



Memorandum

TO: Planning and Environmental Commission

FROM: Community Development Department

DATE: August 12, 2019

SUBJECT: A request for the review of a variance from Section 12-6G-6 Setbacks, Vail Town Code in accordance with the provisions of Section 12-17, Variances, Vail Town Code, to allow for a variance to the required front and side setback for a new deck, located at 4237 Columbine Way, Unit 21/Bighorn Terrace, and setting forth details in regard thereto. (PEC19-0026)

Applicant: Christopher Olsson
Planner: Jonathan Spence

I. SUMMARY

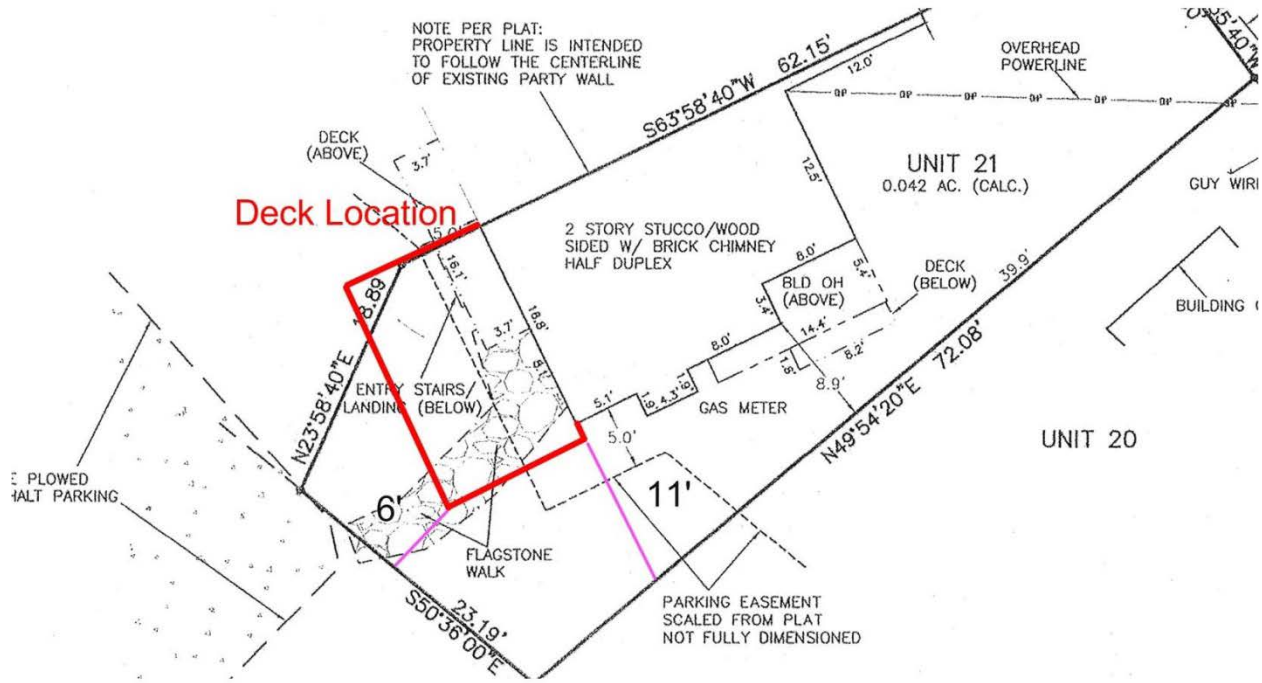
The applicant, Christopher Olsson, is requesting a review of a variance from Section 12-6G-6 Setbacks, Vail Town Code in accordance with the provisions of Section 12-17, Variances, Vail Town Code, to allow for a variance to the required front setback for a new deck, located at 4237 Columbine Way, Unit 21/Bighorn Terrace. The new deck is proposed with a six (6) foot front setback where ten (10) feet is required. Upon analysis, it has been determined that a side setback variance is not required.

Based upon staff's review of the criteria outlined in Section VII of this memorandum and the evidence and testimony presented, the Community Development Department recommends **approval, with a condition**, of this application, subject to the findings noticed in Section VIII of this memorandum.

