



## STAFF REPORT

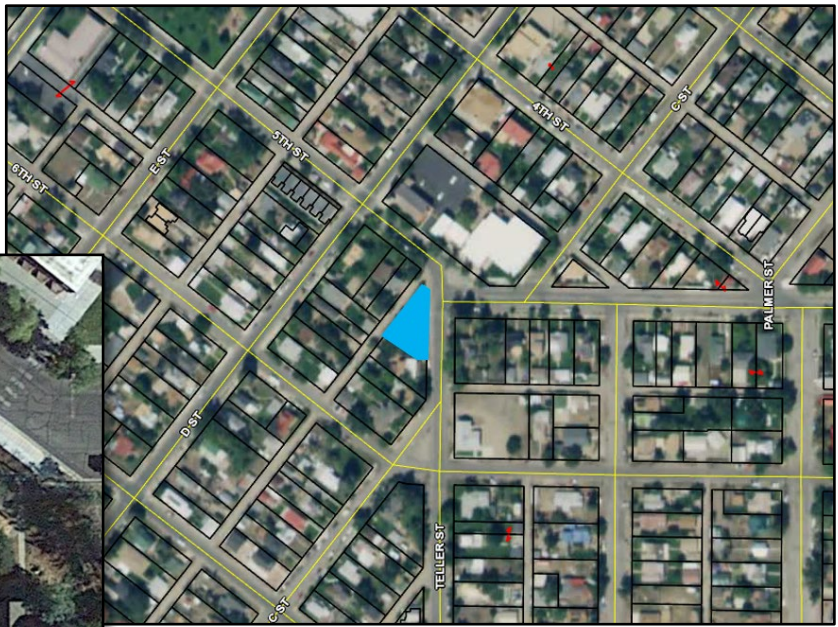
**MEETING DATE:** September 27, 2021  
**AGENDA ITEM TITLE:** 112 Teller Street Variance Application  
**AGENDA SECTION:** Public Hearing

### REQUEST:

The purpose of this request is for a variance from the minimum setback of twenty feet (20') required for the front and rear yard, and within that encroachment, to expand the existing non-conforming structure to two (2) full stories in height where one and one-half (1.5) stories previously existed.

### LOCATION:

The property is legally described as Part of Lots 2 through 7 Block 78 Haskell's Addition, Salida, Chaffee County, Colorado. This property is also known as 112 Teller Street.



**APPLICANT:** The applicant is Lynna's Lodge, LLC, 3220 Cherry Lane, Austin, TX 78703. The applicant's representative is Kurt Wipperfurth of Rincon Construction.

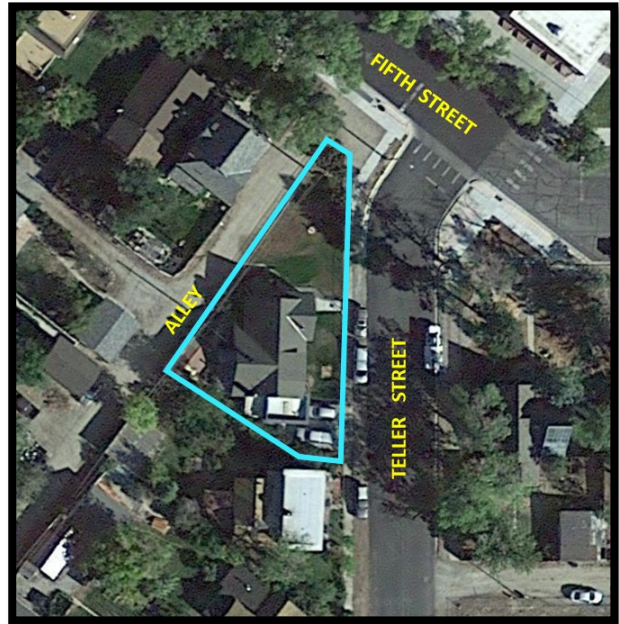
**PROCESS:** Variances are addressed in the City's Code of Ordinances, Section 16-4-180, Zoning Variances. Variances may be granted from the standards of the underlying zone district and shall be authorized only for maximum height, minimum floor area, maximum lot coverage, maximum lot size, minimum setbacks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

**BACKGROUND:** The applicant's original building permit approval was for an interior remodel. The original plan proposed an ADU on the second floor along with several storage areas due to low ceiling heights. During construction, significant damage to the roof structure was discovered and the roof was removed. With the need to construct a new roof, the applicant is proposing to build out a full second story rather than trying to mimic the 1.5 story roof with a variety of dormers and ceiling heights, therefore a plan change application was submitted, prompting the need for this variance request. After discussions with staff as to the utilization of this larger second story space, the applicant has agreed to pursue the staff recommendation of utilizing this R-2 zoned, 7,500 square foot lot to its highest and best use by making the structure a duplex (a Permitted use in R-2) with one unit downstairs and one unit upstairs. In the long-term, this provides the owner with better utilization of the space while providing an additional housing unit that maximizes the allowable density on the lot.

