



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, June 4, 2019 in the Council Chambers at Elko City Hall, 1751 College Avenue, Elko, Nevada, and beginning at 5:30 P.M., P.D.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: May 29, 2019 2:10 p.m.

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

Date/Time Posted: May 29, 2019 2:05 p.m.

ELKO POLICE DEPARTMENT – 1448 Silver Street, Elko NV 89801

Date/Time Posted: May 29, 2019 2:15 p.m.

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

Date/Time Posted: May 29, 2019 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician

Name

Title

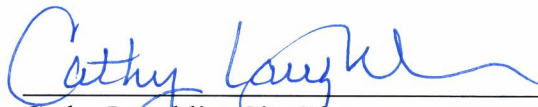
Signature

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 29th day of May, 2019.

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, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.D.S.T., TUESDAY, JUNE 4, 2019
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

May 7, 2019 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action of Conditional Use Permit No. 4-19, filed by Elko County School District, which would allow for the expansion of the current Elko High School campus with the addition of a new building, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally north of the intersection of 11th Street and College Avenue. (1297 College Avenue - APN 001-191-001 & 001-191-001).

2. Review, consideration, and possible action on Variance No. 1-19, filed by Elko County School District for a reduction of the required setback from any Street Line from 59.25' to 20' on the College Avenue Street Line, within a PQP (Public, Quasi-Public) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally north of the intersection of 11th Street and College Avenue. (1297 College Avenue - APN 001-191-001 & 001-191-001).

3. Review, consideration, and possible action on Variance No. 2-19, filed by David & Juliane Ernst for a reduction of the required exterior side yard setback from 15' to 4.5' and the required interior side yard setback from 5.5' to 1.1' for a residence in an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the northeast side of 3rd Street, approximately 36' southeast of Pine Street. (604 3rd Street- APN 001-224-009)

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.D.S.T., TUESDAY, MAY 7, 2019
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
 Gratton Miller
 Ian Montgomery
 Jeff Dalling
 John Anderson
 Stefan Beck
 Tera Hooiman

City Staff Present: Scott Wilkinson, Assistant City Manager
 Cathy Laughlin, City Planner
 Michele Rambo, Development Manager
 Bob Thibault, Civil Engineer
 John Holmes, Fire Marshal
 Shelby Archuleta, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no comments made at this time.

APPROVAL OF MINUTES

April 2, 2019 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the April 2, 2019 Meeting Minutes as presented.**

Moved by Evi Buell, Seconded by Tera Hooiman.

**Motion passed. (6-0, Gratton Miller abstained)*

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible adoption of Resolution 1-19, containing amendments to the Atlas Map #12 and the Transportation Component of the City of Elko Master Plan, and matters related thereto. **FOR POSSIBLE ACTION**

Planning Commission reviewed and initiated the amendment to the City of Elko Master Plan at its March 5, 2019 meeting and made additional changes to the amendments at their April 2, 2019 meeting.

Cathy Laughlin, City Planner, explained that this was triggered by a subdivision application for a Stage 1 meeting that was brought to the City of Elko for a subdivision that is on the corner of Celtic and El Armuth Drive. When staff meets in a Stage 1 they look at all aspects of the subdivision, including transportation and the Transportation Component of the Master Plan. There were a couple of properties that were in the County portion of Royal Crest Drive that did quiet claim deeds and took over possession of what was mapped originally for El Armuth Drive. El Armuth Drive was not mapped as a dedicated roadway, it was mapped as a parcel in the original mapping. With the property owners already taking over half of the ownership of the area, and because of the steep topography, it is nearly impossible for the City to have the extension of El Armuth Drive from Sagecrest Drive to Celtic Way. Looking at the Transportation Component of the Master Plan, and proposing this amendment, we are proposing to eliminate the connection of El Armuth Drive between Sagecrest Drive and Celtic Way, as well as eliminating the connection between El Armuth Drive to the future frontage road. It would also be impossible to do that connection because there is a property that the City would have to acquire in order to do a road connection. It is proposed that El Armuth Drive end at Hondo Lane. Those are the two proposed changes to the Transportation Component of the Master Plan.

Michele Rambo, Development Manager, had no comments.

Bob Thibault, Civil Engineer, stated that any comments from the Engineering Department had already been included in the proposed changes.

John Holmes, Fire Marshal, had no comments or concerns.

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

Commissioner Stefan Beck expressed that they didn't have a packed house, so everything must be going smoothly.

Chairman Jeff Dalling said they hashed all the issues out at the last meeting.

*****Motion: Adopt Resolution 1-19 containing amendments to the Transportation Component and Atlas Map Number 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.**

Moved by Evi Buell, Seconded by Tera Hooiman.

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

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible action to initiate an amendment to the City Zoning Ordinance, specifically Sections 3-2-3 General Provisions and 3-2-2 Definitions, and matters related thereto. **FOR POSSIBLE ACTION**

Ms. Laughlin explained that the Building Codes are being proposed to adopt the 2018 International Building Code, International Residential Code, Etc. With that, we currently have in the City of Elko Building Code a section on curb, gutter, and sidewalk requirements. Staff feels that with the proposed adoption of the new codes that the curb, gutter, and sidewalk section should come out of Building Section and go into the Public Ways Section of the Code. We are proposing to take the curb, gutter, and sidewalk portion completely out of the Building Code, put it into Public Ways, and make a reference to it in this Ordinance. We have created this Ordinance for Section 3-2-3, which is the General Provisions, to add a Section that clearly states that you might be subject to curb, gutter, and sidewalk regulations per another Section of Code. A few definitions were updated and added as pertained to curb, gutter, and sidewalk. Ms. Laughlin then went over the proposed changes.

Commissioner Beck said it sounded like there were not a lot of changes.

Ms. Laughlin explained that they were taking one section out of the Code, moving it to a whole other Section in the Code, and adding a reference to it in the Zoning Code.

Mr. Wilkinson explained that a comprehensive amendment is being done to the Public Ways Section of Code, but that doesn't come to the Planning Commission.

Ms. Rambo added that they are not changing the portion of the Ordinance dealing with curb, gutter, and sidewalk, they are just moving it.

Mr. Thibault had nothing to add.

Mr. Holmes and Mr. Wilkinson had no comments or concerns.

*****Motion: Initiate an amendment to the City Zoning Ordinance, specifically Sections 3-2-3 General Provisions and 3-2-2 Definitions and direct staff to bring the item back as a public hearing.**

Moved by Gratton Miller, Seconded by Stefan Beck.

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

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that City Council Agendas have been slow. When we don't have things on the Planning Commission agenda, then they don't go to City Council. Great Basin Estates continues to be tabled, but we are getting some communication. The Orchard Cove subdivision will be on the next City Council Meeting.

B. Summary of Redevelopment Agency Actions.

Ms. Laughlin reported that the RAC had meeting in April. They got two Storefront Improvement Grant Applications, and they recommended that both of them be approved. That will go to the RDA in May. At the beginning of the May meeting it will be a joint meeting with the RAC to present the recognition awards. Once the joint meeting is adjourned the RDA will move into their meeting. They will have several items on their agenda. They will be looking at the Storefront Grant Applications and the remaining funding. They will also be discussing the block end design, and an expenditure for funding to repaint and freshen up the train in the Train Park. There may also be an agenda item for the lights in the corridor.

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.

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ADJOURNMENT

There being no further business, the meeting was adjourned.

Jeff Dalling, Chairman

Tera Hooiman, Secretary

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration, and possible action on Conditional Use Permit No. 4-19, filed by Elko County School District, which would allow for the expansion of the current Elko High School campus with the addition of a new building, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **June 4, 2019**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **Elko High School is proposing to merge two parcels into one and build a new Science building. Any expansion within the PQP, Public-Quasi, Public zoning district requires a Conditional Use Permit.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff report**
8. Recommended Motion: **Conditionally approve Conditional Use Permit 4-19 based on the facts, findings and conditions as presented in Staff Report dated May 20, 2019**
9. Findings: **See Staff Report dated May 20, 2019.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Elko County School District**
Mr. Casey Kelly
850 Elm Street
Elko, NV 89801
ckelly@ecsdnv.net

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 6/4

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

Title: Conditional Use Permit 4-19
Applicant(s): Elko County School District - Elko High School
Site Location: 1297 College Ave. - APN 001-191-004 + 001
Current Zoning: PQP Date Received: 5/13 Date Public Notice: 5/24
COMMENT: This is to allow for the expansion of the current Elko High School campus with the addition of a new building.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 5/23/19
Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 5/29/19
Recommend approval, assuming off-street parking does not increase. The City of Elko receives complaints about off-street parking in this area (on occasion).

cy
Initial



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

CITY OF ELKO STAFF REPORT

DATE:	May 20, 2019
PLANNING COMMISSION DATE:	June 4, 2019
AGENDA ITEM NUMBER:	I. A. 1
APPLICATION NUMBER:	Conditional Use Permit 4-19
APPLICANT:	Elko County School District
PROJECT DESCRIPTION:	Elko High School Campus, New Science Building
RELATED APPLICATIONS:	Variance 1-19, Parcel Map

A Conditional Use Permit for the expansion of the current Elko High School campus with the addition of a new building.



STAFF RECOMMENDATION:

RECOMMEND APPROVAL, subject to findings of facts, conditions as stated in this report.

PROJECT INFORMATION

PARCEL NUMBER: APN 001-191-001 & 004

PROPERTY SIZE: 14.03 acres combined after approval and recordation of parcel map combining the two parcels

EXISTING ZONING: PQP –Public, Quasi, Public

MASTER PLAN DESIGNATION: Public

EXISTING LAND USE: Developed as the Elko High School campus

NEIGHBORHOOD CHARACTERISTICS:

) The property is surrounded by developed land to the north, south, east and west. The campus is currently zoned PQP, Public, Quasi-Public with R- Single Family and Multiple Family Residential to the south.

PROPERTY CHARACTERISTICS:

-) The property is currently undeveloped on the portion of APN 001-191-004 which is proposed for the new building.
-) The property has moderate topography with slope down toward College Ave.
-) The property is currently accessed from 13th Street.
-) The property has frontage along College Avenue as well as 13th Street.
-) The property is not in the flood zone.

APPLICABLE MASTER PLANS 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 Code 3-2-3 General Provisions
-) City of Elko Code 3-2-4 Establishment of Zoning Districts
-) City of Elko Code 3-2-8 Public, Quasi-Public District
-) City of Elko Code 3-2-17 Traffic, Access, Parking and Loading Regulations
-) City of Elko Code 3-2-18 Conditional Use Permits
-) City of Elko Code 3-8 Flood Plain Management

BACKGROUND INFORMATION

-) The application for the Conditional Use Permit was filed as required under City Code 3-2-8 (D).
-) The applicant has applied for a variance (VAR 1-19) for a reduction in the street line setback from College Avenue for the new building.
-) The applicant is preparing a parcel map to combine both parcels into one parcel. To this date, the application has been received by the Planning Department but the map has not been submitted by the surveyor.
-) The property is located in the Redevelopment Area.

MASTER PLAN

Land Use

1. The Master Plan Land Use Atlas shows the area as Public.
2. PQP- Public, Quasi-Public is listed as a corresponding zoning district for Public in the Master Plan Land Use.
3. Master Plan states that Public land use designation is applied to community and public and quasi-public uses such as those associated with government, non-profit, and utilities. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, the Master Plan's goals and policies.
4. Objective 3: Strengthen, preserve, and promote the area around the City Park, City Hall, and Convention Center as the civic heart of the community.
5. Objective 8: Ensure that new development does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

The conditional use permit is in conformance with the Master Plan Land Use Component

Transportation

1. The Master Plan identifies College Avenue as a minor arterial.
2. The Master Plan identifies 13th Street as a Commercial/Industrial Collector.
3. The site has pedestrian access along College Avenue, 13th Street an interior network of sidewalks from parking area to the buildings. Sidewalks are a necessary safety feature, particularly in residential neighborhoods where children walk to and from the campus.
4. There is no proposed vehicular access from College Avenue to the new building and the current access off 13th Street will remain as existing. It is a safer approach having the access not from the minor arterial.
5. The existing facility meets the goals listed in the Master Plan Transportation document as Best Practice Objective 1; Provide a balanced transportation system that accommodates vehicle, bicycles, and pedestrians, while being sensitive to, and supporting the adjacent land uses.

The conditional use permit is in conformance with the Master Plan Transportation Component and existing transportation infrastructure.

ELKO REDEVELOPMENT PLAN:

1. The property is located within the redevelopment area. The proposed use doesn't provide tax increment growth but does support several goals and objectives listed in the Redevelopment Plan.

The proposed conditional use conforms to the Redevelopment Plan.

