



CITY OF ELKO

Planning Department

Website: www.elkocitynv.gov
Email: planning@elkocitynv.gov

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a regular session on Tuesday, March 3, 2020 in the Council Chambers at Elko City Hall, 1751 College Avenue, Elko, Nevada, and beginning at 5:30 P.M., P.S.T.

Attached with this notice is the agenda for said meeting of the Commission. In accordance with NRS 241.020, the public notice and agenda were posted on the City of Elko Website at <http://www.elkocitynv.gov/>, the State of Nevada's Public Notice Website at <https://notice.nv.gov>, and in the following locations:

ELKO COUNTY COURTHOUSE – 571 Idaho Street, Street, Elko, NV 89801

Date/Time Posted: February 26, 2020 2:10 p.m.

ELKO COUNTY LIBRARY – 720 Court Street, Elko, NV 89801

Date/Time Posted: February 26, 2020 2:05 p.m.

ELKO POLICE DEPARTMENT – 1448 Silver Street, Elko NV 89801

Date/Time Posted: February 26, 2020 2:15 p.m.

ELKO CITY HALL – 1751 College Avenue, Elko, NV 89801

Date/Time Posted: February 26, 2020 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician
Name Title

Shelby Archuleta
Signature

The public may contact Shelby Archuleta by phone at (775) 777-7160 or by email at sarchuleta@elkocitynv.gov to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV.

Dated this 26th day of February, 2020.

NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the City of Elko Planning Department, 1751 College Avenue, Elko, Nevada, 89801 or by calling (775) 777-7160.

Cathy Laughlin
Cathy Laughlin, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.S.T., TUESDAY, MARCH 3, 2020
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

The Agenda for this meeting of the Elko City Planning Commission has been properly posted for this date and time in accordance with NRS requirements.

ROLL CALL

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

APPROVAL OF MINUTES

February 4, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action on Variance No. 1-20, filed by Bailey & Associates, LLC, for a reduction of the required exterior side yard setback from 15' to 12' for the development of a duplex in an R (Single-Family and Multi-Family) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the south corner of the intersection of 8th Street and Elm Street. (APN 001-066-005)

II. REPORTS

- A. Summary of City Council Actions.
- B. Summary of Redevelopment Agency Actions.
- C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

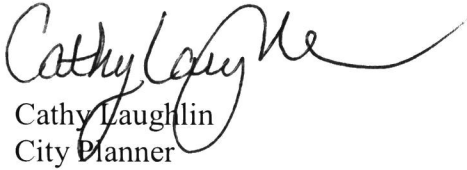
COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

NOTE: The Chairman or Vice Chairman reserves the right to change the order of the agenda and if the agenda is not completed, to recess the meeting and continue on another specified date and time. Additionally, the Planning Commission reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

ADJOURNMENT

Respectfully submitted,


Cathy Laughlin
City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 P.M., P.S.T., TUESDAY, FEBRUARY 4, 2020
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

Jeff Dalling, Chairman of the City of Elko Planning Commission, called the meeting to order at 5:30 p.m.

ROLL CALL

Present: Evi Buell
 Giovanni Puccinelli
 Jeff Dalling
 John Anderson
 Stefan Beck
 Tera Hooiman
 Gratton Miller (*arrived at 5:39 p.m.*)

City Staff Present: Scott Wilkinson, Assistant City Manager
 Cathy Laughlin, City Planner
 Michele Rambo, Development Manager
 Bob Thibault, Civil Engineer
 Matthew Griego, Fire Chief
 Shelby Archuleta, Planning Commissioner

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

January 7, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion:** Approve the January 7, 2020 Planning Commission Meeting Minutes as presented.

Moved by Evi Buell, Seconded by Tera Hooiman.

**Motion passed unanimously. (6-0)*

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action of Conditional Use Permit No. 12-19, filed by Koinonia Development, LP which would allow for a townhome development within a CT (Commercial Transitional) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the south side of N. 5th Street, across from Mary Way. (APNs 001-610-096, 001-610-097, 001-610-098, 001-610-099)

Cathy Laughlin, City Planner, went over the City of Elko Staff Report dated January 7, 2020. Staff recommended approval with the findings and conditions listed in the staff report.

Commissioner Gratton Miller arrived at 5:39 p.m.

Michele Rambo, Development Manager, had no comments.

Bob Thibault, Civil Engineer, recommended approval as presented by staff.

Matt Griego, Fire Chief, had no concerns.

Scott Wilkinson, Assistant City Manager, had no comments or concerns.

*****Motion: Conditionally approve Conditional Use Permit No. 12-19 subject to the conditions in the City of Elko Staff Report dated January 7, 2020, listed as follows:**

1. The CUP 12-19 shall be personal to the permittee and applicable only to the submitted application conforming to the exhibits as presented.
2. Landscaping shall be installed and not obstruct the view of oncoming traffic at the intersections. Home Owner's Association is to provide such maintenance and care as is required to obtain the effect intended by the original landscape plan for the development.
3. CUP 12-19 to be recorded with the Elko County Recorder within 90 days after commencement of work.
4. The permit shall be personal to the permittee, Koinonia Development, LP and applicable only to the specific use of multiple family residential and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
5. Guest parking to be for guest vehicles only, no RV parking allowed on site.
6. All parking lot lighting is to be shielded or cut-off design.
7. An illumination schedule is required to ensure lighting is adequate for safety with minimal impact to adjacent properties.

8. There shall not be any placement of any mail gang boxes or kiosks in association with this complex placed in the city's right of way and shall remain internal to the complex
9. The exterior of the building shall be compatible with surrounding areas and shall be similar to what is presented in the application.
10. The common areas are to be maintained in an acceptable manner at all times.

Commissioner Buell's findings to support the motion were the proposed development is in conformance with the Land Use Component of the Master Plan. The proposed development is in conformance with the existing transportation infrastructure and the Transportation Component of the Master Plan. The site is suitable for the proposed use. The proposed development is in conformance with the City Wellhead Protection Program. The proposed use is in conformance with City Code 2-2-9 (B) CT Commercial Transitional Zoning District and meets the required setbacks. The proposed development is in conformance with 3-2-3, 3-2-4, 3-2-17, 3-2-18, and 3-8 of the Elko City Code.

Moved by Evi Buell, Seconded by Tera Hooiman.

**Motion passed unanimously. (7-0)*

2. Review and consideration of Tentative Map No. 14-19, filed by Koinonia Development, LP, for the development of a subdivision entitled Mountain View Town Homes involving the proposed division of approximately 3.24 acres of property into 44 lots for residential development and 1 common lot within the CT (Commercial Transitional) Zoning District, in conjunction with a conditional use permit application, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the south side of N. 5th Street, across from Mary Way. (APNs 001-610-096, 001-610-097, 001-610-098, 001-610-099)

Ms. Rambo went through the City of Elko Staff Report dated January 16, 2020. Staff recommended conditional approval with the conditions and findings listed in the staff report. Ms. Rambo requested a modification be made to Condition No. 15, to add "or acquire the property needed to create the slope."

Mr. Wilkinson clarified that that condition must be satisfied before City Council consideration of the Tentative Plat. The project is proposing an encroachment onto someone else's property.

Ms. Rambo suggested adding "prior to City Council consideration of the Tentative Map" to Condition No. 15.

Ms. Laughlin recommended conditional approval as stated in the Staff Report.

Mr. Thibault recommended conditional approval. He had one additional condition, which was to provide a streetlight at the mailbox location.

Chief Griego had no concerns.

Mr. Wilkinson recommended approval as presented by staff.

Tom Ballew, High Desert Engineering, 640 Idaho Street, explained that he had received a correction letter some time ago and the streetlight was included on the letter. They added a streetlight by the mailbox after receiving the correction letter and provided the City with revised plans. Mr. Ballew wanted to visit about Condition No. 15 for a minute. He didn't want to spend a lot of time on it, or delay the process. He explained that when they initially talked to the City about grading on the park property. The property looks pretty poor; it's very poorly graded. They proposed going out on the property and cleaning it up, making it right, and seeding it. At that point, Mr. Ballew thought everyone agreed that that would be done using a Permit to Construct, or a condition on the Final Map, and would be included in the public improvement costs. When he received the note about the easement, he questioned the easement. He didn't know why they would want to put an easement there in order to do that work. He would understand a permit to construct. He added that he didn't know anything about the addition that Ms. Rambo just added. He asked that the Commission allow, between now and City Council consideration, them to have some time with staff to talk about that condition more.

Mr. Thibault said they could work through that. He explained that his intention on the condition that they seek an easement was that they work through this process with the City and make application for an easement. Mr. Thibault didn't know if that would be supported by staff, or approved by Council. The City has already sold them some land. During the Stage 1 meeting, there was some discussion about grading and to make sure the land is adequate to include all the grading. There may be other ways to work through it. Mr. Thibault didn't see why they couldn't leave it up to staff and the developer to work that out.

Mr. Wilkinson explained that this was City property, but if you assumed it was owed by someone else, you don't have the right to use someone else's property. What we have is an encroachment into property. There was lengthy discussion about the developer being sure that what they purchased would accommodate their project. There is quite a bit of fill that is proposed. It is buttressing the fill up at the property line. It needs to be protected by an easement. Staff has no authority to say you can use City owned property, the City Council makes those decisions. Whether or not it make sense that there is an easement granted for a permanent slope to protect the construction of the project, or if they acquire additional property to accommodate their proposed development. Mr. Wilkinson thought those were good options. They could also consider other options on their own eliminating the grading with the use of a retaining wall, or something like that. He thought it was an appropriate condition, and believed that the issue needed to be addressed before the City Council considered an approval of an encroachment of a project onto anyone else's property.

Mr. Ballew said he didn't disagree that they had to have permission to get on the property to do the work. The decision to purchase additional property was made based on conversations with staff that said they did not have to purchase the additional property, and that they could use some sort of a license, or a permit, to do the grading on that property. They were never told that they had to buy the property. He asked that they get to have an opportunity to visit the issue between now and City Council consideration.

Mr. Thibault thought any mechanism that would allow them to do this work on City property would take City Council approval. He thought that should be address at a Council meeting prior to them hearing the Tentative Map. He thought the best way to handle it was that Staff and the developer could work through different options and present something to Council prior to presenting the Tentative Map to Council.

Mr. Wilkinson couldn't think of any other options, other than granting an easement. A revocable license isn't appropriate for this type of use. They are proposing a lot of fill to buttress the project where the parking area will be. The way to preserve that, at a minimum, is to grant an easement approved by the City Council. He didn't see a way around that issue. He thought it was a way to protect the project. He asked how deep the fill was going to be.

Mr. Ballew said there would be some fill there.

Mr. Wilkinson thought there should be a slope easement of record.

Mr. Ballew said they wanted to do what they needed to do, but he didn't want to hold up the process. He said if they had been advised that that was what they needed to do they would have done it by now, but he wasn't aware of the condition until yesterday when he received the Staff Report.

Chairman Jeff Dalling asked how they moved forward without a concrete plan. He asked if they could pass it as a condition that City Council approves it.

Mr. Wilkinson said it would take a little bit of time. They would need a legal description for the easement and get a grant written up. They could have both items on the same council meeting. Mr. Wilkinson didn't think it was appropriate to present a project, recommend approval by the City Council, which shows an encroachment onto someone else's property without that issue being addressed.

Chairman Dalling asked why this was coming up now.

Mr. Wilkinson wasn't sure that this was presented to the extent that it is to City Staff when it was discussed, until the Tentative Plat was submitted. He said he wasn't familiar with those conversations.

Mr. Thibault explained that he made the comment requesting that the easements be in place at the same time he requested the streetlight be placed by the mailbox. He was surprised that this was the first that the developer was hearing about it. We already have the revised plans with the new street light location. How did the easement slip through the cracks?

Commissioner Evi Buell asked if the modification of Condition No.15 would satisfy the requirement.

Ms. Laughlin said there was still some time with the Tentative Map being a public hearing at City Council. They would still have a couple weeks to work out the easement, and then they could both be on the same agenda.

Chairman Dalling asked Mr. Ballew if he was okay with the modification to Condition No. 15

Mr. Ballew explained that they were never interested in acquiring that property.

Chairman Dalling explained that the other part of that condition was to obtain an easement.

Mr. Wilkinson explained that they were trying to provide options.

Mr. Ballew didn't have a problem leaving in acquiring additional property as an option. He wanted to give an example. When they did 8-mile Estates, the grading went out into the Peace Park. On that map, they provided a Slope Easement in order to do that grading. They didn't buy the property. When they first talked about this property Mr. Ballew felt they were not talking about an easement, but more like a license, or permission to construct. Their intent is to leave it in better condition that it is now, so it will be a part of the park and a benefit to the park.

