upon any approval of a variance necessary to ensure continued conformance with the Land Use Code, the Municipal Code, or that may be necessary to protect the health, safety and welfare of the Town and its residents. (9) Variances shall be approved by resolution or ordinance of the Board of Adjustment in a form approved by the Town attorney.

STAFF REPORT

TO: Planning and Zoning Commission

FROM: Kyle Parag, Building Official

RE: Variance Request 0034 Rustic Terrace

DATE: March 21, 2024

BACKGROUND/ANALYSIS:

The current homeowners for the property are proposing an addition to the existing single family home. Initial design drawings for the proposed footprint have been provided and reviewed, and it was determined the proposed design is not in accordance with the definition and dimensions for the front setback. The existing home is also not in accordance with current zoning regulations for the front setback. It is determined the existing home footprint is currently in existing non-compliant status. No previous variances have been brought to my attention.

After thorough review of the site conditions, it is determined that the site and proposed structure qualify for a variance request, and meet the minimum factors, most notably that a hardship exists.

It is my opinion to the board that the variance request to reduce the setback should be approved.

Factors in my determination are as follows:

- Limited size of current structure
- Limitations for other buildable options (geography)
- Future expansion of Rustic Terrace
- Location of currently plotted easements
- Effects on adjoining properties

I recommend conditions of the approval of the setback variance as follows:

- Shall only apply to the front setback
- The front setback shall be reduced to no less than 9'-9", which is consistent with the existing building
- The variance shall not apply to any future additions or renovations that are not depicted in the drawings provided in this application

Kyle Parag
Building Official
Town of Blue River



PLANNING & ZONING COMMISSION APRIL MEETING

**April 09, 2024 at 6:00 PM
0110 Whispering Pines Circle, Blue River, CO**

MINUTES

The public is welcome to attend the meeting either in person or via Zoom.

The Zoom link is available on the Town website:

<https://townofblueriver.colorado.gov/planning-zoning>

Please note that seating at Town Hall is limited.

I. CALL TO ORDER, ROLL CALL

Chair Johnson called the meeting to order at 6:00 p.m.

PRESENT

Tim Johnson

Doug O'Brien

Ben Stuckey

Troy Watts

ABSENT

Travis Beck

Mike Costello

Gordon Manin-Excused

Also present: Town Manager Michelle Eddy; Building Official Kyle Parag and Board Liaison

Noah Hopkins attended via Zoom.

II. APPROVAL OF MINUTES

A. Minutes from March 5, 2024

Motion made by Watts, Seconded by O'Brien to approve the minutes of March 5, 2024.

Voting Yea: Johnson, O'Brien, Stuckey, Watts. Motion passed unanimously.

III. PUBLIC HEARING

B. Variance Request

Manager Eddy reviewed the request for a variance for a proposed home addition. It was noted all of the proper documents had been submitted and notifications made. No comments were received at Town Hall concerning the variance request.

Chair Johnson opened the public hearing at 6:01 p.m.

Dan Cleary Lot 4,5,6 Blue Rock Springs noted a date with the meeting notice. It was noted it got moved due to the election. He remarked on the parking issue but noted he didn't have an issue with the project and items within the setbacks and the road access easement that exist on the plat. He asked if the road access easement would be vacated. He asked about sewer lift station allowed in the setback and if uses have been allowed how it affects future impacts.

Watts addressed how variances are addressed and the laws to be considered.

Tom Fitzgerald 0034 Rustic Terr. owner noted he is seeking a variance for the driveway and the addition. The architect noted that it is not creating any further restriction on the site.

Chair Johnson closed the public hearing at 6:24 p.m.

Discussion on this type of variance where the existing home is non-compliant, and the addition would be non-compliant in addition to the driveway.

Discussion on if it falls under the definition of "hardship". Discussion that if it was required to fall completely in the setback, it would not meet the architectural aesthetics. Discussion that it isn't creating additional restrictions.

Motion made by Watts, Seconded by Stuckey to approve the variance for 0034 Rustic Terrace based on facts presented to planning and zoning commission today. Voting Yea: Johnson, O'Brien, Stuckey, Watts. Motion passed unanimously.

IV. PROJECT APPROVAL

C. 0039 Lodestone New Construction

Building Official Parage reviewed the proposed new construction project and recommended approval.

Discussion on project and the parking. It was noted that it is in a cul-de-sac.

Motion made by O'Brien, Seconded by Watts to approve the new construction at 0039 Lodestone. Voting Yea: Johnson, O'Brien, Stuckey, Watts. Motion passed unanimously.

D. 0097 97 Circle New Construction

Building Official Parage reviewed the proposed new construction project and recommended approval.

Motion made by Watts, Seconded by O'Brien to approve the new construction at 0097 97 Circle new construction. Voting Yea: Johnson, O'Brien, Stuckey, Watts. Motion passed unanimously.

V. ADJOURN

Motion made by O'Brien, Seconded by Stuckey adjourn the meeting at 6:54 p.m. Voting Yea: Johnson, O'Brien, Stuckey, Watts motion passed unanimously.

NEXT MEETING -

May 7, 2024