



City of Ketchum  
Planning & Building

IN RE:	)	
	)	
Hammond House (120 Sage Rd SFR)	)	<b>KETCHUM PLANNING AND ZONING COMMISSION</b>
Variance	)	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND</b>
Date: October 14, 2019	)	<b>DECISION</b>
	)	
File Number: 19-082	)	

**PROJECT:** Hammond House (102 Sage Road SFR)

**APPLICATION TYPE:** Variance

**FILE NUMBER:** P19-082

**PROPERTY OWNER:** Rockwell Hammond

**REPRESENTATIVE:** Neil Middleton & Lars Guy

**REQUEST:** Conditional Use Permit for the installation of an associated avalanche attenuation device

**LOCATION:** 102 Sage Road (Warm Springs Village 4<sup>th</sup> Addition: Block 3: Lot 1)

**ZONING:** General Residential Low Density (GR-L) Zoning District

**OVERLAY:** Mountain Overlay and Avalanche Zone

**NOTICE:** A public hearing notice for the three interrelated applications associated with the Hammond House project, including the subject Variance, was mailed to all property owners within 300 ft of the development site on July 24<sup>th</sup>, 2019. The public hearing notice was published in the Idaho Mountain Express on July 24<sup>th</sup>, 2019. A public hearing notice was posted on the subject property on August 6<sup>th</sup>, 2019 and was posted to the City website on August 7<sup>th</sup>, 2019.

**Findings Regarding Applications Filed**

The Hammond House project is comprised of three interrelated development applications for the construction of a new 4,080 sq ft single-family residence located at 102 Sage Road (Warm Springs Village 4<sup>th</sup> Addition: Block 3: Lot 1). In conjunction with Mountain Overlay Design Review, the applicant has submitted a Conditional Use Permit application for the installation of an avalanche attenuation device (KMC §17.92.010.D2) as well as a Variance request for relief from the required front, rear, and side yard setbacks.

Pursuant to Ketchum Municipal Code (KMC) §17.104.050.A, the construction or placement of structures within the Mountain Overlay District is subject to all applicable Design Review improvements and standards (KMC §17.96.060) as well as to the Mountain Overlay Design Review requirements set forth in KMC §17.104.070. The purpose of the MO Zoning District is to encourage land uses harmonious with existing natural resources, protect natural land features and wildlife habitat, prohibit detrimental alteration and minimize impacts to the

existing topography, preserve hillsides and ridges, and minimize the visual impact by siting building footprint away from higher elevations.

The Sage Road neighborhood is characterized by hazards associated with red and blue avalanche zones. Building in the Avalanche Zone must meet the standards and comply with certain restrictions specified in KMC §17.92.010. New construction in the Avalanche Zone must be certified by an engineer licensed in the State of Idaho certifying that the proposed construction as designed will withstand the avalanche forces specific to the development site (KMC §17.02.010.D.3). Avalanche structures or earthwork that threaten to deflect avalanches toward the property of others or otherwise threaten to increase the danger to persons or property are prohibited (KMC §17.02.010.D.2). Avalanche attenuation and protective structures require the review and approval of a Conditional Use Permit. The applicant has submitted a Variance request from the required yard setbacks in order to accommodate the required avalanche attenuation structural components.

The applicant has requested the variance as the minimum relief necessary in order to accommodate the necessary avalanche attenuation and mitigation structural components due to the unique size and topography of the lot. Ketchum Municipal Code specifies different standards for decks and walls in relation to required setbacks and building coverage calculations. Pursuant to KMC §17.128.020.H, decks less than 30" in height from grade may be constructed to the property line and are not included in the calculation for building coverage (KMC §17.08.020). Decks greater than 30" in height from grade are included in the building coverage calculation and must comply with all setbacks unless considered to be a similar architectural feature to a cornice, canopy, or chimney chase, which may encroach into a required yard setback a maximum of 3 ft (KMC §17.128.020.A). Fences, hedges, and walls may not exceed 4 ft in height when located less than 30 ft from the front lot line and may not exceed 6 ft when located more than 30 ft from the front lot line. Fences, hedges, and freestanding walls are not qualified as structures for the purposes of determining setbacks (Definition of *Structure* KMC §17.08.020). Appendages to structures, such as the attached patio and driveway pad proposed by the applicant, are considered to be part of the building for the purpose of determining setback and building coverage unless otherwise specified (Definition of *Building* KMC §17.08.020). While serving as avalanche containment and mitigation features, the patio and driveway pad are appendages of the residence and as such are subject to setback requirements.