*****Motion: Forward a recommendation to City Council to conditionally approve Tentative Map No. 14-19 subject to the conditions found in the City of Elko Staff Report dated January 16, 2020, with modifications listed as follows:**

Development Department:

1. The associated Master Plan Amendment and Zoning Amendment must be approved and in effect prior to application submittal of the Final Map.
2. Conditional Use Permit 12-19 must be approved and all conditions met.
3. A copy of the CC&Rs must be submitted to the City of Elko Development Department prior to recordation of the Final Map.
4. The subdivider is to comply with all provisions of the NAC and NRS pertaining to the proposed subdivision.
5. Tentative Map approval constitutes authorization for the subdivider to proceed with preparation of the Final Map and associated construction plans.
6. The Tentative Map must be approved by the Nevada Department of Environmental Protection prior to submitting for Final Map approval by the City of Elko.
7. Construction plans must be approved by the Nevada Department of Environmental Protection prior to issuance of a grading permit.
8. Tentative Map approval does not constitute authorization to proceed with site improvements.
9. The applicant must submit an application for Final Map within a period of four (4) years in accordance with NRS.360(1)(a). Approval of the Tentative Map will automatically lapse at that time.
10. A soils report is required with Final Map submittal.
11. A hydrology report is required with Final Map submittal.
12. Final Map construction plans are to comply with Chapter 3-3 of City code.
13. The subdivision design and construction shall comply with Title 9, Chapter 8 of City code.
14. The Utility Department will issue an Intent to Serve letter upon approval of the Tentative Map by the City Council.
15. Obtain an easement for any off-site grading prior to issuance of a grading permit, or acquire the property needed to create the slope, prior to City Council consideration.

Commissioner Buell's findings to support the motion were the proposed subdivision and development is in conformance with both the Land Use and Transportation Components of the Master Plan. The proposed subdivision and development does not conflict with the Airport Master Plan; The City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report- November 2012; The Wellhead Protection Program; or applicable sections of the Elko City Code. The proposed subdivision complies with Section 3-3-5(E)(2)(a)-(k) as required by Section 278.349(3) of the Nevada Revised Statutes. The property is not located within the Redevelopment Area. Therefore, there is no conflict with the Redevelopment Plan. A Zoning Amendment is required for the proposed subdivision.

Moved by Evi Buell, Seconded by Tera Hooiman.

**Motion passed unanimously. (7-0)*

3. Review and consideration of Tentative Map No. 16-19, filed by Bailey & Associates, LLC for the development of a subdivision entitled Ruby Mountain Peaks involving the proposed division of approximately 10.00 acres of property into 45 lots for residential development in an R (Single-family & Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast corner of the intersection of Jennings Way and Bluffs Avenue. (APNs 001-01A-014)

Ms. Rambo went over City of Elko Staff Report dated January 17, 2020. She pointed out that the Zoning on the first page of the Staff Report should be R, not R1. Staff recommended conditional approval with the conditions and findings listed in the staff report.

Ms. Laughlin recommended conditional approval.

Mr. Thibault recommended conditional approval.

Chief Griego had no concerns.

Mr. Wilkinson recommended approval as presented by staff.

Scott MacRitchie, 312 Four Mile Trail, explained that with Tower Hill Units 1, 2, & 3 they have been required to, and have, put in parts of the shared use path. He asked if this property was one of the ones that is identified as one that would have to participate in the shared use path.

Mr. Wilkinson explained that this property was across from Home Depot and not located in the area of the shared use path.

*****Motion: Forward a recommendation to City Council to conditionally approve Tentative Map No. 16-19 subject to the conditions found in the City of Elko Staff Report dated January 17, 2020, listed as follows:**

Development Department:

1. The associated Master Plan Amendment must be approved and in effect prior to application submittal of the Final Map.
2. The subdivider is to comply with all provisions of the NAC and NRS pertaining to the proposed subdivision.
3. Tentative Map approval constitutes authorization for the subdivider to proceed with preparation of the Final Map and associated construction plans.
4. The Tentative Map must be approved by the Nevada Department of Environmental Protection prior to submitting for Final Map approval by the City of Elko.
5. Construction plans must be approved by the Nevada Department of Environmental Protection prior to issuance of a grading permit.
6. Tentative Map approval does not constitute authorization to proceed with site improvements.
7. The applicant must submit an application for Final Map within a period of four (4) years in accordance with NRS.360(1)(a). Approval of the Tentative Map will automatically lapse at that time.
8. A soils report is required with Final Map submittal.
9. A hydrology report is required with Final Map submittal. This report will need to be reviewed and approved by both the City of Elko and NDOT.
10. Final Map construction plans are to comply with Chapter 3-3 of City code.
11. The subdivision design and construction shall comply with Title 9, Chapter 8 of City code.
12. The Utility Department will issue an Intent to Serve letter upon approval of the Tentative Map by the City Council.
13. A modification from standards be approved by City Council for Lot 18, 19, 25, and 26 to allow for shorter-than-required front lots widths.
14. No lots are allowed to face Bluffs Avenue, Jennings Way, or Mountain City Highway.

Planning Department:

1. A modification from standards be approved by City Council for Lot 3, 4, 5, 6, 7, 8, and 9 to allow single family residences on double frontage lots not abutting an arterial street.

Commissioner Buell's findings to support the motion were the proposed subdivision and development is in conformance with both the Land Use and Transportation Components of the Master Plan. The proposed subdivision and development does not conflict with the Airport Master Plan; the City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report – November 2012; The Wellhead Protection Program; or applicable sections of the Elko City Code. The proposed subdivision complies with Section 3-3-5(E)(2)(a)-(k) as required by Section 278.349(3) of the Nevada Revised Statutes. The property is not located within the Redevelopment Area. Therefore, there is not conflict with the Redevelopment Plan.

Moved by Evi Buell, Seconded by Gratton Miller.

**Motion passed unanimously. (7-0)*

4. Review, consideration, and possible adoption of Resolution 1-20, containing amendments to the Proposed Future Land Use Plan Atlas Map 8, Land Use Component Corresponding Zoning Districts, Transportation Component Best Practice 2.3 and Roadway Classifications, Existing Functional Classification Atlas Map 11 and Atlas Map 12, and matters related thereto. **FOR POSSIBLE ACTION**

Planning Commission reviewed and initiated the amendment to the City of Elko Master Plan at its January 7, 2020 meeting.

Ms. Laughlin wanted to go over all of the areas that are proposed amendments. She reminded the Commission that any resolution for a Master Plan Amendment needed to be approved by the entire Commission. In the Proposed Future Land Use Plan, Atlas Map 8, several areas are proposed to be modified. There is a property south of the City Limits that staff is proposing to change to Medium Density Residential to bring it into conformance with the surrounding area. Another proposed change is off Jennings Way and Sagecrest. A small triangular parcel is proposed to be modified to Highway Commercial to match the parcel to the north. The third proposed change is for the property that was just discussed in the Tentative Map. Staff is proposing to change that parcel to Medium Density Residential. The fourth change to Atlas Map 8 is for the section of land the City just sold to Koinonia. Staff is proposing to change to Neighborhood Mixed Use. Under the Land Use Component, we are proposing to add Residential Business District under the corresponding zoning districts for Neighborhood Mixed Use. That would bring the Zoning into conformance with the Master Plan. The 3rd proposed change is in the Transportation Component in Best Practice 2.3. Staff is proposing that Table No. 8 get completely modified to clear up any conflicts with Elko City Code Section 3-2-17 for the distance requirements between driveways and intersections in relation to the classification of the roadway. Proposed change no. 4, under the railroad classifications College Avenue is listed as a Minor Arterial from 9th Street to Idaho Street. Staff is proposing to change the classification from 9th to 12th to Residential Collector. Looking at the traffic counts from 2002 to 2018, it doesn't justify the level of service for it to be a Minor Arterial. The fifth proposed change would take those changes of the Roadway Classification of College Avenue and change that on Atlas Map 11 and 12.

Ms. Rambo said she was available to answer questions on Table 8. Staff broadened it to include different classifications that are in the Master Plan and made them consistent with the Zoning Ordinance.

Mr. Thibault, Chief Griego, and Mr. Wilkinson had no comments.

*****Motion: Adopt Resolution 1-20, containing amendments to the Proposed Future Land Use Plan Atlas Map 8, Land Use Component Corresponding Zoning Districts, Transportation Component Best Practice 2.3 and Roadway Classifications, Existing Functional Classification Atlas Map 11 and Atlas Map 12 of the City of Elko Master Plan; directing that an attested copy of the foregoing parts, amendments, extensions of and/or additions to the Elko City Master Plan be certified to the City Council; further directing that an attested copy of this Commission's report on the proposed changes and additions shall have be filed with the City Council; and recommending to City Council to adopt said amendments by resolution.**

**Motion passed unanimously. (7-0)*

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration and possible approval of Final Map No. 15-19, filed by Jordanelle Third Mortgage, LLC, for the development of a subdivision entitled Tower Hill Unit 3 involving the proposed division of approximately 10.72 acres of property into 27 lots for residential development within the R1 (Single-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located southwest of Pheasant Drive between Chukar Drive and Deerfield Way. (APN 001-929-124)

Scott MacRitchie explained that they had completed Tower Hill Phase 1, and they just completed Tower Hill Phase 2. They are trying to go through the motions of getting Tower Hill Phase 3 ready and go through any other problems. Phase 2 was a long drawn out project to try to get accomplished from start to finish, mostly in the construction process. They are trying to get ahead of the game before spring comes around. They are going to try to get all of the things done that they need to in order to get Phase 3 in, at least started if not completed in 2020.

Ms. Rambo went over the City of Elko Staff Report dated January 21, 2020. Staff recommended conditional approval with the conditions and findings listed in the staff report.

Ms. Laughlin recommended conditional approval as presented in the Staff Report. She wanted to make a note in the conditions that the Final Map is for Tower Hill Unit 3, not Phase 3. Condition No. 4 will need to be modified to state Unit.

Mr. Thibault had two minor conditions. One, strike the reference to File No. 666870 and the legal description on Page 1, and also to fill in the Assessor's Parcel Numbers on the jurats for the Assessor and the Treasurer. The map just got recorded, so the Assessor is probably in the process of creating parcel numbers.

Chief Griego had no comments.

Mr. Wilkinson recommended approval as presented by staff.

Mr. MacRitchie wanted to address Mr. Thibault's comments. The map for Tower Hill Unit 2 has not recorded yet, they are still collecting signatures. They hope to get that recorded in the next couple of days. They also plan to complete their third and final phase of the trail system.

*****Motion: Forward a recommendation that the City Council accept, on behalf of the public, the parcels of land offered for dedication for public use in conformity with the terms of the offer of dedication; that the final map substantially complies with the tentative map; that the City Council approve the agreement to install improvements in accordance**

with the approved construction plans that satisfies the requirements of Title 2, Chapter 3, and conditionally approve Final Map 15-19 with conditions listed in the Staff Report dated January 21, 2020, with modifications and additions listed as follows:

1. The Developer shall execute a Performance and Maintenance Agreement in accordance with Section 3-3-21 of City code. The Performance Agreement shall be secured in accordance with Section 3-3-22 of City code. In conformance with Section 3-3-21 of City code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Map approval by the City Council unless extended as stipulated in City code.
2. The Performance and Maintenance Agreement shall be approved by the City Council.
3. The Developer shall enter into the Performance and Maintenance Agreement within 30 days of approval of the Final Map by the City Council.
4. The Final Map for Tower Hill Unit 3 is approved for 27 single family residential lots.
5. The Utility Department will issue a Will Serve Letter for the subdivision.
6. Site disturbance shall not commence prior to approval of the project's construction plans by the Nevada Department of Environmental Protection.
7. Construction shall not commence prior to Final Map approval by the City Council and issuance of a will-serve letter by the City of Elko.
8. Conformance with the conditions of approval of the Tentative Map is required.
9. The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko. The Engineer of Record is to ensure all materials meet the latest edition of the Standard Specifications for Public Works. All right-of-way and utility improvements are to be certified by the Engineer of Record for the project.
10. Strike Parcel Number 666-870 and fill in the Assessor's Parcel Numbers

Commissioner Buell's findings to support the motion were the Final Map for Tower Hill Phase 3 has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City Code. The Final Map is in conformance with the Tentative Map. The proposed subdivision is in conformance with the Land Use and Transportation Components of the Master Plan. The proposed development conforms with Sections 3-3-9 through 3-3-16 (inclusive). The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-17 of City Code. The Subdivider has submitted construction plans in conformance with Section 3-3-18 of City Code. The Subdivider has submitted plans to the City and State agencies for review to receive all required permits in accordance with the requirements of Section 3-3-19 of City Code. The Subdivider has submitted construction plans which, having been found to be in conformance with Section 3-3-20 of City Code, have been approved by City Staff. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-21 of City Code. The Subdivider will be required to provide a Performance and Maintenance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-22 of City Code. The proposed development conforms to Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), and 3-2-17 of City Code. The proposed development is in conformance with Section 3-8 of City Code.

