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Zoning Board of Appeals Hearing

Eagle River Whisky Variance Request 161 Main Street and 161 Nelson Avenue

Hearing Date:	September 3, 2024
File Name and Process:	Eagle River Whisky Variance Request
Owner/Applicant:	Spence & Stefanie Neubauer
Representative:	Robert D Creasy Architecture
Legal Description:	Mackedon & Rathburns Block C Lot 1 and Part of Lot 2
Address:	161 Main Street and 161 Nelson Avenue
Zoning:	Old Town Character Area – 100 Block A Zone District
Staff Member:	Madison Harris, Planner I Scot Hunn, Planning Director
Recommendation:	Approval

Staff Report

I. Summary of Request:

The Applicants, Spence and Stefanie Neubauer, request review of a request for relief from the thirty foot (30') rear setback at 161 Main Street and 161 Nelson Avenue in the Old Town 100 Block A Zone District. The Applicant's Representative Robert Creasy has been proactive in meeting with Town staff prior to submitting the variance request.

Background

The 100-Block Design Guidelines within Appendix B of Chapter 16 were adopted in 2023. At that time, the purpose and intent of requiring the rear setbacks along Eagle and Williams streets was to ensure the provision of parking for residential uses (in mixed use buildings) and, in the case of Williams Street, to create the physical conditions necessary to promote a "Woonerf" concept which allows for vehicular and pedestrian use within the same travel corridor.

Since adoption, the Guidelines – specifically the rear yard setback requirement – have not been implemented as there have been no new building or major redevelopment proposals. Additionally, staff suggest that upon adoption, the rear yard setback requirement did not contemplate 100 percent commercial use (parking requirements for commercial uses were eliminated at the time the Guidelines were adopted to incentivize commercial, sales tax generating uses). Rather, the intent of the generous rear setbacks along Eagle and Williams Street - 25 to 30 feet - captured a concern by the Planning Commission and Town Council that adequate parking for residential purposes, along with adequate maneuverability space be provided along these corridors.

Appendix B, Section 4, Site Design Policy SD.1 (D-E) and Site Design Policy SD.5 (A, C, and D) of the Minturn Municipal Code (MMC) is applicable with regard to improvements within the rear setback:

SD.1 Street Design

- D. Williams Street and Eagle River Street shall be designed as a "woonerf"—or shared streets—including a fifteen-foot clear public right-of-way that is shared between vehicles and pedestrians.*
- E. Setbacks along Williams and Eagle River Street shall be designed to contribute to the placemaking of the street. The area may be used for parking or activation of the street with uses like outdoor dining or patio space.*

SD.5 Parking/Loading

- A. Parking shall not be accessed from Main Street and shall be set back a minimum of forty (40) feet from Main Street. Parking shall be accessed from Nelson, Toledo, Williams, or Eagle River Streets.*
- C. Parking shall be provided along Williams and/or Eagle River Streets within the required building setback area in 100 Block: A. Along Williams (north of Nelson) and Eagle River Streets, a twenty-foot space shall be provided for thirty-degree parking access. Along Williams (south of Nelson) a twenty-three-foot space shall be provided for ninety-degree parking access.*
- D. Parking shall be marked as private parking and dedicated to residential uses, if applicable. If no residential uses are provided on-site, parking shall be provided for commercial uses.*

As referenced in the code sections above, the only apparent improvements permitted within the rear setback area are parking or activation of the street with uses like outdoor dining or patio space. Staff does not believe the MMC contemplates situations such as the one presented at the Eagle River Whisky lots where 1) the proposed use is 100% commercial, 2) there may be a valid need for an expanded first floor area due to federal regulations, and 3) an inability to utilize the full capacity for building height and massing due to those federal regulations.

Per the application's Letter of Intent it states:

“Because of the weight of equipment and full barrels of whisky, the distillery requires a maximum ground floor area in order to be a viable business, but the building does not need

multiple stories, nor the height & massing allowed by current codes for this lot. Our variance request stems from the excessive rear lot set back that current zoning places on this lot... Existing code allows for upper floor balconies to extend up to 10' into the rear setback (similar to our 20' "second" story setback) and it allows for an open terrace up to 48" tall to extend all the way to within 5' of the rear property line which would crowd the Williams St ROW...By stepping the height of our proposed rear setbacks, we bring the building down to a more human scale and increase the access to light and air at the street level. Additionally, by reducing the paved area of parking along Williams Street from over 70' to less than 50' wide, we more successfully create the "woonerf" ambiance that the town's Design Framework Principals envisioned for William's Street where pedestrians share the street with vehicles within an animated street scape."