**OBSERVATIONS:**

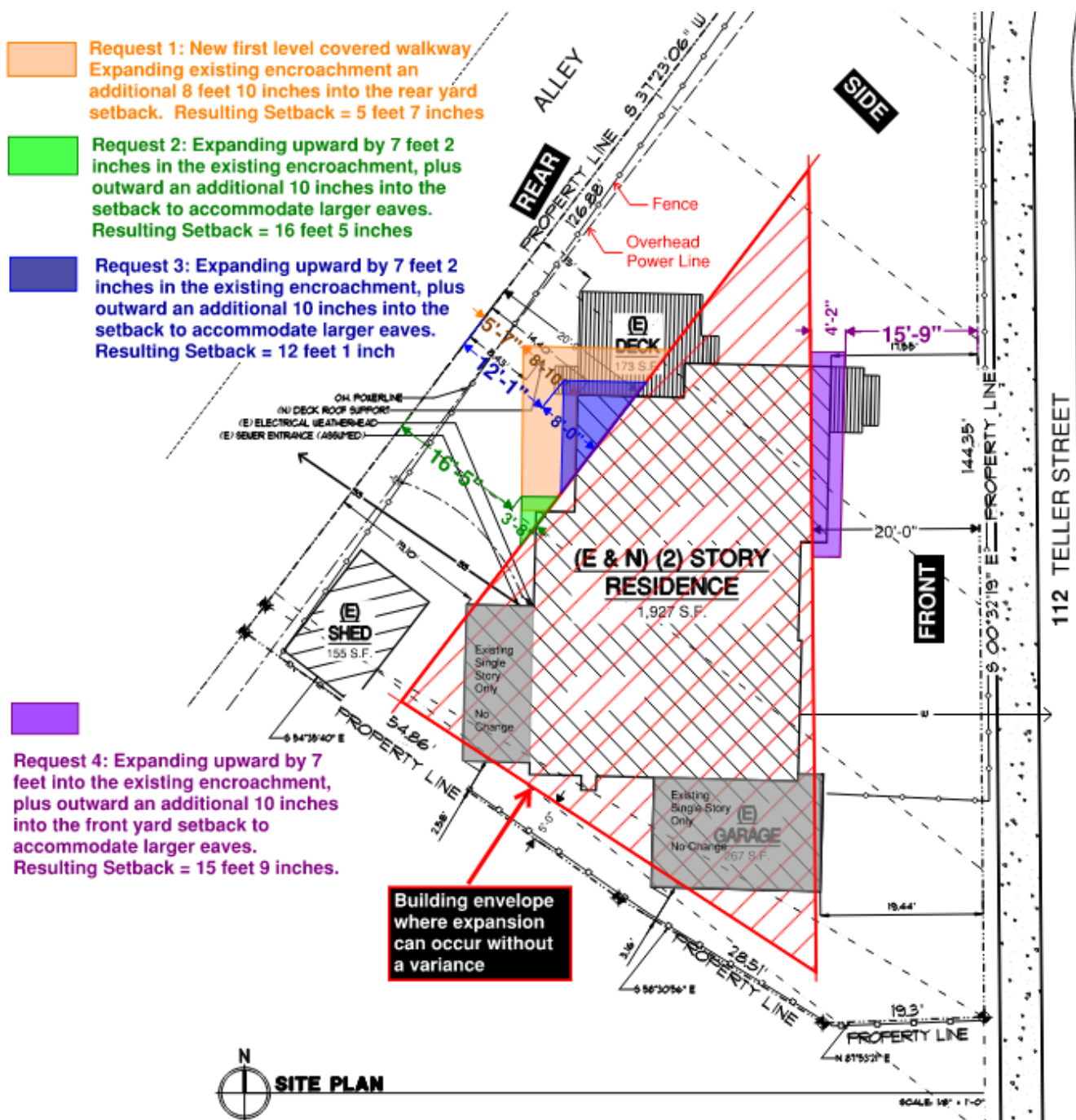
1. The subject property and the surrounding properties are located within the Medium Density Residential (R-2) zone district.
2. The subject property is oddly shaped, resulting in a triangular shaped building envelope.
3. The subject property is a corner lot with only one property, 126 Teller Street, directly adjacent to it on the south. The property directly across the street faces Park Avenue with its side lot facing the subject property.
4. The orientation of the existing residence is facing Teller Street and the front setback is along the Teller Street frontage. The rear setback is along an alley. The existing single-family residence is considered nonconforming because it does not meet the current front or rear setbacks of twenty feet (20'). The existing structure encroaches into the setbacks at several points, and at its closest points, has a sixteen feet seven inch (16' 7") front setback and a twelve foot 11 inch (12' 11") rear setback.