Moved by Evi Buell, Seconded by Tera Hooiman.

****Motion passed unanimously. (7-0)***

2. Review, consideration, and possible action on the 2019 Annual Report of Planning Commission activities. **FOR POSSIBLE ACTION**

Pursuant to City Code Section 3-4-23, the Planning Commission is required to prepare and present an annual report of its activities to the City Council.

Ms. Laughlin went over the 2019 Planning Commission Annual Report.

*****Motion: Approve the 2019 Annual Report of Planning Commission Activities as presented, and forward a recommendation to City Council to approve the report.**

Moved by Evi Buell, Seconded by Gratton Miller.

****Motion passed unanimously. (7-0)***

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that City Council approved the vacation of the final parcel on Commercial Street. They also approved the rezone of the subdivision that was on tonight's agenda. There were two really good applicants for the Planning Commission vacancy, and the Council selected Giovanni Puccinelli. Ms. Laughlin welcomed Giovanni to the Commission.

B. Summary of Redevelopment Agency Actions.

Ms. Laughlin reported that there was a Redevelopment Advisory Council meeting in January. They discussed the next project, which would be the Block Ends. They also discussed the continuation of the Recognition program. Storefront Project applications will be accepted from January 1st until March 31st.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

NOTE: The Chairman or Vice Chairman reserves the right to change the order of the agenda and if the agenda is not completed, to recess the meeting and continue on another specified date and time. Additionally, the Planning Commission reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

ADJOURNMENT

There being no further business, the meeting was adjourned.

Jeff Dalling, Chairman

Tera Hooiman, Secretary

**Elko City Planning Commission
Agenda Action Sheet**

1. **Review, consideration and possible action on Variance No. 1-20, filed by Bailey & Associate, LLC. for a reduction of the required exterior side yard setback from 15' to 12' for a proposed duplex in an R (Single family and multi-family residential) Zoning District, and matters related thereto, FOR POSSIBLE ACTION**
2. Meeting Date: **March 3, 2020**
3. Agenda Category: **PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **The applicant is requesting a variance for the required exterior side yard setback for a proposed duplex on the south corner of the intersection of 8th Street and Elm Streets.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Conditionally approve Variance No. 1-20 based on the facts, findings and conditions as presented in the Staff Report dated February 13, 2020.**
9. Findings: **See Staff Report dated February 13, 2020**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Bailey & Associates, LLC.
780 West Silver Street
Elko, NV 89801
jbaileype@gmail.com**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 3/3

Do not use pencil or red pen, they do not reproduce

Title: Variance No. 1-20

Applicant(s): Bailey + Associates, LLC

Site Location: 1291 + 1285 8th Street - APN 001-066-005

Current Zoning: R Date Received: 2/11 Date Public Notice: 2/18

COMMENT: This is to reduce the required exterior side yard
Setback from 15' to 12' for the development of a
duplex.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 2/19/20

Recommend approval as presented by
Staff

SAW

Initial

City Manager: Date: 2/24/20

No concerns. Recommend approval.

CC

Initial



City of Elko
1751 College Avenue
Elko, NV 89801
(775) 777-7160
FAX (775) 777-7119

CITY OF ELKO STAFF REPORT

REPORT DATE:	February 13, 2020
PLANNING COMMISSION DATE:	March 2, 2020
AGENDA ITEM NUMBER:	I.A.1
APPLICATION NUMBER:	Variance 1-20
APPLICANT:	Bailey & Associates LLC
PROJECT DESCRIPTION:	1285 8th Street, Elko

A Variance request to reduce:

- 1. Exterior side yard setback from 15' to 12'**



STAFF RECOMMENDATION:

RECOMMEND CONDITIONAL APPROVAL, subject to findings of fact, and conditions as stated in this report.

PROJECT INFORMATION

PARCEL NUMBER: 001-066-005

PARCEL SIZE: 4,000 sq. ft.

EXISTING ZONING: (R) Single Family and Multiple Family Residential.

MASTER PLAN DESIGNATION: (RES-MD) Residential medium density

EXISTING LAND USE: Residential

BACKGROUND:

1. The applicant is the property owner.
2. The property is currently undeveloped.
3. The applicant purchased the property from the City of Elko at auction and then dedicated 10' of the property to the City of Elko for 8th Street right-of-way.
4. The lot area is approximately 4,000 square feet. With the exception of 3-2-5(G)(2)a, it does not meet the minimum requirements for lot area and lot width but shall be considered a buildable lot for one single-family dwelling.

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:
North, South, and West: (R) Single and Multiple Family / Developed
East: (PQP) Public, Quasi-Public / Developed

PROPERTY CHARACTERISTICS:

The property is currently undeveloped.
The property is generally flat.

APPLICABLE MASTER PLAN AND CITY CODE SECTIONS:

- City of Elko Master Plan – Land Use Component
- City of Elko Master Plan – Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
- City of Elko Zoning – Section 3-2-5 Residential Zoning Districts
- City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- City of Elko Zoning – Section 3-2-22 Variances
- City of Elko Zoning – Section 3-8 Flood Plain Management

MASTER PLAN - Land use:

1. The Master Plan Land Use Atlas shows the area as Residential Medium Density.
2. R- Single Family and Multiple Family Residential zoning district is listed as a corresponding zoning district for Residential Medium Density.

3. Objective 1: Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.

The proposed variance is in conformance with the Land Use Component of the Master Plan.

MASTER PLAN - Transportation:

1. The area will be accessed from 8th Street, Elm Street and has public alley access.
2. Elm Street and 8th Street are classified as a Commercial Industrial Collectors.

The proposed variance is in conformance with the Transportation Component of the Master Plan.

ELKO REDEVELOPMENT PLAN:

The property is not located within the redevelopment area and consideration of the plan is not required.

ELKO WELLHEAD PROTECTION PLAN:

1. The property is located outside any capture zone for any City of Elko well.

The proposed use of the property does not present a hazard to City wells.

SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS:

1. Section 3-2-4(B) Required Conformity To District Regulations: The regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as provided in this subsection.
 - No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered, unless in conformity with all regulations specified in this subsection for the district in which it is located.
 - No building or other structure shall hereafter be erected or altered:
 - a. To exceed the heights required by the current City Airport Master Plan;
 - b. To accommodate or house a greater number of families than as permitted in this chapter;
 - c. To occupy a greater percentage of lot area; or
 - d. To have narrower or smaller rear yards, front yards, side yards or other open spaces, than required in this title; or in any other manner contrary to the provisions of this chapter.
 - No part of a required yard, or other open space, or off street parking or loading space, provided in connection with any building or use, shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.
 - No yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title.

Construction of a new structure requires conformance with the stipulation of the applicable zone district. The proposed developments, as submitted with this application does not conform to the

exterior side yard.

The proposed development does not conform to Section 3-2-4 of city code. Approval of the variance application is required.

SECTION 3-2-5(G) RESIDENTIAL ZONING DISTRICTS:

1. Minimum lot width stipulated for the district of sixty feet (60'), see ** below
2. Minimum lot depth stipulated for the district of one hundred feet (100')
3. Minimum setbacks stipulated for the district are as follows:
Front Yard: A minimum setback of fifteen feet (15') (20') to a garage.
Rear Yard: A minimum setback of twenty feet (20')
Interior Side: For single family, a minimum setback of five feet six inches (5.5')
Exterior Side: A minimum setback of fifteen feet (15') For a residence in existence prior to November 25, 2003, twelve feet (12')

** A single lot or parcel of land of record in the office of the county recorder as of the effective date of the city subdivision ordinance (December 9, 1975), and which does not meet minimum requirements for lot area, lot width or lot depth shall be considered a buildable lot for one single-family dwelling, provided all other requirements of this chapter are satisfied. Therefore, this variance is for setback consideration and not for lot area or lot width.

The City of Elko requested from Bailey & Associates 10' of the width of the property for right-of-way and existing public improvements within that 10'.

With the proposed development, approval of the variance application is required for conformance with Elko City Code 3-2-5(G).

SECTION 3-2-17 TRAFFIC, ACCESS, PARKING AND LOADING REGULATIONS:

1. The proposed development meets requirement for off street parking. An accessory structure may have a 0' rear setback as long as it abuts a public alley.
2. ECC 3-2-3 (G)(6) states: Carports may be allowed to encroach into required side yards; provided, that two (2) sides of the carport remain open, that no portion of the carport structure be closer than three feet (3') to any side lot line, and all drainage from the roof of the structure shall be onto the property itself.

The proposed development conforms to Section 3-2-17 of city code. Development of the required parking areas will be required with building permit approval.

SECTION 3-2-22 VARIANCES:

B. Procedure: Any person requesting a variance by the planning commission shall include:

Application Requirements

1. There are special circumstances or features, i.e., unusual shape, configuration, exceptional topographic conditions or other extraordinary situations or conditions applying to the property under consideration.

- Applicant states: Narrow lot that had an additional 10' dedicated to the City.
2. The special circumstance or extraordinary situation or condition results in exceptional practical difficulties or exceptional undue hardships, and where the strict application of the provision or requirement constitutes an abridgment of property right and deprives the property owner of reasonable use of property.
 - Applicant states: A narrow lot of 40' with 5.5' setback on one side and 15' on the other side results in more than 51.5% of the lot width is taken in setback area which makes development of a suitable project infeasible.
 - The granting of a variance for the reduction of exterior side yard setback for 15' to 12' would be consistent with residences in existence at the time of enactment (November 25, 2003) which are allowed an exterior side yard setback of 12'. ECC 3-2-5(G)(2).
 3. Such special circumstances or conditions do not apply generally to other properties in the same zoning district.

Applicant states: This is a corner lot that had to dedicate 10' of width to City.

4. The granting of the variance will not result in material damage or prejudice to other properties in the vicinity, nor be detrimental to the public interest, health, safety and general welfare.
 - Applicant states: There is still 12' of side yard which is the same as existing residences that were granted a side yard of 12' during the time of enactment.
5. The granting of the variance will not substantially impair the intent or purpose of the zoning ordinance or effect a change of land use or zoning classification.
 - Applicant states: The zoning will remain R and the proposed use will be in conformance with the zoning classification for the property. The intent of the code is to preserve side yard area while also allowing buildable and developable areas. This lot is not buildable without this variance granted.
6. The granting of the variance will not substantially impair affected natural resources.
 - Applicant states: This is a small lot that will likely not be developed if the variance is not granted.
 - Staff states that there will not be any natural resources substantially impaired by the development of this property.

SECTION 3-8 FLOODPLAIN MANAGEMENT:

1. This parcel is not designated in a Special Flood Hazard Area (SFHA).

FINDINGS

1. The proposed variance is in conformance with the Land Use Component of the Master Plan is consistent with existing land uses in the immediate vicinity.
2. The proposed variance is consistent with the Transportation Component of the Master Plan.
3. The property is not located within the redevelopment area and consideration of the plan is not required.
4. The proposed variance is consistent with City of Elko Wellhead Protection Plan.
5. The proposed development does not conform to Section 3-2-4 of city code. Approval of the variance application is required in order for the proposed development to conform to code.
6. A single lot or parcel of land of record in the office of the county recorder as of the effective date of the city subdivision ordinance (December 9, 1975), and which does not meet minimum requirements for lot area, lot width or lot depth shall be considered a buildable lot for one single-family dwelling. Therefore, the minimum lot width of 60' and lot area of 5,000 sq. ft. is not required based on this exception.
7. The proposed development does not meet side setback requirements stipulated in Section 3-2-5(G) R- Single Family and Multiple Family Residential for exterior side yard setback. Approval of the variance application is required in order for the property to be developed as proposed.
8. The proposed development conforms to Section 3-2-17 of city code. Development of the required parking areas will be required as part of the building permit approval.
9. In accordance with Section 3-2-22, the applicant has demonstrated that the hardship is that the setbacks take over 51% of the existing property width and that the property owner dedicated 10' of width to the City of Elko which therefore makes the 15' exterior side yard setback requirement onerous to develop.
10. In accordance with section 3-2-22, the applicant has demonstrated that the property has unique circumstances based on that fact that the City requested 10' of the parcel to be dedicated to the City of Elko.
11. Granting of the variance will not result in material damage or prejudice to other properties in the vicinity. This finding is based on the fact that residences in existence at the time of enactment (November 25, 2003) are allowed an exterior side yard setback of 12'.
12. Granting of the variance will not substantially impair the intent or purpose of the zoning ordinance. Single family as well as duplex are listed as a principal uses in the underlying zone.
13. Granting of the variance will not impair natural resources.
14. The parcel is not located within a designated Special Flood Hazard Area.

