



## STAFF REPORT

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**MEETING DATE:** May 23, 2022  
**AGENDA ITEM TITLE:** 304 Two Rivers Road Variance Application  
**AGENDA SECTION:** Public Hearing

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### REQUEST:

The purpose of the request is to receive two (2) variances from the minimum side yard setbacks to build a deck addition to the primary residence. Primary buildings in the Two Rivers Planned Development with High-Density Residential (R-3) underlying zone district require a minimum side yard setback of five (5) feet.

The applicant is requesting a minimum allowed side yard setbacks of 2' on either side to construct a front deck.

### APPLICANT:

The applicants are Anie K. Roche & Sandeep Nijhawan, 2100 Riverside Lane, Boulder, CO 80304

### LOCATION:

The property is legally known as LOT 42B Two Rivers Townhomes subdivision exemption duplex conversion, City of Salida, Chaffee County, Colorado.

### PROCESS:

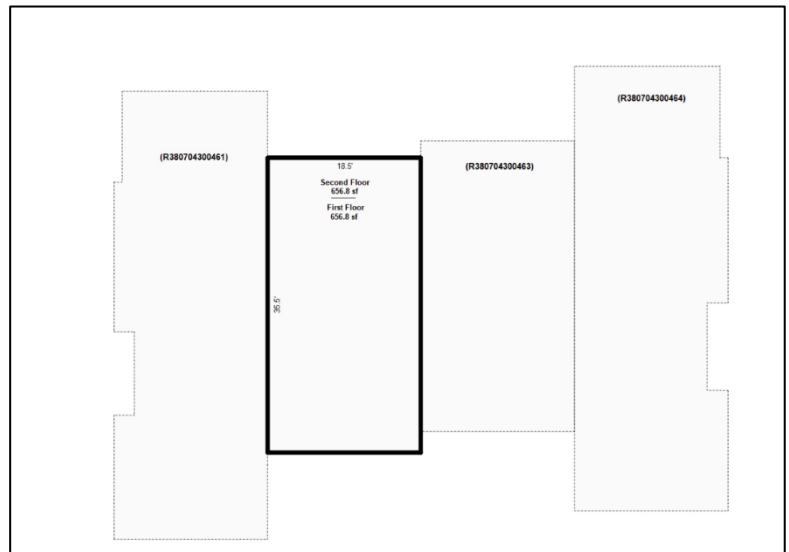
Variances are addressed in the City's Code of Ordinances, Section 16-4-180, Zoning Variances. Variances may be granted from the standards of the underlying zone district and shall be authorized only for maximum height, minimum floor area, maximum lot coverage, maximum lot size, minimum setbacks and parking requirements.



The Board of Adjustment holds a public hearing after fifteen days advance notice of the hearing. The public hearing shall be held, at which any person may appear or be represented by an agent or attorney. The Board may describe appropriate conditions and safeguards in conformity with the Zoning title of the City Code.

## OBSERVATIONS:

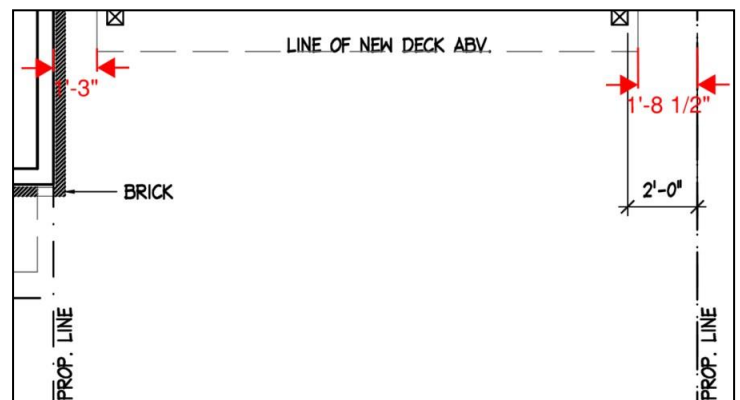
1. The subject property and the properties within the Two Rivers Subdivision are subject to the dimensional standards of the Two Rivers Planned Development. Along the north side of Two Rivers Road the underlying zoning is High Density Residential (R-3) zone district. On the southern portion of Two Rivers Road are both Medium Density Residential (R-2) zone district and Residential Mixed Use (RMU) zone district.