II. DESCRIPTION OF REQUEST

The applicant, Christopher Olsson, is requesting a review of a variance from Section 12-6G-6 Setbacks, Vail Town Code in accordance with the provisions of Section 12-17, Variances, Vail Town Code, to allow for a variance to the required front setback for a new deck to be constructed approximately 28" above grade. The site plan below illustrates the proposed deck project and the variance request: The proposed deck is located six (6) feet from the southern front property line and eleven (11) feet from the eastern side property line. The Vail Town Code allows decks within five (5) feet of grade

to encroach half way into the required twenty (20) foot setback, resulting in an effective required setback of ten (10) feet.

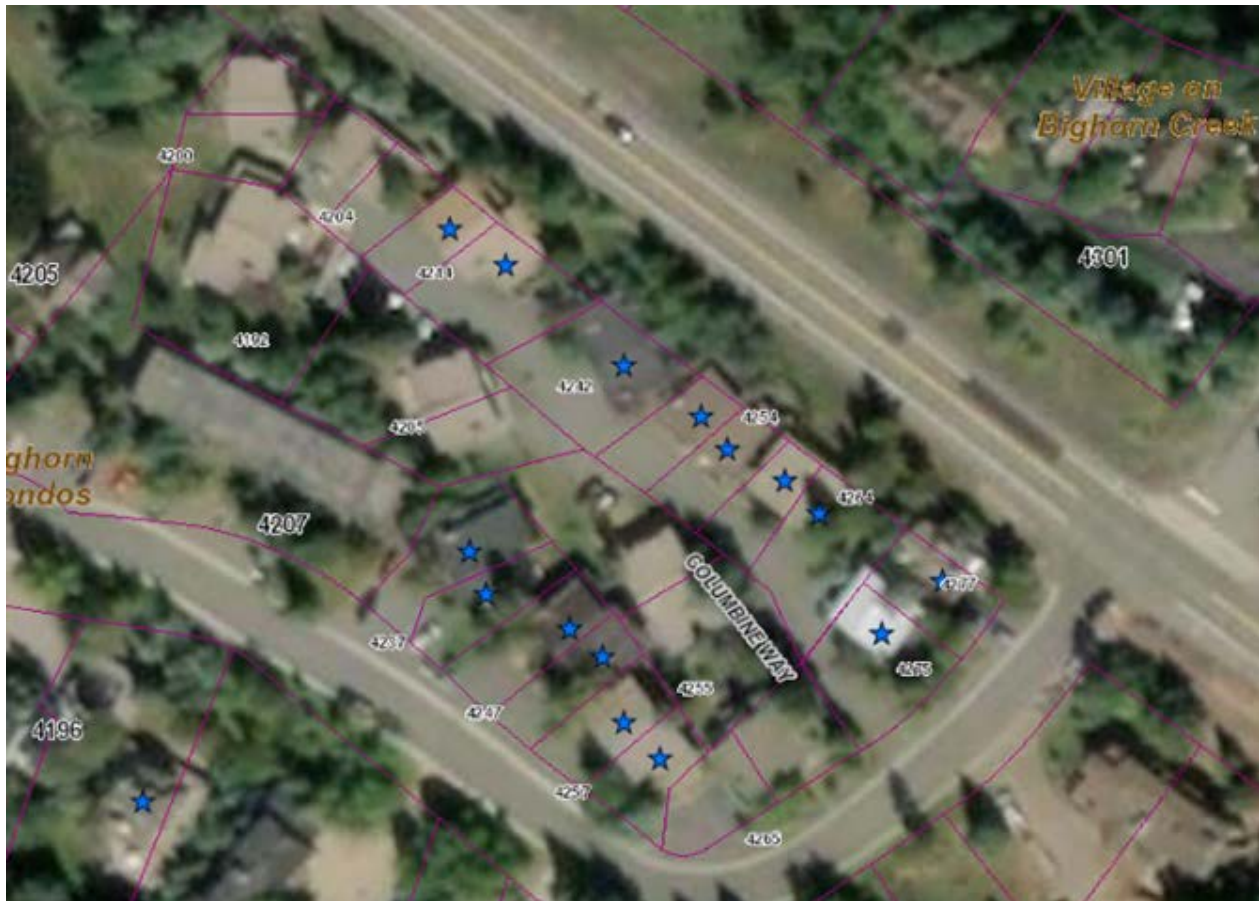


A vicinity map (Attachment A), applicant's narrative (Attachment B), project plan set (Attachments C) and a letter of opposition from Francis and Sharon Casanova (Attachment D) are attached for review.