STAFF RECOMMENDATION:

Staff recommends this item be **conditionally approved** with the following conditions:

CONDITIONS:

Planning Department:

1. Compliance with all staff recommendations.
2. Commencement within one year and completion within eighteen (18) months.
3. Subject to review in two (2) years if determined necessary by the planning commission.



CITY OF ELKO

Planning Department

Website: www.elkocity.com
Email: planning@elkocitynv.gov

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

February 25, 2020

Bailey & Associates, LLC
780 W Silver Street
Elko, NV 89801

Re: Variance No. 1-20

Dear Applicant/Agent:

Enclosed is a copy of the agenda for an upcoming Planning Commission meeting. Highlighted on the agenda is the item or items that you have requested to be acted on at the meeting. Also enclosed is pertinent information pertaining to your request. Please review this information before the meeting.

The Planning Commission requests that you, or a duly appointed representative, be in attendance at this meeting to address the Planning Commission. If you will not be able to attend the meeting but wish to have a representative present, please submit a letter to the Planning Commission authorizing this person to represent you at the meeting.

If you have any questions regarding this meeting, the information you received, or if you will not be able to attend this meeting, please call me at your earliest convenience at (775) 777-7160.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures

CC:

Variance No. 1-20 - Bailey + Associates, LLC

YPNO	assess_nam	address1	address2	mcity	mzip
001063004	BACK GARY N & CHRISTINE A	1375 8TH ST		ELKO, NV	89801-3310
001069012	BRADT JOE M & DAISY R	1381 PRIMROSE LN		ELKO, NV	89801-8820
001066003	BUCKINGHAM ROBERT F & KATHY V	PO BOX 100		PARADISE VALLEY, NV	89426-0100
001620040	COLEMAN DALE A & NADINE M	831 ELM ST		ELKO, NV	89801-3350
001066008	COULAM ANDREW S & MINDY L	1262 7TH ST		ELKO, NV	89801-3240
001620038	CROTTS BRANDON G	851 ELM ST		ELKO, NV	89801-3350
001066012	ELKO CITY OF <i>NO PC</i>	1755 COLLEGE AVE		ELKO, NV	89801-
001620076	ELKO COUNTY OF	560 COURT ST		ELKO, NV	89801-
001620048	ELKO COUNTY SCHOOL DISTRICT	PO BOX 1012		ELKO, NV	89803-1010
001066002	FAGOAGA BETTY L TR	740 ELM ST		ELKO, NV	89801-3310
001069002	GENUNG JANET CHRISTINE TR	744 MAPLE ST		ELKO, NV	89801-3310
001620047	GONZALES BRITTNEY		828 SAGE ST	ELKO, NV	89801-
001063002	GSR RENTALS SAGE ST SERIES LLC	1770 MOUNTAIN CITY HWY		ELKO, NV	89801-2410
001063008	HERNANDEZ GILBERT & DEBRA A	1316 7TH ST		ELKO, NV	89801-3250
001620007	HUEBNER THOMAS A JR TR	1376 8TH ST		ELKO, NV	89801-3310
001066020	KIGHTLINGER RANDY J	747 MAPLE ST		ELKO, NV	89801-3310
001066004	KNIGHT DON	731 SPRING CREEK PKWY		SPRING CREEK, NV	89815-6120
001620041	LAUGHLIN, PATRICK ET AL	371 MOUNTAIN CITY HWY UNIT 7		ELKO, NV	89801
001063003	LIPPARELLI LORRY S & ARLETTA G	768 SAGE ST		ELKO, NV	89801-3310
001066017	MILLER GORDON W & LUCY B TR	371 MOUNTAIN CITY HWY UNIT 6		ELKO, NV	89801-9510
001066011	MILLER GORDON W & LUCY B TR	371 MOUNTAIN CITY HWY UNIT 6		ELKO, NV	89801-9510
001069003	MORRIS BRUCE R	756 MAPLE ST		ELKO, NV	89801-3310
001063007	O'BRIEN COLLEEN MAVOURNEEN	494 GLEN HAVEN DR		SPRING CREEK, NV	89815-6100
001069004	ROBINSON VANESSA L TR	772 MAPLE ST		ELKO, NV	89801-3310
001620006	SABO CASSANDRA LANE	1750 HIGHWAY 160 W STE 101		FORT MILL, SC	29708-8000
001063009	SANDOZ RICHARD P & SUSAN	515 BELLOAK DR		SPRING CREEK, NV	89815-6830
001066014	STASZAK GREGORY M & SHEILA L	1252 7TH ST		ELKO, NV	89801-3240
001066001	SWOPE RICHARD L & JULIE M	521 MOUNTAIN CITY HWY UNIT 16		ELKO, NV	89801-9520
001063001	TOGNINI BETTIE JEANETTE TR	1226 MOUNTAIN VIEW DR		ELKO, NV	89801-2530
001063005	WIGGINS DONALD DEAN & TERRI R	1331 8TH ST		ELKO, NV	89801-3310
001063006	WINES ROBERT J & DARIEL S	761 ELM ST		ELKO, NV	89801-3310
001620037	WOODS CLIFFORD R	871 ELM ST		ELKO, NV	89801-3350

30

Post marked 2/21/20

NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a series of public hearings on Tuesday, March 3, 2020 beginning at 5:30 P.M. P.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on these matters under consideration in person, by writing, or by representative.

The specific item to be considered under public hearing format is:

- **Variance No. 1-20, filed by Bailey & Associates, LLC, for a reduction of the required exterior side yard setback from 15' to 12' for a proposed duplex in an R (Single-Family and Multi-Family) Zoning District, and matters related thereto. The subject property is located generally on the south corner of the intersection of 8th Street and Elm Street. (APN 001-066-005)**

Additional information concerning this item may be obtained by contacting the Elko City Planning Department at (775) 777-7160.

ELKO CITY PLANNING COMMISSION



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

(775) 777-7160 * (775) 777-7219 fax

APPLICATION FOR VARIANCE

APPLICANT(s): Bailey & Associates LLC

MAILING ADDRESS: 780 W Silver St, Elko, NV 89801

PHONE NO (Home) 775-777-7773 **(Business)** 775-385-3659

NAME OF PROPERTY OWNER (If different): _____

(Property owner's consent in writing must be provided.)

MAILING ADDRESS: _____

LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):

ASSESSOR'S PARCEL NO.: 001066005 **Address** 8th and Elm 1291 + 1285 8th St.

Lot(s), Block(s), & Subdivision lots 1,2 Blk 114 FIRST ADDITION

Or Parcel(s) & File No. _____

FILING REQUIREMENTS:

Complete Application Form: In order to begin processing the application, an application form must be complete and signed. *Complete* applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1st Tuesday of every month).

Fee: A \$500.00 non-refundable fee must be paid. If in conjunction with a Rezone Application a \$250.00 non-refundable fee must be paid.

Plot Plan: A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, parking and loading areas, driveways and other pertinent information must be provided.

Elevation Plan: Elevation profile of all proposed buildings or alterations in sufficient detail to explain the nature of the request must be provided.

Note: One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 1/2" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

Other Information: The applicant is encouraged to submit other information and documentation to support this Variance application.

RECEIVED

The APPLICANT requests the following variance from the following section of the zoning ordinance:

Reduction of setback from 15' to 12' on 8th Street side yard.

1. The existing zoning classification of the property zR

2. The applicant shall present **adequate** evidence demonstrating the following criteria which are necessary for the Planning Commission to grant a variance:

- a) Identify any special circumstances, features or conditions applying to the property under consideration. i.e., unusual shape, configuration, exceptional topographic conditions or other extraordinary situations or conditions

Narrow lot that had an additional 10' dedicated to the City.

- b) Identify how such circumstances, features or conditions result in practical difficulty or undue hardship and deprive the property owner of reasonable use of property.

A narrow lot of 40' with 5.5' setback on one side and 15' on the
other side results in more than 51.5% of lot width is taken

in setback area which makes development of a suitable project infeasible.

- c) Indicate how the granting of the variance is necessary for the applicant or owner to make reasonable use of the property.

A 22.5' wide building can function with adequate room area whereas

a smaller width is not practical to develop a functional space.

- d) Identify how such circumstances, features or conditions do not apply generally to other properties in the same Land Use District.

This is a corner lot that had to dedicate 10' of width to City

- e) Indicate how the granting of the variance will not result in material damage or prejudice to other properties in the vicinity nor be detrimental to the public health, safety and general welfare.

There is still 12' of sideyard which is the same as existing

residences that were granted a sideyard of 12' during the time of enactment.

- f) Indicate how the variance will not be in conflict with the purpose or intent of the Code.

The intent of the code is to preserve sideyard area while also allowing buildable

and developable areas. This lot is not buildable without this variance granted.

- g) Indicate how the granting of the variance will not result in a change of land use or zoning classification.

The zoning will remain R and the proposed use will be

in conformance with the zoning classification for the property

- h) Indicate how granting of the variance will not substantially impair affected natural resources.

This is a small lot that will likely not be developed if the variance is not granted.

3. Describe your ability (i.e. sufficient funds or a loan pre-approval letter on hand) and intent to construct within one year as all variance approvals **must** commence construction within one year and complete construction within 18 months per City Code Section 3-2-22 F.1.: _____
Bailey Homes has sufficient funds on hand to develop the property.

(Use additional pages if necessary to address questions 2a through h)

This area intentionally left blank

By My Signature below:

☒ I consent to having the City of Elko Staff enter on my property only for the sole purpose of inspecting said property as part of this application process.

☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

☐ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

☐ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.

☐ I have carefully read and completed all questions contained within this application to the best of my ability.

Applicant / Agent Jon D Bailey
(Please print or type)

Mailing Address 780 W Silver St
Street Address or P.O. Box

Elko, NV 89801
City, State, Zip Code

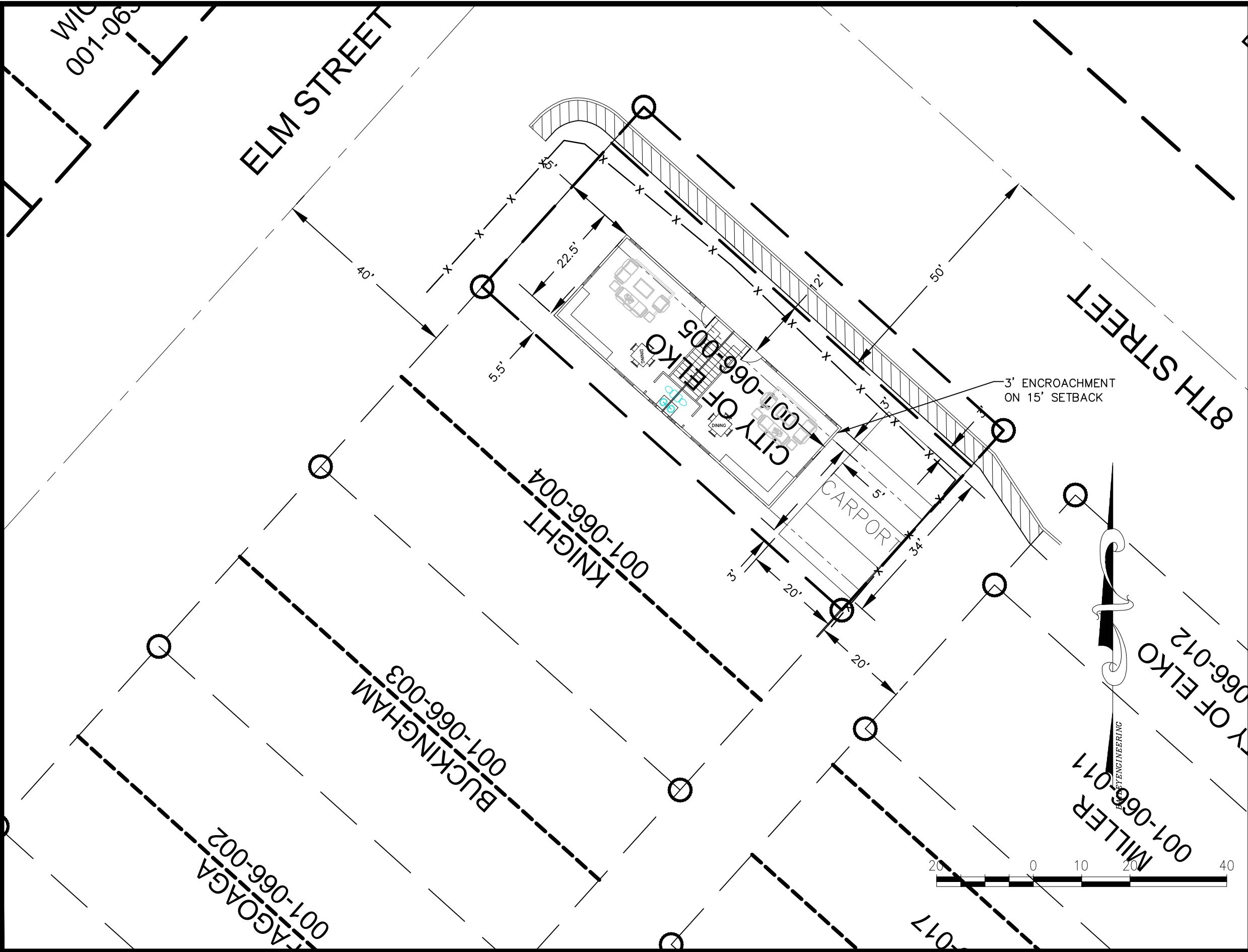
Phone Number: 775-385-3659

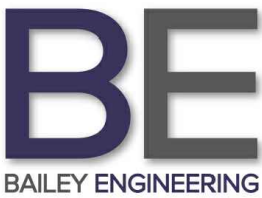
Email address: jbaileype@gmail.com

SIGNATURE: DocuSigned by:
Jonathan Bailey
FB21AC7300D8486...

