



VARIANCE APPLICATION

Legal Description: Lot LOT 137 Subdivision Mountain View Sub
Street Address: 132 Mountain View Dr

Homeowner Name: Jason and Meredith Himmelman Phone: 970-470-1816
Mailing Address: PO Box 6658- Breckenridge CO 80424 Email: jake@breckenridgeassociates.com

Variance Being Requested:

We are requesting a variance to the street side of our home. We have another baby on the way and need more space. The other side of the home is the river and wetlands

Zoning Ordinance to which the variance is requested, and specify the nature of the variance requested:

Sec. 16-5-50. Site and structure requirements

a. Front yard. The front yard requirement shall be twenty-five (25) feet

We are requesting that the front setback as measured from road easement be reduced as shown on attached site plan.

State if the variance requested meets each of the following six (6) conditions. Please explain for each one:

1. That the granting of the variance will not authorize a use not permitted by the zoning regulations of the Town:
There is no proposed change to the existing use of this lot with the approval of this variance.
2. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitation on other properties having the same classification in the same zone district:
We believe that any other property with similar existing hardships could apply for similar setback variances. We also feel that numerous homes within our subdivision are already within the easement due to the challenges that the river/wetlands present
3. That the granting of the variance will not be detrimental to the public health, safety or welfare, materially injurious to properties or improvements in the vicinity, or prevent the proper access of light and air to adjacent properties:
The requested variance presents no detrimental effects to the health, safety, and welfare of the public.
4. That the strict, literal interpretation and enforcement of the specified regulation would result in unnecessary hardship inconsistent with the objectives of the Title:

Driveway and garage access are already in place, additions to the north end would exclude access to your existing garage. West Side- pedestrian access easement and wetland setbacks. Existing on site wastewater treatment system in place prohibits additions to the south. Also need privacy from house above

5. That the circumstances found to create a hardship were not created by the owner, and are not due to, or the result of, general conditions in the zone district and cannot reasonably be corrected:

The hardships were created outside of the control of the existing homeowner. The river/wetlands run the length of the house. Septic cant be moved.

House above us is extremely close

6. That the variance would not be out of harmony with the intent and purpose of the zoning code:

The variance would be in harmony with the purpose of the code. The variance would be small but would allow us comfortable living without disturbing the natural environment. Would also be in line with other homes in the sub that previously faced these challenges

NO VARIANCE AUTHORIZING A CHANGE IN THE PERMITTED USE OF THE PROPERTY SHALL BE GRANTED.

The following documents are submitted herewith for the Commission's information and review:

1. Completed Application Form / Application Fee
2. Site plan diagram with proposed addition and setbacks / Proposed plans and elevations.
3. Adjacent neighbor mailing list.
4. _____

I/We the applicant named herein understand the following:

1. That the main function of the Planning and Zoning Commission is to provide for reasonable interpretations of codes and ordinances with relation to their intent, so that the spirit of the ordinance(s) shall be observed, public safety and welfare secured and justice adhered to.
2. Notice of hearings to be given at the expense of the applicant by publication in a newspaper of general circulation within the Town by posting on the premises and by mailing to all property owners within three hundred (300) feet of the property in question. Notices shall be posted, published and mailed at least ten (10) days before the hearing date and shall contain the time and date of the hearing, the name of the applicant, a general description of the property indicating its location (which may be shown by map), what relief is being sought and the grounds on which the relief is being sought. The owners within three hundred (300) feet of the affected property were notified of the variance request. This letter shall contain all the names and addresses of those notified, and shall be submitted to the Building Department at least ten (10) days prior to the scheduled hearing. The application must be submitted to the Building Department at least twenty (20) days prior to the date of the hearing.
3. I/We (the applicant) shall be notified of the Commission's decision within thirty (30) days after the date of the hearing.
4. That any decision made by the Planning and Zoning Commission is not binding as to covenants, which apply to the property in question. Applicant is responsible for obtaining any necessary approvals from the Homeowner's Associations or Committees, which administer the covenants within the subdivision where the property is located.
5. Within seven (7) days following action by the Planning and Zoning Commission, written findings and decision, in the form of a resolution, shall be transmitted to the applicant and to the Board of Trustees. Such decision of the Planning and Zoning Commission, with respect

to variances, is final and is subject to appeal only through a court competent jurisdiction pursuant to §31-23-307, C. R. S.