III. BACKGROUND

The existing residence located at 4237 Columbine Way, #21 was originally constructed under Eagle County jurisdiction in 1967 and later annexed into the Town of Vail in 1974. The existing lot and structure are both non-conforming in regard to numerous provisions of the Town's zoning regulations (a zoning analysis is provided in Section V below). The Planning and Environmental Commission has consistently held that construction of a structure prior to annexation or the adoption of the current zoning regulations may be a basis for granting a variance from the Town's current zoning regulations. The Development Lot, which includes Unit #22, (other half of the duplex) received a setback variance to facilitate a residential addition in 1994.

Several similar setback variance requests have previously been approved within the Bighorn Terrace Subdivision, as shown on the map below (Blue stars indicate approved variances).



The Bighorn Terrace Subdivision was recorded in 1967. This subdivision plat includes an extensive parking easement that encumbers almost every lot in the subdivision, including the subject parcel. Please see the subdivision plat in the project plan set (Attachment C) The proposed deck falls partially within this easement. The Bighorn Mutual Sanitation and Recreation Company (the governing body for the subdivision) chose in 2009 to use as-built surveys and other associated documents to preserve existing paved parking areas as opposed to amending the actual easement. The associated as-built survey is included in the project plan set that demonstrates that the proposed improvements do not impact the preserved parking areas. It should be noted that the Town of Vail is not a party to the parking easement and the easement is solely for the benefit of the residents, not the general public.

IV. APPLICABLE PLANNING DOCUMENTS

Staff finds that the following provisions of the Vail Town Code are relevant to the review of this proposal:

Title 12 – Zoning Regulations, Vail Town Code

Chapter 6, Article G, Medium Density Multiple-Family (MDMF) District (in part)

12-6G-1: PURPOSE:

The medium density multiple-family district is intended to provide sites for multiple-family dwellings at densities to a maximum of eighteen (18) dwelling units per acre, together with such public facilities as may appropriately be located in the same zone district. The medium density multiple-family district is intended to ensure adequate light, air, open space, and other amenities commensurate with multiple-family occupancy, and to maintain the desirable residential qualities of the zone district by establishing appropriate site development standards. Certain nonresidential uses are permitted as conditional uses, and where permitted, are intended to blend harmoniously with the residential character of the zone district. (Ord. 29(2005) § 23: Ord. 37(1980) § 6: Ord. 30(1977) § 5: Ord. 8(1973) § 5.100)

12-6G-2: PERMITTED USES:

The following uses shall be permitted in the MDMF district:

Employee housing units, as further regulated by chapter 13 of this title.

Multiple-family residential dwellings, including attached or row dwellings and condominium dwellings.

Single-family residential dwellings.

Two-family residential dwellings. (Ord. 2(2012) § 6: Ord. 1(2008) § 8)

12-6G-3: CONDITIONAL USES:

The following conditional uses shall be permitted in the MDMF district, subject to issuance of a conditional use permit in accordance with the provisions of chapter 16 of this title:

Bed and breakfasts, as further regulated by section 12-14-18 of this title.

Communications antennas and appurtenant equipment.

Dog kennels.

Funiculars and other similar conveyances.

Home child daycare facilities, as further regulated by section 12-14-12 of this title.

Private clubs and civic, cultural and fraternal organizations.

Public and private schools.

Public buildings, grounds and facilities.

Public park and recreation facilities.

Public utility and public service uses.

Religious institutions.