FOR OFFICE USE ONLY

File No.: 1-20 **Date Filed:** 2/11/20 **Fee Paid:** \$500 CK# 33720



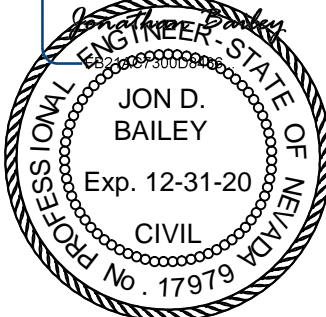


BE
 BAILEY ENGINEERING

PLLC
 P.E. NV# 17979
 780 W. Silver #104 Elko, NV
 (775)385-3659

registration

DocuSigned by:



JON D. BAILEY
 CIVIL
 No. 17979
 Exp. 12-31-20
 2/11/2020

JON D. BAILEY

DESIGN BY:	JDB
DRAWN BY:	JDB
CHECKED BY:	-
DATE:	2-10-20
JOB NO:	-
SCALE:	AS NOTED

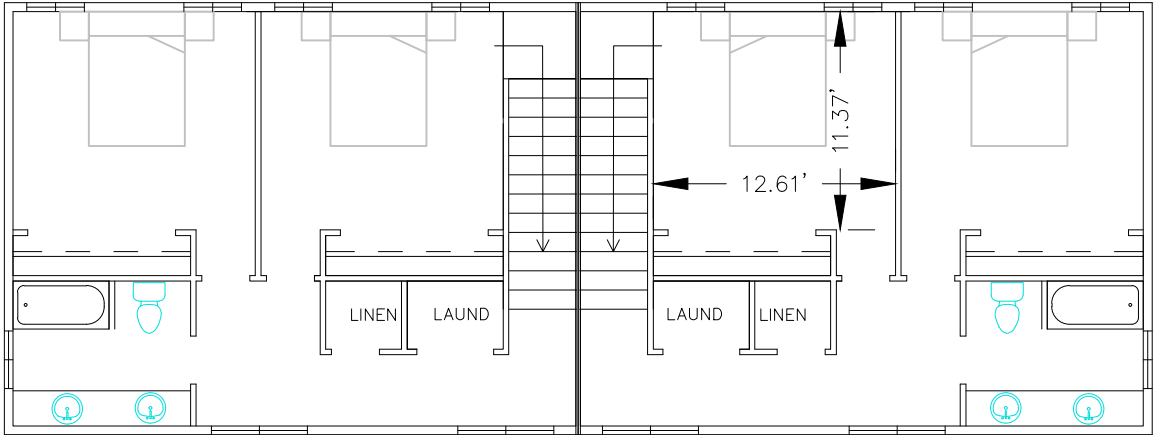
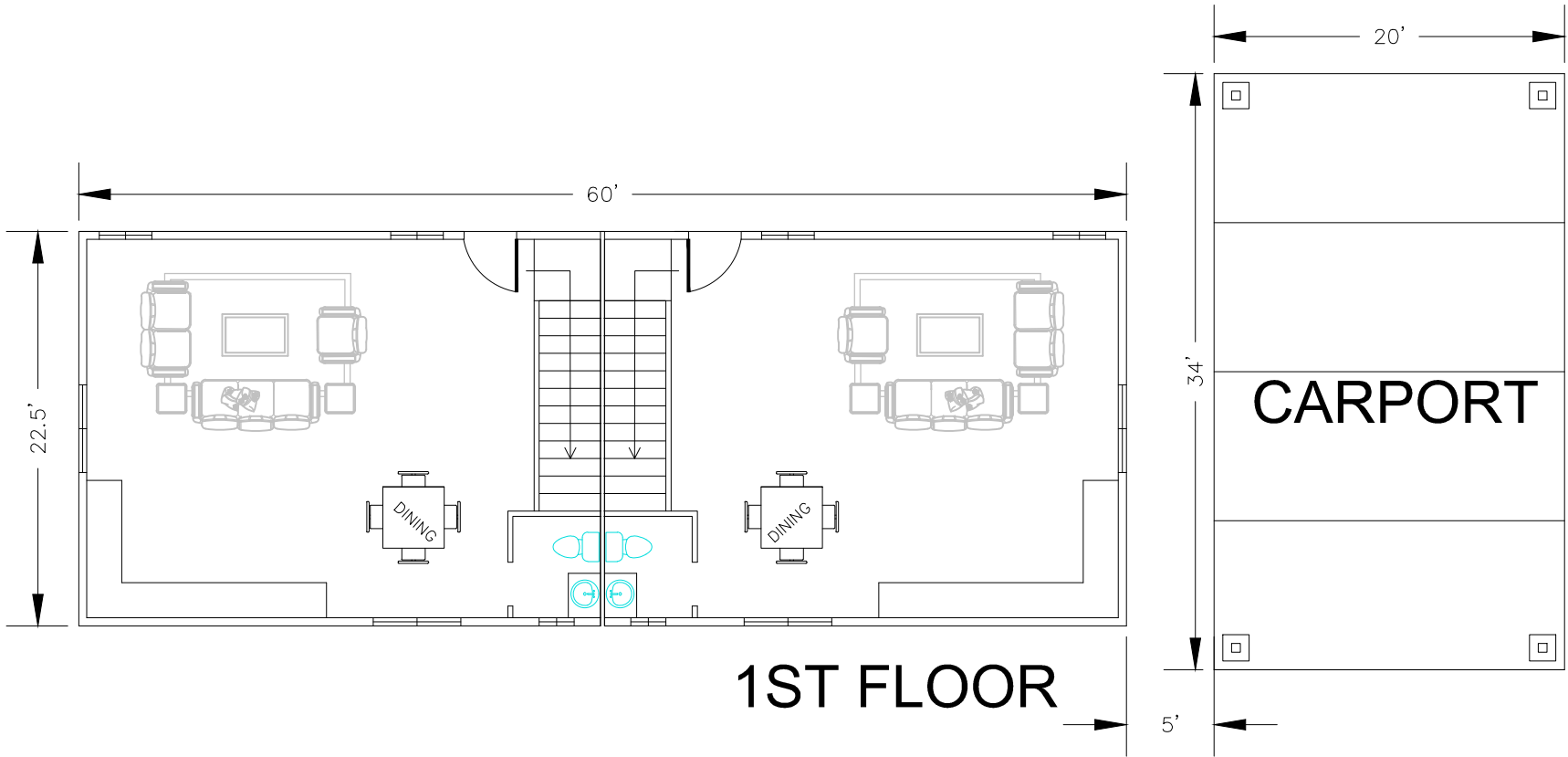
SHEET TITLE

PLOT PLAN

SHEET

1

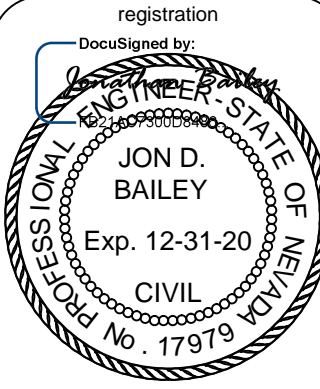
OF 4



2ND FLOOR



PLLC
P.E. NV# 17979
780 W. Silver #104 Elko, NV
(775)385-3659

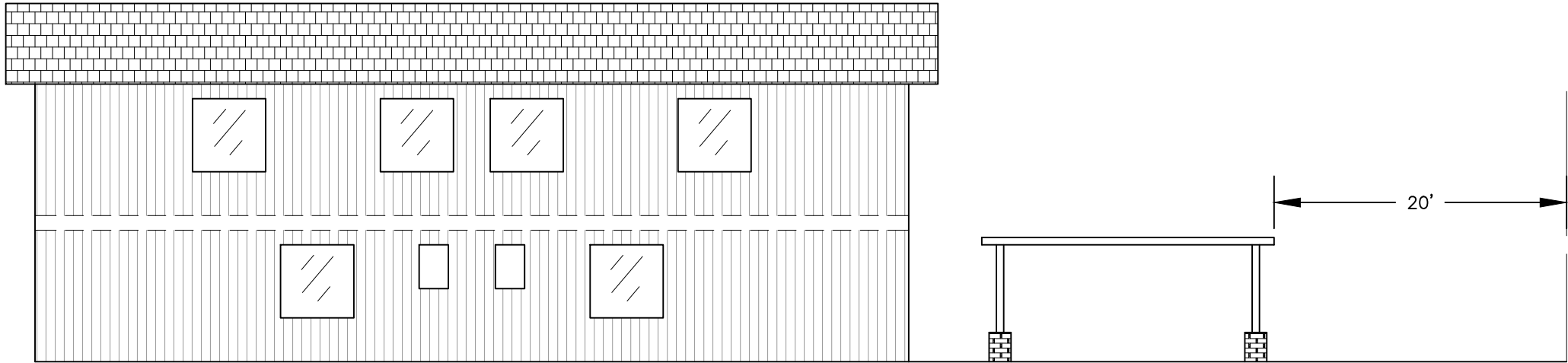


2/11/2020
JON D. BAILEY

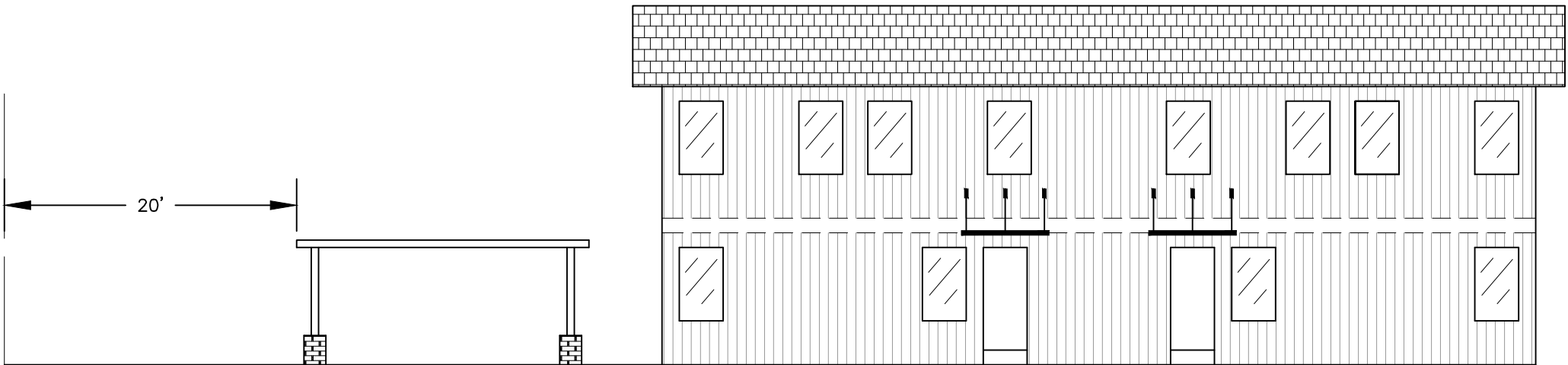
DESIGN BY:	JDB
DRAWN BY:	JDB
CHECKED BY:	-
DATE:	2-10-20
JOB NO:	-
SCALE:	AS NOTED