The patio at the rear elevation, avalanche retaining walls, and driveway pad encroach into the required setbacks from the front, rear, and side property lines required in the GR-L Zone. The applicant has submitted a Variance request from the required yard setbacks in order to accommodate the required avalanche attenuation structural components. The applicant has requested the variance as the minimum relief necessary in order to accommodate the necessary avalanche attenuation and mitigation structural components due to the unique size and topography of the lot.

Ketchum Municipal Code defines a variance as:

*A modification of the requirements of this title as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, parking areas, height of buildings, or other title provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots (KMC §17.08.020).*

Per KMC §17.148.010, a variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of unique characteristics of the site, and that the variance is not in conflict with the public interest. A variance may be granted by the Planning & Zoning Commission only if the applicant demonstrates compliance with all of the variance criteria as outlined in KMC §17.148.010.

### **Findings Regarding Subject Property**

The property is located in the General Residential Low Density (GR-L) Zoning District and also within the Mountain Overlay and Avalanche Zone. The subject property is within Warm Springs Village Subdivision 4<sup>th</sup> Addition, which was created in 1961 prior to the adoption of the City's first comprehensive zoning ordinance in 1974 (Ordinance No. 208) as well as the City's first subdivision ordinance in 1979 (Ordinance No. 316). The subject undeveloped, infill site has a total lot area of 0.16 acres. The dimensions of the subject property are noncompliant as the lot has both an area of 6,934 sq ft, which is less than the 8,000 sq ft minimum lot area required in the GR-L Zone, and a lot width of 29 ft, which is less than the 80 ft average required. The lot is also nonconforming in relation to the maximum 35% of linear footage of street frontage that may be dedicated to access off-street parking as an improved access easement spans the width of the parcel. The subject property is located on the north side of Sage Road approximately 185 ft from its intersection with Warm Springs. The Ski Hut Townhomes development borders the subject property to the southeast and an existing single-family residence is sited on the adjacent lot to the northwest. The subject property is bounded at the rear by one 83.66 acre parcel in the county and zoned Rural Residential (R-10) with a permitted density of one unit per 10 acre.

The subject property has a minimum elevation of 5898' at the southeast corner and a maximum elevation of 5920' at the northwest corner for a total elevation gain of 22'. Unlike the lots further east on Sage Road with depths exceeding 1,000 ft up the hillside, the subject trapezoidal lot has a maximum depth of 112 ft at the western property line. In addition to the nonconforming lot dimensions and topographical challenges, the subject lot is also constrained by an approximately 20 ft wide cross easement (Instrument No. 363233 & 574032) providing access for the benefit of the adjacent single-family residence at 104 Sage Road and the L & A Townhomes located at 108 Sage Road.

### **Findings Regarding Public Hearings**

At the August 12<sup>th</sup>, 2019 meeting, the Planning & Zoning Commission held a site visit and considered the three interrelated applications associated with the Hammond House project, including the subject Mountain Overlay Design Review, as well as Staff analysis, the applicant's presentation, and public comment. After providing feedback to the applicant, the Commission continued review of the three interrelated applications requesting additional information and material from the applicant. At the September 9<sup>th</sup>, 2019 meeting, the Planning & Zoning Commission reconvened the public hearing and approved [4-1] the three interrelated applications.

### **Findings Regarding Variance Evaluation Standards (KMC Chapter 17.148)**

**KMC §17.148.010.A. The strict enforcement of the provisions of this title creates an undue hardship to the property owner; however, economic feasibility shall not be considered an undue hardship.**

The subject property is within Warm Springs Village Subdivision 4<sup>th</sup> Addition, which was created in 1961 prior to the adoption of the City's first comprehensive zoning ordinance in 1974 (Ordinance No. 208) as well as the City's first subdivision ordinance in 1979 (Ordinance No. 316). The subject undeveloped, infill site has a total lot area of 0.16 acres. The dimensions of the subject property are noncompliant as the lot has both an area of 6,934 sq ft, which is less than the 8,000 sq ft minimum lot area required in the GR-L Zone, and a lot width of 29 ft, which is less than the 80 ft average required. Unlike the lots further east on Sage Road with depths exceeding 1,000 ft up the hillside, the subject trapezoidal lot has a maximum depth of 112 ft at the western property line. In addition to the nonconforming lot dimensions and topographical challenges, the subject lot is also constrained by an approximately 20 ft wide cross easement (Instrument No. 363233 & 574032) providing access for the benefit of the adjacent single-family residence at 104 Sage Road and the L & A Townhomes located at 108 Sage Road.

