



## STAFF REPORT

**MEETING DATE:** September 27, 2021  
**AGENDA ITEM TITLE:** Buskist Variance Application - 325 W. Park Avenue  
**AGENDA SECTION:** Public Hearing

### REQUEST:

The purpose of the request is to receive a variance from the minimum front lot line setback and the minimum rear lot line setback to build a second story addition on the existing nonconforming single-story residence. In the Single-Family Residential (R-1) zone district the required minimum front lot line setback is 30' and the required minimum rear lot line setback is 30' for a primary structure. The single-family residence was built in 1979 "prior to setback requirements" at the current front setback of 28' and at the current rear setback of 7'. The applicant is requesting the variances to construct a second story addition to match the footprint of the existing residence.

### APPLICANT:

The applicant is Kyle Buskist, 325 W. Park Ave, Salida CO 81201.

### LOCATION:

The subject property is located at 325 W. Park Ave, legally known as Tract in Block 206 of Eddy Bros Addition and Part of Vacated Alley, as well as 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.



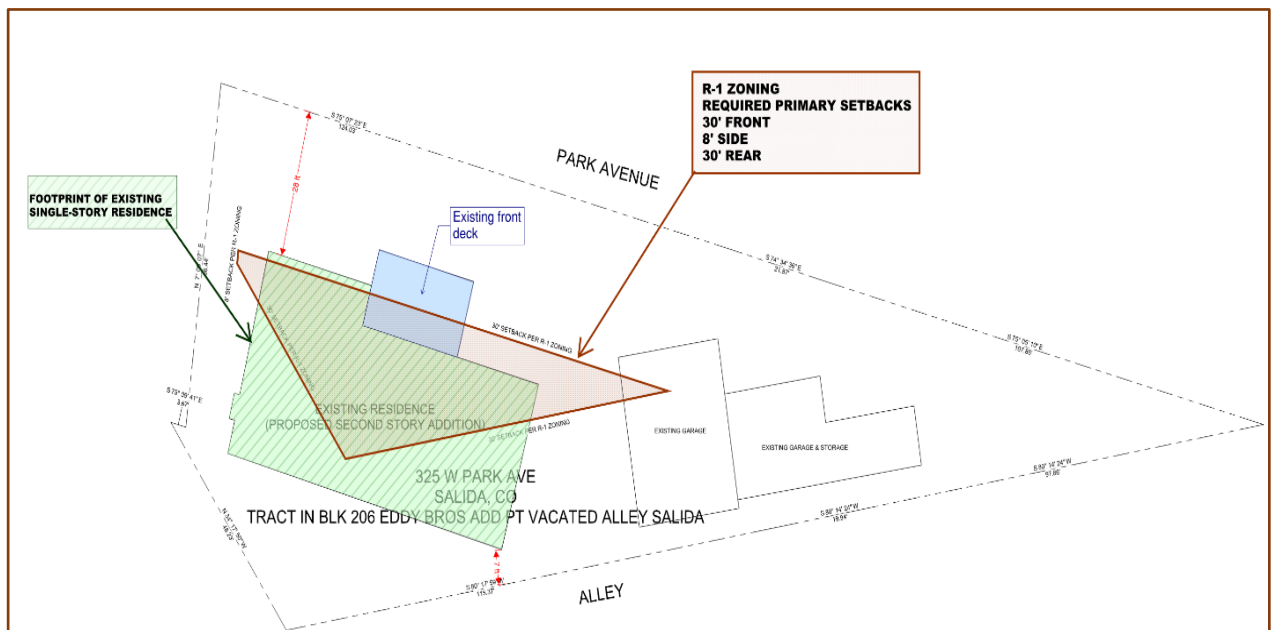
The Board of Adjustment holds a public hearing after fifteen days advance notice of the hearing. The public hearing shall be held, at which any person may appear or be represented by an agent or attorney. The Board may describe appropriate conditions and safeguards in conformity with the Zoning title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

## OBSERVATIONS:

1. The subject property is located within the Single-Family Residential (R-1) zone district. Surrounding properties are also within the (R-1) zone district.
2. The existing residence is considered a nonconforming structure. Nonconforming structures are structures that were lawfully established pursuant to the zoning and building regulations in effect at the time of their development which do not now conform to the provisions of the current zoning regulations.



3. The existing single-family residence is nonconforming because it does not meet the required front setback of 30' and the required rear setback of 30' for primary structures. The house was built in 1979 with a front setback of 28 feet and rear setback of 7 feet, prior to current setback requirements.
4. The applicant is unable to build a single-story or second story addition and meet the current front and rear setback requirements as shown in the site plan.



5. The request is to receive relief from the required minimum 30' front and rear setbacks to construct a second story addition to match the footprint of the existing residence. The applicant is not requesting to increase the nonconformity further into the setbacks, he is requesting the variance to be able to build the second story addition at the existing front and rear setbacks.
6. As of Friday, September 24<sup>th</sup> staff has not received any opposition to the variance request.

