

TOWN OF BLUE RIVER, COLORADO

MEMORANDUM

TO: Mayor & Board of Trustees
THROUGH: Michelle Eddy, Town Manager
FROM: Bob Widner, Town Attorney
DATE: January 26, 2022

SUBJECTS: **CONTINUATION**
ARTICLE VII OF CHAPTER 16B - ACCESSORY IMPROVEMENTS

The Board of Trustees (BOT) was previously provided two different versions of the DRAFT proposed Land Use Code (LUC) for Blue River:

- Multi-colored Version of Chapters 16, 16A, 16B, 16C, and 17
- Clean Version of the Land Use Code

On September 20, the BOT review Chapter 16 - Land Use Code General Provisions

On October 18, the BOT reviewed Part 1 of Chapter 16A - Zoning

On November 15, the BOT reviewed **Part 2 and Part 3** of **Chapter 16A** and then moved onto **Chapter 16B** and proceeded through to **Article VI**.

On December 20, the BOT reviewed the first part of **Article VII** of Chapter 16B (Accessory Improvements) through Section 16B-7-60.

In the upcoming January 31 BOT meeting, the BOT will continue on with uncovered sections of Chapter 16B starting with Section 16B-7-70 as outlined in this Memorandum.

To assist in your review, please note the following:

You have two versions of the same draft LUC:

- A “**REDLINED**” version that contains many different colors and strikeouts. The coding for this version is as follows:
 - If the text is **BLUE**, it is either exact language from the current Blue River Municipal Code or the Architectural Guidelines or the language is very similar and revised to be clearer or more enforceable, so the concept is the same in the new code.
 - If the text is UNMARKED without color, it is new language.
 - If the text is **YELLOW**, it is merely a placeholder to remind me on final editing to ensure that the references are correct.
 - If the text is **GREEN**, it is either a question to be answered by the BOT (such as a distance or a height) OR it is a question for me to later determine if the green text is needed in the final.
- A largely “**CLEAN**” Version that might be easier to review. You will find both **YELLOW** and **GREEN** text that is merely for future drafting reference.

Review Outline for the CONTINUATION OF **Chapter 16B of Article VII – ACCESSORY IMPROVEMENTS**

The following is intended to assist the BOT in reading additional sections of **Article VII of Chapter 16B** for the January 31 BOT meeting.

This Article is very important. It details with the regulation of ancillary or secondary uses of property which have impacts on neighbors and neighborhoods. Critically important is that nothing in Article VII is “written in stone.” This means that the Board of Trustees may modify or delete any of the provisions that are merely suggested. Fair amounts of the material in Article VII are drawn from existing regulations in both the Municipal Code as well as the Blue River Architectural Guidelines.

Section 16 B-7-10. Generally.

An Accessory Improvement is a use of residential property that is ancillary or secondary to the “principal permitted use.” This section provides a short framework for Article VII, and most importantly, an Accessory Improvement cannot be placed on property unless the property has a lawfully existing dwelling unit on the same lot. In other words, you cannot install a deck, shed, hot tub, fence, or any other Accessory Improvement on a vacant lot or parcel of land.

The most important parts of Article VII of Chapter 16 B pertain to the location of the common Accessory Improvements.

Section 16 B-7-20. Berms.

Section 16 B-7-30. Garages.

Section 16 B-7-40. Sheds.

Section 16 B-7-50. Driveways.

Section 16 B-7-60. Parking Areas.

These sections were reviewed by the BOT on December 20 and revisions were directed that will appear in redline/strikeover in the next version of the LUC.

Section 16 B-7-70. Walkways.

Although the current Blue River regulations recognize both major and minor paths and walkways, this section is rewritten to limit the application of the section to those primary walkways within the lot intended for access to the residential dwelling unit. The section is intended to ensure that the primary walkways are designed to be accessible to emergency service providers.

- (1) This section imposes an obligation that the primary walkway (leading to the entrance of the residential dwelling unit) be surfaced with “flagstone, sandstone,

cobbles¹, gravel, concrete pavers, wood or wood substitute decking, asphalt, or exposed or colored concrete.”

The BOT should consider whether these surface materials are appropriate or, possibly, that no surface treatment is required. If no surface treatment is to be required, this entire section can be deleted in individual owners can decide what form of walkway is desired for their residence.

Section 16 B-7-80 Reserved (for future use)

Section 16 B-7-90 Reserved (for future use)

Section 16 B-7-100. Decks.

The Board of Trustees should review this section as it is proposed. Some of the current requirements are retained in this proposed section. Decks are often an issue of conflict for property owners and municipalities because the decks may be designed and constructed in a manner that conflicts with adjacent properties.

- Any deck exceeding 18 inches in height above the finished grade may not be located within a setback.
- Decks that were built lawfully prior to the adoption of a new LUC shall be nonconforming and will be allowed to continue to exist until such time the deck is substantially rebuilt (not simply maintained).

Section 16 B-7-110. Gazebos, Pergolas, and Similar Structures.

Gazebos, pergolas, and other similar structures are oftentimes desired within residential properties. The current Blue River regulations do not specifically address in detail gazebos, pergolas, or other similar structures. The Board of Trustees should note:

- These structures may not be located within a setback.
- The structures should be designed to be compatible color and material with the primary residential dwelling unit.

Section 16 B-7-120. Hot Tubs and Saunas.

The current Blue River regulations require that hot tubs and swimming pools be located within the setback. This provision is an *evident misstatement* or error because restricting these uses to location within the setback makes no common sense.

- Hot tubs and saunas may not be located within a setback.

¹ Cobble when used as a building material is generally defined as a rock fragment between 64 and 256 millimeters in diameter, especially one that has been naturally rounded.

