



## STAFF REPORT

**MEETING DATE:** December 13, 2022

**AGENDA ITEM TITLE:** Smedly / Brown Variance Application – 649 West 2<sup>nd</sup> Street

**AGENDA SECTION:** Public Hearing

**APPLICANT:** The applicants are Judy Brown, 649 W. Second Street, Unit 1, and Abigail Smedly, 649 W. Second Street, Unit 2.

**LOCATION:** The subject property is located at 649 West Second Street, legally known as Lots 12 & 13 Block 38 Sacketts Resurvey of Salida, Chaffee County, Colorado.

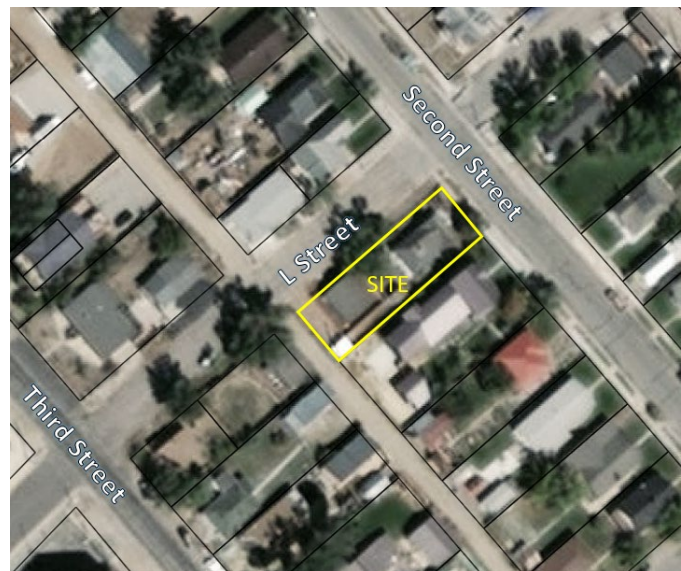
**REQUEST:** This variance request was received prior to the effective date of the ordinance changing the requirements for a variance, and therefore is subject to the old criteria.

The purpose of the request is to receive variances from the R-2 dimensional standards for front setback, rear setback, lot size, and parking requirement. The applicants are requesting these variances to allow for future subdivision of a corner lot that has an existing primary home and ADU. The intention is to subdivide the lot so that the ADU may/can become a primary home on its own lot that could then be purchased by the current renter.

The first variance request is from the twenty (20) foot required minimum front and rear setbacks for a primary home. The applicant is asking for an approximate four (4) foot front setback and seventeen (17) foot rear setback. When the ADU was built, it was located using the Accessory Structure setbacks, and because of the orientation of the existing lot, what were side setbacks for the ADU would become front and rear setbacks if it becomes a primary home.

The second variance request is from the required minimum lot size of 5,625 sf. The existing lot is shown as 7,500 sf on the Chaffee County Assessor's website. The applicants are requesting allowance to subdivide it in the future into two lots; one lot of +/-4,750 sf containing the existing primary dwelling unit fronting Second Street, and the second lot of +/- 2,750 sf lot containing the existing ADU fronting L Street. The exact dimensions of the proposed lots will be known once the survey for the subdivision plat is completed, and should be quite close, if not exactly these sizes.

The third variance request is from the required minimum parking of one space per unit. This



request is only for the possible future lot of the existing primary unit fronting Second Street. Currently the 2 required parking spaces (1 for each unit) are on what would be the future ADU lot.

