



STAFF REPORT

MEETING DATE: July 24, 2023
AGENDA ITEM TITLE: Kuhn Variance Application (Reconsideration)
AGENDA SECTION: Public Hearing

UPDATE ON RECONSIDERATION:

The variance approved at the June 26th Board of Adjustments meeting did not contain a complete record at the time of consideration. A neighbor had sent electronic public comment prior to the hearing. The electronic comment was sent to an email displayed at the top of the Board of Adjustment agenda. Staff was unaware that the email address was defunct, therefore, the comment was never received. For this reason, reconsideration of the variance will preside with a now complete record.

REQUEST:

The purpose of the request is to receive a variance from the minimum side yard setback for an existing accessory building under twelve (12) feet in height. Accessory buildings in the Medium Density Residential (R-2) zone district require a minimum side yard setback of three (3) feet.

The applicant is requesting a minimum allowed side yard setback of 16” on the southwest side of the property for the existing accessory building.

APPLICANT:

The applicants are Adriane & Martin Kuhn, 147 W. 4th Street, Salida, CO 81201.

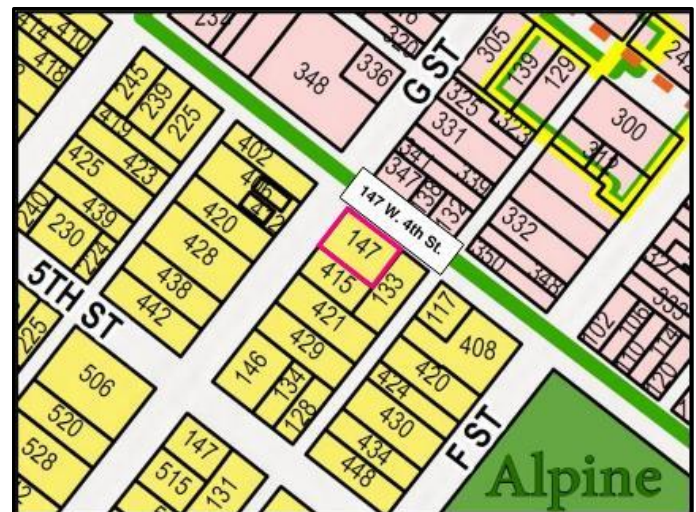
LOCATION:

The property is legally known as Part of Lots 24, 25, & 26, Haskells Addition, 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, 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.

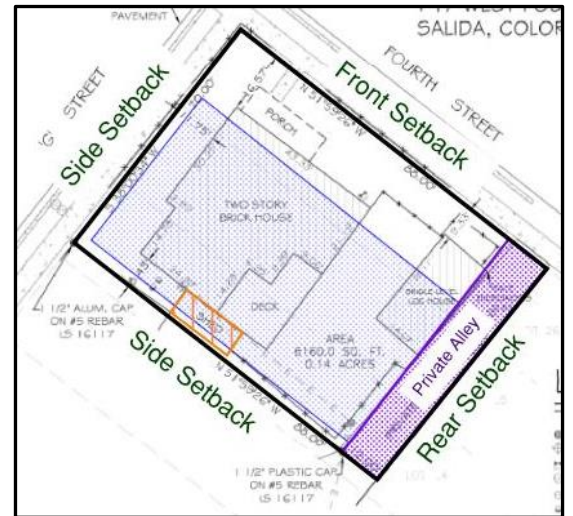


OBSERVATIONS:

1. The subject property is located in the Medium Density Residential (R-2) zone district. Directly across 4th street is the Central Business District (C-2) zone district and Historic Protection Overlay (HPO).

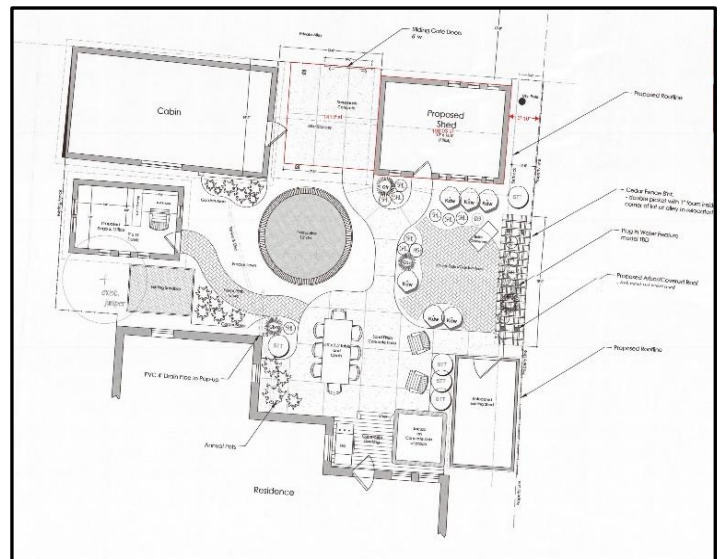
2. The southwesterly 12' portion of the property is a paved driveway (private alleyway easement) for the neighboring property at 415 G Street. The property is constrained by curb and gutter in all other places for on-site parking.