SHEET TITLE
FLOOR PLAN

SHEET
2
OF 4



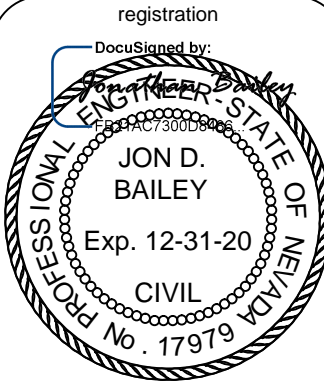
SOUTHWEST ELEVATION



8TH ST ELEVATION



PLLC
P.E. NV# 17979
780 W. Silver #104 Elko, NV
(775)385-3659

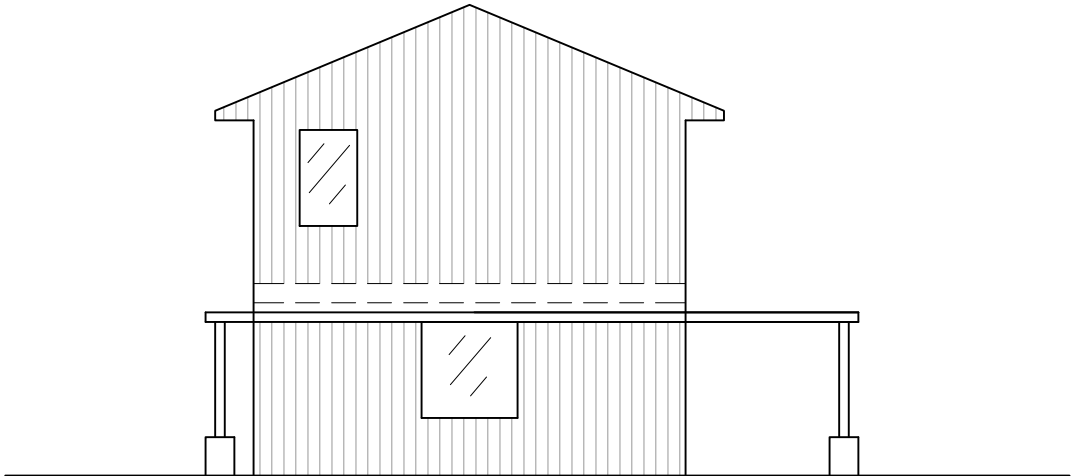


2/11/2020
JON D. BAILEY

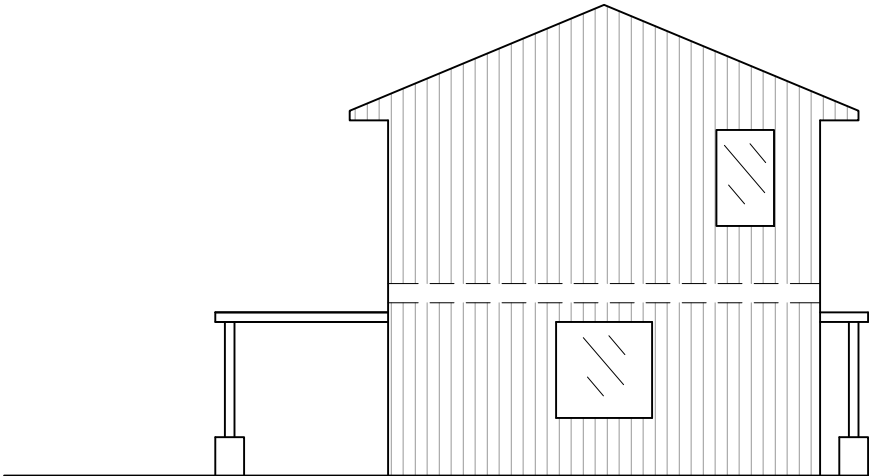
DESIGN BY:	JDB
DRAWN BY:	JDB
CHECKED BY:	-
DATE:	2-10-20
JOB NO:	-
SCALE:	AS NOTED

SHEET TITLE
ELEVATION

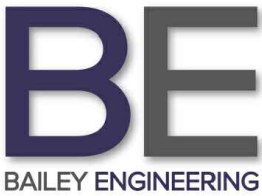
SHEET
3
OF 4



ALLEY ELEVATION



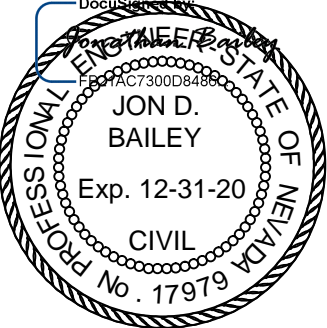
ELM ST ELEVATION



PLLC
P.E. NV# 17979
780 W. Silver #104 Elko, NV
(775)385-3659

registration

DocuSigned by:
Jon Bailey



2/11/2020

JON D. BAILEY

DESIGN BY:	JDB
DRAWN BY:	JDB
CHECKED BY:	-
DATE:	2-10-20
JOB NO:	-
SCALE:	AS NOTED

SHEET TITLE

ELEVATION

SHEET

4

OF 4

Zoning Bulletin

in this issue:

Telecommunications Towers/Denial of variance related to 200-foot setback requirement called into question

1

Disqualification/Lawsuit contends former town attorney should be barred from participating in his client's lawsuit

2

Religious Exercise—Court considered whether religious school met 'substantial burden' for asserting RLUIPA violations

3

Land Use Dispute—Were owner's substantive and procedural due process rights violated by requirement to submit new application for site-plan approval?

5

Constitutional Rights Violations—Township denies application to own and operate a gun club

6

Zoning News from Around the Nation

7

Telecommunications Towers/Denial of variance related to 200-foot setback requirement called into question

Court analyzes whether adjustment board applied correct standard when denying variance application

Citation: *ECO-SITE, LLC, et al., Plaintiffs, v. THE CITY OF UNIVERSITY CITY, MISSOURI, et al., Defendants. Additional Party Names: Collective Solutions, LLC, 2019 WL 6842009 (E.D. Mo. 2019)*

MISSOURI (12/16/19)—The issue in this case was whether a city's board of adjustment applied the wrong standard when evaluating to grant or deny a variance to construct a telecommunications tower.

The Background/Facts: The City of University City, Missouri's zoning code required any telecommunications tower be located at least 200 feet from a street or property line. Collective Solutions LLC (Collective) filed an application to University City's board of adjustment (BOA) seeking a variance from the 200-foot setback requirement so that an 80-foot-tall telecommunications tower could be built in a back-parking lot of a grocery store, which was zoned as a general commercial (GC) district.

The application stated the variance was needed because the only area on the property that would comply with the 200-foot set back requirement would be in front of the store's entrance.

Collective proposed a site that would be 99 feet from the street and 140 feet from the nearest property line. Eco-Site LLC (Eco-Site) signed the application on Collective's behalf and attached site drawings with its logo. The site drawings listed Eco-Site as the developer and Collective as the contact person.

To accommodate the tower, a few parking lot spaces to the grocery store would need to be removed.

The BOA denied the variance request following a public hearing. It found there were alternative locations where a tower could be erected without a variance—albeit these were less desirable to Collective and Eco-Site. Also, the variance would violate the general spirit of the zoning code and denial of the application would not result in an undue hardship for the property owner.

Eco-Site filed suit. It asserted the BOA's decision was arbitrary and capricious and violated state and federal law. It sought relief under the federal Telecommunications Act of 1996, as well as state law.

The parties filed cross-motions for judgment without a trial.



The Court's Decision: Eco-Site's request for judgment without a trial granted.

The BOA had “made the procedural mistakes of applying the wrong standard” when determining that the variance request should be denied.

The BOA improperly considered alternative locations, which “were the ‘driving force’ behind its decision to deny the variance,” the court wrote. “Had those considerations not been available to the [BOA], [it] might have reached a different conclusion, particularly had [it] applied the appropriate, ‘slightly less-rigorous’ practical difficulties standard,” the federal court ruled.

Disqualification/Lawsuit contends former town attorney should be barred from participating in his client's lawsuit

Town claims cemetery's attorney was privy to confidential information and discussions germane to the case

Citation: *FERNCLIFF CEMETERY ASSOCIATION, Plaintiff, v. TOWN OF GREENBURGH, NEW YORK, Defendant*, 2019 WL 6878560 (S.D. N.Y. 2019)

NEW YORK (12/17/19)—The issue in this case was whether a former town attorney who now represented a cemetery association in that town should be disqualified from the association's lawsuit against the town for alleged substantive due-process rights violations.

The Background/Facts: The Ferncliff Cemetery Association (FCA) operated a cemetery in Hartsdale, within the Town of Greenburgh, New York (the town). Its property consisted of 63.5 acres on the north side of Secor Road (the north parcel) and about 12.5 acres on the south side of that road (the south parcel).

The town had vested its legislative power in the Town Board, which was comprised of four elected town council members and a town supervisor. Its planning board, which was appointed by the town board, reviewed town-related development plans, and its zoning board of appeals (ZBA) was authorized to apply the town's zoning ordinances and hear appeals from decisions rendered by the building inspector. Its land-use committee advised the town's boards on zoning and land-use applications, and its members included the building inspector and the town attorney.

From 1992 to 2000, Frederick Turner, who represented FCA in this matter, was the town attorney.

In 2001, FCA applied for a building permit for a caretaker cottage on the south parcel, which the building inspector approved. In 2013, FCA submitted another application; this time to replace the existing caretaker's cottage with a new cottage that would include a garage for vehicles, equipment, materials, and supplies, which the building inspector denied. The inspector, however, suggested FCA could apply for a variance.

FCA appealed this decision to the ZBA, which found it was entitled to a building permit to the extent that the proposed building contained a residence. The ZBA affirmed the decision as to the garage, though, because it was “much larger” than a residential accessory garage and more of a “maintenance facility, storage facility or commercial garage”—and none of these were permitted under the zoning ordinance. With the ZBA decision, FCA would have to use a variance for such a facility.

FCA didn't pursue the variance. Instead, it filed an ac-

Contributors

Corey E. Burnham-Howard

For authorization to photocopy, please contact the **Copyright Clearance Center** at 222 Rosewood Drive, Danvers, MA 01923, USA (978) 750-8400; fax (978) 646-8600 or **West's Copyright Services** at 610 Opperman Drive, Eagan, MN 55123, fax (651) 687-7551. Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use.

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Zoning Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write to West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.



THOMSON REUTERS®

610 Opperman Drive

P.O. Box 64526

St. Paul, MN 55164-0526

1-800-229-2084

email: west.customerservice@thomsonreuters.com

ISSN 0514-7905

©2020 Thomson Reuters

All Rights Reserved

Quinlan™ is a Thomson Reuters brand

tion in state court, which ruled the ZBA had properly considered the matter and denied Ferncliff's request to overturn the decision.

This wasn't the first time the FCA and the town had been embroiled in a legal dispute. Previously there had been some legal action taken with respect to the FCA's desire to erect a ausoleum (the Rosewood Mausoleum), which eventually was constructed in 1999.

In federal court the FCA challenged the town's reclassification of the south parcel from cemetery to residential in its 2016 Comprehensive Plan and the 2017 assessment roll. FCA contended this violated its right to substantive due process under the Fifth Amendment.

The town asked to have the FCA's now attorney, Turner, disqualified from the case.

The Court's Decision: Request to disqualify Turner denied.

The "heavy burden" required to show to disqualification was necessary had not been met.

The town contended that Turner must be disqualified because his role as town attorney "made him 'privy to confidential information and discussions related to the events mentioned in [FCA's] Amended Complaint,' " the court explained. But, FCA asserted that the town couldn't meet "its burden of . . . establishing any substantive connection between this matter and the Rosewood matter, or . . . mak[ing] any showing that Turner participated in the Rosewood matter personally and substantially."

The court agreed as to the first point. The town made conclusory statements consisting of "at most . . . two sentences," which didn't meet the burden of proof necessary to warrant disqualification.

"Assuming for the sake of argument that [the town] shown that . . . Turner participated 'personally and substantially' in the Rosewood matter, [it] ha[d] not shown that the Rosewood litigation [wa]s the same 'matter' as the instant case," the court noted.

"The Rosewood litigation involved development of the North Parcel (specifically, the height of a proposed mausoleum), while the FAC challenges [the town's] development of the south parcel (specifically, a caretaker's cottage and garage), as well as [a] 2016 adoption of [a] Comprehensive Plan and the tax authority's 2017 and 2018 determinations as they relate[d] to the [s]outh [p]arcel."

The Bottom Line:

Any facts concerning the Rosewood lawsuit had been given from a "historical perspective and [for] informational purposes only"—that is, FCA wasn't seeking relief related to Rosewood.

Practically Speaking:

While the Rosewood litigation and this lawsuit "involve[d] the same parties, the legal theories and facts [we]re not the same" and the town did not show that the "Rosewood litigation and this case constitute[d] the same 'discrete and isolatable . . . set of

transactions,' " so they were not "the same matter."

Religious Exercise—Court considered whether religious school met 'substantial burden' for asserting RLUIPA violations

School claims violations resulted from city's denial of request to use ball field lights and sound system at night

Citation: *Marianist Province of United States v. City of Kirkwood*, 2019 WL 6797544 (8th Cir. 2019)

The Eighth U.S. Circuit has jurisdiction over Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

EIGHTH CIRCUIT (MISSOURI) (12/13/19)—This case addressed the issue of whether a private religious school's right to religious exercise was substantially burdened by not being able to use its baseball field's lights and sound system at night.