Ski lifts and tows. (Ord. 2(2016) § 5: Ord. 12(2008) § 8)

12-6G-4: ACCESSORY USES:

The following accessory uses shall be permitted in the MDMF district:

Home occupations, subject to issuance of a home occupation permit in accordance with the provisions of section 12-14-12 of this title.

Private greenhouses, toolsheds, playhouses, attached garages or carports, swimming pools, patios, or recreation facilities customarily incidental to permitted residential uses.

Other uses customarily incidental and accessory to permitted or conditional uses, and necessary for the operation thereof. (Ord. 29(2005) § 23: Ord. 8(1973) § 5.400)

12-6G-5: LOT AREA AND SITE DIMENSIONS:

The minimum lot or site area shall be ten thousand (10,000) square feet of buildable area, and each site shall have a minimum frontage of thirty feet (30'). Each site shall be of a size and shape capable of enclosing a square area eighty feet (80') on each side within its boundaries. (Ord. 12(1978) § 3)

12-6G-6: SETBACKS:

In the MDMF district, the minimum front setback shall be twenty feet (20'), the minimum side setback shall be twenty feet (20'), and the minimum rear setback shall be twenty feet (20'). (Ord. 50(1978) § 2)

12-6G-7: HEIGHT:

For a flat roof or mansard roof, the height of buildings shall not exceed thirty five feet (35'). For a sloping roof, the height of buildings shall not exceed thirty eight feet (38'). (Ord. 37(1980) § 2)

12-6G-8: DENSITY CONTROL:

A. Gross Residential Floor Area: Not more than fifty six (56) square feet of gross residential floor area (GRFA) shall be permitted for each one hundred (100) square feet of buildable site area. Total density shall not exceed eighteen (18) dwelling units per acre of buildable site area.

A dwelling unit in a multiple-family building may include one attached accommodation unit no larger than one-third (1/3) of the total floor area of the dwelling.

B. Exemptions: All projects that have received final design review board approval as of December 19, 1978, shall be exempt from the changes in this section as long as the project commences within one year from the date of final approval. If the project is to be developed in stages, each stage shall be commenced within one year after the completion of the previous stage. (Ord. 14(2004) § 8: Ord. 31(2001) § 5: Ord. 4(1996) § 1: Ord. 16(1991) § 3: Ord. 19(1979) § 5: Ord. 50(1978) § 18)

12-6G-9: SITE COVERAGE:

Site coverage shall not exceed forty five percent (45%) of the total site area. (Ord. 17(1991) § 5: Ord. 8(1973) § 5.507)

12-6G-10: LANDSCAPING AND SITE DEVELOPMENT:

At least thirty percent (30%) of the total site area shall be landscaped. The minimum width and length of any area qualifying as landscaping shall be fifteen feet (15') with a minimum area not less than three hundred (300) square feet. (Ord. 19(1976) § 6: Ord. 8(1973) § 5.509)

12-6G-11: PARKING:

Off street parking shall be provided in accordance with chapter 10 of this title. At least one-half (1/2) of the required parking shall be located within the main building or buildings and hidden from public view or shall be completely hidden from public view from adjoining properties within a landscaped berm. No parking or loading area shall be located in any required front setback area. (Ord. 19(1976) § 6: Ord. 8(1973) § 5.510)

Chapter 12-17, Variances (in part)

12-17-1: PURPOSE:

A. Reasons For Seeking Variance: In order to prevent or to lessen such practical difficulties and unnecessary physical hardships inconsistent with the objectives of this title as would result from strict or literal interpretation and enforcement, variances from certain regulations may be granted. A practical difficulty or unnecessary physical hardship may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from topographic or physical conditions on the site or in the immediate vicinity; or from other physical limitations, street locations or conditions in the immediate vicinity. Cost or inconvenience to the applicant of strict or literal compliance with a regulation shall not be a reason for granting a variance.