### **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 [minimum] 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 Medium Density Residential (R-2) zone district. Surrounding properties are in the Medium Density Residential (R-2) zone district.
2. No new construction is proposed, and currently both the primary unit and ADU meet the required R-2 dimensional standards. *Below: Existing primary home on left, ADU on right.*



3. The purpose of the setback and lot size variances, if granted, is to allow the applicants to submit a minor subdivision application using the dimensional standards of this variance. The future minor subdivision would divide the existing lot into two lots, dividing off the existing ADU from the existing primary unit, and cause the ADU to be reclassified as a primary unit which would then change its required setbacks. Without a variance, the minor subdivision would not be allowed due to the non-conformities it would create.
4. The off-street parking spaces for both the ADU and the primary home are located at the back of the lot, between the ADU and the alley; this is currently the only curb cut for the property. The applicants are requesting a variance so that when the property is subdivided, the resident of the primary home does not immediately need to construct an off-street parking space, but rather request that requirement be enforced if/when a building permit is issued for any modifications to the existing primary home.
5. The applicants do not have an Improvement Location Certificate or a Property Survey at this time. If the variance is granted and they apply for a minor subdivision, they will need to provide a subdivision plat created by a licensed surveyor. Every attempt was made to locate the property pins in order to provide the most accurate setback measurements, but it appears there are no pins on this property. Therefore the setback requests are approximate – since no

new visible construction is proposed and the buildings already exist, the actual setbacks are whatever currently exists, which will be precisely known once a subdivision plat is created. Staff's best estimates are plus/minus the following:

- Front Setback: Likely minimum of three (3) feet, (estimates show it closer to 4')
  - Rear Setback: Likely minimum of sixteen (16) feet, (estimates show it closer to 17')
  - Minimum Lots Sizes: 1 lot at an estimated 2750 sf and 1 lot at an estimated 4750 sf.
6. The corner lots directly across L Street and directly across the alley were both subdivided in this manner, either prior to zoning or under a previous land use code allowing this subdivision. (The current Code, Sec. 16-4-180(a) states that a variance shall not be granted *solely* because of the presence of nonconformities in the zone district or adjoining districts.)



***Above: Subdivided corner Lot Directly West across L Street from Subject Lot; the newer home (at left) was built in 1957.***

***Below: Subdivided Corner Lot Directly South across Alley from Subject Lot; the newer home (at right) was built in 1932.***



7. Staff has received a letter of support from a neighbor. As of Thursday, December 8<sup>th</sup>, staff has not received any opposition to the variance requests.

**REQUIRED SHOWING (Section 16-4-180):** The applicant shall demonstrate a majority of the following 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: *This variance allows for a pathway to home ownership for this applicant. This property is unique in that it faces the street, and that peculiarity allows for me to be a permanent resident of the community without disturbance to the neighborhood. The ADU structure is pre-existing, so this allows the property to become a primary dwelling space with no construction additions.*

- This is a corner lot; this type of potential subdivision would only be possible on a corner lot, where the creation of a new lot would still have frontage along a public street.

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

Applicant's response: *The infrastructure is pre-existing, this property could create the ability for home-ownership on existing town infrastructure.*

- The corner lot was pre-existing.

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: *Strict application of the provisions of this land use code deprives the ability to use the land for affordable home ownership.*

- Strict application would not deprive the applicant reasonable use.

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 variance is necessary to provide the opportunity for affordable, stable, home ownership. I could not live in Salida long-term if this opportunity was not considered. My relationship with my landlord Judy Brown is such that she is supportive in my endeavor to find permanent housing by utilizing this existing structure. In this way, I can continue to contribute to the community as a nurse, and as a primary resident. It is my landlord's right to split her lot as she wishes, and I am deeply grateful she is willing to pursue this request with me.*

- The variance is not necessary to provide the applicant reasonable use of the land or building.

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 amount of land that will be a primary dwelling is a perfect amount to make use of existing infrastructure. The dwelling does not require any use of the alleyway/ additional traffic*

- This is the minimum necessary variance. While the exact measurement of the front and rear setbacks isn't currently known, the setbacks will be whatever is existing. Also, the minimum lot sizes will be extremely close to what the applicant projects, with a slight allowance for the possibility that the 7,500 square foot lot as shown on the assessor's website may not be exactly 7,500 square feet.