2. The orientation of the existing townhome is facing Two Rivers Road. The townhome is built side lot line to side lot line along adjoining party walls. The townhome is one of four units in the multifamily building. The townhome is the second unit from the west, one of the two middle units in the multifamily building. The subdivision exemption duplex conversion plat was recorded on February 16<sup>th</sup>, 2022
3. All of the other residences within the city block are fronting Two Rivers Road.
4. The requests is to receive relief from the minimum 5' side yard setback for a deck accessed from the second floor. The applicant is requesting to construct a deck addition to the townhome that will decrease the required 5' side yard setback to 2' side yard setbacks on either side of the structure.



5. The requests is for 2' side yard setbacks on either side of the deck. There is some discrepancy in the request as the plans show a distance of 1'-3" on the west side and 1'-8 1/2" on the east side.
6. As of Friday, May 20<sup>th</sup> staff has received two letters of opposition from adjoining neighbors to the variance requests, which are attached to the staff report.



**REQUIRED SHOWING (Section 16-4-180):** The applicant shall demonstrate that a majority of the following criteria to the Board of Adjustment before a variance may be authorized.

1. Special Circumstances Exist. There are special circumstances or conditions which are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in the neighborhood.

Applicant's response:

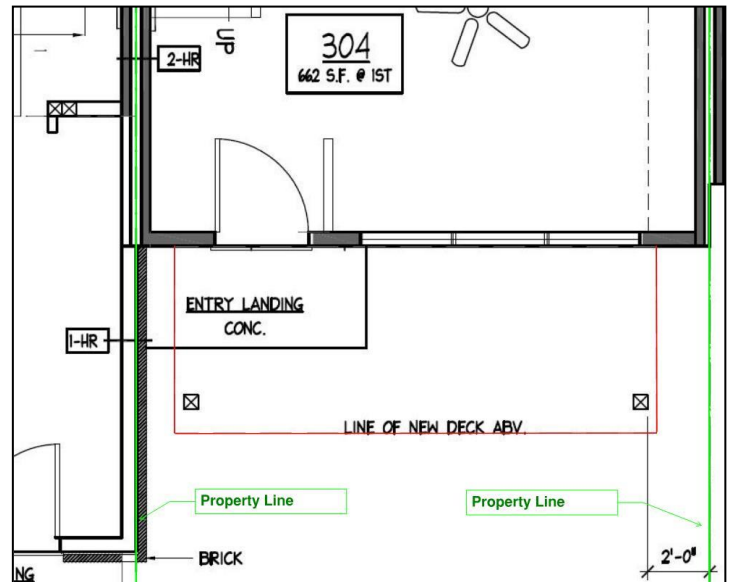
*The said property, while under construction, was under a purchase contract on 10/13/2021. The applicants (now owners) had requested the developer/seller, Tom Pokorny, Natural Habitats, to include a balcony/deck per the attached engineering drawings before closing. The closing was initially planned for December 2021. However, due to COVID related material delays the closing was moved to March 2022. In January 2022, the building inspector advised Mr. Pokorny to submit a separate application for the planned deck rather than pursue a plan change of the ongoing construction to avoid confusion and potential delays. In addition, due to COVID related material and labor delays - it was decided to delay the building of the balcony to post closing. As a result, Mr. Pokorny proceeded with the separation of Lot 42/43 (plat recorded 478158 on 02/16/2022) into four separate properties and the sale/closing of the said property to the applicants on 03/31/2022. After closing, Mr. Pokorny submitted the deck engineering plan to the City for review, and during the zoning review it was determined that while the deck met the zoning requirement before the legal separation of the lots, however, now that the division of the lots has been recorded, it required a 5 ft setback from the newly created lot lines.*