- B. Development Standards Excepted: Variances may be granted only with respect to the development standards prescribed for each zone district, including lot area and site dimensions, setbacks, distances between buildings, height, density control, building bulk control, site coverage, usable open space, landscaping and site development, and parking and loading requirements; or with respect to the provisions of chapter 11 of this title, governing physical development on a site.*
- C. Use Regulations Not Affected: The power to grant variances does not extend to the use regulations prescribed for each zone district because the flexibility necessary to avoid results inconsistent with the objectives of this title is provided by chapter 16, "Conditional Use Permits", and by section 12-3-7, "Amendment", of this title.*

12-17-6: CRITERIA AND FINDINGS:

- A. Factors Enumerated: Before acting on a variance application, the planning and environmental commission shall consider the following factors with respect to the requested variance:*
- 1. The relationship of the requested variance to other existing or potential uses and structures in the vicinity.*
 - 2. The degree to which relief from the strict or literal interpretation and enforcement of a specified regulation is necessary to achieve compatibility and uniformity of treatment among sites in the vicinity, or to attain the objectives of this title without grant of special privilege.*
 - 3. The effect of the requested variance on light and air, distribution of population, transportation and traffic facilities, public facilities and utilities, and public safety.*
 - 4. Such other factors and criteria as the commission deems applicable to the proposed variance.*
- B. Necessary Findings: The planning and environmental commission shall make the following findings before granting a variance:*
- 1. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone district.*
 - 2. That the granting of the variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.*

3. *That the variance is warranted for one or more of the following reasons:*
- a. *The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this title.*
 - b. *There are exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not generally apply to other properties in the same zone district.*
 - c. *The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone district.*

V. ZONING AND SITE ANALYSIS

Address: 4237 Columbine Way

Legal Description: Bighorn Terrace Unit #21

Zoning: Medium Density Multiple-Family (MDMF)

Land Use Plan Designation: Medium Density Residential

Current Land Use: Residential

Geological Hazards: None

Development Lot: Unit #21 and #22 (Duplex)

| Standard | Allowed / Required MDMF | Existing | Proposed |
|-----------------|---|--|---|
| Site Area | Min. 10,000 sq. ft. | 4,576 sq. ft. | No Change |
| Setbacks | Front – 20' Side – 20' Rear – 20' | Front – 17" Side(W) – 15' Side(E) – 8.9' Rear – 18' | Front – 6'(New construction) Side(W) – 15' Side(E) – 11"(New construction) Rear – 18' |
| Height | Flat or Mansard Roof – 35' Sloping Roof – 38' | Sloping Roof – <35" | No Change |
| Density | 18 DUs/ per acre of buildable site area, or 1.89 units on a .105 acre parcel. | 2 DUs | No change |
| GRFA | Max. 56/100 Buildable Site Area or 2,562 sq. ft. * | Unknown | No Change |
| Site Coverage | Max. 45% of site area or 2,059 sq. ft. | 1,312sq. ft. | No Change |
| Parking/Loading | ≤2,000 GRFA=2 spaces | 2 Required | 2 spaces |
| Landscaping | Min. 30% of site area or 1,373 sq. ft. | 65% (2,979 sq. ft.) | 60% (2,770 sq. ft.) |

The proposal seeks variance relief from the required ten (10) foot front deck setback.

VI. SURROUNDING LAND USES AND ZONING

| | <u>Existing Land Use:</u> | <u>Zoning District:</u> |
|--------|---------------------------|---------------------------------------|
| North: | Residential | Medium Density Multiple-family (MDMF) |
| South: | Residential | Two-family Residential (R) |
| East: | Residential | Medium Density Multiple-family (MDMF) |
| West: | Residential | Medium Density Multiple-family (MDMF) |

VII. REVIEW CRITERIA

The review criteria for a variance request are prescribed in Title 12, Chapter 17, Variances, Vail Town Code.

1. The relationship of the requested variance to other existing or potential uses and structures in the vicinity.

This proposed ground level deck is for an existing residence originally constructed in 1967. Both the existing lot and the existing residence are non-conforming in regard to several the provisions of the Town's zoning regulations. The Planning and Environmental Commission has consistently held that construction of a structure prior to annexation or the adoption of the current zoning regulations may be a basis for granting a variance from the Town's current zoning regulations.