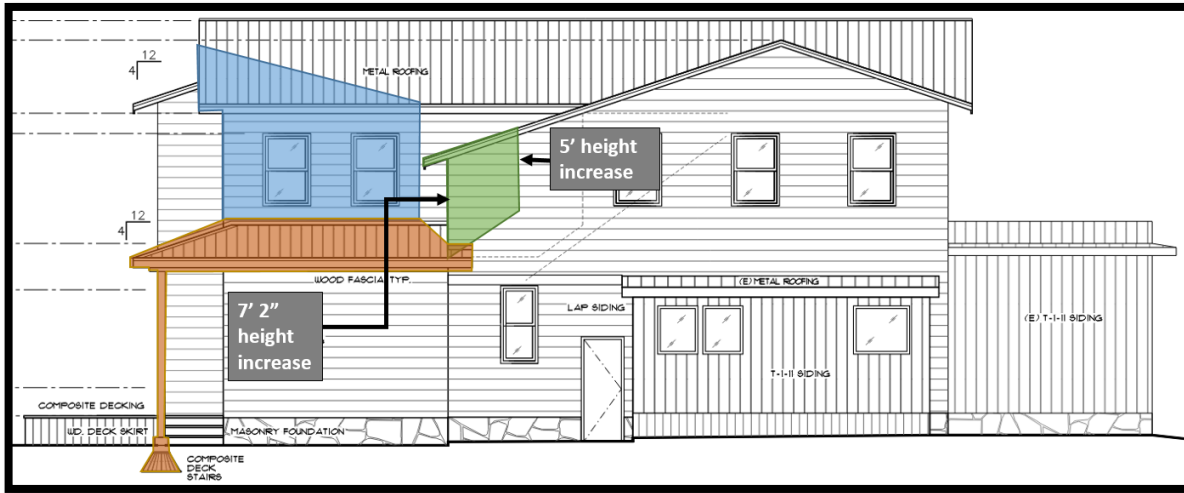




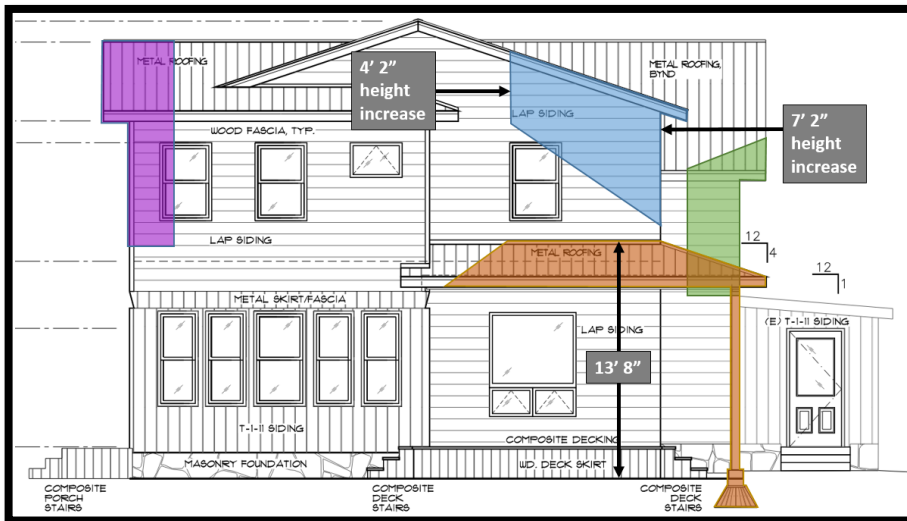
**OBSERVATIONS, Continued:**

5. As of Thursday, September 23<sup>rd</sup>, staff has not received any opposition to the variance requests from the adjoining neighbors.
6. The applicant is requesting to increase the existing non-conformities of both the front and rear setbacks by expanding that non-conformity upward in three different areas, outward due to larger eaves, and to construct a new non-conformity with the addition of a covered area that wraps around a corner of the home. There are four (4) distinct requests, described and illustrated here:

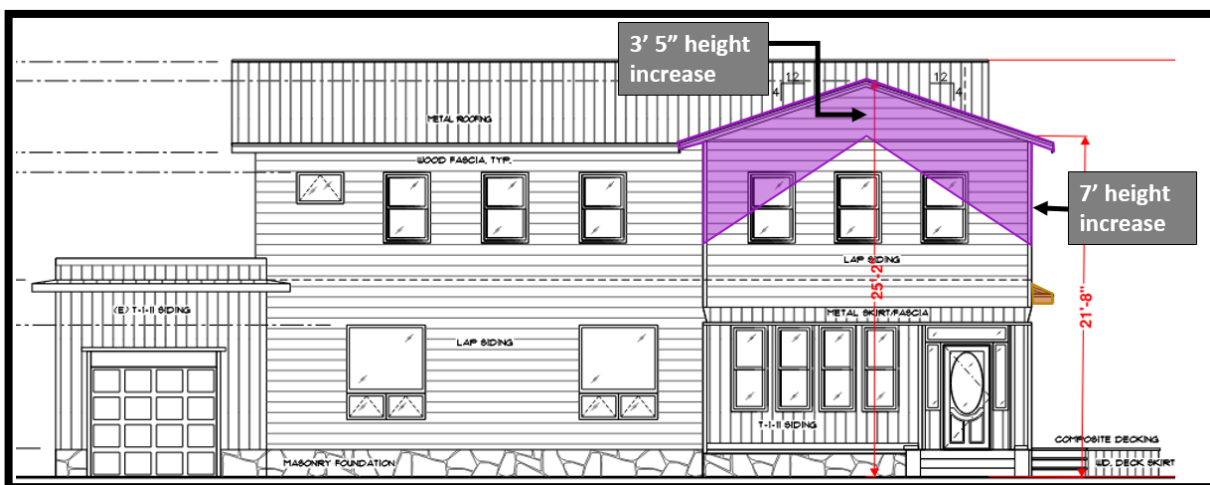




**Figure A - View of Rear Elevation from Alley – Proposed Encroachments**



**Figure B - View of Side Elevation from Fifth Street – Proposed Encroachments**



**Figure C - View of Front Elevation from Teller Street – Proposed Encroachments**

**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:

*-Triangular shaped lot.*

*-The period in which building was built and various improvements and additions that were not properly documented.*

*-Various changes to local building code requirements that post date the original the land use and construction.*

- The existing residence was built in 1899 with various updates over the years.
- The subject property is an odd shaped lot resulting in a triangular building envelope, upon which a rectangular shaped home was built, resulting in several corners of the home encroaching into the current setbacks. The required setbacks at the time of the construction of the current configuration of the home are unknown.

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

Applicant's response: *Interior remodel of the 2nd floor exposed damaged, structural deficiencies as well as numerous code violations. Homeowner/contractor determined the best solution would be to demo existing roof that was not built to code to prevent inevitable structural failure.*

- The special circumstances and conditions are not a result of the applicant as they did not construct the existing home within the setbacks.

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:

*(16-4-160) Nonconformities*

*(b;1) Use of nonconforming building or structure shall not be expanded, altered, enlarged or relocated except as permitted.*

*(c;1) A nonconforming structure may be extended or altered in a manner that does not increase the its nonconformity.*

- Strict application of the Code would deprive the owners a second story matching the first story footprint of the building and deprive the owners from maximizing the allowable density on the lot. The covered walkway is the logical location for a possible future entrance to the upstairs unit if a separate entrance is ever created by the current or future owner.

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:

*This variance would allow for the:*

- increase second floor walls to allow for 8' ceiling.*
- install engineered roof (per code).*
- provide additional housing.*
- improve overall structure integrity and curb appeal.*

- Replacing a 1.5 story second floor with a full second story allows for the provision of an additional dwelling unit, which is a reasonable use on this 7,500 square foot R-2 zoned lot.