Proposed Plans

Staff has been working with the Applicant and their architect for several months on potential plans for a new commercial building. As summarized above, one of the more prescriptive restrictions within the 100-Block Design Guidelines is the requirement for a 30 feet setback along Williams Street south of Nelson Avenue, while the Guidelines require 25 feet along Eagle and the rest of Williams.

In an effort to work within the spirit and intent of the Guidelines, and to otherwise reduce the amount of relief (from the rear setback) requested to achieve the project design goals, the Applicant is proposing reducing the rear setback from 30 feet to 10 feet for the first floor of the building and from 30 feet to 20 feet for the second floor of the building. The first floor on the rear would be capped at a 14-foot eave height, and the second floor would be capped at a 20-foot eave height.

Conceptual building plans and massing models are provided with the application to help staff, the Planning Commission, and Town Council make an informed decision regarding the request.

The Planning Commission is forwarding a **recommendation of approval with conditions** of the variance request from the strict interpretation and application of the Town's Setback requirements.

II. Zoning Analysis:

Zoning

The subject property is located within the "Old Town Character Area" 100 Block A Zone District, described as follows:

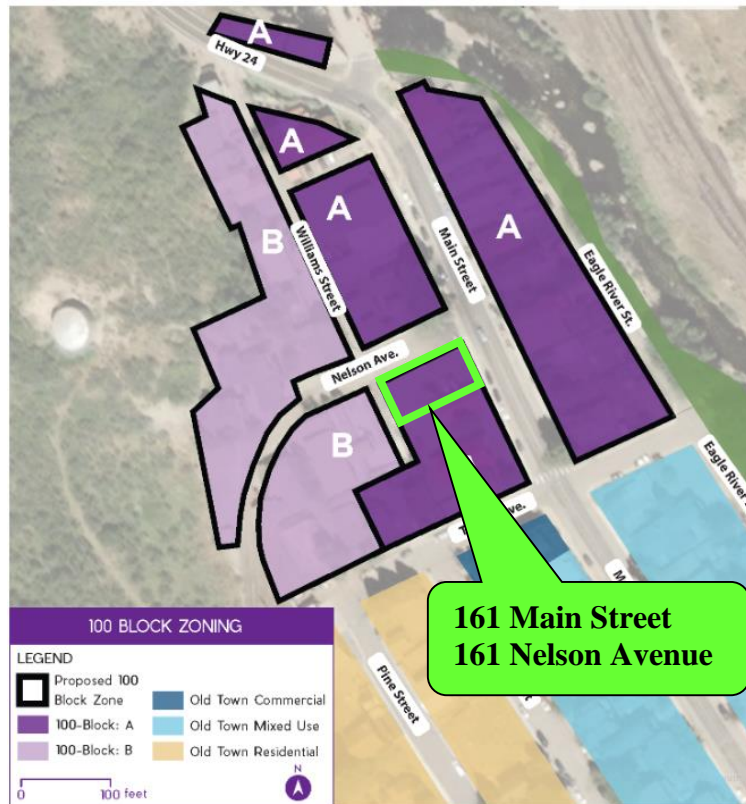
- (a) The 100 Block Commercial Zones are characterized by a compact retail/commercial core area bisected by Highway 24. The area consists of businesses and residences with an identity of the historic commercial core that is distinct from other parts of the community.*
- (b) **The purpose of this area is to provide convenient commercial services to residents and visitors and to promote the development of the Town's primary retail commercial district.** Accommodation of sales tax-generating commercial uses and non-street level residential units can enhance Old Town vitality while maintaining the visual character and scale. **Street level space within the 100 Block Commercial Zones shall be dedicated to retail uses.** Non-street level space within the 100 Block*

Commercial Zones may be used for compatible retail, office, and residential uses.

- (c) ***The 100 Block Commercial Zones should function as a pedestrian shopping corridor. Buildings shall orient toward sidewalks and pedestrian areas with storefront windows and main entrance doors. The scale of buildings both in terms of height and width should encourage transparency, pedestrian engagement, and facilitate pedestrian movement not only along Highway 24 but also between Highway 24, Williams Street and Eagle Street and along all streets in the 100 Block.***
- (d) *The small town historic main street character will be maintained by keeping in scale with the original plat of twenty-five-foot by one hundred-foot lots and one- to two-story building frontages along Highway 24. Large monolithic buildings and "strip" retail areas are not allowed. New development in the 100 Block shall follow the standards and guidelines provided in Appendix B which seeks to ensure new structures maintain compatibility with historic structures while bringing new uses to increase vitality.*

- Town of Minturn Town Code Section 16-6-35

Figure 1: 100 Block Zoning Map



III. Applicable Standards and Design Guideline Criteria:

Variance

The Minturn Municipal Code provides the following purpose, intent and criteria for the approval of a variance:

Sec. 16-21-690. - Variances.