Staff believes the applicant is proposing to upgrade an existing non-conforming site in a manner that is in keeping with the general character and architectural style of the neighborhood. Staff does not believe this proposal will have any significant negative impacts on nearby existing or potential uses and structures in comparison to the existing conditions. The proposed five foot (6') south front setback is consistent with other homes in the vicinity.

Therefore, Staff finds this proposal will not negatively affect the other existing or potential uses and structures in the vicinity in comparison to existing conditions.

Staff finds the proposed variance meets this criterion.

2. The degree to which relief from the strict or literal interpretation and enforcement of a specified regulation is necessary to achieve compatibility and uniformity of treatment among sites in the vicinity, or to attain the objectives of this title without grant of special privilege.

Staff believes the applicant has proposed the minimum necessary amount of deviation from the setback requirements to facilitate the construction of a functional (209 square foot) ground level deck.

The proposed deck will improve the functionality and value of the home, an upgrade supported by Land Use Plan Goal 1.3.¹ Staff believes the proposed variances are consistent with the goals of the Town of Vail Land Use Plan and purposes of the Medium Density Multiple-Family (MDMF) District as identified in Section IV of this memorandum.

Staff finds the proposed variance meets this criterion.

3. The effect of the requested variance on light and air, distribution of population, transportation and traffic facilities, public facilities and utilities, and public safety.

The proposed variance will facilitate the construction of a ground level deck that will not alter population; will not affect any existing transportation or traffic facilities, public facilities, or utilities; and will not affect public safety in comparison to existing conditions.

Therefore, Staff finds the proposed variance conforms to this criterion.

4. Such other factors and criteria as the commission deems applicable to the proposed variance.

VIII. STAFF RECOMMENDATION

Based upon the review of the criteria outlined in Section VII of this memorandum and the evidence and testimony presented, the Community Development Department recommends the Planning and Environmental Commission **approve, with a condition**, a variance from Section 12-6G-6 Setbacks, Vail Town Code in accordance with the provisions of Section 12-17, Variances, Vail Town Code, to allow for a variance to the required front setback for a new deck, located at 4237 Columbine Way, Unit 21/Bighorn Terrace, and setting forth details in regard thereto.

Should the Planning and Environmental Commission choose to **approve, with a condition**, this variance request, the Community Development Department recommends the Commission pass the following **motion**:

"The Planning and Environmental Commission approves the applicant's request for a variance from Section 12-6G-6 Setbacks, Vail Town Code in accordance with the provisions of Section 12-17, Variances, Vail Town Code, to allow for a variance to the required front setback for a new deck, located at 4237 Columbine Way, Unit 21/Bighorn Terrace, and setting forth details in regard thereto."

¹ Town of Vail. (n.d.). *Land Use Plan* (p. 4). "The quality of development should be maintained and upgraded whenever possible."

Should the Planning and Environmental Commission choose to **approve, with a condition**, this variance request, the Community Development Department recommends the Commission applies the following **condition**:

1. *“Approval of this variance is contingent upon the applicant obtaining Town of Vail design review approval for this proposal.*

Should the Planning and Environmental Commission choose to **approve, with a condition**, this variance, the Community Development Department recommends the Commission make the following **findings**:

“Based upon the review of the criteria outlined in Section VII of the staff memorandum to the Planning and Environmental Commission dated August 12, 2019, and the evidence and testimony presented, the Planning and Environmental Commission finds:

1. *The granting of this variance will not constitute a granting of special privilege inconsistent with the limitations on other properties classified in the Medium Density Multiple-Family (MDMF) District;*
2. *The granting of these variances will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity; and*
3. *These variances are warranted for the following reasons:*
 - a. *The strict literal interpretation or enforcement of the specified regulation will result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of Title 12, Zoning Regulations, Vail Town Code;*
 - b. *There are exceptions or extraordinary circumstances or conditions applicable to the same site of the variance that do not apply generally to other properties in the Medium Density Multiple-Family (MDMF) District.; and*
 - c. *The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the Medium Density Multiple-Family (MDMF) District.”*

IX. ATTACHMENTS

- A. Vicinity Map
- B. Applicant’s Narrative
- C. Project Plan Set

D. Letter of Opposition from Francis and Sharon Casanova, August 2, 2019