



## Memorandum

TO: Planning and Environmental Commission

FROM: Community Development Department

DATE: August 26, 2019

SUBJECT: A request for review of a variance from Section 14-6-7, Retaining Walls, Vail Town Code, pursuant to Title 12 Chapter 17, Variances, Vail Town Code, to allow for a retaining wall in excess of six (6) feet tall at the Town of Vail Public Works facility located at 1289 Elkhorn Drive/Unplatted, and setting forth details in regard thereto. (PEC19-0041)

Applicant: Town of Vail  
Planner: Chris Neubecker

### I. SUMMARY

The Town of Vail is requesting a variance for the construction of a retaining wall in excess of six (6) feet at the rear of the Public Works site located at 1289 Elkhorn Drive/Unplatted. The request is for a retaining wall of up to twenty-two (22) feet tall.

The retaining wall will facilitate an expanded use area of approximately 36,500 square feet (0.84 acres) of additional flat development area to provide for future storage needs, and which will also provide for temporary storage of equipment and vehicles during construction of the Streets Department building.

### II. DESCRIPTION OF REQUEST

The applicant is requesting the review and approval of a variance for:

- Constructing a new retaining wall up to twenty-two (22) feet tall, which will facilitate expanded storage space for busses and special event equipment

The proposed retaining wall is at the rear of the bus barn and Streets Department building. The retaining wall will allow the Public Works Department to use a space that is currently not accessible to vehicles due to a steep slope at the rear of the building. The retaining wall was anticipated in the recently approved Public Works Master Plan approved in April 2019.

### III. BACKGROUND

In April 2019 the Town of Vail received approval for the Public Works Master Plan. The Master Plan provides a summary of the immediate needs and the long term use of the Public Works site within the Town of Vail. The Plan provides a roadmap to guide future development of the site, while helping the Town to understand the possible costs and impacts of future development, and allowing for flexibility in implementation of the Master Plan. The Master Plan identifies the need for additional outdoor storage for special events, bulk storage and an impound lot at the rear of the existing Streets Department building and Bus Barns.

The timeframe for the Master Plan is 20 years. The proposed Streets Department building and retaining wall are the first projects that will help to implement the Plan.

### IV. APPLICABLE PLANNING DOCUMENTS

#### Title 12, Zoning Regulations, Vail Town Code (in part)

##### 12-1-2: PURPOSE:

*A. General: These regulations are enacted for the purpose of promoting the health, safety, morals, and general welfare of the town, and to promote the coordinated and harmonious development of the town in a manner that will conserve and enhance its natural environment and its established character as a resort and residential community of high quality.*

*B. Specific: These regulations are intended to achieve the following more specific purposes:*

- 1. To provide for adequate light, air, sanitation, drainage, and public facilities.*
- 2. To secure safety from fire, panic, flood, avalanche, accumulation of snow, and other dangerous conditions.*
- 3. To promote safe and efficient pedestrian and vehicular traffic circulation and to lessen congestion in the streets.*
- 4. To promote adequate and appropriately located off street parking and loading facilities.*
- 5. To conserve and maintain established community qualities and economic values.*
- 6. To encourage a harmonious, convenient, workable relationship among land uses, consistent with municipal development objectives.*
- 7. To prevent excessive population densities and overcrowding of the land with structures.*
- 8. To safeguard and enhance the appearance of the town.*
- 9. To conserve and protect wildlife, streams, woods, hillsides, and other desirable natural features.*

10. *To assure adequate open space, recreation opportunities, and other amenities and facilities conducive to desired living quarters.*
11. *To otherwise provide for the growth of an orderly and viable community. (Ord. 8(1973) § 1.100)*

**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. (Ord. 29(2005) § 39: Ord. 8(1973) § 19.100)*

**12-17-5: PLANNING AND ENVIRONMENTAL COMMISSION ACTION:**

*Within twenty (20) days of the closing of a public hearing on a variance application, the planning and environmental commission shall act on the application. The commission may approve the application as submitted or may approve the application subject to such modifications or conditions as it deems necessary to accomplish the purposes of this title, or the commission may deny the application. A variance may be revocable, may be granted for a limited time period, or may be granted subject to such other conditions as the commission may prescribe. (Ord. 29(2005) § 39: Ord. 8(1973) § 19.500)*

