



**City of Ketchum
Planning & Building**

IN RE:)	
)	
Moseley Residence)	KETCHUM PLANNING & ZONING COMMISSION
Design Review)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
Underground Structure Setback Encroachment)	DECISION
Date: December 14, 2021)	
File Number: 21-096)	

PROJECT: Moseley Residence

APPLICATION TYPE: Design Review (Underground Structure Setback Encroachment)

REPRESENTATIVES: Aaron Belzer, Farmer Payne Architects & Ashley Boand, Ben Young Landscape Architects

OWNER: Colin Moseley

LOCATION: 119 Sage Road (Warm Springs Village 4th Addition: Block 2: Lot 9)

ZONING: General Residential Low Density (GR-L)

OVERLAY: Avalanche

NOTICE: A public hearing notice for the project was mailed to all owners of property within 300 feet of the project site on October 27th, 2021. The public hearing notice was published in the Idaho Mountain Express the on October 27th, 2021.

FINDINGS OF FACT

Findings Regarding Project Background

The applicant submitted a building permit application for the construction of a new single-family residence and associated site improvements, including a pool, located at 119 Sage Road on April 6th, 2021. The project plans did not comply with Ketchum Municipal Code as noncompliant features encroached within the 15-foot required setback from front property line. The code compliance issue was flagged by the Planning Department and communicated to the contractor and architect on May 14th, June 22nd, July 1st, August 26th, and September 13th. The revised plans submitted by the applicant failed to address the code violation. The applicant started construction without an approved building permit. The Building Official issued a Stop Work Order for the project on August 9th, 2021.

Findings Regarding Action Before the Planning and Zoning Commission

The Planning and Zoning Commission considered this application during their regular meeting on November 9th, 2021. In order to issue a building permit for the proposed residence, the project must comply with the Zoning Ordinance. There were two outstanding compliance issues presented for the Planning and Zoning Commission's consideration. The first was the building foundation/structure encroaching into the front yard setback. Subject to Design Review approval, subterranean encroachments may be approved by the Planning and Zoning Commission. The second issue was the placement of an above-grade wall with a structural foundation and permanent stairs within the front setback area. The Commission was asked to consider the Design Review application for the subterranean encroachments and separately make a determination if the above-grade wall and stairs are considered permanent, structural elements that may not be located in the setback, or if the wall and stairs are nonpermanent, landscape features that can be removed in the future and that may be located in the required setback.

Findings Regarding Proposed Moseley Residence Project

The applicant submitted revised project plans on October 27th, 2021 showing their desired design and configuration for the residential development. The site plan indicates stairs and a steel-clad, concrete wall encroaching within the front setback area. The stairs connect the driveway access along Sage Road to the front door of the home. The grade change from Sage Road to the residence's finished floor elevation is approximately 6 feet. The stairwell is comprised of 10 stair risers and includes a handrail.

The structural details on Sheet S4.1 show that the concrete wall is 9 feet-2 inches in height from the bottom of the footing to the top of the wall. As noted in the applicant's letter, the wall has been engineered to withstand the avalanche forces that may impact the property. The foundation plan on Sheet S2.0 shows that the avalanche wall and building foundation footings are connected.

Findings Regarding Underground Structure Encroachment

As indicated on Sheet S2.0, the home's building footing encroaches into the front setback area. Below-grade structures may encroach into required setbacks subject to the standards specified in Ketchum Municipal Code §17.128.020.K.

- K. Encroachments of below grade structures into required setbacks are permitted provided all of the following standards are met:*
- 1. Proposed encroachments shall receive design review approval from the Planning and Zoning Commission; and*
 - 2. Below grade encroachments into the riparian setback are not permitted; and*
 - 3. Construction activity shall not occur on adjacent properties; and*
 - 4. Encroachment of below grade structures into required setbacks shall not conflict with any applicable easements, existing underground structures, sensitive ecological areas, soil stability, drainage, other sections of this Code or other regulating codes such as adopted International Code Council Codes, or other site features concerning health, safety, and welfare; and*
 - 5. Egress openings required by adopted International Code Council Codes shall not encroach in required setbacks; and*
 - 6. Below grade encroachments into required setbacks shall be located entirely below natural, existing, or finished grade, whichever is lowest; and*

7. *The ground above below grade encroachments within required setbacks that is not otherwise covered by permitted decks, fences, hedges and walls shall be suitably landscaped in keeping with the general character of the surrounding neighborhood or as otherwise required by this Code.*
 - a. *Required landscape plans shall address the compatibility of proposed landscaping with the below grade structure, including any necessary irrigation; and*
8. *Below grade encroachments into required setbacks shall not interfere with drainage.*
 - a. *Required drainage plans shall address the ability of drainage to be managed on the subject property with respect to underground encroachments into required setbacks.*

The Planning and Zoning Commission found that the project meets these required standards. The below-grade structure does not conflict with any applicable easements, sensitive ecological areas, or drainage. No construction activity is proposed to encroach onto adjacent properties. No egress opening encroaches within the setback area. The home's primary egress and front door is sited within required setbacks. The building footing is located entirely underground. The Commission found that below-grade building footings and foundations may encroach into required the setback area so long as these structural elements are entirely underground.