The Background/Facts: St. John Vianney High School, Inc. (Vianney), an all-male Marianist high school in Kirkwood, Missouri, was a leasehold owner of school property through a long-term lease with Marianist Province of the United States.

Vianney used about 37 acres of the property for various educational and athletic programs. In its view, the property was a forum to evangelize by drawing people to the campus and sharing their faith, and before any athletic event or practice, student athletes and coaches prayed.

The school's campus had classroom buildings, a track, an outdoor football and soccer stadium, and a sports field used for baseball. The track, football, and soccer facilities had lights and sound systems, which had been installed before 2012. But, the baseball field, which abutted homes did not have lights despite the fact that Kirkwood didn't have any lighting restrictions in its zoning code.

That changed, however, in November 2012 when new regulations were incorporated into the zoning code limiting the maximum level of light a property owner could cast onto nearby residential properties to 0.1 foot-candles. The purpose of the 2012 regulations was to "strike a balance of safety and aesthetics by providing lighting regulations that protect drivers and pedestrians from glare and reduce . . . the trespass of artificial lighting onto neighboring properties." Sound regulations also barred "loud, unnecessary noises" that "unreasonably or unnecessarily disturb[ed] . . . the comfort, repose, health, peace, or safety of others in the city."

In late 2014, Vianney started installing baseball field lights. In 2015, contractors told it that there wasn't a lighting configuration that could both comply with the lighting regulations and be bright enough to play baseball safely at night.

Vianney applied for a variance from the regulations. Kirkwood's city planner told Vianney it did not need a variance based on a mistaken assumption that the field already had lights.

Vianney submitted a site plan for its improvements to the baseball field, which Kirkwood approved. Vianney paid more than \$235,000 to install the lights, and in January 2016, it updated the sound system for the baseball field.

Then, the neighbors began to complain. Vianney submitted another site plan in 2016, which the city approved but with conditions as to the lights and sound system. Vianney argued those conditions deprived it of all meaningful use of its baseball field at night.

In 2017, Vianney filed a request in state court alleging a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA) connected to the use of lights and updated sound system on the baseball field. The case was transferred to federal court, and both Vianney and Kirkwood asked for judgment without a trial.

The Court's Decision: Affirmed in part; case sent back for further proceedings.

Vianney failed to show that its religious exercise was substantially burdened by not being able to use the baseball field at night and it had been treated on equal terms with Kirkwood's public high school.

Vianney had a "substantial burden" for establishing a RLUIPA violation. That federal law gave " 'broad protection' for religious exercise in two areas of government activity: 1) land-use regulation; and 2) religious exercise by institutionalized persons."

"The land-use provisions include[d] the two causes of action relevant here: a 'substantial burden' claim and an 'equal terms' claim," the court explained. It noted, too, that Congress had "mandated that RLUIPA 'shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.'" Also, "[t]his case [wa]s this circuit's first examination of RLUIPA in the land-use context," it added.

The court first addressed Vianney's claim that Kirkwood's lighting and sound regulations substantially burdened its religious exercise in violation of RLUIPA. It explained that the government could not "implement a land-use regulation in a manner that 'impose[d] a substantial burden on the religious exercise' of an institution, unless the government demonstrate[d] that imposing the burden (1) further[ed] a compelling governmental interest and (2) [wa]s the least restrictive means of furthering that interest."

Vianney contended religious exercise " 'motivate[d] the school's use' of its baseball field at night." For instance, it claimed that athletics "[wa]s part of the 'formation of young men' in the Catholic Marianist tradition and that

nighttime sports games allow[ed] it to reach out to the community and engage in religious fellowship."

While RLUIPA broadly defined the term "religious exercise" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," Vianney did not demonstrate that its religious exercise had been substantially burdened.

The Bottom Line:

Vianney had been "merely inconvenienced . . . by its inability to use its baseball field at night," the court found.

Vianney had been "merely inconvenienced . . . by its inability to use its baseball field at night," the court found.

In reaching this decision, the Eighth U.S. Circuit Court of Appeals agreed with other circuits, including the Sixth, Ninth, and Eleventh Circuits, in finding that "requiring a religious institution to use feasible alternative locations for religious exercise d[id] not constitute a substantial burden."

Ultimately, the court found that "Vianney had not shown that its religious exercise w[ould] be substantially burdened by being limited to using its baseball field only during daylight hours, as it ha[d] for decades." The court noted there were "alternative times and locations, such as at its baseball field during the day and its football and soccer facility at night, to carry out its religious mission."

The cases cited are *Livingston Christian Schools v. Genoa Charter Township*, 858 F.3d 996 (6th Cir. 2017); *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 185 Ed. Law Rep. 845 (9th Cir. 2004); and *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004).

The Sixth U.S. Circuit has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee; the Ninth U.S. Circuit has jurisdiction over Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington; and the Eleventh U.S. Circuit has jurisdiction over Alabama, Florida, and Georgia.

Case Note:

The court ruled the lower court had not abused its discretion in deciding the state RFRA claim on the merits when no federal claims remained.

Land Use Dispute—Were owner's substantive and procedural due process rights violated by requirement to submit new application for site-plan approval?

Property owner claimed violations stemmed from plans to construct a swimming pool on her property

Citation: *Thomas v. Town of Mamakating, New York*, 2019 WL 6112690 (2d Cir. 2019)

The Second U.S. Circuit has jurisdiction over Connecticut, New York, and Vermont.

SECOND CIRCUIT (NEW YORK) (11/18/19)—The issue in this case was whether a case was “ripe” for adjudication related to a land use dispute where a property owner who wanted to install a swimming pool claimed the town and its planning and zoning boards and the building inspector had violated her substantive and procedural due process rights by finding her requiring to submit a new applicable and pay applicable fees for site-plan approval after concluding her previous application for reinstatement of an expired site-plan approval had been abandoned.

The Background/Facts: Ann Thomas bought a property in Mamakating, New York that had a mound of sand on it. The mound was left over from an unpermitted mining operation on the property.

In 2011, Thomas applied for and received a building permit to construct a swimming pool, which would require removal of some of the sand mound. She also submitted an amended building application to construct a 1,500-square-foot pole barn in addition to the pool.

In 2012, the town's building inspector determined that the planning board would need to conduct a site plan review and provide approval for the amended application because “the amount of grading shown on [the] Site Plan d[id] not appear to be associated with the proposed improvements.”

In August 2013, the planning board conditionally approved a site plan. In October of that year, it approved a modified site plan.

In November 2013, the building inspector issued a building permit. And, months later, the New York State Department of Environmental Conservation (NYSDEC) approved an exemption from the Mined Land Reclamation Law for the proposed site work, which was required to satisfy a condition of the site plan approval.

In November 2014, the building permit expired. The conditional site plan approval also expired in April 2015,

and Thomas wasn't able to get the construction work done by that time.

In October 2015, the building inspector along with NYSDEC representatives inspected Thomas' property. They observed bulldozing of material off site onto a neighboring property and that no erosion control measures were in place. In addition, they noticed no construction of the pool and pole barn had begun yet. At that point, the building inspector issued a stop-work order and a notice of zoning-code violations including construction without a building permit, construction without site plan approval, and site disturbance exceeding approved limits.

Thomas requested an extension on the site-plan approval. The planning board requested an “as-built survey” to determine whether Thomas' project complied with the site plan that the board was being asked to extend.

Thomas submitted an as-built survey in April 2016 and, at the request of the planning board, a revised survey three months later. In January 2017, the town engineer notified Thomas that she had “exceeded the limits of the area approved disturbance by the Planning Board,” that “the clearing, grading and removal of materials performed on the project c[ould not] reasonably be characterized as associated with the construction of a 20 x 40 in-ground swimming pool and 37.5' by 40' pole barn,” and that the construction was an impermissible “mining activity.”

The building inspector then told Thomas she could apply to the zoning board for a use variance and that if such a use variance was granted, a NYSDEC-issued mining permit would be required.

Thomas appealed the building inspector's “mining activity” determination to the zoning board. The zoning board upheld the building inspector's findings. It found that based on the expired building permit, the expired site plan approval, and the fact that “land disturbances ha[d] extended beyond those approved pursuant to the expired site plan” for Thomas' project, her project constituted “Extractive Operations” in violation of the local zoning code.

On the day the zoning board reached its decision, Thomas was told the planning board deemed her application for reinstatement of her expired site plan approval abandoned since she hadn't responded to two previous letters. She was advised to submit a new application and pay applicable fees if she wanted to obtain site plan approval.

Thomas filed suit against the planning board, the zoning board, the building inspector, and the town (the defendants), claiming they violated her substantive and procedural due process rights under Section 1983 of the U.S. Code.

The lower court granted the defendants judgment. Thomas appealed.

The Court's Decision: Affirmed.

The case wasn't ripe for adjudication.

In *Williamson County Regional Planning Committee v. Hamilton Bank of Johnson*, the “Supreme Court ha[d] articulated ripeness requirements applicable to the land use

context,” the Second U.S. Circuit Court of Appeals explained. It had ruled that “a takings claim arising from a local land use dispute [wa]s not ripe until the local regulatory body ha[d] rendered a ‘final decision’ regarding the use of the property at issue.”

After the Williamson decision, the Second Circuit had “extended the final decision requirement to other constitutional claims relating to land use disputes, including substantive and procedural due process challenges.” “In practice, the final decision requirement conditions federal review on a property owner submitting at least one meaningful application for a variance,” it wrote.

Thomas argued she had received a final decision on her proposed land use even though she hadn’t applied for a variance because the prior approvals showed how she might use her property. “Specifically, she contends that the issuance of the site plan approval and the building permit in 2013 reflect the Town’s determination that her project is compliant with the zoning code,” the court explained. “Contrary to Thomas’s theory, those prior approvals do not constitute a final decision for purposes of this suit given the zoning board’s subsequent determination that Thomas’s project exceeds the scope of those approvals,” the court wrote. “That is, Thomas is not challenging the issuance of the site plan approval and the building permit in 2013, but rather challenging a series of decisions after 2015 which allegedly deprived Thomas of her rights to finish the construction at issue. Because Thomas can still seek a use variance from the zoning board and has not done so, we cannot evaluate how the Town’s zoning rules will ultimately be applied to Thomas’s property,” the court added.

EXCEPTION TO VARIANCE REQUIREMENT

There was an exception to the variance requirement that might apply in certain instances. If seeking the variance would be futile, the property owner would be excused from seeking one, the court noted, adding “[f]utility occur[ed] ‘when a zoning agency lacks discretion to grant variances or has dug in its heels and made clear that all such applications w[ould] be denied.’”

“[W]e conclude that the Town’s actions in this case do not warrant application of the futility exception.”

Thomas claimed the variance exception applied since the building inspector had interfered in her project, which caused delays. But, “[h]aving considered the entire factual record, we conclude that the Town’s actions in this case do not warrant application of the futility exception.”

Case Note:

“A property owner does not have a vested right to complete a construction project regardless of whether her permits for that project expire or are violated,” the court wrote.

The case cited is *Williamson County Regional Planning Com’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985) (overruled by, *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019)).

Constitutional Rights Violations—Township denies application to own and operate a gun club

Would-be gun club owner asserts violations of Second and Fourteenth Amendment

Citation: *Drummond v. Township of Robinson*, 784 Fed. Appx. 82 (3d Cir. 2019)

The Third U.S. Circuit has jurisdiction over Delaware, New Jersey, Pennsylvania, and the Virgin Islands.

THIRD CIRCUIT (PENNSYLVANIA)(11/14/19)—The issue in this case is whether a township and its zoning officer had committed constitutional violations of the Second and Fourteenth amendments in denying an application to own and operate a gun club.

The Background/Facts: William Drummond filed an application with the township of Robinson, Pennsylvania to own and operate a gun club. The township and its zoning officer denied the application, so Drummond, along with the Second Amendment Foundation Inc. and another entity filed suit alleging Second and Fourteenth amendment violations.

The lower court granted the township’s request for dismissal and denied Drummond’s request for a preliminary injunction. Drummond appealed.

The Court’s Decision: Vacated in part; case sent back for further proceedings.

The Second Amendment challenges stood, as did the request for preliminary injunction.

“Second Amendment challenges [we]re-evaluated using a two-step framework. First, courts . . . ‘ask[ed] whether the challenged law impose[d] a burden on conduct falling within the scope of the Second Amendment’s guarantee.’ Then, if the law impose[d] such a burden, courts evaluate [d]it ‘under some form of means-end scrutiny.’” Third U.S. Circuit Court of Appeals explained.

Drummond contended that the lower court erred in ruling at step one that specific sections of Robinson’s zoning ordinance didn’t burden his Second Amendment rights, therefore, the court had erred in failing to reach step two.