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 apply generally 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. (Ord. 29(2005) § 39: Ord. 8(1973) § 19.600)*

Title 14, Zoning Regulations, Vail Town Code (in part)

**Title 14 – Development Standards, Vail Town Code**

**14-1-1: PURPOSE AND INTENT:**

*It is the purpose of these rules, regulations, and standards to ensure the general health, safety, and welfare of the community. These rules, regulations, and standards are intended to ensure safe and efficient development within the town of Vail for pedestrians, vehicular traffic, emergency response traffic, and the community at large. The development standards will help protect property values, ensure the aesthetic quality of the community and ensure adequate development of property within the town of Vail. (Ord. 29(2005) § 78)*

**14-1-5: VARIANCES:**

*Variances to the development standards may be allowed when practical difficulties and unnecessary physical hardships inconsistent with the purpose and intent of the development standards exist. Variances from the development standards shall be in accordance with title 12, chapter 17 of this code. The issuance of a variance shall not compromise the safety of a site or structure. (Ord. 29(2005) § 78)*

**14-6-7: RETAINING WALLS:**

*A. General: All retaining walls are reviewed by the design review board or the administrator to determine compatibility to the existing topography and the materials in use. **Retaining walls shall not exceed an exposed face height of six feet (6').** Within a front setback, retaining walls shall not exceed an exposed face height of three feet (3'), unless related to access to a structure constructed on excessive slopes (in excess of 30 percent). Retaining walls associated with a street located within a public right of way or access to an underground covered parking structure are exempt from these height limits, but must be approved by the design review board.*

*Retaining walls shall be located a minimum of two feet (2') from adjacent private property boundaries and should be ten feet (10') from the edge of a public street unless otherwise approved by the town engineer.*

*All retaining walls over four feet (4') in height, measured from the bottom of a footing to the top of wall as per the adopted town of Vail building code, shall be engineered and stamped by a licensed Colorado professional engineer (PE stamp) except in the right of way, where retaining walls over three feet (3') in height, measured in the same manner, shall require a PE stamp.*

*All retaining walls requiring a PE stamp shall be required to have submitted and approved, prior to building permit release, engineered stamped plans, profiles, sections, details, and engineering analyses and calculations for each wall type as required by the town engineer. At a minimum, unless otherwise directed, the engineering submittal shall include PE stamped plans, and PE stamped typical details with all engineering design parameters and calculated factor of safety provided on the details. Plans and details shall be cross referenced.*

*B. Boulder Retaining Walls: Boulder retaining walls shall comply with all the standards of subsection A of this section. The height listed for retaining walls is the exposed height of either a single or combined height of combination walls. If the batter (slope of the face of the wall) is greater than one to one (1:1), a PE stamp is required.*

*C. Combination Retaining Walls: A retaining wall should be considered a combination wall if the upper wall falls within a prism defined as starting one foot (1') behind the face of the lower wall at the lowest finished grade line and then back at a 1.5:1 angle from this starting point. The minimum bench of combination retaining walls shall be four feet (4'). All combination retaining walls shall have a PE stamp. (Ord. 14(2006) § 6: Ord. 29(2005) § 80: Ord., 9-21-1999)*

## **V. ZONING ANALYSIS**

Address:	1289 Elkhorn Dr.
Legal Description:	Unplatted
Lot Area:	17.32 acres / (754,459 sq. ft.)
Zoning:	General Use (GU)
Land Use Designation:	Public / Semi-Public

## **VI. SURROUNDING LAND USES AND ZONING**

	<u>Land Use</u>	<u>Zoning</u>
North:	USFS	None
South:	I-70	None
East:	USFS	None
West:	Open Space	Agricultural and Open Space

## **VII. REVIEW CRITERIA – VARIANCE**

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

The requested variance will have no impacts on other existing or potential uses or structures in the vicinity. The requested retaining wall will be located at the rear of the Public Works site, behind the existing and proposed buildings. There are no

nearby residential or commercial uses, and the location of the wall cannot be seen from the interstate or from the S. Frontage Road.