ELKO WELLHEAD PROTECTION PLAN

-) The property is located in the 30-year capture zone for City wells. Development will be required to conform to the Elko Wellhead Protection Plan

SECTION 3-2-3 GENERAL PROVISIONS

-) Section 3-2-3 (C) City code specifies use restrictions. The following use restrictions shall apply.
1. Principal Uses: Only those uses and groups of uses specifically designated as "principal uses permitted" in zoning district regulations shall be permitted as principal uses; all other uses shall be prohibited as principal uses
 2. Conditional Uses: Certain specified uses designated as "conditional uses permitted" may be permitted as principal uses subject to special conditions of location, design, construction, operation and maintenance hereinafter specified in this chapter or imposed by the planning commission or city council.
 3. Accessory Uses: Uses normally accessory and incidental to permitted principal or conditional uses may be permitted as hereinafter specified.

Other uses may apply under certain conditions with application to the City.

1. Section 3-2-3(D) states that "No land may be used or structure erected where the land is held by the planning commission to be unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, low bearing strength, erosion susceptibility, or any other features likely to be harmful to the health, safety and general welfare of the community. The planning commission, in applying the provisions of this section, shall state in writing the particular facts upon which its conclusions are based. The applicant shall have the right to present evidence contesting such determination to the city council if he or she so desires, whereupon the city council may affirm, modify or withdraw the determination of unsuitability."

The proposed development is required to have an approval as a conditional use to be in conformance with ECC 3-2-3 as required in ECC 3-2-8(D).

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.
2. Section 3-2-4(B)(4) stipulates that 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.

The proposed development does not conform with this section of the code and therefore the applicant has applied for a variance (VAR 1-19) for the street line setback requirement.

SECTION 3-2-8 PQP PUBLIC, QUASI-PUBLIC DISTRICT

1. The intent of the district is to accommodate public or quasi-public institutional uses.
2. Section 3-2-8(D) The establishment, expansion or change of any use, including principal permitted uses, shall be governed by the conditional use permit procedure, as set forth in section [3-2-18](#) of this chapter.
3. Section 3-2-8(C) The total ground floor area of all buildings shall not exceed thirty five percent (35%) of the net site area. Minimum setback from any street line is not less than one and one-half (1 ½) times the height of the principal building. Minimum setback from interior side and rear lot lines is not less than the height of the principal building, plus one additional foot for each five feet (5') or part thereof that such building exceeds thirty five feet (35') in the aggregate horizontal dimension of the wall generally parallel to such side or rear lot line. Building height shall conform with requirements contained within the city airport master plan.
4. Development of the property is required to be in conformance with City code and conditions for the CUP. It appears the property can be developed in conformance with the requirements stipulated in City code with the approval of a variance.

The proposed development does not conform with the development standards of this section of code and therefore, the applicant has requested a variance.

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

-) Conformance with this section is required as the property is developed.

SECTION 3-2-18 CONDITIONAL USE PERMITS

General Regulations:

1. Certain uses of land within designated zoning districts shall be permitted as principal uses only upon issuance of a conditional use permit. Subject to the requirements of this chapter, other applicable chapters, and where applicable to additional standards established by the Planning Commission, or the City Council, a conditional use permit for such uses may be issued.
2. Every conditional use permit issued, including a permit for a mobile home park, shall automatically lapse and be of no effect one (1) year from the date of its issue unless the permit holder is actively engaged in developing the specific property to the use for which the permit was issued.

3. Every conditional use permit issued shall be personal to the permittee and applicable only to the specific use 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.
4. Conditional use permits shall be reviewed from time to time by City personnel. Conditional use permits may be formally reviewed by the Planning Commission. In the event that any or all of the conditions of the permit or this chapter are not adhered to, the conditional use permit will be subject to revocation.

3-8 FLOOD PLAIN MANAGEMENT

1. The parcel is not located within a designated flood plain.

FINDINGS

1. The proposed development is in conformance with the Land Use Component of the Master Plan. The proposed conditional use permit meets Objectives 3 & 8 of the Land Use Component of the Master Plan.
2. The proposed development is in conformance with the existing transportation infrastructure and the Transportation Component of the Master Plan.
3. The proposed development conforms with the goals and objectives of the Redevelopment Plan.
4. The site is suitable for the proposed use.
5. The proposed development is in conformance with the City Wellhead Protection Program.
6. The proposed use is consistent with surrounding land uses.
7. The proposed use is in conformance with City Code 3-2-8 PQP, Public-Quasi, Public with the approval of the Conditional Use Permit and variance 1-19 for street line setback reduction.
8. Development under the proposed conditional use will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc. or pose a danger to human health and safety.
9. The parcel is not located within a designated Special Flood Hazard Area.
10. 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 with the approval of the variance for street line setback that is associated with this CUP.

STAFF RECOMMENDATION:

Staff recommends **APPROVAL** of CUP 4-19 with the following conditions:

1. The permit is granted to the applicant Elko County School District.
2. The permit shall be personal to the permittee and applicable only to the specific use 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.
3. A variance for the College Ave. street line setback for the principal building is required to be approved prior to issuing of a building permit. All conditions of VAR 1-19 to be met prior to occupancy of the building.
4. Slope stabilization will be required on all slope areas.
5. A Parcel Map for the consolidation of the two parcels be approved and recorded prior to issuing a building permit for the new building.
6. CUP 4-19 to be recorded with the Elko County Recorder within 90 days after the commencement of the construction of the new building.



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

May 29, 2019

Elko County School District
Attn: Casey Kelly
850 Elm Street
Elko, NV 89801

Re: Conditional Use Permit No. 4-19 and Variance No. 1-19

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:

CUP 4-19 + Var 1-19 - ECSD - ELKO High School

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001202014	AIAZZI, STANLEY G & JOYCE L TR		1309 OAK ST	ELKO NV	89801-3433
001242018	ARENDT, SCOTT		575 12TH ST	ELKO NV	89801-3404
001252010	BEACH, JACKIE LEE & LORRAINE K		572 13TH ST	ELKO NV	89801-3407
001203012	BIEGLER, PHILIP J		1319 COLLEGE AVE	ELKO NV	89801-3427
001242015	BRASWELL, JAY C & MAHELIA J		576 11TH ST	ELKO, NV	89801-3403
001202015	BROWN, HOWARD A & JILL R		716 13TH ST	ELKO NV	89801-3442
001201001	ROBERT BLANKENSHIP		791 13TH ST	ELKO NV	89801-3443
001252001	CARNICLE, ALLEN R & NATALIE B		588 13TH ST	ELKO NV	89801-3407
001203005	CAVALIERE, RICHARD J & JANICE J		10566 RIDGECREST DR	JACKSON CA	95642-9348
001251014	CHARPENTIER, KAY MARIE		576 12TH ST	ELKO NV	89801-3405
001201002	CLINTON, ELDON WAYNE ET AL		7850 E MEMORY LANE	PRESCOTT VALLEY AZ	86315
001241024	CREWS, JAMES V		1026 1/2 COLLEGE AVE	ELKO NV	89801-3479
001203010	CURWEN, MIKE & MACKENZIE		1351 COLLEGE AVE	ELKO NV	89801-3427
001251011	DENNIS, ROY J & LODEEN M		546 12TH ST	ELKO NV	89801
001251012	DOLBERG, ANDREW & MELANIE		552 12TH ST	ELKO NV	89801-3405
		C/O ZIONS BANK ATN:			
001241035	EINBODEN, ALLAN F & DINA L	MATT SNELL	2460 S 3270 W	WEST VALLEY CITY UT	84119-1116
001191003	ELKO COUNTY OF		540 COURT ST	ELKO NV	89801-3515
001620020	ELKO COUNTY SCHOOL DISTRICT	} 1p.c.	850 ELM ST	ELKO NV	89801-3349
001620019	ELKO COUNTY SCHOOL DISTRICT		850 ELM ST	ELKO NV	89801-3349
001191001	ELKO COUNTY SCHOOL DISTRICT-ELK		850 ELM ST	ELKO NV	89801-3349
001242017	GEIST & SCHVANEVELDT LLC		318 FALLS AVE	TWIN FALLS ID	83301-3373
001241025	GREDZINSKI, ISABELLA JOY		1026 COLLEGE AVE	ELKO NV	89801-3422
001251001	GUISTI, MARK L		592 12TH ST	ELKO NV	89801-3405
001242003	GUZMAN, SERGIO A & GEORGIA C TR		207 MOUNTAIN CITY HWY # 14	ELKO NV	89801-9505
001203011	HARRIS, JERALD		1329 COLLEGE AVE	ELKO NV	89801-3427
001202003	HASSETT, DANIEL M		1342 CEDAR ST	ELKO NV	89801-3418
001202013	HASSETT, MARY CATHERINE TR		1335 OAK ST	ELKO NV	89801-3433
001203002	HAYES, DEREK JON		467 WESTCLIFF DR	SPRING CREEK NV	89815-6830
001251003	HENNEBERRY, MICHAEL J & JACQUELI		565 13TH ST	ELKO NV	89801-3406
001203003	IRIBARNE, JANET		1328 OAK ST	ELKO NV	89801-3434
001242014	JONES, DIANA J		110 WILSON AVE	ELKO NV	89801-4144
001203004	KENNEDY, MARK E		1340 OAK ST	ELKO NV	89801-3434

001202002 LARIOS, ADA ROSE
001251002 LOSTRA, ANSON J & JOLANDE L TR
001241029 MAHTAPENE-CORDOVA, NOAH ET AL
001203013 MARVEL, JODY
001241026 MCKNIGHT, SHARON K
001242013 OLSON, LISA
001201003 PATTANI, FERN J & GLEN J
001203001 RAGLAND, LEVI & HALEY L
001241028 REMALY, TAYLOR DAVID ET AL
001203009 RHOADS, DEAN A & SHARON L TR
001241030 RIOS, ANTONIO & RUIZ, GUADALUPE
001242006 ROBINSON, RICHARD L & MYRNA L
001242005 ROBINSON, RICHARD L & MYRNA L
001241027 SANDHOFF, SEAN R ET AL
001202012 SHERRILL, THOMAS EDWARD JR ETAL
001202011 SHINN, KAREN L
001251013 SMITH, WINIFRED C TR
001242016 STEFLIK, DANIEL M TR ET AL
001242002 STEFLIK, DANIEL M TR ET AL

C/O HUGHES, JANET S
POA

001202001 STEIN, CAROL TR
001202016 STEIN, MICHAEL S
001242001 STOWELL, ROSEMARY ANN
001251004 TRUXAL, CHRISTOPHER & LACEY

1320 CEDAR ST
591 13TH ST
589 11TH ST
1640 BALLARD LN
PO BOX 281205
552 11TH ST
739 13TH ST
1306 OAK ST
593 11TH ST
PO BOX 8
328 MAPLE ST
563 12TH ST
563 12TH ST
2715 PURPLE ROOT DR
1345 OAK ST
1355 OAK ST
564 12TH ST
1010 COURT ST
1010 COURT ST

87 DILLONS LN
5679 KEYMAR DR
594 11TH ST
555 13TH ST

ELKO NV 89801-3418
ELKO NV 89801-3406
ELKO NV 89801-3402
WINNEMUCCA NV 89445-3241
LAMOILLE NV 89828-1205
ELKO NV 89801-3403
ELKO NV 89801-3443
ELKO NV 89801-3434
ELKO NV 89801-3402
TUSCARORA NV 89834-0008
ELKO NV 89801-3148
ELKO NV 89801-3404
ELKO NV 89801-3404
LAS VEGAS NV 89156-7702
ELKO NV 89801-3433
ELKO NV 89801-3433
ELKO NV 89801-3405
ELKO NV 89801-3945
ELKO NV 89801-3945

MORGANTON GA 30560-2491
SAN JOSE CA 95123-3416
ELKO NV 89801-3403
ELKO NV 89801-3406

51

Post Marked 5/24/19

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, June 4, 2019 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 this matter under consideration in person, by writing, or by representative.

The specific items to be considered under public hearing format are:

- Conditional Use Permit No. 4-19, filed by Elko County School District, which would allow for the expansion of the current Elko High School campus with the addition of a new building, and matters related thereto. The subject property is located generally north of the intersection of 11th Street and College Avenue. (1297 College Avenue - APN 001-191-001 & 001-191-004).
- Variance No. 1-19, filed by Elko County School District for a reduction of the required setback from any Street Line from 59.25' to 20' on the College Avenue Street Line, within a PQP (Public, Quasi-Public) Zoning District, and matters related thereto. The subject property is located generally north of the intersection of 11th Street and College Avenue. (1297 College Avenue - APN 001-191-001 & 001-191-004).

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 phone * (775) 777-7219 fax

APPLICATION FOR CONDITIONAL USE PERMIT APPROVAL

APPLICANT(s): Elko County School District	
(Applicant must be the owner or lessee of the proposed structure or use.)	
MAILING ADDRESS: 850 Elm St., Elko, NV 89801	
PHONE NO. (Home)	(Business) 775-738-5196
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.: 001-191-004	Address 1297 College Ave.
Lot(s), Block(s), & Subdivision 10, 15, 34N	
Or Parcel(s) & File No. 001-191-004	

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 \$750.00 non-refundable fee.