- Hot tubs and saunas may be covered by a trellis, pergola, or other structure if the structure meets the requirements of the LUC and the building code.
- If a deck is already located within the setback (i.e., nonconforming), a hot tub or sauna may not be located on the nonconforming deck (unless the hot tub or sauna is also a non-conforming accessory use).

Section 16 B-7-130. Recreational Accessory Improvements.

This section attempts to address swimming pools (currently addressed in the Blue River regulations) and other types of common recreational activity locations within residential property. The Board of Trustees should note:

- Permanent fire pits, outdoor fireplaces, outdoor cooking facilities, chimeneas, and playground equipment, must be located within the Buildable Area and may not be located within setbacks. The BOT should note that because the setback standards for Blue River are relatively short/small (e.g., 10-15 feet), allowing permanent recreational activities within setbacks may directly conflict with the quiet enjoyment of an adjacent property.
- Mobile, temporary, or impermanent fire pits, outdoor fireplaces, outdoor cooking facilities, chimeneas, and playground equipment (not affixed to ground) may be located within setbacks.

Section 16 B-7-140. Fences.

The current Blue River policies and regulations address fences. Because of the importance of the impact of fences upon the mountain and natural character of the Town, the Board of Trustees should review this section in detail to ensure that the section comports with your needs. Generally, the current regulations apparently attempt to limit fences to animal enclosures. However, I am aware that the town has approved fencing - as I recall a split rail fence - to allow an owner to prevent trespass and to mark the location of the boundary of his property. The Board of Trustees will need to decide the following should the Board decide to retain these current provisions:

- Dog runs and other similar small enclosure fence areas cannot be larger than **?** square feet in total area.
- If a fence is permitted as a demarcation of a lot or a lot area (i.e., the fence shall not exceed **?** in linear feet.
- Fences allowed in the current Blue River regulations are limited to **five (5) feet in height**. The Town Board is asked to confirm that it acceptable or to authorize a change.

Section 16 B-7-150. Retaining, Screening, and Landscape Walls.

Care was taken in this section to retain much of the requirements found in the current Architectural Design Guidelines. However, the section is rewritten in the proposed LUC to be more enforceable. The Board of Trustees should note:

There are three different types of walls referenced in the current regulations and these classifications are retained in the proposed LUC.:

- (1) A retaining wall is intended to hold back a mass of soil, to restrain a vertical faced mass of earth, or to resist lateral pressure and prevent the advance of a mass of earth.
 - (2) A screening wall is intended to prevent or mitigate the view of items located on a lot such as service yards, utility tanks, trash containers, storage of patio furniture, and maintenance and recreational equipment.
 - (3) A landscape wall is intended to hold the vertical weight of architectural elements such as pillars, gazebos, pergolas, or other similar structures or intended to aesthetically divide areas of a lot such as garden beds, transitions between natural and landscape areas, or to designate walkways or other purposes of the lot.
- These three types of walls (retaining, screening, and landscape) should be designed to fit with the site contours and changes in topography for the lot.
 - Neither a screening wall nor a landscape wall may be located along a lot line. Because these walls are largely if not entirely aesthetic in nature, limiting these walls immediately adjacent to other property is reasonable. Note that a *retaining* wall may be on the lot line as it may be necessary to ensure the buildable area for the lot.
 - None of these three types of walls may be located within a setback except that a retaining wall may be allowed to provide for a reasonable *Building Area*.
 - Consistent with the current Architectural Design Guidelines, these walls must meet design standards that will make them look natural or match with the principal structures on the property.
 - Retaining walls should not normally exceed 4 feet in height. However, they may exceed this standard if necessary to address significant elevation change. But a retaining wall may not be greater than 8 feet in height.
 - Screening walls may not exceed 6 feet in height.
 - Landscape walls may not exceed 72 inches above finished grade or more than 32 linear feet in length.

Section 16 B-7-160. Flagpoles.

The Board of Trustees should note that this section is merely suggestive and can be deleted without problem. It is only offered because in some communities, flagpole regulations address the location of the pole to lessen impacts upon adjacent properties, and especially where noise from the chain on the metal flagpole disrupts adjacent properties.

There are two types of flagpoles commonly regulated in communities: (1) freestanding poles; and (2) poles attached to structures.

Poles attached to structures are commonplace in many communities. These are oftentimes short poles mounted on the building from which a flag is displayed.

Freestanding poles are often regulated in communities because they may be located in positions that cause impact to adjacent properties.

Four mountain communities, flagpoles when attached to trees.

Options for the BOT to address flagpoles may be:

- A. Not regulate these types of improvements and allow residential property owners to install both freestanding and attached flagpoles wherever they deem desirable and in any number they deem appropriate.
- B. Allow attached flagpoles but prohibit or otherwise regulate freestanding flagpoles. This regulation could be established in the proposed LUC with specific “hardwired” standards limiting or controlling location and design. Or, the regulations could make freestanding flagpoles a special or conditional use that requires the residential property owner to seek a permit so that the Town can establish reasonable locations for the flagpole.

Because the town, to my knowledge, has not experienced issues with regard to flagpoles, the BOT may wish to postpone regulations at this time. The BOT should be aware that once a flagpole is installed by a property owner, it will be difficult to remove or otherwise control the flagpole. Although unlikely, it is possible that a property could install a 30-foot-tall flagpole with a rather significantly sized flag in the absence of any regulations for this type of improvement.

Once the BOT has finished Article VII, I will introduce generally the remaining portions of Chapter 16B (Signs, Lighting, and Landscaping and others). The Signs and Lighting sections will take significant time to cover in the February BOT meeting.

Please contact me directly if you have any questions.