Signature: _____ Date: _____

Findings of the Planning & Zoning Commission:

GENERAL INFORMATION AND GUIDELINES

The Town of Blue River has established specified distances from the front, back and sides of all lots as “setbacks” wherein no structures may be erected. These setbacks are maintained to create more open space between homes and structures upon and adjacent to other lots and to maintain open areas along roads and lot lines to prevent encroachment problems along these lines. It is expected that all property owners will respect the concepts and guidelines established by the Town with respect to these setback distances. It is incumbent upon the property owner to consider these setback distances prior to purchasing a new lot, or prior to attempting to enlarge any building or structure upon an existing lot that may not allow such improvements within the allowable building envelope, considering all setback distances.

Only after a property owner has fully demonstrated a true hardship, which was not caused and/or could have been reasonably averted by the applicant, will the Planning and Zoning Commission consider granting a variance to those established setback distances.

The Commission’s main criterion for granting a variance is that of a demonstrated “hardship” upon the applicant. Many times an applicant wishes to build a larger structure that is not conducive to the available area (building envelope) upon a lot, taking into account all front, side, and rear setbacks, and they request a variance. You must demonstrate a true hardship, not created by the applicant, to the Commission, which explains why the structure(s) cannot be placed elsewhere without a variance, or downsized to permit the structure to be placed on your lot without a variance, or modified to request the smallest possible sized variance for your situation. The Commission will request you to fully discuss all these other possible alternatives and why they will not work prior to considering a variance for your situation.

The Planning and Zoning Commission (P&Z) consists of seven (7) voting members appointed by the Town of Blue River Board of Trustees for two and four year terms. Assistance with application questions can be obtained from the Town of Blue River Building Official, who is not a member of the Commission and can answer questions and provide guidance without compromising the voting procedure.

After receipt, the Chairman of the P&Z, and/or the Town Building Official, will verify that the application is complete; all questions answered clearly and concisely, with appropriate attachments (maps) that are legible, drawn to scale (not reduced), marked with property locations (subdivisions and lot numbers), dates of survey and by whom, and that the drawings display the variance request clearly (i.e.- locations of all lot lines, structures and sizes, wells, septic system tanks and fields, roads, easements, setbacks, etc.). It is strongly suggested that a registered land surveyor prepare an Improvement Location Certificate (ILC) or a detailed survey for the property and submit it with the application. Applicants must be aware that this is not an extra step; if the variance is approved, the TOBR Building Official must receive an ILC prior to any excavation or construction commencing on the property. Applicants should be aware that surveys in the middle of winter, with heavy snow cover present, are more difficult, costly and time consuming. Such ILC surveys can easily take several weeks to perform, dependent on weather conditions and surveyor workloads. Also, specific dimensions must be stated in the variance request. For example, if a garage or home is requested to be built within a lot setback, the exact distances and exact location from the lot lines to all

home/garage corners and sides (to drip lines) within that variance request must be accurately labeled on the ILC survey, stated on the map, in the application and staked with labeled lath or stakes on the lot for P&Z and public inspection. If a variance is approved, the written approval will state these same exact dimensions in the approval and/or attachments.

The applicant shall also provide an accurate drawing to scale (not reduced) copy of the map they used to determine all property owners located within 300 feet of the subject property seeking the variance. Such a map may be obtained from the Summit County Clerk and Recorder's Office. The Summit County Assessor's Office can provide ownership addresses of the property owners to be notified. Both offices are located at the Summit County Courthouse, 208 E. Lincoln in Breckenridge. The map submitted to the TOBR Clerk should be marked with a line encompassing the 300-foot mark, measured from all points along the property lines. A pencil, compass and straight edge are necessary to perform this task properly.