Plot Plan: A plot plan provided by a properly licensed surveyor depicting the proposed conditional use permit site drawn to scale showing property lines, existing and proposed buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other pertinent information that shows the use will be compliant with Elko City Code.

Elevation Plan: Elevation profiles including architectural finishes of all proposed structures or alterations in sufficient detail to explain the nature of the request.

Note: One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 ½" 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 conditional use permit application.

RECEIVED

1. Current zoning of the property: PQP
2. Cite the provision of the Zoning Ordinance for which the Conditional Use Permit is required:
3-2-8, D
3. Explain in detail the type and nature of the use proposed on the property:
Expansion of education space on property adjacent to Elko High School Campus and owned by Elko County School District. Specifically, the construction of a new 2-story, +/-22,000 sf science building.
4. Explain how the use relates with other properties and uses in the immediate area:
The use is congruent with the use of the adjacent buildings to the north and west - secondary education buildings.
Property to the southeast consists of single-family residential.
5. Describe any unique features or characteristics, e.g. lot configuration, storm drainage, soil conditions, erosion susceptibility, or general topography, which may affect the use of the property: None.
6. Describe the general suitability and adequacy of the property to accommodate the proposed use: The property is adjacent to Elko High School and parts of the lot are currently used for their parking. The School District has used this property in the past for modular classrooms. Current zoning is PQP with public schools as an allowed use. The past use was for a hospital.

7. Describe in detail the proposed development in terms of grading, excavation, terracing, drainage, etc.: Development of the building site will likely require demolition of the existing retaining walls and ramped walkways, excavation of additional material to expand the building pad and construction of new retaining walls and ramped walkways.

8. Describe the amounts and type of traffic likely to be generated by the proposed use:

Traffic is not expected to change based on the addition of this building to the campus. Classes currently held in adjacent buildings on the campus will be moved to this building.

9. Describe the means and adequacy of off-street parking, loading and unloading provided on the property:

Off-street parking is currently provided to the northeast and northwest. Required parking is not expected to increase with the addition of this building to the campus. Loading and unloading is expected to be infrequent and can occur either at the street or via the parking lot to the northwest.

10. Describe the type, dimensions and characteristics of any sign(s) being proposed:

No permanent sign(s) proposed. Required construction signage is expected.

11. Identify any outside storage of goods, materials or equipment on the property:

No outside storage is planned beyond the construction period.

12. Identify any accessory buildings or structures associated with the proposed use on the property:

None.

(Use additional pages if necessary to address questions 3 through 12)

By My Signature below:

☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of 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 Casey Kelly, P.E., PMP

(Please print or type)

Mailing Address 850 Elm St.

Street Address or P.O. Box

Elko, NV 89801

City, State, Zip Code

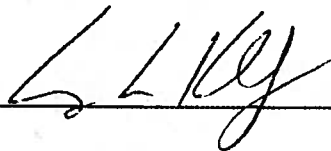
Phone Number:

775-738-5196

Email address:

ckelly@ecsdnv.net

SIGNATURE: _____



FOR OFFICE USE ONLY

File No.: 4-19 **Date Filed:** 5/13/19 **Fee Paid:** \$ 750 cc# 0491

ELKO HIGH SCHOOL
SCIENCE BUILDING
CONCEPTUAL ELEVATION



ELKO HIGH SCHOOL
SCIENCE BUILDING
CONCEPTUAL ELEVATION

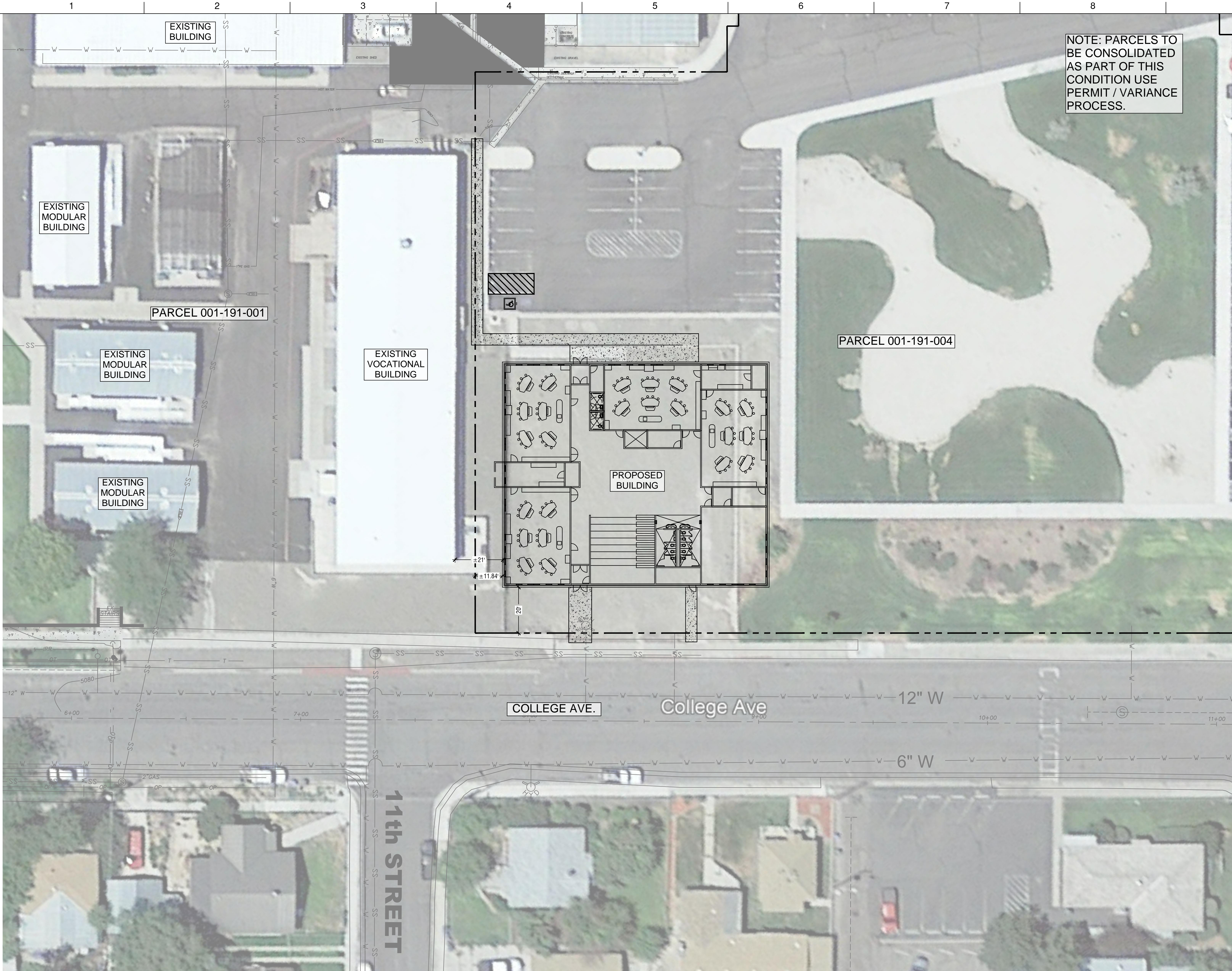


ELKO HIGH SCHOOL
SCIENCE BUILDING
CONCEPTUAL ELEVATION



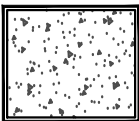
ELKO HIGH SCHOOL
SCIENCE BUILDING
CONCEPTUAL ELEVATION





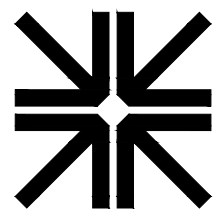
NOTE: PARCELS TO
BE CONSOLIDATED
AS PART OF THIS
CONDITION USE
PERMIT / VARIANCE
PROCESS.

Material Legend:



STANDARD CONCRETE FLATWORK WITH
RAMPING AS REQUIRED TO MEET ADA
REQUIREMENTS.

DESIGN WEST
ARCHITECTS, P.A.
MERIDIAN, IDAHO • PULLMAN, WASHINGTON
KENNEWICK, WASHINGTON • ONTARIO, OREGON
SPOKANE, WASHINGTON



DRAWN BY
NH

CHECKED BY
BW

JOB NUMBER
19033

REVISIONS



ELKO HIGH SCHOOL
SCIENCE BUILDING

TBD COLLEGE AVE.
ELKO, NEVADA 89801

DATE
05-13-2019

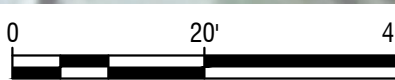
SHEET NAME

Conditional
Use Site
Plan

SHEET
CUP

Condition Use - Site Plan

Horizontal Scale: 1" = 20'



**Elko City Planning Commission
Agenda Action Sheet**

1. **Review, consideration and possible action on Variance No. 1-19, filed by Elko County School District for a reduction of the required setback from any street line from 59.25' to 20', on the College Avenue Street Line, within a PQP (Public, Quasi-public) Zoning District, and matters related thereto, FOR POSSIBLE ACTION**
2. Meeting Date: **June 4, 2019**
3. Agenda Category: **PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **The applicant is requesting a variance for the required street line setback for a new proposed structure.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Conditionally approve Variance No. 1-19 based on the facts, findings and conditions as presented in the Staff Report dated May 18, 2019**
9. Findings: **See Staff Report dated May 18, 2019**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Elko County School District
Mr. Casey Kelly
850 Elm Street
Elko, NV 89801
ckelly@ecsdnv.net**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 6/4

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

Title: Variance No. 1-19

Applicant(s): Elko County School District - Elko High School

Site Location: 1297 College Ave - APN 001-191-004 + 001

Current Zoning: PQP Date Received: 5/13 Date Public Notice: 5/24

COMMENT: This is for a reduction of the required setback from any street line from 59.25' to 20' on the College Avenue Street Line, within a PQP Zoning District.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 5/23/19

Recommend approval as presented by staff

SPW

Initial

City Manager: Date: 5/29/19

Recommend approval, assuming off-street parking does not increase. The City of Elko receives complaints about off-street parking in this area (on occasion).

U

Initial



City of Elko
1751 College Avenue
Elko, NV 89801
(775) 777-7160
FAX (775) 777-7219

CITY OF ELKO STAFF REPORT

REPORT DATE:	May 18, 2019
PLANNING COMMISSION DATE:	June 4, 2019
AGENDA ITEM NUMBER:	I.A.2
APPLICATION NUMBER:	Variance 1-19
APPLICANT:	Elko County School District
PROJECT DESCRIPTION:	Elko High School Campus, New Science Building
RELATED APPLICATIONS:	CUP 4-19, Parcel Map

A variance request from provisions under Section 3-2-8, requiring minimum setbacks from any street line in a Public, Quasi-Public District. The minimum setback requirements from any street line within the PQP District are 1 ½ times the building height for the principal building.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER:	APN 001-191-001 & 004 to be combined by parcel map
PARCEL SIZE:	14.03 acres with recordation of parcel map to combine parcels
EXISTING ZONING:	PQP –Public, Quasi, Public
MASTER PLAN DESIGNATION:	Public
EXISTING LAND USE:	Developed as Elko High School Campus

BACKGROUND:

1. The application for the variance was filed as required under City Code 3-2-8 (C).
2. The applicant has applied for a Conditional Use Permit (CUP 4-19) as required under Elko City Code 3-2-8 (D).
3. The applicant is preparing a parcel map to combine both parcels into one parcel. To this date, the application has been received by the Planning Department but the map has not been submitted by the surveyor.
4. The property is located in the Redevelopment Area.
5. The properties are currently being served by City of Elko water and sewer and other non-city utilities.

NEIGHBORHOOD CHARACTERISTICS:

) The property is surrounded by developed land to the north, south, east and west. The campus is currently zoned PQP, Public, Quasi-Public with R- Single Family and Multiple Family Residential to the south.

APPLICABLE MASTER PLAN SECTIONS AND CITY CODE SECTIONS:

-) City of Elko Master Plan – Land Use Component
-) City of Elko Redevelopment Plan
-) City of Elko Zoning – Section 3-2-8 Public, Quasi-Public Districts
-) City of Elko Zoning – Section 3-2-22 Variances

MASTER PLAN - Land Use:

1. The Master Plan Land Use Atlas shows the area as Public.
2. PQP-Public, Quasi-Public zoning district is listed as a corresponding zoning district for Public.
3. Master Plan states that Public land use designation is applied to community and public and quasi-public uses such as those associated with government, non-profit, and utilities. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, the Master Plan's goals and policies.
4. Objective 3: Strengthen, preserve, and promote the area around the City Park, City Hall, and Convention Center as the civic heart of the community.