Findings Regarding Zoning Code History

The City's regulation of setbacks has evolved from yard requirements to how far a building or structure must be setback from a property line. The yard requirements regulated the portion of unobstructed open area on a lot from a lot line for a depth or width specified by the regulations of the zoning district. The definition for setback was not introduced into Ketchum Municipal Code until 2013 through the City's adoption of Ordinance 1110. According to staff reports, the purpose of Ordinance 1110 was to reconcile inconsistencies and clarify unclear language within the zoning code. The Commission held a workshop to consider these zoning code amendments on July 30th, 2012. The workshop meeting minutes captured the Commission's discussion regarding setbacks. They discussed that the purpose of setbacks is to ensure adequate separation between buildings and useable open space between structures relative to the desired character and visual density in neighborhoods. They commented that any elements permitted to be sited within setback areas must be clearly defined. The Commission discussed that decks at or below 30 inches in height above grade are not considered a structure and may be sited within setback areas. This allowance was tied to the height threshold—all decks greater than 30 inches in height above grade at any point were determined to be subject to setbacks. Additionally, this height threshold applied to features appurtenant to a deck. For example, attached guardrails or benches connected to a deck that were greater than 30 inches in height above grade were also considered to be subject to setbacks. The 30 inches above existing grade height threshold is aligned with building code. Building code requires that guardrails be provided for those portions of open-sided walking surfaces, including stairs, porches, balconies, decks, or landings that are located more than 30 inches measured vertically from the floor or grade below.

Findings Regarding Zoning Code Interpretation Questions

The zoning code is unclear as to whether above-grade, nonpermanent walls may be treated like fences and allowed within required setback areas. Ketchum Municipal Code §17.08.020 provides a definition for fence but does not include a definition for wall. Fence is defined as a hedge, structure, or partition,

erected for the purpose of enclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two contiguous properties.

Ketchum Municipal Code §17.08.020 defines setback as the minimum horizontal distance between a specified lot line (front, side, rear), measured along a straight line and at a right angle to such lot line, and the nearest point of an above-grade or below-grade building or structure. Structures include anything permanently constructed in or on the ground (KMC §17.08.020). The only elements not qualified as structures are fences less than 6 feet in height, decks less than 30 inches above grade, paved areas, and structural or nonstructural fill (KMC §17.08.020). Ketchum Municipal Code §17.08.020 defines the term building as any permanent structure built for the shelter or enclosure of persons, animals, chattels, or property of any kind, which is permanently affixed to the land and has one or more floor and a roof. Additionally, the definition of building states that any appendage to said structure, such as decks, roof overhangs, and porte-cocheres, are part of said building for the purposes of determining building coverage, setbacks, or other regulations unless otherwise specified.

The zoning code is silent as to whether other non-permanent features like landscape steps may be permitted within required setback areas. Supplementary yard regulations specified in Ketchum Municipal Code §17.128.020 provide allowances for certain features to extend into required setback areas. For example, cornices, canopies, eaves, chimney chases, or similar architectural features may extend into a required yard not more than 3 feet and decks less than 30 inches in height from existing grade may be constructed to the property line.

Findings Regarding Planning and Zoning Commission Zoning Code Interpretation Determination

The Commission determined that a wall may be considered a non-permanent landscape feature like a fence so long as the wall is not structural element. These non-permanent walls must be able to be removed without compromising the structural integrity of the principal building or other accessory structures on the project site. Non-permanent walls may be sited within the required setback areas so long as the walls meet the maximum height standards specified in Ketchum Municipal Code §17.124.130. Permanent, structural walls must be sited within required setback areas.

The Commission concluded that the same setback standards provided for decks may be applied to stairs. Ketchum Municipal Code §17.128.020.H allows decks less than 30 inches from existing grade may be constructed to the property line. The Commission determined that stairs less than 30 inches in height above existing grade may be located within required setback areas. Ketchum Municipal Code §17.128.020.I requires decks more than 30 inches in height from existing grade at any point shall be subject to setbacks. The Commission determined that stairs greater than 30 inches in height from existing grade at any point shall be subject to setbacks. The Commission determined that the height measurement should include not only the stair risers and treads but also any appurtenance to stairs such as any required handrails (Ketchum Municipal Code §17.128.020.H).

The Commission approved the above-grade wall and stairs within the front setback area of the Moseley Residence project subject to the condition that no portion of the stairs, including the handrail, may exceed 30 inches height above existing grade.

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 Municipal 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 Design Review application for the development and use of the project site.
2. The Commission has authority to hear the applicant’s Design Review Application pursuant to Chapter 17.96 of Ketchum Municipal Code Title 17.
3. The City of Ketchum Planning Department provided notice for the review of this application in accordance with Ketchum Municipal Code §17.96.080.
4. The Design Review application is governed under Ketchum Municipal Code Chapters 17.96, 17.124, 17.08, 17.12, 17.18, and 17.128.

DECISION

THEREFORE, the Ketchum Planning and Zoning Commission unanimously **approves** this Design Review Application File No. P21-096 for the Moseley Residence project located at 119 Sage Road this Tuesday, November 9th, 2021 subject to the following condition of approval.

CONDITION OF APPROVAL

1. No portion of the stairs within the front setback area may exceed 30 inches in height above existing grade.

Findings of Fact **adopted** this 14th day of December 2021.

Neil Morrow, Chair
City of Ketchum
Planning and Zoning Commission