3. The primary building is a nonconforming building that does not meet the current front setback. The accessory building (single level log house) permitted in 1946, according to City documents, does not meet the current front setback. *On a corner lot, the front lot line shall be designated by the location of the primary entrance or front porch. On a corner lot, the owner shall choose which lot line is designated the rear lot line.*



4. A written request in October 2021 was made to the Administrator to construct an 8' fence. The request was granted and in January 2022, the owners permitted and built an 8' fence between their property and the neighboring, 415 G Street, property.

5. On May 16th, 2023, a code violation letter was sent to the owners regarding the accessory building in question. Staff was made aware, by formal grievance in March 2023, that the accessory building was encroaching on the neighboring property in 2016 and the current owners relocated the accessory building entirely on their property in its current location in 2021.



6. The request is to receive relief from the minimum 3' side yard setback for an accessory building. The applicant has relocated the building 16" from the current side yard property line. This does not include building eaves.

7. Staff have received a comment from a neighbor against the variance request. This comment was sent to the Board of Adjustment and Applicants for review prior to this hearing. Comment is attached.



Variance Approval Criteria Section 16-4-180(e): Variances from requirements of this Chapter shall be considered an extraordinary remedy. When considering, reviewing, and deciding on whether to approve a variance application, the Board of Adjustment must find that all the following criteria have been met:

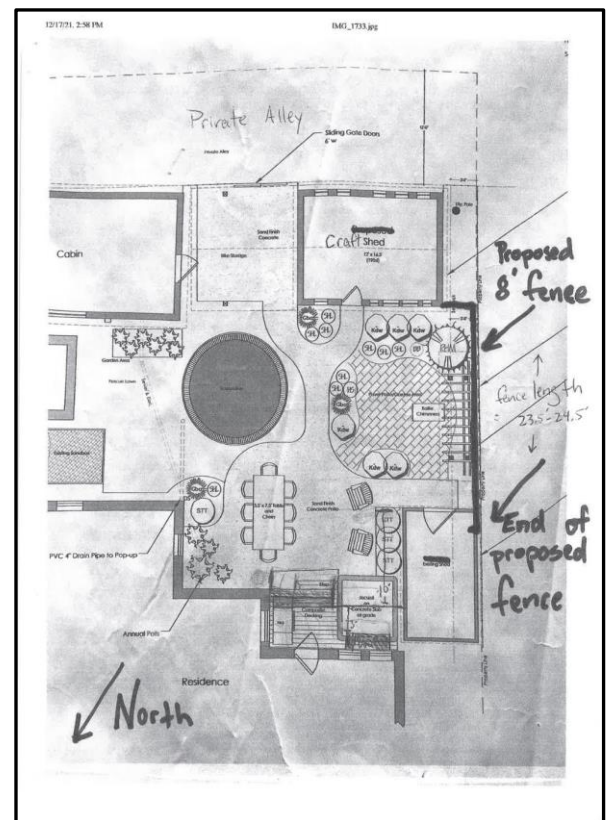
1. Special Circumstances Exist. Strict application of the standards adopted in this Chapter would result in undue hardship or practical difficulties for the owner of such property. Special circumstances include, but are not limited to, exceptional or peculiar limitations to the dimension, shape, or topography of the property, such as slope, standing or moving water, wetlands, floodplain, rock features, narrowness, shallowness or irregular shape of a lot.