5. Objective 8: Ensure that new development does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

The approval of the variance from the setback requirements stipulated for the PQP zoning district is in conformance with the Land Use Component of the Master Plan.

ELKO REDEVELOPMENT PLAN:

1. The property is located within the redevelopment area. The proposed use doesn't provide tax increment growth but does support several goals and objectives listed in the Redevelopment Plan.

The proposed variance conforms to the Redevelopment Plan.

SECTION 3-2-8 PUBLIC, QUASI-PUBLIC DISTRICT:

1. The Minimum Setback From Any Street Line: Not less than one and one-half (1½) times the height of the principal building. Elko County School District is submitting a parcel map for the consolidation of the two parcels, the setbacks would not have any interior side yard or rear setback requirements as the new consolidated parcel will have street frontage along all four sides.
 - a. The following setbacks are required, all horizontal measurements for setback requirements are for the principal building on this parcel:
 - i. Street line setback requirements
 1. 39.5' building height
 2. 59.25' distance required to any street line
 3. Greater than 400' to Cedar Street property line
 4. Greater than 300' to 13th Street property line
 5. Greater than 700' to 9th Street property line
 6. 20' setback provided to College Avenue property line and therefore the request for a variance would be for the reduction of the street line setback requirement to College Avenue.
2. Maximum Lot Coverage: The total ground floor area of all buildings shall not exceed thirty five percent (35%) of the net site area
 - a. It does not appear that with the addition of the new proposed building, the lot coverage would exceed the 35% of the net site area requirement. The combined buildings are approximately 141,839 sq. ft. with combined lot of 14.03 acres which would be 23%.

Approval of Variance 1-19 in conjunction with approval of Parcel Map 1-19 is required to be in conformance with Section 3-2-8 of City Code.

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.
 -) Application states: The property has moderate slope, which increases towards the back of the building site.

-) Application states: Additional land is available for development to the NE, but is slated for a future auditorium.
-) The special circumstance is directly related to the property as developed with multiple principal buildings that don't necessarily all meet the setback requirements for the PQP zoning district.
-) The proposed building site will not interfere with any possible site triangle for traffic as it is not located at the intersection of any existing streets.
- 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.
 -) Application states: Building is sized to accommodate specific program requirements. Meeting 1.5 times building height setback would require demolition of a majority of the parking lot to the north and complicate grading.
- 3. Such special circumstances or conditions do not apply generally to other properties in the same zoning district.
 -) Application states: Adjacent properties appear to have setbacks equal to ½ building height or less.
 -) Application states: Meeting required setback would substantially increase site development costs and reduce available parking by approximately 18 spaces.
 -) Staff feels that the elimination of 18 required parking stalls would not be in the best interest of the development.
- 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.
 -) Application states: Setback will adequately separate building from street. As the building located Northwest of residences across the street, building will not block sunlight.
 -) Staff feels that the location of the building doesn't create a visibility safety hazard for traffic as the proposed location has distance separation from any intersection.
- 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.
 -) Application states: Reduced setback will not affect ability to route utilities. Since building pad is cut in to slope rather than following topography, scale will be approximately equal to adjacent building.
 -) Application states: The variance request is for setback only and maintains the current zoning with the proposed Public School use.
- 6. The granting of the variance will not substantially impair affected natural resources.
 -) Application states: No natural resources will be affected.

FINDINGS

1. The proposed variance approval is in conformance with the Land Use Component of the Master Plan.
2. The property is located within the redevelopment area and meets the goals and objectives of the plan.
3. The property will have street frontage on all four sides with the consolidation of the two parcels into one. Approval of VAR 1-19 is required to be in conformance with Elko City Code 3-2-8.

4. The property as developed with the addition of the proposed building, does not exceed the thirty five percent of the net site area lot coverage.
5. Approval of Variance 1-19 in conjunction with approval of the parcel map to consolidate the two parcels into one will bring the proposed new development into conformance with Section 3-2-8 of City Code.
6. The special circumstance is directly related to the property as it is developed as the only high school in the City of Elko. It is somewhat land locked and with a growing population, it requires expansion of its classroom facilities.
7. The special circumstance of a fully developed property with several legal non-conforming issues. This circumstance does not generally apply to other properties in the district.
7. 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.
8. The granting of the variance is directly related to the zoning of the property and will not impair the intent or purpose of the zoning and will not change the use of the land or zoning classification.
9. The granting of the variance will not impair natural resources.

STAFF RECOMMENDATION:

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

1. Approval of CUP 4-19.
2. Parcel map 1-19 is to be approved, recorded and all conditions satisfied.



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

May 29, 2019

Elko County School District
Attn: Casey Kelly
850 Elm Street
Elko, NV 89801

Re: Conditional Use Permit No. 4-19 and Variance No. 1-19

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:

CUP 4-19 + Var 1-19 - ECSD - ELKO High School

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001202014	AIAZZI, STANLEY G & JOYCE L TR		1309 OAK ST	ELKO NV	89801-3433
001242018	ARENDT, SCOTT		575 12TH ST	ELKO NV	89801-3404
001252010	BEACH, JACKIE LEE & LORRAINE K		572 13TH ST	ELKO NV	89801-3407
001203012	BIEGLER, PHILIP J		1319 COLLEGE AVE	ELKO NV	89801-3427
001242015	BRASWELL, JAY C & MAHELIA J		576 11TH ST	ELKO, NV	89801-3403
001202015	BROWN, HOWARD A & JILL R		716 13TH ST	ELKO NV	89801-3442
001201001	ROBERT BLANKENSHIP		791 13TH ST	ELKO NV	89801-3443
001252001	CARNICLE, ALLEN R & NATALIE B		588 13TH ST	ELKO NV	89801-3407
001203005	CAVALIERE, RICHARD J & JANICE J		10566 RIDGECREST DR	JACKSON CA	95642-9348
001251014	CHARPENTIER, KAY MARIE		576 12TH ST	ELKO NV	89801-3405
001201002	CLINTON, ELDON WAYNE ET AL		7850 E MEMORY LANE	PRESCOTT VALLEY AZ	86315
001241024	CREWS, JAMES V		1026 1/2 COLLEGE AVE	ELKO NV	89801-3479
001203010	CURWEN, MIKE & MACKENZIE		1351 COLLEGE AVE	ELKO NV	89801-3427
001251011	DENNIS, ROY J & LODEEN M		546 12TH ST	ELKO NV	89801
001251012	DOLBERG, ANDREW & MELANIE		552 12TH ST	ELKO NV	89801-3405
		C/O ZIONS BANK ATN:			
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001203011	HARRIS, JERALD		1329 COLLEGE AVE	ELKO NV	89801-3427
001202003	HASSETT, DANIEL M		1342 CEDAR ST	ELKO NV	89801-3418
001202013	HASSETT, MARY CATHERINE TR		1335 OAK ST	ELKO NV	89801-3433
001203002	HAYES, DEREK JON		467 WESTCLIFF DR	SPRING CREEK NV	89815-6830
001251003	HENNEBERRY, MICHAEL J & JACQUELI		565 13TH ST	ELKO NV	89801-3406
001203003	IRIBARNE, JANET		1328 OAK ST	ELKO NV	89801-3434
001242014	JONES, DIANA J		110 WILSON AVE	ELKO NV	89801-4144
001203004	KENNEDY, MARK E		1340 OAK ST	ELKO NV	89801-3434

001202002 LARIOS, ADA ROSE	1320 CEDAR ST	ELKO NV	89801-3418
001251002 LOSTRA, ANSON J & JOLANDE L TR	591 13TH ST	ELKO NV	89801-3406
001241029 MAHTAPENE-CORDOVA, NOAH ET AL	589 11TH ST	ELKO NV	89801-3402
001203013 MARVEL, JODY	1640 BALLARD LN	WINNEMUCCA NV	89445-3241
001241026 MCKNIGHT, SHARON K	PO BOX 281205	LAMOILLE NV	89828-1205
001242013 OLSON, LISA	552 11TH ST	ELKO NV	89801-3403
001201003 PATTANI, FERN J & GLEN J	739 13TH ST	ELKO NV	89801-3443
001203001 RAGLAND, LEVI & HALEY L	1306 OAK ST	ELKO NV	89801-3434
001241028 REMALY, TAYLOR DAVID ET AL	593 11TH ST	ELKO NV	89801-3402
001203009 RHOADS, DEAN A & SHARON L TR	PO BOX 8	TUSCARORA NV	89834-0008
001241030 RIOS, ANTONIO & RUIZ, GUADALUPE	328 MAPLE ST	ELKO NV	89801-3148
001242006 ROBINSON, RICHARD L & MYRNA L } 1p.c.	563 12TH ST	ELKO NV	89801-3404
001242005 ROBINSON, RICHARD L & MYRNA L }	563 12TH ST	ELKO NV	89801-3404
001241027 SANDHOFF, SEAN R ET AL	2715 PURPLE ROOT DR	LAS VEGAS NV	89156-7702
001202012 SHERRILL, THOMAS EDWARD JR ETAL	1345 OAK ST	ELKO NV	89801-3433
001202011 SHINN, KAREN L	1355 OAK ST	ELKO NV	89801-3433
001251013 SMITH, WINIFRED C TR	564 12TH ST	ELKO NV	89801-3405
001242016 STEFLIK, DANIEL M TR ET AL } 1p.c.	1010 COURT ST	ELKO NV	89801-3945
001242002 STEFLIK, DANIEL M TR ET AL }	1010 COURT ST	ELKO NV	89801-3945
	C/O HUGHES, JANET S		
	POA		
001202001 STEIN, CAROL TR	87 DILLONS LN	MORGANTON GA	30560-2491
001202016 STEIN, MICHAEL S	5679 KEYMAR DR	SAN JOSE CA	95123-3416
001242001 STOWELL, ROSEMARY ANN	594 11TH ST	ELKO NV	89801-3403
001251004 TRUXAL, CHRISTOPHER & LACEY	555 13TH ST	ELKO NV	89801-3406

51

Post Marked 5/24/19

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, June 4, 2019 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 this matter under consideration in person, by writing, or by representative.

The specific items to be considered under public hearing format are:

- Conditional Use Permit No. 4-19, filed by Elko County School District, which would allow for the expansion of the current Elko High School campus with the addition of a new building, and matters related thereto. The subject property is located generally north of the intersection of 11th Street and College Avenue. (1297 College Avenue - APN 001-191-001 & 001-191-004).
- Variance No. 1-19, filed by Elko County School District for a reduction of the required setback from any Street Line from 59.25' to 20' on the College Avenue Street Line, within a PQP (Public, Quasi-Public) Zoning District, and matters related thereto. The subject property is located generally north of the intersection of 11th Street and College Avenue. (1297 College Avenue - APN 001-191-001 & 001-191-004).

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

ELKO CITY PLANNING COMMISSION

Shelby Archuleta

From: Cathy Laughlin
Sent: Tuesday, May 21, 2019 3:37 PM
To: Shelby Archuleta
Subject: FW: Variance for Elko County School District

Cathy Laughlin
City Planner

(775)777-7160 ph
(775)777-7219 fax
claughlin@elkocitynv.gov

City of Elko
1751 College Avenue
Elko, NV 89801

From: Brandon Weholt <bweholt@designwestid.com>
Sent: Tuesday, May 21, 2019 2:19 PM
To: Cathy Laughlin <claughlin@elkocitynv.gov>
Subject: RE: Variance for Elko County School District

Cathy,

The assessor records show a total of 129,839 sq. ft. on the 10.83 acre parcel and nothing on the adjoining parcel to be consolidated. Casey believes this to be correct. The proposed building will add +/-12,000 sq. ft. on the ground floor. Is this adequate?

Thanks,



Brandon Weholt, NCARB
DESIGN WEST ARCHITECTS, P.A.

From: Cathy Laughlin <claughlin@elkocitynv.gov>
Sent: Monday, May 20, 2019 5:04 PM
To: Brandon Weholt <bweholt@designwestid.com>
Subject: Variance for Elko County School District

Brandon,
Do you have the lot coverage calculation for me yet for the Elko High School Campus including the proposed new building?

Cathy Laughlin
City Planner

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



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

MAY 13 2019

APPLICATION FOR VARIANCE

APPLICANT(s): Elko County School District

MAILING ADDRESS: 850 Elm St., Elko, NV 89801

PHONE NO (Home) _____ **(Business)** 775-738-5196

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.: 001-191-004 **Address** 1297 College Ave.

Lot(s), Block(s), & Subdivision 10, 15, 34N

Or Parcel(s) & File No. 001-191-004

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.

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

Reduce setback from Street Line from 1.5 times principal building height (3-2-8, C, 1) to 20'
Building height is estimated at 39.5'.

1. The existing zoning classification of the property PQP

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

Property has moderate slope, which increases towards the back of the building site.

Additional land is available for development to the NE, but is slated for a future auditorium.

- 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.

Building is sized to accommodate specific program requirements.