(a) Purpose of provisions; limitations.

- (1) In order to prevent or to lessen such practical difficulties and unnecessary physical hardships inconsistent with the objectives of this Chapter as would result from strict or literal interpretation and enforcement, variances from certain regulations may be granted. Cost or inconvenience to the applicant of strict or literal compliance with a regulation shall not be a reason for granting a variance.*
- (2) Variances may be granted only with respect to the development standards prescribed for each zone, including lot area and site dimensions, setbacks, distances between buildings, height, density, site coverage, usable open space, landscaping, site development and parking and loading requirements.*
- (3) The power to extend variances does not extend to the use regulations prescribed for each district because the flexibility necessary to avoid results inconsistent with the objectives of this Chapter is provided by Sections 16-21-620, Conditional Use Permits, and Division 3 of this Article, Amendments to text of Land Use Regulations or Character Area and Zone District Map.”*

(c) Approval criteria. *Before acting on a variance application, the Planning Commission and the Zoning Board of Appeals shall consider the following factors with respect to the requested 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 among sites in the vicinity, or to attain the objectives of this Chapter without grant of special privilege;*
- (3) The effect of the requested variance on light and air, distribution of population, transportation and traffic facilities, public facilities and utilities and public safety; and*
- (4) Such other factors and criteria as the Planning Commission and Zoning Board of Appeals deem applicable to the proposed variance.*

(d) Findings required. *The Planning Commission and Zoning Board of Appeals shall make the following findings before granting a variance:*

- (1) There are exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the same zone;*
- (2) The exceptional or extraordinary circumstances of the site create a situation in which the strict, literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this Chapter;*
- (3) That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity and will not result in substantial impairment to the purposes of this Chapter.*
- (4) There is no substantial impairment to the public that would result from the granting of the variance.”*

Staff Response:

As noted above, the Town Council acting as the Zoning Board of Appeals must make positive findings for all four variance criteria. Although no one criterion should be weighted differently or considered more important, the first two criteria are typically the most difficult to establish.

In this instance, the Applicant will be required to demonstrate an ‘extraordinary circumstance,’ ‘physical hardship,’ and/or ‘practical difficulty’ when the regulations are applied strictly and literally to their property.

The Applicant has reduced the total amount of relief requested as evidenced by the building design which steps up in mass and form from first floor to second floor remaining cognizant of the impacts on the pedestrian experience, and in keeping with the overall intent of the Design Guidelines. Staff does not believe that this will have a negative impact on light or air, and in fact is respectful of the shading effects on walkways around the building based on the massing presented. The proposed design does not contemplate perpendicular parking along Williams Street except for a loading dock area, and so there should be minimal conflict with the parking across the street at the Molly G Building.

Staff suggests that the intention of the 30-foot rear setback is to ensure enough area within a lot to provide adequate parking area for any second story and above residential uses. As stated within the Applicant’s letter of intent “since federal rules do not allow residential use above a distillery, we cannot utilize the code allowed height for other uses.”

With no residential uses allowed within the proposed building per federal regulations; the prioritization of economic viability and welfare within the downtown corridor by the Minturn Municipal Code Old Town Character Area purpose and intent, the 2023 Imagine Minturn Community Plan, and Town of Minturn Town Council 2023-2025 Strategic Plan; and the proposed design of the building, which otherwise complies with the Design Guidelines and goals for activation on Williams Street, there may be a case for physical hardship and/or practical difficulty to allow for the requested relief from the rear setback.

For reference the following statements from the referenced above documents are relevant to this review:

Article 6 – Old Town Character Area

Sec. 16-6-10. – Character Area characteristics.