- The existing residence was issued certificate of occupancy April 5<sup>th</sup>, 2022. The sale date of the property according to the warranty deed is March 31<sup>st</sup>, 2022. The approved staff report for the duplex conversion subdivision exemption is dated February 9<sup>th</sup>, 2022.
- The definition of setback in the Land Use Code: *the distance required by this Chapter between the face of a building or structure and the lot line opposite that building face, measured perpendicularly to the building.* Units of the multifamily building currently do not consist of a deck addition. The multifamily building does have a homogeneous façade approved on the original building plans dated January 14<sup>th</sup>, 2021. No plans submitted showed a second floor deck addition to be constructed at the time of building permit application approval in 2021. The plans made for the deck addition are dated March 15<sup>th</sup>, 2022. These plans were created after the staff report was completed and the plat was recorded on February 16<sup>th</sup>, 2022.
- No Special circumstances exist because the residence was subdivided in 2022 with full knowledge that any addition will have to meet Land Use Code standards. Written in the staff report for the duplex conversion subdivision exemption under review standards, conformance with subdivision review standards **Section 16-06-60 (d) Zone district compliance.** *Except for the original primary structure comprising the dwelling units and any common and/or side-by-side or connected garages or driveways, all new structures, or the expansion of any existing structures on the two new duplex lots shall be subject to the setback requirements for the underlying zone district in which the lots are located.* The current building meets or exceeds the zone district standards within the Two Rivers Planned Development. With this addition of the second floor deck, the building will not meet the setback requirements as stated in the staff report for the duplex conversion subdivision exemption.

2. Not result of Applicant. The special circumstances and conditions have not resulted from any action of the applicant.

Applicant's response: *As explained in #1, the special circumstances and conditions are due to sequence of events and timing of the division of the lots. They were not the result from any act of the applicant.*

- The applicant would like to create the front deck to create a usable and more appealing front yard.
- The applicant does not have the ability to construct a front deck of this size (85 square feet) without being granted the variance. The applicant may be able to construct a sizably smaller front deck that meets the standards of the zone district.



3. Strict Application Deprives Reasonable Use. The special circumstances and conditions are such that the strict application of the provisions of this Chapter would deprive the applicant a reasonable use of the building or land.

Applicant's response: *The applicant purchased the said property to enjoy the outdoor views with the intent to build a deck/balcony. However, the unique circumstances and conditions are such that the strict application of the zoning provisions makes the proposed deck too small (given the lot width is only 18'-6"), non-functional due to the location of the existing windows, and aesthetically unpleasing. Also, this balcony would have been okay to build if we had done it prior to closing and separation of the lots. Now that the lots are separated - the codes are being applied in a "strict" manner.*

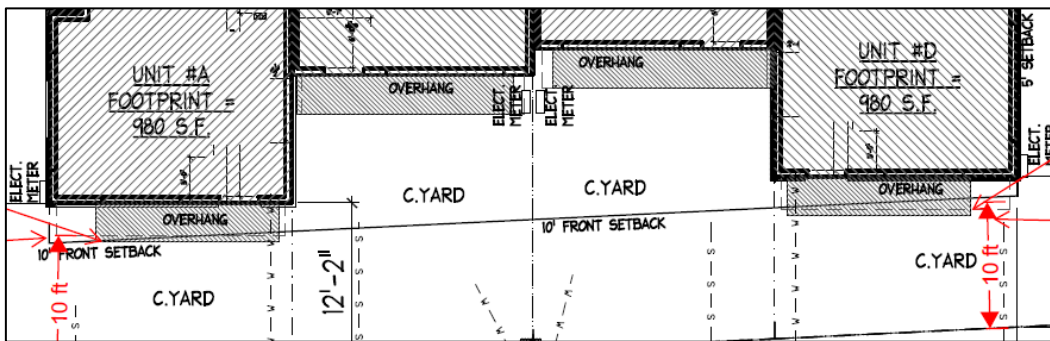
- Strict application would not deprive the applicant of making use to the full extent of the front yard to enjoy the outdoor views. The deck may have been compliant with the zoning standards if it was built to building department code and constructed prior to the recording of the subdivision exemption.
- The narrow lot allows for limited room to expand building area once subdivided. Minimum lot frontages in the Two Rivers Planned Development dimensional standards is fifteen (15) feet. This lot width according to the plat is 18' 5 3/8". By conforming to the dimensional standards of five (5) feet side setbacks, there is currently reasonable buildable area (8' 5 3/8") to construct the deck addition off the primary residence.



4. Variance is Necessary to Provide Reasonable Use. The granting of the variance is necessary to provide the applicant a reasonable use of the land or building.

Applicant's response: *The applicant purchased the said property to enjoy the outdoor views with the intent to build a deck/balcony. Therefore, granting the variance is necessary to provide the applicant with the reasonably intended use of the said property.*

- The variance is not necessary to make reasonable use of the proposed front yard area because there is an existing overhang that protects the applicant from the elements entering and exiting the unit. Each of the units in the multifamily building consist of the same Tuscan styled overhang, projecting three (3) feet from the building wall. The two middle units consist of a larger overhang (50 sq.ft.) in the front yard while the two outer units consist of a smaller overhang (43 sq.ft.).