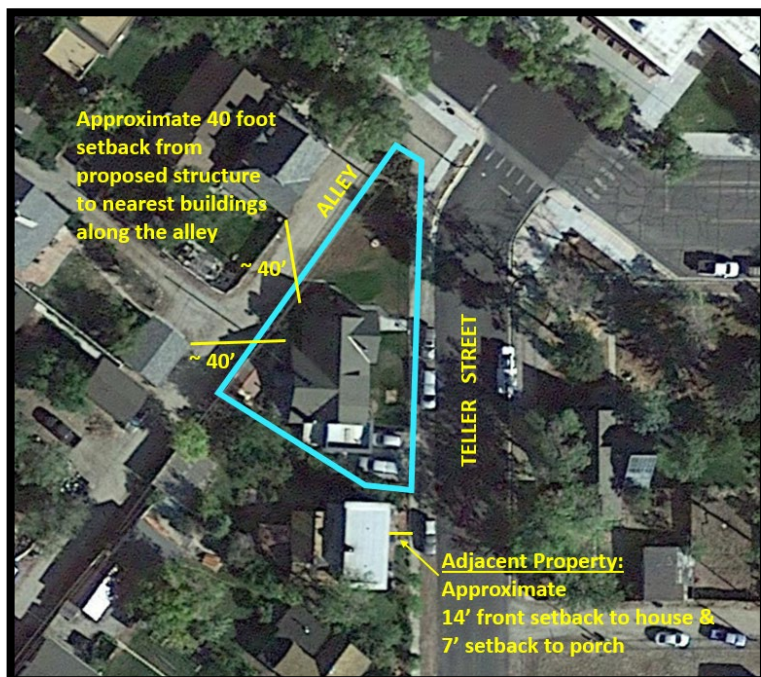
5. Minimum Variance. The granting of the variance is the minimum necessary to make possible the reasonable use of the land or building.

Applicant's response: *The requested variance would allow for maximizing the cubic feet of the existing structure without increasing/altering the existing footprint with no additional encroachment on the ground level.*

- Requests 2, 3 & 4 are upward encroachments utilizing the existing footprint with the addition of twenty inch (20") eaves. Request 1, in addition to being an architectural feature, allows for the option of a future covered entrance and walkway to the upstairs unit.

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 proposed variance will not be injurious to the neighborhood and not a determinate to the public welfare or the environment.*



- The granting of the variance will not be injurious to the neighborhood. The rear of the lot is along an alley. There are two lots across the alley that align with this property, and the setback to structures on those properties will be approximately 40 feet or more.

- Only one property has the same orientation facing Teller Street - 126 Teller directly to the south - and it is an existing non-conforming structure with an approximate fourteen foot (14') front setback for the house and seven foot (7') setback for the covered porch.

- The proposed increased encroachments are all adjacent to public right-of-way: Teller Street in the front and the alley along the rear property line.

- The Fire Chief, Public Works Director and Chaffee County Building Official had no concerns. Xcel Energy provided guidance on setbacks from the 120/240 Volt overhead line that is on this property along the alley side. The requirement is a minimum setback of 5 feet from a vertical wall plane, which is currently met.
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: *The granting of the variance is consistent with the general purposes and intent of this Land Use Code,*

*-Encroachments along street and alley.*

*-No Variance requested for adjacent properties*

- The applicant complies with all other aspects of the code besides the encroachments described here.
- Setbacks help provide open space 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. The proposed encroachments are adjacent to public rights-of-way and there will be adequate space which the owner can use for maintenance of the structures.

#### **REVIEW AGENCIES:**

**Fire Department – Fire Chief, Doug Bess** – No concerns from fire.

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

**Xcel Energy – Sterling Waugh** - The existing power line in this area is 120/240 Volt line and the horizontal clearance is five feet from a vertical wall plane. The customer needs to make sure to meet that clearance. I did not see the overhead service to the home mapped on the attachment. If the service goes over the deck it needs to have eleven feet clearance per NESC (Table 234-1 of NESC). They can also pay to underground the service if that is more desirable for the customer.

**Chaffee County Building Department, Dan Swallow** – No concerns.

#### **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 either met, or not met, by the applicant.

#### **RECOMMENDED FINDINGS:**

That the variance requests are in conformance with Section 16-4-180 (e), required showing. A special circumstance exists due to the shape of the lot and the existing non-conforming home. The variance allows the highest and best use of the property, the requests are not injurious to the neighborhood and there is adequate access for maintenance. The requests meet the intent of the Code, will not impact adjacent neighbors, and are in keeping with the general purposes of the Code.

**STAFF RECOMMENDATION:**

The variance request meets the preponderance of required showing criteria 1 through 7.

Based on the findings, staff recommends the Board APPROVE the variance based on the following findings of fact:

1. The shape of the lot and the existing non-conformity and condition of the structure predate the applicant's ownership, creating a special circumstance.
2. The applicant will be able to maintain the proposed encroachments and it will not be injurious to the neighborhood as required by Section 16-4-180 (6).

**RECOMMENDED MOTION: I make a motion to approve the Lynna's Lodge Variance with the following 2 conditions:**

1. A plan change to City of Salida Building Permit No. 099-21 must be approved prior to construction re-commencing.
2. Prior to issuance of a certificate of occupancy, water and wastewater system development fees must be paid, and the current system development fee deferral and suspension agreement must be rescinded via recorded document.

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: Application materials  
Agency reviews