Applicant's response:

The special circumstances are:

- *Our house is old, with limited storage. We need the storage space.*
- *Our lot is constrained by an easement for our neighbors.*
- *The shed has been there for many years without complaint.*
- *Our master plan for our backyard space is now complete.*
 - *We were granted multiple permits related to this project and a site plan showing the location of the shed was submitted and approved twice. The fence permit specifically spelled out that the fence was to be attached to this shed.*
 - *Concrete has been poured right up to and adhering to the skirting of the shed on 2 sides.*
 - *A hot tub has been placed next to the shed, according to the site plan, and permitted electrical has been installed on the side of the shed.*
 - *A small deck was just completed this winter that fills up the remaining space between the house and the shed. Custom fencing attached to the shed by permit could not be extended in the same fashion if the shed were removed.*



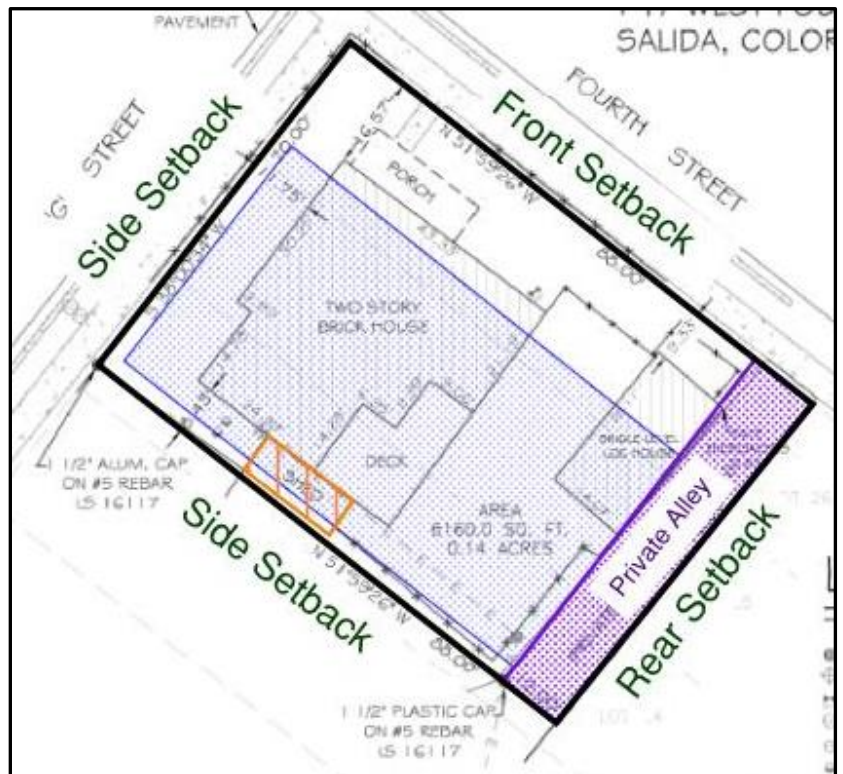
- The existing permitted 8' fence attached to the accessory building was approved by the City on January 4th, 2022. On the site plan, the demarcation of where the 8' fence is affixed to the "Existing Shed" and "Craft Shed" that are off the property line.
- At the time of fence permitting, staff assumed the accessory building was an existing nonconforming building as is the nature of the other buildings on the property. Therefore, we were unaware that this was indeed relocated to its current location a couple of years ago.

- 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.* According to the applicant, the accessory building was encroaching into the neighbor's property at 415 G Street and moved completely onto their property, per the ILC. Relocating the accessory building must meet the standards of the zone district for all permitted and permit exempt buildings.

2. Substantial Detriment. The requested variance would not create a substantial detriment to the public good and would not substantially impair the intent and purpose of this Chapter, this Code or the City's Comprehensive Plan.

Applicant's response: *No impact. The shed has been in about the same location for years and there was a shed with no setback in the same place for years before that. Many other properties in the neighborhoods around downtown have similar sheds with no setbacks, including our neighbors. We now understand that our shed is not considered nonconforming according to the Land Use code. We've learned that it was placed by the prior owner after the setback requirements went into effect. However, we believe allowing the shed to remain where it is satisfies the spirit, though not the letter, of Section 16-4-160 because there has historically been a shed in basically the same location for a long time.*

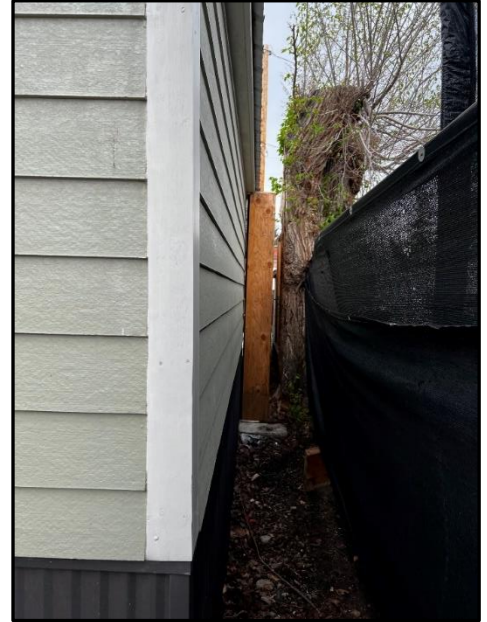
- The applicant had removed the encroachment of the accessory building completely onto their property at the current location.
- The accessory building is behind the primary building, not very visible to the public; if at all.
- The area in blue (image right) describes the buildable area of an accessory building that is under 12' in height, utilizing 3' side yard setbacks in the R-2 zone district. The rear setback is hampered by the 12' private alleyway, which would typically be a 5' rear setback for accessory buildings. The accessory building is highlighted in orange.