Accompanying that map shall be a list of all the Subdivision name(s), lot number, and names and addresses of the owners of record that fall within the 300-foot mark. The P&Z Chairman or Building Official may verify with the Assessor's Office regarding the accuracy of the data submitted on the list. Applicant's failure to notify owners of record within 300 feet of the subject property can cause unnecessary delays. If the applicant fails to properly notify a landowner, the applications may be rejected. Applicants should also be aware that the County Assessor's Office maps are not survey accurate, and can be slightly misleading as to exact distances. However, they do show all adjoining subdivisions in relation to each other. Therefore, re-checking exact distances on the official recorded plat in the Clerk and Recorder's Office may be necessary. If there is any question as to a "close distance" of a property to the 300-foot requirement, it is strongly suggested to add extra neighbor notifications rather than risk missing a property owner.

A property owner located within the 300-foot distance that must be notified also includes all Municipal, County, State or Federal landowners (i.e.-county, state or federal roads, national or state forest or lands, county lands, etc.).

If the P&Z Chairman and/or the Building Inspector now deem, the application complete, the TOBR Clerk will send copies of the application and supporting documents to all P&Z members for their information.

The applicant must then pick up a poster from the TOBR Clerk to be displayed upon the lot, which will inform all interested parties of the date, time, and location of the scheduled public hearing regarding the variance request for that property ten day before the hearing. The applicant must also publish notice of the public hearing in the Summit County Journal ten days before the scheduled hearing. Call the TOBR Clerk (970) 547-0545 for assistance with timetables in publishing the notice. The property shall also be marked with stakes identifying the lot lines, setback, and exact location of corners requested in the variance so that interested parties and the P&Z members can relate to the variance request on the ground and identify the specifics of the variance request. It is preferred for these markings to be completed by a registered land surveyor, as part of the ILC survey. After this is completed, the applicant must mail notice to all the property owners on the list provided located within 300-feet of the property. Notice shall include the complete application, including all supporting document and maps along with a brief letter explaining the nature of the variance request.

As an overview, considering all the above steps, it can easily take a considerable amount of time to properly schedule a public meeting, providing all steps are correctly followed, and depending upon time of year, availability of surveyors, publication notices, review of applications, etc.

APPLICANT CHECKLIST

1. \$400.00 refundable deposit, payable to the Town of Blue River
2. Completed "Request for hearing and variance" application including—
 - A. Name and address of the owner and, if the applicant is not the owner, written authorization of the owner to the applicant to make application and act as agent for the owner.
 - B. Evidence of ownership (such as an informational title commitment) and a legal description for all property to be considered for rezoning.
 - C. A written description of the precise nature of the proposed variance and its operating characteristics, and measures proposed to make the variance compatible with other properties in the vicinity
 - D. A site plan, (ILC or survey) preferably by a registered land surveyor, showing proposed development of the site, including topography, building or structure locations, parking, traffic circulation, landscaped area, utilities, drainage features, setbacks and all easements (if any).
 - E. Preliminary building plans and elevations sufficient to indicate the dimensions, general appearance, scale and interior plan of all buildings
3. Notice of hearings to be given at the expense of the applicant by publication in a newspaper of general circulation within the Town by posting on the premises and by mailing to all property owners within three hundred (300) feet of the property in question. Notices shall be posted, published and mailed at least ten (10) days before the hearing date and shall contain the time and date of the hearing, the name of the applicant, a general description of the property indicating its locations (which may be shown by map), what relief is being sought and the grounds on which the relief is being sought.
4. The applicant shall submit a letter certifying to the Commission all property owners within three hundred (300) feet of the affected property that were notified of the variance request. This letter shall contain all the names and addresses of those notified, and shall be submitted to the Building Department at least ten (10) days prior to the scheduled hearing date. In addition, the applicant shall also provide a copy, to scale (not reduced) of the map they used to determine all property owners within 300 feet of the subject property, which shows the 300 foot distances from all property lines and the affected lots (property owners) to be notified within these distances.
5. The application must be submitted to the Building Department at least twenty (20) days prior to the date of the hearing.

ARTICLE XI

Variances

Sec. 16-11-10. Application; public hearing.