**Below: The photo shows the existing home and ADU. The white line represents the potential subdivision of the lot should the variance be granted.**



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: *-No alleyway use required by resident of new primary dwelling (current ADU) -Infrastructure is pre-existing.*

- The granting of the variance would not be injurious to the neighbors. The lot directly across the street and the lot directly across the alley have been subdivided in this manner. This proposed lot has even greater setbacks than those lots, and those lots have caused no known injury to the neighborhood.
- Staff has received a letter in support of the variance requests (see attachments).

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: *-This aligns with the Salida Comprehensive plan. -Chaffee Housing needs assessment-this variance creates homeownership, prevents sprawl, and spreads out cost for neighbors.*

- Land Use Code Article IV, Zoning, Section 16-4-10, Purpose of article. States:

"This Article specifies the purpose and intent of zone districts that regulate the type and intensity of land uses within the City. The zone districts have been organized into broad district classifications, these being residential, mixed-use, commercial, and industrial. The incorporated area of the City is divided into zone districts to achieve compatibility of uses and character within each zone district, **guided by the vision of the Salida Comprehensive Plan** and to achieve the purposes of this Land Use Code.

The Zoning Ordinance acknowledges that the purpose of zoning is to be guided by the vision of the Salida Comprehensive Plan. Principles, Policies, and Action items within the Comprehensive Plan state the importance of providing a mix of housing types and densities throughout the city to address a variety of incomes and lifestyles (Policy H-I-1); that Salida will continue to be a city where working people, families, and residents of all generations and income levels can continue to afford to live in the community (Principle H-II); and identifies Action H-II.1.d. – Revise development standards, procedures or fee structures that are barriers to the free market development of affordable housing.

This is an example of a free-market solution to the problem of a lack of attainable, for-sale, workforce housing. The applicant is a local essential worker who strives for homeownership for the stability and equity-building that it provides over renting. The solution they are proposing is in conformance with the Salida Comprehensive Plan and therefore is consistent with the intent of the Land Use Code. To this end, staff recommends the following condition be required at the time of subdivision plat:

- The future subdivision plat shall contain a note stating that neither of these lots shall be allowed a short-term rental license.

**Land Use Code Sec. 16-4-180(f)** The Board, in approving the variance, may impose such restrictions and conditions on such approval, and the premises to be developed or used pursuant to such approval, as it determines are required to prevent or minimize adverse effects from the proposed variance on other land in the neighborhood and on the general health, safety and welfare of the City. All conditions imposed upon any variance shall be set forth in the granting of such variance.

**REVIEW AGENCIES:**

**Public Works Department, David Lady, Director** – 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 preponderance of the above criteria are met.

**RECOMMENDED FINDINGS:**

That the variance request is 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, will not impact adjacent neighbors, and enhances the goals of the City of Salida Comprehensive Plan.

**STAFF RECOMMENDATION:**

Staff believes the proposed variance meets the preponderance of the required criteria, specifically items 1, 2, 5, 6 and 7. Based on the findings below, staff recommends the Board of Adjustment **APPROVE** the variance request with the following findings of fact:

1. Allowing the variance to minimum front and rear setbacks, minimum lot size, and minimum parking requirement for one unit, will not be injurious to the neighborhood.
2. It is the minimum variance necessary to allow for future subdivision of the lot.
3. It is consistent with the intent of the Code because it is consistent with the policies of the Comprehensive Plan.

**RECOMMENDED MOTION: “I make a motion to approve the 649 West Second Street Variance as the request meets the review standards for Zoning Variances, subject to the following conditions:”**

1. That the future subdivision plat shall contain a note requiring that an off-street parking space be provided by the existing primary unit at time of future building permit for the property.
2. The future subdivision plat shall contain a note stating that neither of these lots shall be allowed a short-term rental license.

BECAUSE THIS APPLICATION IS FOR A VARIANCE, THE SALIDA BOARD OF ADJUSTMENT SHALL MAKE THE FINAL DECISION ON THIS APPLICATION. DECISIONS BY THE BOARD SHALL BE FINAL AND MAY NOT BE APPEALED FURTHER EXCEPT IN COURT.

Attachments:

Application materials

Letter of support from neighbor

Proof of publication