3. Adverse Impacts. The requested variance would not result in significantly adverse impacts to the natural environment or to the surrounding properties and neighborhoods.

Applicant's response: *No adverse impacts. The neighbors have expressed a desire for privacy at prior points in time. In addition, they approved our request to build an 8-foot-tall fence along the property line. The shed continues this line of privacy and as you can see in the attached pictures, it is minimally higher than the fence in the required setback area.*

- A formal complaint regarding the location of the accessory building was made by a neighbor. The neighbor advised Staff in March 2023, that the accessory building was about a foot over onto their property and had been moved in 2021. It was moved without regard to the accessory building setbacks creating difficulty for the neighbor to construct a fence in that area.
- The granting of the variance may impact the surrounding properties as it will be in close proximity to the side property line, the applicant may explain that maintaining the accessory building is feasible.



4. Minimum Variance. The granting of the request is the minimum variance necessary for reasonable use of the property or building and the least deviation required from the applicable zoning standard to afford relief.

Applicant's response: *The minimum variance necessary for continued reasonable use is to allow the shed to stay where it is. I am unable to be as precise as I would like by placing a string line along the lot line due to the neighbors' encroaching fence. The shed is approximately 16 inches from the lot line. The setback should be 36 inches. Please grant a variance for a setback of 16 inches and allow the shed to stay where it is.*

- 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. As mentioned by the Building Department Official, "If a permit was required there would have been fire rating of the structure and no projections permitted with the close vicinity of the lot line."
 - Sec. 18-2-10 of the Salida Municipal Code references the adoption of the International Residential Code (IRC) 2015 edition. In IRC 2015 section R105.2 Work Exempt from permit: "One-story detached accessory structures, provided that the floor area does not exceed 200 square feet. Although this work is exempt from permit the IRC states: "Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction."

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:

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

Public Works Department – David Lady – This has no impact on Public Works.

Chaffee County Building Department – Chad Chadwick – See attached 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 the findings whether or not criteria 1 through 4 of the above section are met by the applicant.

POSSIBLE FINDINGS:

Option A: Based on the findings below, the Board of Adjustment may recommend **APPROVAL** of the variance request based on the following findings of fact:

- Special circumstances exist such that strict application of the standards adopted in this Chapter would result in undue hardship or practical difficulties for the owner of such property.
- The requested variance would not create a substantial detriment to the public good and would not substantially impair the intent and purpose of this Chapter, this Code or the City's Comprehensive Plan.
- The requested variance would not result in significantly adverse impacts to the natural environment or to the surrounding properties and neighborhoods.
- The granting of the request is the minimum variance necessary for reasonable use of the property or building and the least deviation required from the applicable zoning standard to afford relief.

Or

Option B: Based on the findings below, the Board of Adjustment may recommend **DENIAL** of the variance requests based on the following findings of fact:

- No special circumstances exist such that strict application of the standards adopted in this Chapter would result in undue hardship or practical difficulties for the owner of such property.
- The requested variance would create a substantial detriment to the public good and would substantially impair the intent and purpose of this Chapter, this Code or the City's Comprehensive Plan.
- The requested variance would result in significantly adverse impacts to the natural environment or to the surrounding properties and neighborhoods.
- The granting of the request is not the minimum variance necessary for reasonable use of the property or building and is not the least deviation required from the applicable zoning standard to afford relief.

RECOMMENDED MOTION #1: "I make a motion to reconsider the Kuhn Variance request."

If Above Motion #1 Passes:

RECOMMENDED MOTION #2 (OPTION A): "I make a motion to approve the Kuhn Variance request as the request meets all of the review criteria for Zoning Variances."

RECOMMENDED MOTION #2 (OPTION B): "I make a motion to deny the Kuhn Variance request as the request does not meet all of the review criteria for Zoning Variances."

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: Proof of Publication
Application materials
Agency reviews
Figure 16-1 Detached Accessory Building Side Lot Line Setback Parameters
Public Comment Letter