**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: 30' setback but built in 1979. Newer homes appear to have up to date setbacks, variance requested is for existing setbacks.*

- The triangular lot does not have the depth to construct the proposed second story addition and meet the required front and rear setbacks of 30'.
- Special circumstances exist because of the irregular shaped lot and the residence was built in 1979 at the current setbacks prior to the applicant owning the property.

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

*Applicant's response:*

- Special circumstances and conditions have not resulted from any action of the applicant. The applicant did not construct the residence within the front and rear setbacks and is requesting the variance to construct the second story addition to accommodate his growing family.
- The applicant would like to construct the second story addition to create more living space within the residence. With the irregular shape of the lot the applicant is unable to construct a usable single story or second story addition without a variance.

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: Yes, need more space for our growing family. Don't want to move out of town for more space, would like our children to walk/ride bikes to school and around town.*

- Strict application would deprive the applicant of making a functional living space by constructing a second story addition.
- 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.

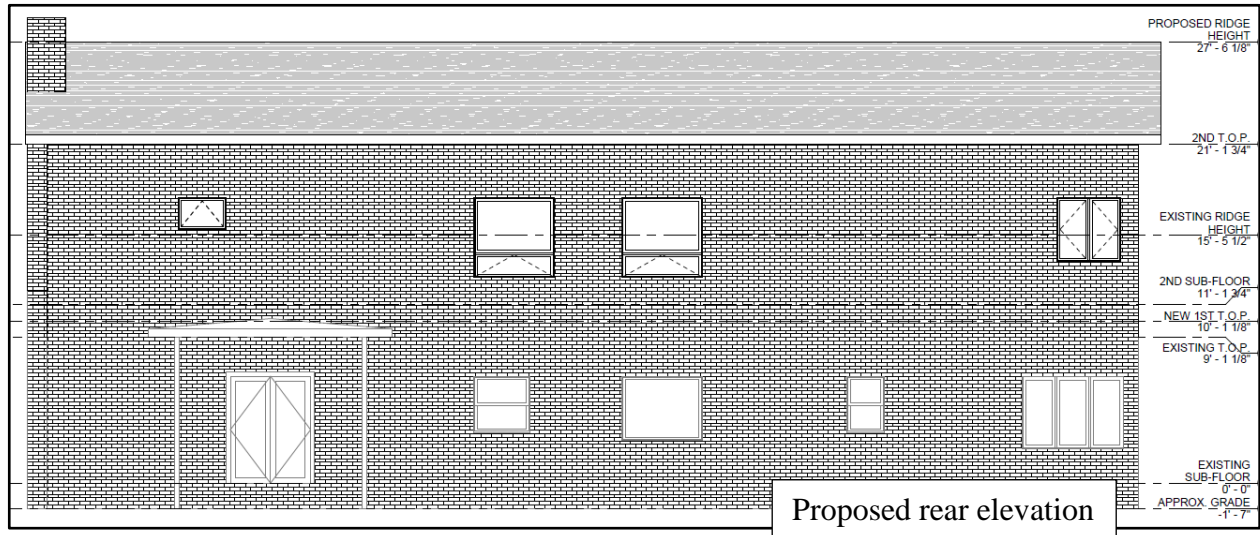
Applicant's response: *Yes, refer to #3*

- The variance is not necessary to make reasonable use of the property. The second story addition will allow the applicant additional living space.
  - All new construction in the City is required to meet the setback requirements unless some special circumstance exists such as an existing building that does not meet the setback requirements. Currently the residence does not meet the required 30' front and rear setback requirements on the irregular shaped 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: *Yes, can't go outwards do to existing decks, yard space, walkways, etc. or without encroaching further than the existing setbacks that already don't meet the 30' setback.*

- Currently the applicant has reasonable use of the property. The proposal is to construct the second story addition and not increase the nonconformity further into the 30' setbacks as the footprint would remain the same.





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 will not be injurious to the neighborhood and the applicant will be able to maintain the addition on his own property.
- The Fire Department has no concerns with the variance request.

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*

- The applicant complies with all other aspects of the code.
- 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. There will be adequate space which the owner can use for maintenance of the addition.

#### REVIEW AGENCIES:

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

#### 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 in conformance with Section 16-4-180 (e), Required showing, because the variance allows the highest and best use of the property, will not be injurious to the neighbors, maintenance of the addition is feasible, will not impact adjacent neighbors and is in keeping with the general purposes of the Code.

**STAFF RECOMMENDATION:**

Staff believes the proposed variance meets the preponderance of criteria #'s 1, 2, 3, 4, 5, 6 and 7.

Based on the findings below, staff recommends the Board of Adjustment **APPROVE** the variance request based on the following findings of fact:

1. The irregular lot and existing conditions of the residence are not the result of any action by the applicant.
2. The second story addition will not be injurious to the neighborhood as required by Section 16-4-180(6) and the applicant will be able to maintain the proposed addition on the subject property.

**RECOMMENDED MOTION: "I make a motion to approve the Buskist Variance as the requests meet the review standards for Zoning Variances, subject to the following condition.**

1. That the applicant submits a building permit that meets the requirements of the building department.

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