Meeting 1.5 times building height setback would require demolition
of a majority of the parking lot to the north and complicate grading.

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

Meeting required setback would substantially increase site development
costs and reduce available parking by approx. 18 spaces.

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

Adjacent properties appear to have setbacks equal to 1/2 building height or less.

- 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.

Setback will adequately separate building from street. As the building located Northwest of residences across the street, building will not block sunlight.

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

Reduced setback will not affect ability to route utilities. Since building pad is cut in to slope rather than following topography, scale will be approx. equal to adjacent building.

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

The variance request is for setback only and maintains the current zoning with the proposed Public School use.

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

No natural resources will be affected.

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.: _____
Funding is in place.

(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 Casey Kelly, P.E., PMP

(Please print or type)

Mailing Address 850 Elm St.

Street Address or P.O. Box

Elko, NV 89801

City, State, Zip Code

Phone Number: 775-738-5196

Email address: ckelly@ecsdnv.net

SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 1-19 **Date Filed:** 5/13/19 **Fee Paid:** \$500 cc#0491

ELKO HIGH SCHOOL
SCIENCE BUILDING
CONCEPTUAL ELEVATION



ELKO HIGH SCHOOL
SCIENCE BUILDING
CONCEPTUAL ELEVATION



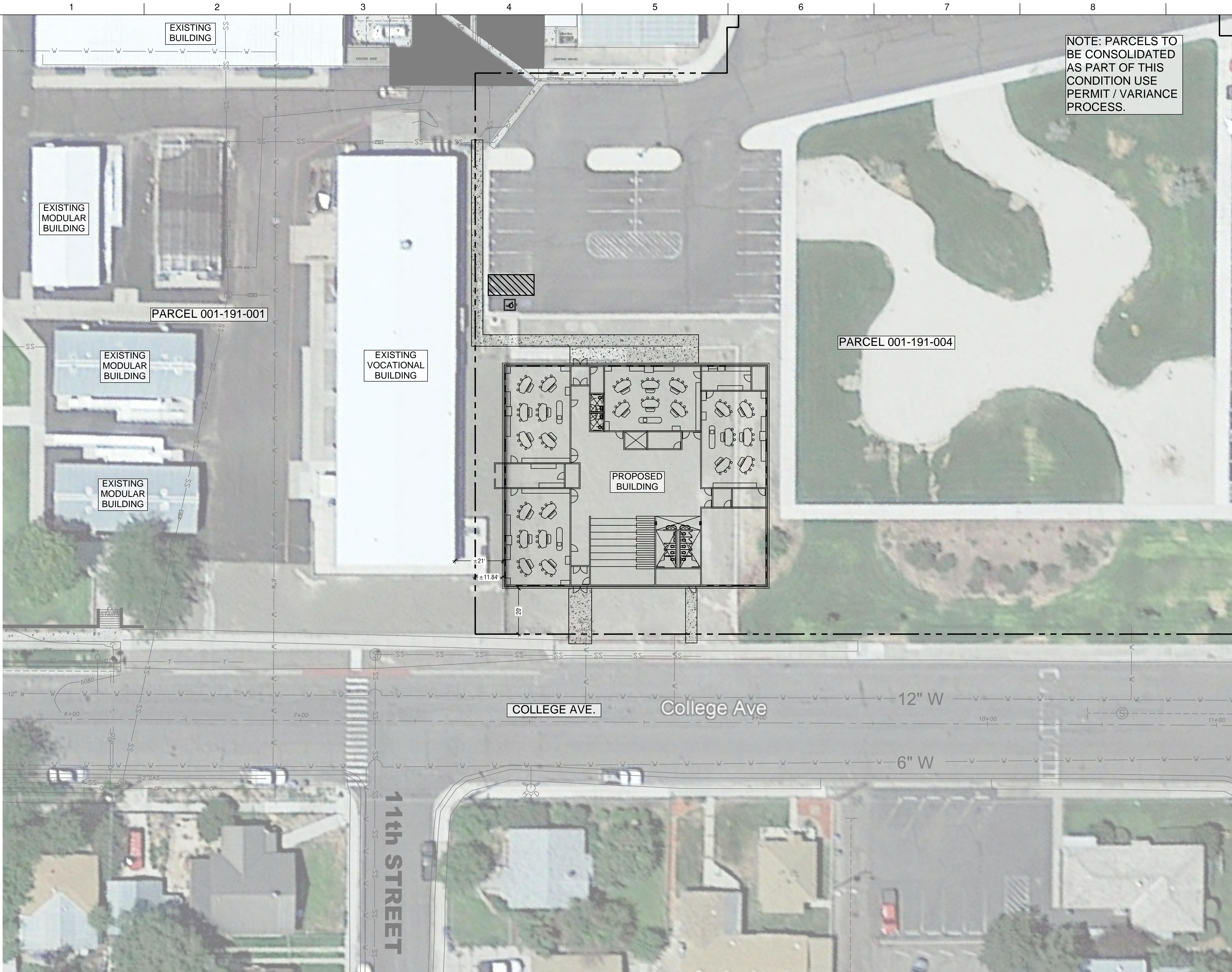
05-13-2019

ELKO HIGH SCHOOL
SCIENCE BUILDING
CONCEPTUAL ELEVATION



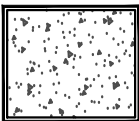
ELKO HIGH SCHOOL
SCIENCE BUILDING
CONCEPTUAL ELEVATION





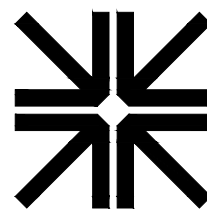
NOTE: PARCELS TO
BE CONSOLIDATED
AS PART OF THIS
CONDITION USE
PERMIT / VARIANCE
PROCESS.

Material Legend:



STANDARD CONCRETE FLATWORK WITH
RAMPING AS REQUIRED TO MEET ADA
REQUIREMENTS.

DESIGN WEST
ARCHITECTS, P.A.
MERIDIAN, IDAHO • PULLMAN, WASHINGTON
KENNEWICK, WASHINGTON • ONTARIO, OREGON
SPOKANE, WASHINGTON



DRAWN BY
NH

CHECKED BY
BW

JOB NUMBER
19033

REVISIONS



ELKO HIGH SCHOOL
SCIENCE BUILDING

TBD COLLEGE AVE.
ELKO, NEVADA 89801

DATE
05-13-2019

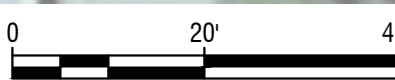
SHEET NAME

Conditional
Use Site
Plan

SHEET
CUP

Condition Use - Site Plan

Horizontal Scale: 1" = 20'



**Elko City Planning Commission
Agenda Action Sheet**

1. **Review, consideration and possible action on Variance No. 2-19, filed by David and Juliane Ernst for a reduction of the required exterior side yard setback from 15' to 4.5' and the required interior side yard setback from 5.5' to 1.1', for a residence in an R (Single family and multi-family residential) Zoning District, and matters related thereto, FOR POSSIBLE ACTION**
2. Meeting Date: **June 4, 2019**
3. Agenda Category: **PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **The applicant is requesting a variance for the required interior and exterior side yard setbacks for an existing structure.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Conditionally approve Variance No. 2-19 based on the facts, findings and conditions as presented in the Staff Report dated May 21, 2019**
9. Findings: **See Staff Report dated May 21, 2019**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Jacques Errecart**
518 Commercial Street
Elko, NV 89801
jacquesg518@gmail.com

Juliane & David Ernst
15530 Donnybrook Ct
Reno, NV 89511

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 6/4

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

Title: Variance No. 2-19

Applicant(s): David + Julianne Ernst

Site Location: 604 3rd St. - APN 001-224-009

Current Zoning: R Date Received: 5/14 Date Public Notice: 5/24

COMMENT: This is for a reduction of the required ext. side yard setback from 15' to 4.5' and the required int. side yard setback from 5.5' to 1.1' for a residence in a R zoning district.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 5/23/19

Recommend approval as presented by staff

SAU

Initial

City Manager: Date: 5/29/19

No comments/concerns.

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:	May 21, 2019
PLANNING COMMISSION DATE:	June 4, 2019
AGENDA ITEM NUMBER:	I.A.3
APPLICATION NUMBER:	Variance 2-19
APPLICANT:	David and Juliane Ernst
PROJECT DESCRIPTION:	604 3rd St., Elko

A Variance request to reduce:

- 1. Interior side yard setback from 5.5' to 1.1'**
- 2. Exterior side yard setback from 12' to 4.5'**



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-224-009

PARCEL SIZE: 5,400 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 was developed in the early 1900s.
3. The lot area is approximately 5,400 square feet. With the exception of 3-2-5(G)(2)b, it meets the lot area requirements stipulated in code.
4. The property, as developed, is a legal non-conforming use with regard to current setback requirements stipulated in code.
5. The applicant has applied for a building permit to add two small additions to the structure for a more contemporary function while maintaining the historic qualities. The additions will not extend into the setbacks any more than the existing structure. The construction of these additions into the currently required setbacks requires a variance.
6. The structure has been vacant and boarded up for several years.

NEIGHBORHOOD CHARACTERISTICS:

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

PROPERTY CHARACTERISTICS:

The property is currently developed with a single family use.
The property is located on a fairly steep portion of 3rd Street. The result is a slight slope in the front yard and a significant slope/berm along 3rd Street.
The property is located on the east side of 3rd Street near Pine Street with no current ingress/egress. The applicant is proposing to provide a new driveway on 3rd Street into the rear yard.
As defined in Elko City Code 3-2-2, the front yard setback would actually be the property line adjacent to the dedicated alley so therefore, the Third Street side is the exterior side yard.

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 3rd Street.
2. Third Street is classified as a residential local.

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.

Alteration of the structure requires conformance with the stipulation of the applicable zone district. The structure, as located on the property does not conform to the exterior side yard and interior side yard setbacks.

The property does not conform to Section 3-2-4 of city code. Approval of the variance application is required to bring the property into conformance.

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

1. Minimum area stipulated for the district is five thousand five hundred (5,000) square feet for an interior lot in an existing platted subdivision characterized by twenty five foot (25') wide lots and situation within a residential zoning district.
2. Minimum lot width stipulated for the district of sixty feet (60'), see ** below
3. Minimum lot depth stipulated for the district of one hundred feet (100')
4. 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: 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.

The structure encroaches into both stipulated side yard areas. Approval of the variance application is required to bring the property into conformance with Elko City Code 3-2-5(G).

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

1. The current development does not meet requirement for off street parking; however, the applicant is proposing two off-street parking spaces and a driveway access off of 3rd Street into the rear yard.

The property does not conform 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: The building is an existing, non-conforming structure encroaching into setbacks required by current code. Because new construction is planned within setbacks, a variance is requested to reduce side yard setbacks. The building is likely over one hundred years old and was reportedly moved to the site in the early 1900's and placed on a foundation at a time when present day codes were inapplicable or loosely enforced.
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: To achieve compliance, the building would have to be so heavily modified that total demolition would be more cost-effective than saving any portion of the structure, resulting in difficulty and hardship for the owners' reasonable use of their property.
 -) The granting of a variance for the reduction of setbacks is necessary to bring the property into compliance with the city zoning ordinance and thus allow the issuance of a proper building permit and subsequent certificate of occupancy.
3. Such special circumstances or conditions do not apply generally to other properties in the same zoning district.

Applicant states: The existing, non-conforming building was likely placed before significant zoning regulations were enforced. In the attached assessor's map, it can be seen that this block is highly irregular relative to most adjacent and nearby city blocks. This block has significant grading issues and may have been re-parceled to better deal with slope issues. Most of the surrounding properties were probably developed at a later time, on more level ground, and under closer development scrutiny.
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.

-) This property and surrounding properties are historically well-established and the neighborhood is appreciated and even prized as a historic part of the City of Elko. This particular residence has been vacant for a number of years and is boarded over to prevent vandalism. The new owners have completed architectural plans to add on to and modify the building for more contemporary functioning while largely maintaining the historic qualities of both the interior and exterior.
- 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: As the City Code is intended to enhance the general welfare of its citizens, the granting of this variance will help eliminate a visual and community nuisance by rehabilitating a blighted property. The property has apparently been zoned R since zoning was first applied. No changes will occur.
- 6. The granting of the variance will not substantially impair affected natural resources.
 -) No natural resources will be affected by this project.

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 property does not conform to Section 3-2-4 of city code. Approval of the variance application is required to bring the property into conformance with 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' is not required based on this exception.
7. The developed property does not meet side setback requirements stipulated in Section 3-2-5(G) R- Single Family and Multiple Family Residential. The structure encroaches into both the interior side yard and exterior side yard setback areas. Approval of the variance application is required to bring the property into conformance with code.