“[T]o uphold the constitutionality of a law imposing a condition on the commercial sale of firearms, a court necessarily must examine the nature and extent of the imposed condition,” the court explained. The lower court had found that at step one “that the nature and extent of [two sections]

of the Robinson Township Zoning Ordinance d[id] not substantially burden Second Amendment rights because they le[ft] open alternative channels for law-abiding citizens to acquire a firearm or maintain proficiency in the use of firearms through use of a time, place, and manner test.”

“We agree with Drummond that this was error,” the appeals court ruled. That’s because the lower court had “essentially collapsed the two-step . . . test when it used a time, place, and manner test to evaluate the Step One inquiry—whether the law places a burden on Second Amendment rights.” The case on which the two-step test was based was outlined in the Third Circuit’s ruling in *United States v. Marzzarella*, which “demonstrate[d] that in determining whether the law place[d] a burden on Second Amendment rights, a textual and historical analysis [wa]s required.” Such analysis was expected to “apply the textual and historical understanding of the Second Amendment” as explained in another case decided by the Supreme Court, *District of Columbia v. Heller*. In *Heller*, the court enunciated that the “analysis should apply the textual and historical understanding of the Second Amendment . . . to the conduct at issue: acquiring firearms and maintaining proficiency in their use,” the Third Circuit explained.

“A time, place, and manner test is not an appropriate means to determine, at Step One, whether a burden has been placed on Second Amendment rights, and is instead appropriate under the Step Two inquiry,” the court found.

In this case, the lower court erred by not performing the textual and historical analysis; instead, it had “skipped ahead to the time, place, and manner question.”

A CLOSER LOOK

Drummond’s other constitutional arguments fell apart. “The zoning officer’s conduct did not violate his Fourteenth Amendment rights to substantive due process because the zoning officer’s conduct [wa]s not conscience-shocking,” the court found. “Stalling, delay, and failure to notify about meetings d[id] not rise to the level of the ‘most egregious’ official conduct, which [wa]s required in order to shock the conscience,” it added.

Also, one of the sections in the township’s zoning ordinance did not violate the Fourteenth Amendment’s Equal Protection Clause by requiring gun clubs to operate as nonprofits while allowing other businesses within the zoning district to operate for a profit. “Because gun clubs [we]re not a protected class under the Equal Protection Clause, the ordinance [wa]s subject to only rational-basis review,” the court noted. “The profit versus nonprofit distinction in [the section at issue] bears a rational relationship to the Township’s permissible objective of nuisance prevention because the commercial nature of a shooting range is reasonably related to the intensity of land use and the impact that such use may have on neighboring properties,” the court found.

Case Note:

The lower court had denied Drummond’s request for a prelimi-

nary injunction after finding his constitutional claims had failed. “In light of our decision to vacate and remand for further proceedings on the facial Second Amendment claims, Drummond’s preliminary injunction request is no longer moot to the extent it is based on those claims,” the Third Circuit ruled.

The cases cited are *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008); and *U.S. v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010).

Zoning News from Around the Nation

CALIFORNIA

The cost of housing in places like San Francisco and Los Angeles (LA) can be prohibitively expensive. Mortgage Professional America (MPA) reports that a new housing development shortage coupled with a big housing demand has in many cases doubled median home values in these to metropolitan areas. And, to the north in Seattle, it’s not any better. The report indicated that home appreciation has risen by two-thirds there since 1999.

MPA said one way to deal with the housing-affordability crisis is to relax zoning regulations. It cited analysis by Zillow suggesting that this approach could result in millions of new—and importantly, more affordable—homes coming on the market.

In LA, for example, permitting four homes on 20% of single-family lots could result in yield a housing inventory increase of more than two million homes—a 53.4% increase over the current housing inventory when considered in conjunction with homes already expected to be constructed.

According to a recent report by the *San Francisco Examiner*, Senate Bill 50 (SB 50) seeks to halt “low-density zoning” that contributes to the housing crisis and breeds segregation.

For more information on Zillow’s policy-related research, visit [zillow.com/research/policy-politics/](https://www.zillow.com/research/policy-politics/). And, to read more about SB 50, visit leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB50.

Sources: [mpamag.com](https://www.mpamag.com/); [sfexaminer.com](https://www.sfexaminer.com/)

MASSACHUSETTS

The Somerville City Council has approved an overhaul to that city’s zoning ordinance. The “historic new ordinance uses national best practices to implement SomerVision,” the city’s Master Plan in effect since 2012, a press release on the city’s website explained.

Somerville represents the first—and biggest—municipality in the Boston area to adopt a citywide form-based code (FBC) like this, the city noted. The new ordinance came about following more than seven years of research and analysis, the city explained. There were hundreds of community meetings, several public hearings and an extensive Board of Aldermen and City Council. Then, on December 12, 2019, the City Council voted to

approve the proposed new zoning ordinance, which represents the “first major overhaul of zoning in Somerville since 1990, and an update of some regulatory elements that have existed since zoning was first adopted in 1924.”

“For years we have steadfastly worked, as a community, to ensure that we have the best possible zoning ordinance that meets the goals and expectations of our residents and businesses, that enables us to expand affordable housing, jobs, development, and so much more to move our community forward while ensuring residents of all backgrounds can afford to stay, and build their homes and businesses here,” said Somerville Mayor Joseph Curtatone.

“This effort was one of the most significant undertakings by the City Council in decades and we are grateful for the collaboration from the administration and the invaluable input from the community throughout,” said Ward 6 City Councilor and Chair of the Council’s Land Use Committee Lance Davis.

The 552-page ordinance is designed to provide:

- “clear, simple language to make zoning understandable to a broad audience”; and
- “illustrations, graphics, and photos to help users visualize the standards.”

It also:

- establishes parking maximums in areas within walking distance to the city’s rapid transit stations;
- regulations development of 23 building types;
- permits common home improvements including “building components by-right” such as dormers, bay windows, rear additions, and porches; and
- requires new development projects to provide 20% of affordable-dwelling housing units.

To learn more about Somerville’s zoning overhaul, visit somervillema.gov/news/somerville-city-council-administration-pass-citys-first-zoning-overhaul-30-years-or-somervillezoning.com.

And, in other zoning news out of the Bay State, a struggling western Massachusetts-based mall may get new life

thanks to a plan to put a Cannaworld retail store and marijuana-cultivation facility inside a 127,000 square-foot structure in the Eastfield Mall that previously housed a Macy’s department store, *WAMC Northeast Public Radio* reported recently.

An attorney representing the mall’s owners told the Springfield City Council that housing a marijuana dispensary at this location could propel a \$200 million mixed-use redevelopment plan, which would include housing, the news outlet reported.

At the present time, the mall, which is situated on 87 acres on a busy commercial road, has about 50 tenants. It recently lost its major anchor tenants, including Macy’s, JCPenney, and Sears.

The Cannaworld proposal would require special permitting granted by the city council as well as a Massachusetts Cannabis Control Commission license.

Sources: somervillema.gov; wamc.org

OHIO

The Athens City Council has passed an ordinance that calls for the rezoning in certain parts of its Uptown area, reported *The New Political* recently. As a result, businesses won’t need to reserve parking spots for customers; they can do so if they choose, instead.

Source: thenewpolitical.com

TENNESSEE

Mt. Juliet, Tennessee has been served with a lawsuit filed on behalf of carafem, a national abortion provider, by the ACLU and ACLU Tennessee, as well as a law firm, challenging a zoning ordinance designed to restrict surgical abortion clinics, the *Tennessean* reported recently.

The news report noted that carafem had opening a Mt. Juliet-based center in March of 2019, stating its intent to provide birth control and medical abortions to end pregnancies up to 10 weeks. But it also expressed plans to offer surgical abortion procedures, and the city commissioners have approved, by unanimous vote, regulations to restrict surgical abortion clinics to industrially zoned areas.

Source: tennessean.com

BEST PRACTICES | TOOLS | LAW

THE COMMISSIONER | BEST PRACTICES

SAVING VINTAGE AND HISTORIC SIGNS

Three cities tackle the challenge of preserving these nonconforming community landmarks. *By James B. Carpentier, AICP*



A years-long effort to restore the iconic diving girl sign on the Pueblo Hotel in Tucson prompted the city to rewrite its sign code to allow for preservation of local landmark signs.

TUCSON'S EIGHT-YEAR OLD historic landmark sign ordinance started with one man's effort to save the "diving lady" sign (left), which for more than 60 years had welcomed visitors to the Pueblo Hotel. Barry Davis, the new owner, converted the property into law offices in 1993 and then started a years-long effort to get the city to grant a permit to restore the dilapidated sign.

It wasn't easy. The existing code banned signs that were located in a right-of-way, exceeded the 12-foot maximum height, and/or failed to meet the required setback. The fact that the diving lady topped a pole was another mark against it.

The good news is that the battle to save one sign started a discussion about Tucson's past and whether icons and community landmarks with significant ties to the past like this one should be saved—and provides a few best practices for other communities looking to do the same.

How they did it

First came a new sign code. A small group that included the Tucson-Pima County Historical Commission, the Citizen Sign Code Committee, the Downtown Partnership, and the business owner with the historic sign worked together to develop a code that allowed for the preservation of signs such as the diving lady. Forming a broad stakeholder group, as Tucson did, ensures sign regulations that are representative of the entire community.

To get ideas, the group chose outstanding examples from jurisdictions throughout the U.S., including Flagstaff, Arizona; Orlando, Florida; and San Jose, California. It took 24 public meetings, but the city council finally approved the sign code in June 2011. The code defines three types of landmark signs: classic,

transitional, and replica. The rules define a classic sign as one installed before 1961. A transitional sign dates from between 1961 and 1974. A replica historic sign is an accurate copy of a pre-1961 sign.

To date, some 200 signs have been included in the city's official register of historic landmark signs. Inclusion is voluntary, but the city does provide some incentives to encourage participation. For one thing, property owners who are involved in the program may exempt compatible registered signs from the total square footage of signage allowed for their building. They may also put up new signs if they are appropriate. The code also allows registered signs to be relocated to another location so long as the zoning is appropriate and the signs do not exceed the measurements allowed by the Historic Landmark Sign Concentration requirement.

Other models

Salt Lake City also has done a notable job with its recently adopted vintage sign ordinance. It has developed comprehensive design guidelines for new and existing signs in historic districts.

A model in ensuring that new signs in historic districts are appropriate is Portsmouth, New Hampshire, where the historic district commission has developed guidelines for an eight-page policy document for new signs and awnings. The document includes many helpful images and provides clear guidance for applicants.

If your community is seeking ways to save its historic signs or to address new signs in historic districts, the approaches outlined here are worth a look.

Carpentier is the director of state and local government affairs for the International Sign Association in Alexandria, Virginia.

THE COMMISSIONER | TOOLS

THE BASE, THE OVERLAY, AND THE FLOAT

By DAVID SILVERMAN, AICP

Zoning can be endlessly creative and endlessly confusing, both to land-use practitioners and lay people. Let's explore a few basic zoning terms and tools that every commissioner needs to know.

BASE ZONING DISTRICT. Likely 99.9 percent of your time involves dealing with standard base districts, shown on your zoning maps as permitted or specially permitted uses. The base zoning district plays a key role either by perpetuating existing development patterns or setting the stage for new ones. Besides permitted uses, base districts include bulk regulations governing the massing of buildings on zoning lots (e.g., height, floor area ratio, and setbacks) and other matters pertaining to improving property. Your base district may also include regulations for things like accessory uses, landscaping, and architectural requirements.

BEYOND THE BASE—OVERLAY AND FLOATING ZONES. Now consider another scenario, one that addresses a unique development challenge that does not fit anywhere—but must be accommodated. Zoning, in its infinite capacity to be creative (and maddening), came up with solutions—one that may appear on your zoning map without immediate effect, and one that shows up in the zoning code but does not appear on the map.

Consider these nonexhaustive examples: You have an area that requires intensive redevelopment with projections of a certain scale. Another is an ecologically sensitive area that warrants redevelopment, but at a lesser scale than is permitted by the underlying base zoning. A third use could be to maintain and expand unique architectural features.

There are two other zoning tools that can help address these challenges. The first is the overlay zone, which overlays a discrete area of a base district or districts and creates an additional set of development standards to account for specific land-use policy goals and objectives. The overlay zone enables new standards to be introduced in a very targeted and strategic way. It can be used to address specific land-use policy goals and objectives in your community's comprehensive plan.

The next is the floating zone. It is similar to an overlay zone, with one important caveat. It "floats" over a community or a specific part of a community, with yet another set of standards to accommodate specific development opportunities. It differs from the overlay zone in that it is unmapped and can be "set down" on top of any base zoning district in the community. You only know the floating zone exists because the regulations governing it are part of the zoning text.

Both the overlay and the floating zones result from certain triggering events that govern the development of a property. Usually that event is a planned development. Be aware, however, that the floating zone will require a map amendment along with the other zoning entitlements.

Silverman is a partner at Ancel Glink, a law and planning firm in Chicago.