Commission Finding: This standard has been met. The Commission finds that the dimensional constraints and topographical challenges create an undue hardship to the property owners.

**KMC §17.148.010.B. The variance is necessary because of the unique size, shape, topography or location of the subject property.**

The trapezoidal development site is characterized by both dimensional and topographical constraints. The dimensions of the subject property are noncompliant as the lot has both an area of 6,934 sq ft, which is less than the 8,000 sq ft minimum lot area required in the GR-L Zone, and lot width of 29 ft, which is less than the 80 ft average required. In addition to dimensional and topographical challenges, the site is further constrained by the cross easement, which serves as driveway access to three adjacent dwelling units to the west. The proposed avalanche attenuation device at the rear of the property is approximately 18 ft in width. These factors constrain the total feasible buildable area of the lot. The Commission has found that due to these constraints, the applicant has utilized the area of the property the most suitable for the development of single-family residence.

Commission Finding: The standard has been met. The applicant has provided sufficient support that a Variance is the minimum relief required due to the unique size, shape, and topography of the subject lot.

**KMC §17.148.010.C. The subject property is deprived, by provision of this title, of rights and privileges enjoyed legally by other properties in the vicinity and under an identical zone.**

The subject property is denied the same rights and privileges enjoyed legally by other properties in the vicinity and under the GR-L Zone as the dimensional and topographical constraints in conjunction with the associated avalanche hazards would preclude the development of a residential dwelling unit.

Commission Finding: This standard has been met due to the dimensional and topographical constraints in conjunction with the associated avalanche hazards would preclude the development of a residential dwelling unit. The avalanche mitigation required for the site precludes an alternative design for a single-family residence that would comply with the zoning and dimensional standards within Title 17 of Ketchum Municipal Code.

**KMC §17.148.010.D. The need for the variance is not the result of actions of the applicant or property owner.**

The need for the variance is not the result of the actions of the applicant or property owner, but is due to the subject properties topographical challenges and dimensional constraints as well as the avalanche hazards associated with the site.

Commission Finding: This standard has been met. The subject property is within Warm Springs Village Subdivision 4th Addition, which was created in 1961 prior to the adoption of the City's first comprehensive zoning ordinance in 1974 (Ordinance No. 208) as well as the City's first subdivision ordinance in 1979 (Ordinance No. 316).

**KMC §17.148.010.E. The variance does not create health and safety hazards.**

The plans submitted for a Building Permit shall include a certification stamped by an engineer licensed in the State of Idaho confirming that the single-family residence and associated avalanche protection devices will resist the avalanche forces associated with the site and that all proposed improvements will not deflect avalanche debris toward the property of others. Prior Building Permit issuance for the project, an independent third-party review of the avalanche evaluation, associated design loads, and structural plans shall be submitted to the Planning & Building Department for review and approval. Subject evaluation, among other items, shall assure the project (1) does not deflect the avalanche onto neighboring properties, (2) does not create hazards

for occupants of the structure due to blocked egress or other design considerations (glazing, gathering areas, etc.), and (3) does not threaten to increase the danger to persons or property. As conditioned, the variance does not create health or safety hazards.

Commission Finding: As conditioned, this standard has been met.

**KMC §17.148.010.F. The variance does not relieve an applicant from any of the procedural provisions of this title.**

The variance request does not relieve the applicant from any of the procedural provisions of Title 17. All standard permitting processes would apply to any further construction at the site. As noted in condition #1, the Variance is subject to Mountain Overlay Design Review P19-021 and Conditional Use Permit P19-081. The applicant will be required to submit a Building Permit for the proposed construction of the new single-family residence. Excepting any regulations that may be relieved through the approval of the associated variance, the Planning & Building Department would ensure that the project comply with dimensional standards of the GR-L Zoning District as well as all applicable standards and regulations specified within KMC Title 17 as part of Building Permit application review.

Commission Finding: This standard has been met.

**KMC §17.148.010.G. The variance does not relieve an applicant from any standard or provision that specifically states that no variance from such standard or provision is permitted.**

Ketchum Municipal Code defines a variance as:

*A modification of the requirements of this title as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, parking areas, height of buildings, or other title provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots (KMC §17.08.020).*

The applicant's request for a variance is in accordance with the definition of variance as defined in Ketchum Municipal Code and with the procedural standards for processing variance requests as outlined in KMC §17.148.020. No request has been made from any standard that prohibits the option to request a variance.