8. The property does not conform 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 existing structure has been in place for over 24 years and it appears the structure predates the current setbacks stipulated in code and encroaches into the current stipulated setbacks.
10. In accordance with Section 3-2-22, the applicant has demonstrated that this circumstance prevents the applicant from obtaining building permits to modernize the structure depriving the applicant of full use of the structure.
11. In accordance with section 3-2-22, the applicant has demonstrated that the property has unique circumstances based on that fact that the main structure already encroaches into both side yard setback areas and there is some significant topographic issues, namely slope, effecting the property.
12. 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 the existing structure has been in this same location for over 100 years and the small additions will not extend beyond the existing exterior walls.
13. Granting of the variance will not substantially impair the intent or purpose of the zoning ordinance. Single family is listed as a principal use in the underlying zone.
14. Granting of the variance will not impair natural resources.
15. 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. Conformance to plans approved as a part of the variance.
4. Subject to review in two (2) years if determined necessary by the planning commission.

Building Department:

1. If approved the following shall apply:
 - j All walls within 5 feet of property line are required to have a fire-resistance rating. This shall be a 1 hour rating tested in accordance with ASTM E 119 or UL 263 with exposure from both sides. The projection or roof overhang shall have a fire-resistance rating of 1 hour on the underside if located greater than 2 feet or

less than 5 feet from the property line. Roof projections or overhangs are not allowed within 2 feet of a property line. Openings less than 3 feet to property line are not allowed. Openings up to 25% maximum of wall area from 3 feet to 5 feet of property line are allowed. These requirements are as per Table R302.1(1) 2009 International Residential Code. And table R302.1 of Elko city amended building codes.

Public Works Department:

1. Applicant must provide required public improvements along 3rd Street. This can be done in conjunction with the building permit.



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

May 29, 2019

David & Juliane Ernst
15530 Donnybrook Ct
Reno, NV 89511-9065

Re: Variance No. 2-19

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: Jacques Errecart, 518 Commercial Street, Elko, NV 89801 –
Email: jacquesg518@gmail.com

Var 2-19 Ernst

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001213007	ANDRESON, JUDY M		273 COURT ST	ELKO NV	89801-3155
001213005	BOGUE, CHARLES ET AL		555 3RD ST	ELKO NV	89801-3189
001224005	BOUNDY, DEAN F		327 COURT ST	ELKO NV	89801-3157
001215005	BR SONS LLC	DBA: CENTRE MOTEL	475 3RD ST	ELKO NV	89801-3166
001224016	BRESCHINI, KYLE M TR ET AL		597 4TH ST	ELKO NV	89801-3172
001224001	BRESCHINI, OLIVER SCOTT		340 NEW PINE ST	ELKO NV	89801-3163
001221003	CANNON, STEPHANIE R		336 JUNIPER ST	ELKO NV	89801-3161
001221004	CASHIN, ROY T & LORNA J		350 JUNIPER ST	ELKO NV	89801-3161
001169003	CERVANTES, ANGEL & ELIAZAR		270 JUNIPER ST	ELKO NV	89801-3199
001169004	COOK, AIMEE		227 BELLOAK CT	SPRING CREEK NV	89815-6801
001224018	DOKE, SHARON M		376 NEW PINE ST	ELKO NV	89801-3163
001221002	DOMINGO, DONNA MARIE	C/O CUSTODIAN	320 JUNIPER ST	ELKO NV	89801-3161
001213004	DON, DANIEL FRANCIS		264 PINE ST	ELKO NV	89801-3165
001224014	ELKO COUNTY OF		571 IDAHO ST	ELKO NV	89801-3715
001261002	FOURTH & COURT LLC		491 4TH ST	ELKO NV	89801-3133
001261003	GUTTRY, GLEN GRAYDON TR ET AL		3169 MIDLAND DR	ELKO NV	89801-2512
001224015	HANK, WILLIAM F & KAREN CRAWFOR		360 NEW PINE ST	ELKO NV	89801-3163
001224003	HIGGINS, KELLY ET AL		555 4TH ST	ELKO NV	89801-3172
001224010	HIGGINS, LISA MARIE		PO BOX 263	ELKO NV	89803-0263
001169002	HORSLEY, KIMBERLY Y		258 JUNIPER ST	ELKO NV	89801-3199
001224007	IMMENSCHUH, LOREN A JR ET AL	C/O REESE IMMENSCHUH	PO BOX 271	ZEPHYR COVE NV	89448-0271
001213003	JOHNSON, DIANA L		248 PINE ST	ELKO NV	89801-3165
001224012	LAKEVIEW LOAN SERVICING LLC	C/O LOANCARE LLC	3637 SENTARA WAY	VIRGINIA BEACH VA	23452-4262
001224017	LUNA, RAFAEL		589 4TH ST	ELKO NV	89801-3172
001224011	MARLEY, CARL W		616 3RD ST	ELKO NV	89801-3151
001213002	MARTIN, DENISE J & ROBERT		220 PINE ST	ELKO NV	89801-3165
001215003	MARVEL INVESTMENT COMPANY LLC	} 1 p.c	PO BOX 2645	ELKO NV	89803-2645
001215004	MARVEL INVESTMENT COMPANY LLC		PO BOX 2645	ELKO NV	89803-2645
001213006	MOODY, SHIRLEY P		503 3RD ST	ELKO NV	89801-3149
001224006	MOSCHETTI, MICHAEL J & LARENE S		PO BOX 2135	ELKO NV	89803-2135
001169007	NICKOVICH, MICHAEL TRENT		PO BOX 46	ELKO NV	89803-0046
001224008	OWENS, LYNNE R		309 NEW PINE ST	ELKO NV	89801-3162
001224013	PACINI, NATALI J TR		630 3RD ST	ELKO NV	89801-3151

001213008	PRYOR, JOHN R		1500 COLLEGE PKWY	ELKO NV	89801-5032
001221001	SCHUMMER, DAVID C & MICHELE L		455 BAKER ST	COPPEROPOLIS CA	95228-9217
001169005	SCOTT, MARCIA LEONI ET AL	DBA: JIGGS BAR	152 TWIN BRIDGES	SPRING CREEK NV	89815-8729
001221008	SECRIST, LILLIAN M TR		390 JUNIPER ST	ELKO NV	89801-3161
001169006	SMALES, D MIKE & SHEILA		229 PINE ST	ELKO NV	89801
001221007	SNOBLE, MELISSA		353 NEW PINE ST	ELKO NV	89801-3162
001224004	SONORA, LLC		PO BOX 1597	ELKO NV	89803-1597
001261001	STAHL PROPERTIES LLC	C/O THUNDERBIRD (MR. KANSAGR,	345 IDAHO ST	ELKO NV	89801-3135
001213009	WHALEN, DONALD M ET AL		233 COURT ST	ELKO NV	89801-3155

(41)

Post marked 5/24/19

NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a series of public hearings on Tuesday, June 4, 2019 beginning at 5:30 P.M. P.D.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. 2-19, filed by David & Juliane Ernst for a reduction of the required exterior side yard setback from 15' to 4.5' and the required interior side yard setback from 5.5' to 1.1' for a residence in an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. The subject property is located generally on the northeast side of 3rd Street, approximately 36' southeast of Pine Street. (604 3rd Street- APN 001-224-009)**

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): JULIAHE & DAVID ERNST
MAILING ADDRESS: 15570 DOWNEYBROOK, RENO, NV
PHONE NO (Home) 775-376-3357 (Business) -
NAME OF PROPERTY OWNER (If different): SAME
(Property owner's consent in writing must be provided.)
MAILING ADDRESS: NA
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: 001-224-009 Address 604 THIRD ST
Lot(s), Block(s), & Subdivision 11+, BLOCK 19, CITY OF ELKO
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.

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Applicant requests the following variance from the following section of the zoning ordinance: Elko City Code section 3-2-5, G.1. "Table of Area Requirements." As shown in the attached site plan, the existing building encroaches on both the interior side setback and the exterior side setback. Setback orientation was determined by the city planning department by designating the alley the front of the property. This allowed the building to be in compliance with the front and rear yard setbacks but left the building encroaching on both interior and exterior side setbacks. This application requests a variance to reduce both interior and exterior side setbacks to achieve compliance with the City Code.

Application Responses:

1. *The existing zoning classification of the property is "R."*
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)*

The building is an existing, non-conforming structure encroaching into setbacks required by current code. Because new construction is planned within setbacks, a variance is requested to reduce side yard setbacks. The building is likely over one hundred years old and was reportedly moved to the site in the early 1900's and placed on a foundation at a time when present-day codes were inapplicable or loosely enforced.

- 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.)*

To achieve compliance, the building would have to be so heavily modified that total demolition would be more cost-effective than saving any portion of the structure, resulting in difficulty and hardship for the owners' reasonable use of their property.

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

The granting of a variance for the reduction of setbacks is necessary to bring the property into compliance with the city zoning ordinance and thus allow the issuance of a proper building permit and subsequent certificate of occupancy.

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

The existing, non-conforming building was likely placed before significant zoning regulations were enforced. In the attached assessor's map, it can be seen that this block is highly irregular relative to most adjacent and

nearby city blocks. This block has significant grading issues and may have been re-parceled to better deal with slope issues. Most of the surrounding properties were probably developed at a later time, on more level ground, and under closer development scrutiny.

- 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.)*

This property and surrounding properties are historically well-established and the neighborhood is appreciated and even prized as a historic part of the City of Elko. This particular residence has been vacant for a number of years and is boarded over to prevent vandalism. The new owners have completed architectural plans to add on to and modify the building for more contemporary functioning while largely maintaining the historic qualities of both the interior and exterior.

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

As the City Code is intended to enhance the general welfare of its citizens, the granting of this variance will help eliminate a visual and community nuisance by rehabilitating a blighted property.

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

The property has apparently been zoned R since zoning was first applied. No changes will occur.

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

No natural resources will be affected by this project.

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.)*

The property has been purchased, architectural plans have been completed, and a building permit has been applied for. The scale and scope of the work is manageable to be completed within 18 months.

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 JACQUES ERRECLART
(Please print or type)

Mailing Address 510 COMMERCIAL
Street Address or P.O. Box
ELKO, NV 89801
City, State, Zip Code

Phone Number: 775 238 9454

Email address: jacquesg510@gmail.com

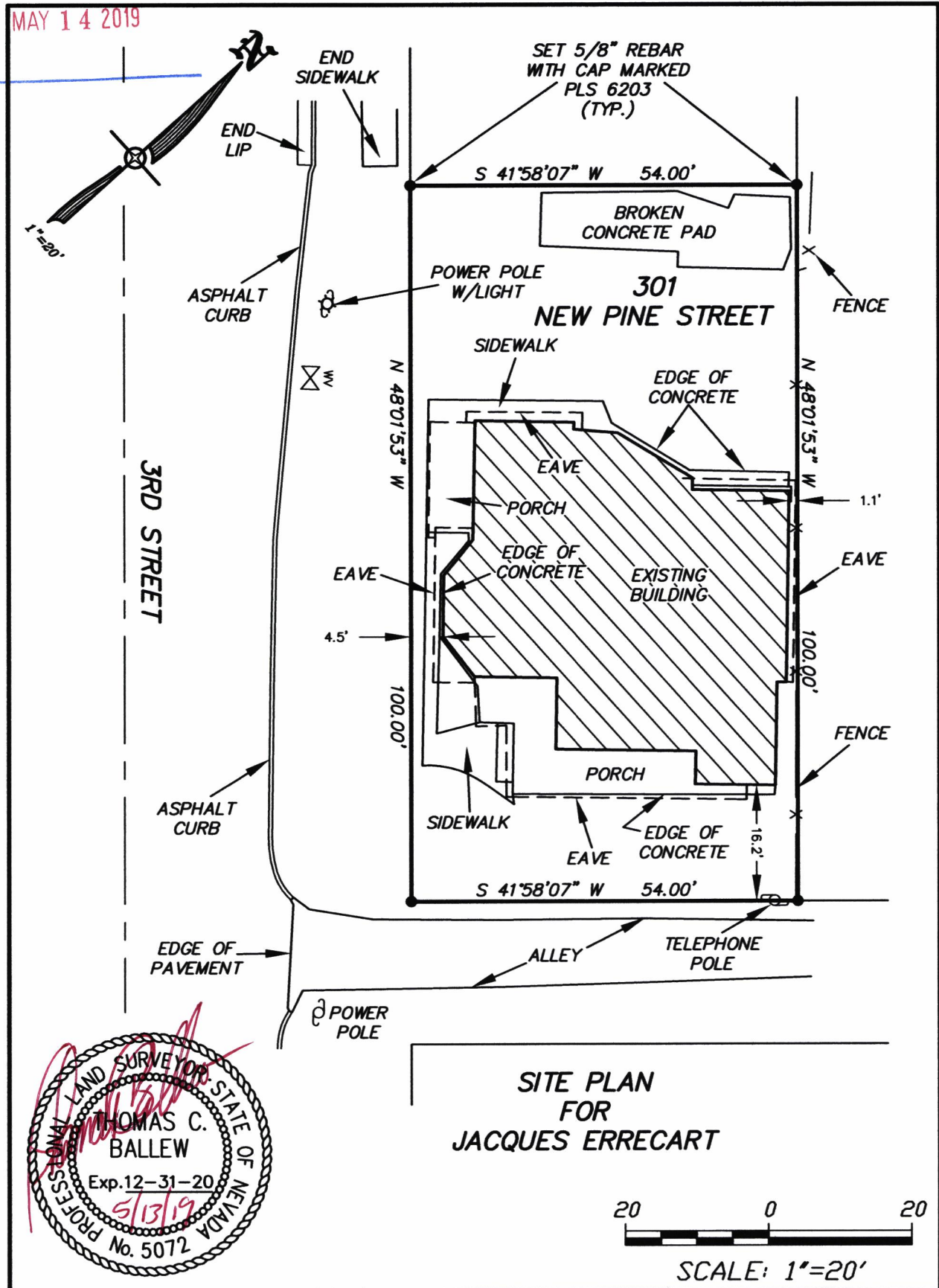
SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 2-19 **Date Filed:** 5/14/19 **Fee Paid:** \$500 CK# 2006

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MAY 14 2019



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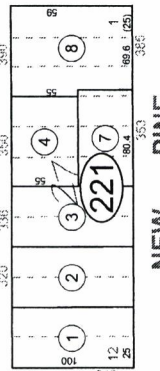
MAY 14 2019

001-220

18

17

JUNIPER ST.