Staff finds that the proposed variance **conforms** to this criterion.

**2. The degree to which relief from the strict and 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 a grant of special privilege.**

The proposed retaining wall is necessary to attain the objectives of this title without a grant of special privilege. Specifically, one retaining wall of up to 22' tall is necessary to reduce the site disturbance in order to reduce the impact on bighorn sheep winter range. The objective and purpose of Title 12 includes *"to promote the coordinated and harmonious development of the town in a manner that will conserve and enhance its natural environment and its established character as a resort and residential community of high quality."* By installing one retaining wall, the applicant is able to reduce the loss of sheep habitat and conserve and enhance the natural environment. Stepping the retaining wall would result in more site disturbance and greater loss of habitat. In addition, the retaining wall and additional storage created will help achieve the following specific purposes of Section 12-1-2, Purpose:

1. *To provide for adequate light, air, sanitation, drainage, **and public facilities.***
2. *To secure safety from fire, panic, flood, avalanche, **accumulation of snow,** and other dangerous conditions.*
9. *To conserve and protect wildlife, streams, woods, **hillsides,** and other desirable **natural features.***

Staff finds that the proposed variance **conforms** to 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 not impact light and air, distribution of population, or public safety. The proposal will have a positive effect on public facilities and utilities, since the wall will facilitate future development, including future solar panels above the wall, and will improve the ability to provide storage at Public Works. The retaining walls will improve vehicular circulation, and will allow the Town of Vail to improve overall service to the community, including snow removal services.

Staff finds that the proposed variance **conforms** to this criterion.

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

## VIII. ENVIRONMENTAL IMPACTS

The administrator has waived the requirement for an environmental impact report (EIR) for this phase of the Public Works site; however, an EIR may be required for future phases of development. An Environmental Impact Report (EIR) is not required by the Vail Town Code until plans are submitted for design review. An EIR may be required in the future when the utility grade solar panels are installed above the retaining wall.

The site is currently used for Public Works functions, and the retaining wall will help the Town staff operate more efficiently while minimizing the loss of bighorn sheep habitat. The proposed retaining wall design will result in the removal of 36,500 square feet of previously disturbed land which may be used by sheep for foraging. The proposed wall design results in about 19,000 square feet less disturbance than if the retaining wall were stepped back into the hillside.

## IX. STAFF RECOMMENDATION

The Community Development Department finds that the application meets the required criteria in Section 12-17-6, Criteria; Findings, Vail Town Code, and we recommend the Town of Vail Planning and Environmental Commission **approve** this application.

### Motion:

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

*“The Planning and Environmental Commission approves the applicant’s request for a variance from Section 14-6-7, Retaining Walls, Vail Town Code, pursuant to Title 12 Chapter 17, Variances, Vail Town Code, to allow for a retaining wall in excess of six (6) feet tall at the Town of Vail Public Works facility located at 1289 Elkhorn Drive/Unplatted, and setting forth details in regard thereto. (PEC19-0041)”*

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

### Findings:

*“Based upon the review of the criteria outlined in Section VII of the staff memorandum to the Planning and Environmental Commission dated August 26, 2019, and the evidence and testimony presented, the Planning and Environmental Commission finds:*



1. *The granting of this variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the General Use (GU) 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. *This variance is warranted for the following reasons:*
  - b. There are exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the General Use (GU) District.”*

## **X. ATTACHMENTS**

- A. Vicinity Map
- B. Applicant Narrative
- C. Development Plans from Victor Mark Donaldson Architects, July 25, 2019
- D. Site Photos
- E. Geologic Hazards Report, H-P Kumar, November 6, 2018