Commission Finding: This standard has been met.

**KMC §17.148.010.H. The variance does not relieve an applicant from conditions established during prior permit review.**

The variance does not relieve the applicant from conditions established during any prior permit review. Pursuant to condition #1, the Variance is subject to Mountain Overlay Design Review P19-021 and Conditional Use Permit P19-081. As indicated on Sheet A-1.0 of the MO Design Review submittal drawings, a stairway and associated retaining walls encroach onto the improved cross easement. Per the cross easement, no owner may erect, build, locate, or maintain any improvement on the easement premises. Prior to issuance of a Building Permit for the project, the applicant shall submit written consent from the adjacent property owners and easement beneficiaries (Instrument #363233 and #574032) for all proposed encroachments within the easement area.

Commission Finding: This standard has been met.

**KMC §17.148.010.I. The variance does not allow establishment of a use that is not otherwise permitted in the zone in which the subject property is located.**

A single-family dwelling as proposed with the three interrelated applications is a permitted use within the GR-L Zoning District (KMC §17.12.020).

Commission Finding: This standard has been met.

**KMC §17.148.010.J. The variance is the minimum necessary to grant relief to the applicant.**

Due to the topographical constraints and dimensional constraints, the variance is the minimum necessary to grant relief to the applicant.

Recommendation: This standard has been met due to the dimensional and topographical constraints in conjunction with the associated avalanche hazards would preclude the development of a residential dwelling unit. The avalanche mitigation required for the site precludes an alternative design for a single-family residence that would comply with the zoning and dimensional standards within Title 17 of Ketchum Municipal Code.

**CONCLUSIONS OF LAW**

1. The City of Ketchum is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code to enact the Ordinances and regulations, which Ordinances are codified in the Ketchum City Code (“KMC”) and are identified in the Findings of Fact and which are herein restated as Conclusions of Law by this reference and which City Ordinances govern the Applicant’s Variance Application for the development and use of the project site.
2. The Commission has authority to hear the applicant’s Variance Application pursuant to Chapter 17.116 of Ketchum Code Title 17.
3. The City of Ketchum Planning Department provided adequate notice for the review of this application.
2. The Conditional Use Permit Application is governed under Ketchum Municipal Code Chapters 17.96, 17.104, 17.92, 17.116, 17.148, 17.124, and 17.128.
3. The proposed Variance application for relief from the front, rear, and side setbacks required in the GR-L Zone in order to accommodate the required avalanche attenuation device meets the standards of approval under Title 17 of KMC subject to conditions of approval.

**DECISION**

**THEREFORE**, the Ketchum Planning and Zoning Commission **approves** this Variance application this Monday, September 9<sup>th</sup>, 2019 subject to the following conditions:

**CONDITIONS OF APPROVAL**

1. The Variance is subject to Mountain Overlay Design Review P19-021 and Conditional Use Permit P19-081. All associated conditions of approval shall apply.
2. Per Ketchum Municipal Code §17.148.050, all variances shall be issued and construction shall commence within six (6) month from the date that such variance is granted, otherwise, the variance shall no longer be considered valid.
3. The plans submitted for a Building Permit shall be stamped by an engineer licensed in the State of Idaho certifying that the single-family residence and associated avalanche protection devices will resist

the avalanche forces associated with the site and that all proposed improvements will not deflect avalanche debris toward the property of others.

4. As the property is located within the Avalanche Zone, the project shall comply with all applicable standards specified in Chapter 17.92 Avalanche Zone District.
5. This Variance approval is based on the application presented at the Planning and Zoning Commission meetings of August 12<sup>th</sup>, 2019 and September 9<sup>th</sup>, 2019.
6. All governing ordinances, requirements, and regulations of the Fire Department (2012 International Fire Code and local Fire Protection Ordinance No.1125), Building Department (2012 International Building Code, the 2012 International Residential Code, and Title 15 of Ketchum Municipal Code), Utilities Department, Street Department (Title 12 of Ketchum Municipal Code), and the City Engineer shall be met prior to issuance of Certificate of Occupancy.
7. In addition to the requirements set forth in this Design Review approval, this project shall comply with all applicable local, state, and federal laws.

Findings of Fact **adopted** this 14<sup>th</sup> day of October, 2019.

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Neil Morrow, Chair  
City of Ketchum  
Planning and Zoning Commission