16

ST.

NEW PINE

21

THIRD

FOURTH

PINE ST.

FIFTH

COURT ST.

CITY OF ELKO



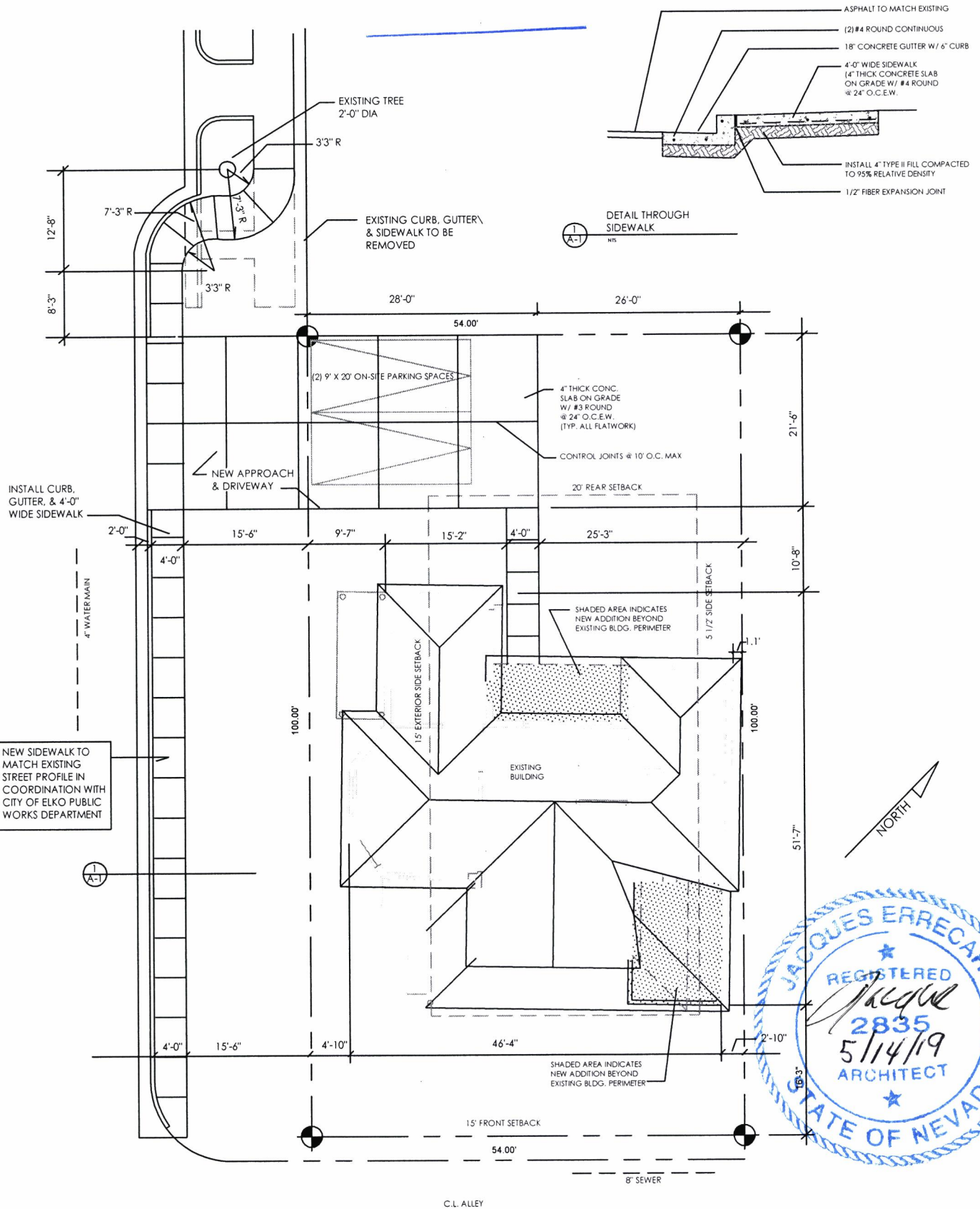
Revision Docs.
Parcel Map #186178, 553176, 707716
Doc #594155

Last Revised: 06/04/2018 JLS

For assessment use only, does not represent a survey, no liability for accuracy is assured. Other uses forbidden unless approved by Elko County Assessor.

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MAY 14 2019



SITE PLAN

1:120

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MAY 14 2019



Zoning Bulletin

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Nonconforming Use—Property owner seeks permit to remodel res- idential structure to add bedrooms without changing the number of apartment units	7
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Nonconforming use/evidence—After Town adopts ordinance prohibiting mining use, property owner claims a right to continue the nonconforming mining use

Town asks court to ignore evidence of property use after a now null and void ordinance was adopted

Citation: *Cobleskill Stone Products, Inc. v. Town of Schoharie*, 169 A.D.3d 1182, 2019 WL 758533 (3d Dep't 2019)

NEW YORK (02/21/19)—This case addressed the issue of as to when a property owner's use of its property became nonconforming. More specifically, the case addressed whether the use became nonconforming upon adoption of a local law that prohibited the use even though that law was later annulled.

The Background/Facts: Cobleskill Stone Products, Inc. ("Cobleskill") owns a quarry in the Town of Schoharie (the "Town"). The quarry has been in operation since the 1890s. In 1975, the Town's zoning ordinance specified that "[c]ommercial [e]xcavation or [m]ining" was a permitted use with a special permit (the "1975 Ordinance"). In 2000, Cobleskill purchased an additional parcel of property to the south of the areas it was mining (the "southern property"). Cobleskill did not apply with the Town for a special permit to mine those areas, but did apply to the state Department of Environmental Conservation ("DEC") to amend its existing mining permit to include the southern property.

In 2005, the Town enacted a zoning ordinance (the "2005 Ordinance"), which prohibited mining where Cobleskill's southern property was located.

Thereafter, Cobleskill filed a legal action, asking the court to declare that it had a vested right to quarry as a preexisting nonconforming use.

While Cobleskill's action was pending, in February 2014, the 2005 Ordinance was declared legally null and void for noncompliance with certain procedural requirements. The 1975 Ordinance was thus revived. Then in 2015, the Town adopted another zoning ordinance (the "2015 Ordinance"), which again rezoned portions of Cobleskill's property and prohibited on those areas commercial mining and excavation.

In March 2018, Cobleskill's action was set for a nonjury trial. The parties each filed motions in limine, asking for certain testimony/evidence to be excluded from trial. The Town asked the court to exclude from trial any evidence relating to efforts undertaken or expenses incurred by Cobleskill after the adoption of the 2005 Ordinance.



Generally, when a zoning ordinance that prohibits a use is adopted, prior nonconforming uses in existence at the time of the zoning ordinance's adoption are protected. The entity claiming a right to the nonconforming use must show that the property was being used for the nonconforming use at the time the zoning ordinance prohibiting the use became effective. Thus, "to be entitled to a declaratory judgment voiding the Town's zoning restrictions with respect to the subject property, [Cobleskill had to] 'establish specific actions constituting an overt manifestation of [its] intent to utilize the property for the ascribed purpose at the time the zoning ordinance became effective.'" Accordingly, here, with its motion in limine, the Town was hoping to quash evidence that may have established that Cobleskill began using the southern property for mining after the adoption of the 2005 Ordinance but prior to adoption of the 2015 Ordinance (which may have established Cobleskill

had right to continue that nonconforming use of mining the southern property).

The Supreme Court granted the Town's motion in limine.

Cobleskill appealed. Cobleskill argued that the Town's motion in limine should have been denied because after the annulment of the 2005 Ordinance, the 1975 Ordinance was restored "and, accordingly, it was not until the Town's [adoption of the 2015 Ordinance] that [Cobleskill's] use became nonconforming for the purpose of its vested rights claim."

DECISION: Motion in Limine denied.

The Supreme Court, Appellate Division, Third Department, New York, agreed with Cobleskill. The court explained "the general premise that the judicial nullification and voidance of an ordinance revives, by operation of law, the prior ordinance in effect before the null and void law was adopted." Thus, the court found that inasmuch as the annulled 2005 Ordinance could have "no lingering effect," Cobleskill was "entitled to have its nonconforming use rights evaluated as of the effective date of the 2015 [O]rdinance" The court noted that to hold otherwise "would incentivize municipalities to rush to enact local laws with any number of infirmities"

The court reversed the lower court's grant of the Town's motion in limine, and denied the motion.

Contributors

Corey E. Burnham-Howard

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Review/Jurisdiction— Property owners appeal decision finding that their neighbors had no zoning violation

**Town contends decision was not subject to
judicial review**

Citation: *Raposa v. Town of York*, 2019 ME 29, 2019 WL 924081 (Me. 2019)

MAINE (02/26/19)—This case addressed the issue of whether a code enforcement officer's decision interpreting a land use ordinance is appealable to the town board of appeals and in turn to the Superior Court—whether the code enforcement officer finds that there is a violation or not.

The Background/Facts: Daniel and Susan Raposa (the "Raposas") own residential property in the Town of York (the "Town"). The property abutting theirs was owned by Joshua Gammon ("Gammon"). Gammon used his property for his commercial landscaping business since purchasing it in 2014. The prior owner of Gammon's property used the property for a residence and excavation business.

In March 2016, the Raposas contacted the Town's Code Enforcement Officer ("CEO") to express their concern that Gammon's use of his property was "not consistent" with the prior owner's nonconforming use. Essentially, the Raposas asserted that although the prior use of Gammon's

property had been a legally nonconforming use, Gammon had changed the use and was now in violation of the Town's zoning ordinance. The CEO responded in writing, stating that the uses on Gammon's property were consistent with the previous uses and that he found "no violations."

The Raposas appealed the CEO's "no violation" determination to the Town's Board of Appeals (the "Board"). Although the Board granted the Raposas appeal, in doing so the Board made factual findings that the use of the property by Gammon's landscaping business did not constitute a "change in use but rather was an intensification of the previous use."

The Raposas appealed the Board's decision to the Superior Court, challenging the Board's factual findings. The Superior Court ultimately dismissed the Raposas' appeal, finding that "the Board's review of the CEO's decision was advisory and therefore unreviewable."

The Raposas appealed that dismissal.

DECISION: Judgment of Superior Court vacated, and matter remanded.

The Supreme Judicial Court of Maine held that "a CEO's written decision interpreting a land use ordinance is appealable to the Board and in turn to the Superior Court—whether the CEO finds that there is or is not a violation—so long as the ordinance does not expressly preclude appeal." The court therefore concluded that the Superior Court had jurisdiction to hear the Raposas' appeal of the Board's decision, and therefore the appeal had been improperly dismissed.

In so holding, the court acknowledged (and ultimately overruled) prior case law, which had held that where a town board of appeal's role in an appeal is advisory in nature, the board's decision is not subject to judicial review. (*See Herrle v. Town of Waterboro, 2001 ME 1, 763 A.2d 1159 (Me. 2001)*). The court found that in light of cases decided subsequent to that one, as well as related legislative action, Maine law now made clear that a board of appeals' review of a CEO's determination is justiciable (i.e., reviewable by courts).

Among other things, the court pointed to the Maine Legislature's 2013 enactment of 30-A M.R.S. § 2691(4), which provides that: "[a]bsent an express provision in a charter or ordinance that certain decisions of its code enforcement officer or board of appeals are only advisory and may not be appealed, a notice of violation or enforcement order by a code enforcement officer under a land use ordinance is reviewable on appeal by the board of appeals and in turn by the Superior Court" The court found that case law subsequent to the enactment of that statute had determined that "violation" notices were generally appealable. Here, in its decision, the court made clear for the first time that "no violation" notices were similarly appealable.