*“The intent of the Community Plan is that the Old Town Character Area maintain its unique and friendly small town character while providing for a **compatible mix of retail/commercial** and residential uses. Old Town provides for low-impact retail/commercial and residential uses that support and enhance the friendly small town character. Small town main street characteristics such as walkability, window fronts, main entrances fronting sidewalks, and **smaller scale buildings are to be promoted.** **The intent is to concentrate retail/commercial uses on Main Street and Williams Street** and discourage retail/commercial uses on secondary streets when they would conflict with existing residential uses. **The Old Town Character Area is to function as the primary retail/commercial core that encourages compatible retail/commercial activity and***

economic vitality. *Subdivisions and planned unit development occurring within the Old Town Character Area need to comply with the zoning code and promote the objectives in the Design Guidelines.”*

2023 Imagine Minturn Community Plan

Chapter 2: A Thriving 100 Block

*“Objective 2.1 Implement a framework for **redevelopment and growth** in the 100 Block that contributes to Minturn’s character and **economic development**.”*

*“Objective 2.6 **Invest in continuous placemaking improvements to support the 100 Block as a vibrant, central community gathering place**; improve connectivity to the riverfront area and nearby amenities.”*

Chapter 3: An Economically Vibrant Community: Commercial Development & Industry

*“Objective 3.3 **Pursue land use changes that support Minturn’s tax base and economic growth**; plan future development on important catalyst sites, including Dowd Junction.”*

*“Objective 3.6 **Ensure that the Town’s zoning and development code supports and encourages commercial development and redevelopment in key commercial districts while preserving historic character**.”*

2023-2025 Strategic Plan Vision Statement

*“Preserve Minturn’s **long-term viability**, its unique character and genuine mountain town community”*

For these reasons, granting of the variance should not result in any detrimental effects on the welfare of the Town or the substantial impairment to the purposes of the Design Guidelines and Chapter 16 of the MMC, overall.

IV. Planning Commission Hearing August 28, 2024:

Before the day of the hearing, Commissioner Boyd sent an email questioning whether public notice had been adequately provided. For context, the deadline for public notice for the August 28, 2024 Planning Commission hearing was August 19, 2024, ten days prior to the hearing. Adjacent property owner letters, the newspaper posting, and a sign posted to property all needed to be sent/posted by August 19th. This was accomplished, however, the wrong date was on the sign posted on August 19th. This was caught August 22nd and corrected the same day with seven days remaining within the public notice period for the Planning Commission hearing. The Planning Commission took into account the fact that the newspaper posting and the adjacent property owner letters had been sent at the appropriate time, and that the sign posting was corrected as soon as it was discovered, and determined that there had been adequate public notice and the public hearing could commence.

During the public hearing, the Applicants and their representative emphasized that they are trying to create a more pedestrian friendly structure while keeping with the Town’s Design

Guidelines and helping to maintain the view to the Water Tank. The Town received four letters of support for this project, and two letters of opposition. Those written public comments are included in this packet.

Of those who spoke at the hearing, one person spoke who was against the variance being granted, stating that they did not believe that the 100 Block was the appropriate place for this use due to concerns about odor, pollution, and vehicle maneuverability. They also believe this to be a self-imposed hardship and that the street level should be dedicated to retail only, not a distillery space.

Three others who spoke were in favor and were appreciative of the proposed building helping to maintain views of the Water Tank and the valley. One person stated that the intent of the 100 Block Guidelines was to create thoughtful growth and character, and this proposed building addresses that. Another person stated that this building and the use proposed fit the character of Minturn. The third person in support expressed concerns about the snow pile that normally sits on this lot, but was still supportive of the variance.

The Applicants responded to the public comment given by stating that they would be applying for a conditional use permit for Light Manufacturing which a conditional use within the 100 Block A Zone District. That they have their Actively Green certification through Walking Mountains, and that any odor is due to air filtration, and they would have filters if there were any issues. They hope this to be a teaching place for small manufacturing and want to be as cutting edge as possible.

After listening to staff's presentation, the Applicants' representative's presentation, and public comment, the Planning Commission deliberated on the application. Overall there was support for granting this variance, and they believe that the proposed building meets the intent of the 100 Block Design Guidelines. They also discussed that a variance must be acted upon within one year of being approved otherwise it expires, and the Applicants have multiple other applications to get through i.e. DRB, CUP, and an Amended Final Plat, before they get to building permit.

V. Planning Commission Recommendation and Suggested Conditions:

The Planning Commission forwarded a recommendation that the Applicant's request for a variance for relief from the strict application of the Town's Rear Setback limits at 161 Main Street and 161 Nelson Avenue be granted with conditions as the request generally meets all variance criteria, particularly for practical difficulty.

The Planning Commission is **recommending approval with conditions** of the variance request.

1. The Applicants shall apply for and successfully complete a formal Design Review Board application; and
2. The Applicants shall apply for and successfully complete a Conditional Use Permit application; and

3. The Applicants shall apply for and successfully complete an administrative subdivision process to eliminate the common lot line between the two lots and to combine the lots into one lot.