An application for a variance shall be heard by the Planning and Zoning Commission in accordance with Section 16-2-60(b) of this Chapter. The application shall include the following information, unless determined by the Building Official to be unnecessary for its consideration:

- (1) Name and address of the owner and, if the applicant is not the owner, written authorization of the owner to the applicant to make application and act as agent for the owner;
- (2) Evidence of ownership (such as an informational title commitment) and a legal description for all property to be considered for rezoning;
- (3) A list of the owners of all properties within the boundaries of the area to be rezoned or changed, and of all properties within three hundred (300) feet of the property proposed to be rezoned or changed. The owners list shall include the name of all owners, their addresses and a general description of the property owned by each.
- (4) A description of the precise nature of the proposed variance and its operating characteristics, and measures proposed to make the variance compatible with other properties in the vicinity;
- (5) A site plan, showing proposed development of the site, including topography, building or structure locations, parking, traffic circulation, usable open space, landscaped area and utilities and drainage features;
- (6) Preliminary building plans and elevations sufficient to indicate the dimensions, general appearance, scale and interior plan of all buildings;
- (7) Such additional materials as the Planning and Zoning Commission may prescribe or the applicant may submit pertinent to the application and to the findings prerequisite to the granting of a variance. (Ord. 05-02 §6, 2005)

Sec. 16-11-20. Approval criteria.

The following criteria shall be considered in reviewing applications for a variance:

- (1) The relationship of the requested variance to other existing or potential uses and structures in the vicinity;
- (2) The degree to which relief from the strict or literal interpretation and enforcement of a specified regulation is necessary to achieve compatibility and uniformity of treatment objectives of this Chapter without grant of special privilege;
- (3) The effect of the requested variance on light and air, traffic movement, public facilities and utilities and public safety;
- (4) Such other factors and criteria as the Planning and Zoning Commission deems applicable to the proposed variance. (Ord. 05-02 §6, 2005; Ord. 06-01 §1, 2006)

Sec. 16-11-30. Findings required.

The Planning and Zoning Commission shall make all the following written findings before granting a variance:

- (1) That the granting of the variance will not authorize a use not permitted by the zoning regulations of the Town;
- (2) That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties having the same classification in the same district;
- (3) That the granting of the variance will not be detrimental to the public health, safety or welfare, materially injurious to properties or improvements in the vicinity or prevent the proper access of light and air to adjacent properties;
- (4) That the strict, literal interpretation and enforcement of the specified regulation would result in unnecessary physical hardship inconsistent with the objectives of this Chapter;

(5) That the circumstances found to create a hardship were not created by the owner, are not due to or the result of general conditions in the zone district and cannot reasonably be corrected; and

(6) That the variance would not be out of harmony with the intent and purpose of this Chapter. (Ord. 05-02 §6, 2005)

Sec. 16-11-40. Decision final.

Any decision of the Planning and Zoning Commission shall be final unless an appeal is taken to a court of competent jurisdiction pursuant to Section 31-23-307, C.R.S. (Ord. 05-02 §6, 2005)

Sec. 16-2-30. Deposit and fees for land use development applications.

Any person applying for a land use development application, including but not limited to an annexation, subdivision, planned residential development, conditional use permit, easement vacation, replat, rezoning, variance, lot line adjustment, or any other land use development application, shall pay all direct costs accrued by the Town as a result of the application and development process, including but not limited to publication of notices, public hearing and professional costs, including engineering, attorney, consultant and recordation fees. In order to ensure that these fees are paid and development pays its own way, as well as the prompt payment of such costs to the Town, all land use applicants shall deposit the following sums with the Town at the time of initial land use development application:

<i>Land Use Application</i>	<i>Deposit Fees</i>
Annexations, subdivisions, replats or planned residential developments	\$2,000.00
Lot line vacation applications	250.00
Lot line adjustments or rezoning requests	500.00
Conditional use permit	300.00
Easement vacation or relocations	1,500.00
Variances	400.00
Any other land use applications	500.00

Any balance remaining after the payment of all costs to the Town shall be returned to the applicant. If the balance on deposit with the Town falls below twenty-five percent (25%) of the initial amount deposited, the applicant shall deposit such additional sums as the Town deems necessary in order to raise the balance to the initial amount deposited. Any dispute regarding the reasonableness or appropriateness of fees charged shall be presented to and resolved by the Board of Trustees. (Prior code 1-6-3)