5. Minimum Variance. The granting of the variance is the minimum necessary to make possible the reasonable use of the land or building.

Applicant's response: *Given the location of the existing doors, windows on the first and second floor, and the narrow width of the lot, the proposed variance is the minimum necessary to make possible the reasonable use of the said property with a balcony/deck.*

- The applicant with the addition of the front deck is not making the minimum necessary reasonable use of the property. The deck may be constructed in a different manner to facilitate the dimensional standards of the zone district.

6. No Injury to the Neighborhood. The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare or the environment.

Applicant's response: *The granting of the variance with the proposed deck shall not be detrimental to the neighborhood, surrounding land, or the public. The deck will have a privacy shield/ wall on each end for the privacy of the immediate neighbors.*

- The granting of the variance may be injurious to the neighborhood as it will be in close proximity to the side property lines, the applicant may find issue maintaining the proposed deck addition to the unit.
  - The deck may impede in the privacy of neighbors. A neighbor wrote in an attached letter to this staff report: "The deck will be visible when I look out my front windows, when they are sitting on it they will be looking right into my bedroom windows on the second floor destroying much of the current privacy I enjoy."
  - The deck addition may make snow removal difficult on the second floor. As with additional lot coverage brings additional shade. This may create ice buildup to the main entrance of the property along with the adjoining neighbor's property.
7. Consistency with Code. The granting of the variance is consistent with the general purposes and intent of this Land Use Code.

Applicant's response: *Yes, granting of the variance is consistent with the general purposes and intent of the City's Land Use Code.*

- The existing unit complies with all other aspects of the Land Use Code besides the proposed side setbacks.
- Setbacks help provide privacy and to address basic safety issues: distances between buildings decrease the potential damage in case of a fire, provide the room necessary for a homeowner to maintain his/her buildings on his/her own property and provide for solar access and ventilation.

## **REVIEW AGENCIES:**

**Fire Department – Assistant Fire Chief, Kathy Rohrich** – Fire Department has no concerns at this time.

**Public Works Department – David Lady** – No concerns.

**Chaffee County Building Department – Dan Swallow** – See attached emailed comments.

**REQUIRED ACTIONS BY THE BOARD:**

1. The Board shall confirm that adequate notice was provided.
2. The Board shall conduct a public hearing.
3. The Board shall make findings that a majority of the points 1 through 7 of the above section are met by the applicant.

**RECOMMENDED FINDINGS:**

That the variance requests are not in conformance with Section 16-4-180 (e) because the variance may be injurious to the adjoining neighbors and surrounding neighborhood, may not be necessary to provide reasonable use, is the result of the applicant, and no special circumstances exist for a variance to the land use code. The result of the variance request is the applicant's desire to have a second floor deck addition.

**STAFF RECOMMENDATION:**

Staff believes the proposed variance does not meet the preponderance of criteria #'s 1, 2, 3, 4, 5, 6 and 7.

Based on the findings below, staff recommends the Board of Adjustment **DENY** the two variance requests based on the following findings of fact:

1. There are no special circumstances that exist.
2. The request is a result of the applicant.
3. The request does not deprive the applicant of reasonable use.
4. The request is not necessary to provide reasonable use.
5. The request is injurious to the neighborhood.
6. The request is not consistent with the Land Use Code.

**RECOMMENDED MOTION: "I make a motion to deny the 304 Two Rivers Road Variance requests as the requests not meet the review standards for Zoning Variances."**

BECAUSE THIS APPLICATION IS FOR A VARIANCE, THE SALIDA BOARD OF ADJUSTMENT SHALL MAKE THE FINAL DECISION ON THIS APPLICATION. THE DECISION OF THE BOARD OF ADJUSTMENT MAY BE APPEALED WITHIN 15 DAYS OF THE DECISION BY AN AGGRIEVED PERSON AS SET FORTH IN SECTION 16-2-70 OF THE LAND USE CODE.

Attachments: Proof of Publication  
Application materials  
Deck Addition Permit Set  
Agency reviews  
Letters from Neighbors