Applying its holding to the facts of this case, the court concluded that since the Town's ordinance allowed for an appeal from "any" order, relief or denial issued in a Board decision, the CEO's determination that there was "no violation" on Gammon's property was reviewable on appeal to the Superior Court.

Overruling *Herrle v. Town of Waterboro, 2001 ME 1, 763 A.2d 1159 (Me. 2001)*, and *Farrell v. City of Auburn, 2010 ME 88, 3 A.3d 385 (Me. 2010)*.

See also: *Paradis v. Town of Peru, 2015 ME 54, 115 A.3d 610 (Me. 2015)*.

See also: *Dubois Livestock, Inc. v. Town of Arundel, 2014 ME 122, 103 A.3d 556 (Me. 2014)*.

Case Note:

In making its decision, the court recognized that CEO "no violation" decisions (just like "violation" decisions) determined "the use and value of property" and that "persons affected by [those] decisions would otherwise have no remedy" if the decisions were not appealable to court.

Agricultural Uses and Zoning—County approves proposed landfill expansion finding it would not significantly impact farms

Opponents of landfill expansion contend that county mis-interpreted and mis-applied a state statute's required "farm impacts test"

Citation: *Stop the Dump Coalition v. Yamhill County, 364 Or. 432, 435 P.3d 698 (2019)*

OREGON (02/28/19)—This case addressed the issue of how to interpret and apply the "farm impacts test" in ORS 215.296.

The Background/Facts: Riverbend Landfill Co. ("Riverbend") owned a solid waste landfill on land zoned for exclusive farm use ("EFU") in Yamhill County (the "County"). Oregon statutory law (ORS 215.283(2)(k)) allows solid waste disposal facilities as one of 27 nonfarm uses that can be permitted on any EFU-zoned land, if approved by the local governing authority. Such uses (including landfills) can only be approved where the local governing body (i.e., here, the County) finds that the use will not:

"(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."

(See ORS 215.296(1) (requiring the "farm impacts test").)

Thus, when Riverbend sought to expand its landfill onto adjacent EFU-zoned land, it applied to the County for approval.

In considering Riverbend's application, the County had to apply Oregon's "farm impacts test." The County determined that, with conditions of approval, Riverbend's landfill expansion would not result in significant cumulative impacts on farms "because the farms that would experience multiple impacts represented 'only 10 percent of the acreage in the [farm] study area' and only a 'relatively small portion of the landscape.'" "Relying on that broad-gauge view of cumulative impacts," the County found that, with implementation of conditions of approval, the proposed landfill expansion would not "force a significant change in accepted farm practices or significantly increase the cost of those practices on surrounding farm lands."

Opponents of the landfill expansion (the "Opponents"), including individuals and organizations, appealed the County's determination. Among other things, the Opponents contended that Riverbend's applications failed the farm impacts test.

The Land Use Board of Appeals ("LUBA") rejected the Opponents' challenge. LUBA determined that the County reasonably had concluded that, with conditions imposed, the landfill expansion would not cause significant changes in accepted farm practices and in the cost of those practices. LUBA, however, also concluded that the County's factual findings regarding its cumulative impacts analysis were "inadequate and not supported by substantial evidence." So LUBA remanded the matter back to the County to make determinations as to whether "individual insignificant impacts" were "cumulatively significant."

Both the Opponents and the County appealed LUBA's decision to the Court of Appeals. The Court of Appeals affirmed LUBA's order.

The Opponents then petitioned the Supreme Court of Oregon to address the requirements of the farm impacts test.

On review to the Supreme Court of Oregon, the parties argued "two disparate views of how the farm impacts test works" and should be interpreted. Riverbend and the County argued that "to determine the significance of changes or cost increases on a single farm or multiple farms caused by a proposed nonfarm use, the local government must take a global view and consider whether the changes rise to the level of causing certain large-scale effects in the surrounding lands, especially a decrease in the supply of agricultural land." On the other hand, the Opponents argued that the text of ORS 215.296 made clear that "the farm impacts test requires (1) the applicant to properly identify the surrounding lands, the farms on those lands, the accepted farm practices on each farm, and the impacts of the proposed nonfarm use on each farm practice; (2) the local government to determine whether the proposed nonfarm use will force a 'significant' change to, or cost increase in, an accepted farm practice, as that term is ordinarily used; and (3) if there is a significant change, the local government to determine whether the applicant has demonstrated that, with conditions of approval imposed pursuant to subsection (2) of the statute, the nonfarm use meets the test."

DECISION: Judgment of Court of Appeals affirmed in part, reversed in part, and remanded.

The Supreme Court of Oregon, for the first time interpreting and applying the farm impacts test in ORS 215.296, agreed with the Opponents that the Oregon Legislature intended the farm impacts test "to apply on a farm-by-farm and farm practice-by-farm practice basis and intended to use the ordinary meaning of 'significant' and 'significantly' in ORS 215.296(1), not a specialized meaning tied to the supply of agricultural land, supply of food, or farm profitability."

In so holding, the court examined the text, context, and legislative history of the "farm impacts test" of ORS 215.296. The court found that the legislature intended the farm impacts test "to focus on forced changes in farming and forest practices and the costs of those practices" (and thus, not solely on the "impending changes to the gross supply of agricultural land.") The court found that in adopting the farm impacts test, the Oregon Legislature was "not content to disallow nonfarm uses only if there were impending reductions in the resulting supply of agricultural land." Instead, the court found it apparent that the Legislature "understood that adverse changes in farm practices or the costs of those practices could well lead to later reductions in the supply of operating, productive agricultural land over time, as it becomes more onerous for owners to continue their agricultural use of EFU land due to nearby nonfarm uses."

More specifically, the court summarized its holding, stating that the farm impacts test of ORS 215.296 requires an applicant to prove that the proposed nonfarm use "(1) will not force a significant change in the accepted farm practice and (2) will not significantly increase the cost of that practice." The court explained that a "significant" change or increase in cost is "one that will have an important influence or effect on the farm." Moreover, the court said that "[f]or each relevant accepted farm practice, if the applicant cannot prove both of those elements without conditions of approval, the local government must consider whether, with conditions of approval, the applicant will meet the farm impacts test."

The court also explained that once the farm impacts test is applied to each particular change or cost increase in accepted farm practices, the changes or costs must then be considered in the aggregate.

Here, the court reaffirmed LUBA's remand to the County to determine whether cumulative impacts from the proposed landfill expansion on each farm were significant. But, before remanding to the County, the court ordered that LUBA "reconsider whether the [C]ounty correctly determined that the change in accepted farm practices [expected from the landfill expansion] was not substantial." And the court warned that whether a change was substantial could not be "ameliorated" by a condition that Riverbend pay for increased costs or subsidies for lost crops.

See also: *Craven v. Jackson County*, 308 Or. 281, 779 P.2d 1011 (1989).

See also: *Von Lubken v. Hood River County*, 118 Or. App. 246, 846 P.2d 1178 (1993).

Zoning Amendment / Marijuana Use—Town passes general bylaw prohibiting marijuana uses, amending a prior zoning bylaw that had permitted marijuana uses

Marijuana farmer argues annulment of zoning bylaw is invalid because amendment of zoning bylaw must be through enactment of zoning bylaw not general bylaw

Citation: *Valley Green Grow, Inc. v. Town of Charlton*, 2019 WL 1087930 (Mass. Land Ct. 2019)

MASSACHUSETTS (03/07/19)—This case addressed the issue of whether an attempted annulment of a zoning bylaw (via a warrant article vote at special town meeting) that permitted marijuana uses in the town was invalid because the annulment was enacted as a general bylaw and not as a zoning bylaw with required statutory process, or whether it was a valid exercise of the town's police power and authority to regulate recreational marijuana use, merely supplementing the zoning bylaw.

The Background/Facts: In November 2016, Massachusetts voters authorized the legalization, regulation, and taxation of recreational marijuana in Massachusetts. Thereafter, Valley Green Grow, Inc. ("VGG") entered into an agreement to purchase a farm in the Town of Charlton (the "Town"). VGG sought to build on that farm property a 1,000,000 square foot indoor marijuana growing and processing facility, a 130,000 square foot post-harvest processing facility, and a 10,000 square foot cogeneration facility.

At the time VGG entered into the property purchase agreement, the Town's zoning bylaw allowed, as of right in every district, the "[i]ndoor commercial horticulture/floriculture establishments (e.g., greenhouses)." At its May 2018 Town Meeting, the Town adopted by the required two-thirds vote, Warrant Article 27, amending the Town's zoning bylaw to allow by special permit certain recreational marijuana uses in the agricultural, community business, industrial and business enterprise use zoning districts.

Then, in August 2018, a group of Town residents (the "Residents") brought two warrant articles to a special town meeting: (1) Warrant Article 1 sought to rescind the previously adopted amendment to the zoning bylaw that allowed marijuana uses; (2) Warrant Article 2 sought to adopt a general bylaw to ban all non-medical marijuana uses within the Town. Because Warrant Article 1 was a zoning bylaw

amendment, Massachusetts statutory law required that it pass by two-thirds majority vote. It failed to obtain the two-thirds majority necessary for an amendment to the zoning bylaw. Because Warrant Article 2 was a general bylaw, Massachusetts statutory law required a simply majority vote for passage. Warrant Article 2 passed by a majority vote.

Thereafter, VGG brought a legal action in land court, asking the court to declare that Warrant Article 2 was invalid. VGG argued that Warrant Article 2 was invalid because it was an "improper attempt by the Town to exercise its zoning power through a general bylaw by regulating a use already regulated in its zoning bylaw."

VGG brought a motion for summary judgment, asking the court to find that there were no material issues of fact in dispute, and deciding the matter in its favor based on the law alone.

DECISION: Motion for Summary Judgment granted.

Agreeing with VGG, the Massachusetts Land Court, Department of the Trial Court, Worcester County, held that Warrant Article 2 was invalid and of "no force and effect." The court found that Warrant Article 2, which was not a zoning bylaw but was enacted as a general bylaw, acted, in effect, as a zoning bylaw amendment but yet was not enacted in accordance with the required legal process for zoning bylaw amendment (i.e., two-third majority vote for passage). (See G.L. c. 40A, § 5.)

In so holding, the court explained the process for analyzing whether a general bylaw (such as that enacted under Warrant Article 2 here) "impermissibly intrudes on a subject that is or should be regulated by the zoning bylaw." The analysis, said the court should include first examining the subject matter of the challenged general bylaw to see if there is a history in the municipality of the subject being treated under zoning. If the municipality has a history of regulating that subject matter through its zoning bylaw, it can only be further regulated through the zoning bylaw, not through a general municipal bylaw, said the court. Moreover, the court explained that "[a] general bylaw can only treat the subject matter of a zoning bylaw through regulations that supplement the terms of the zoning bylaw, through, for example, setting the terms of particular uses on individual applications through a licensing process." "The general bylaw may not, however, contradict or restrict the use that is controlled by the zoning bylaw." The court explained that this was because, under Massachusetts statutory law, zoning bylaws have stricter requirements for enactment than general bylaws. (See G.L. c. 40A, § 5 (requiring two-thirds vote for enactment of a zoning bylaw) and G.L. c. 40, § 21 (requiring majority vote for enactment of a general bylaw).)

Further, the court looked at the Massachusetts statutory law authorizing municipalities to adopt bylaws imposing "reasonable safeguards on the operation of marijuana establishments" (See G.L. c. 94F, § 3(a).) The court found nothing in that statute required such bylaws be enacted either as zoning or general bylaws—but allowed the municipality the option of using either. Still, the court cautioned,

once the municipality chooses to regulate recreational marijuana under a zoning bylaw, it may “only change that regulation by amending the zoning bylaw, not by using a general bylaw to change what is allowed under the zoning bylaw.”

Here, because the Town chose to regulate recreational marijuana use in the Town through its zoning bylaw (per Warrant Article 27), the Town could only change or bar that use by amending the zoning bylaw, said the court. The Town “could not do what it did here—bar the previously allowed zoning use” through adoption of a general bylaw.

See also: *Rayco Inv. Corp. v. Board of Selectmen of Raynham*, 368 Mass. 385, 331 N.E.2d 910 (1975).

See also: *Lovequist v. Conservation Commission of Town of Dennis*, 379 Mass. 7, 393 N.E.2d 858, 9 Env'tl. L. Rep. 20730 (1979).

See also: *Spenlinhauer v. Town of Barnstable*, 80 Mass. App. Ct. 134 (2011).

Review/Design Standards—City code allows developer's proposed modification of design standards

Opponents of the development challenge city's interpretation of its code, which allows such modifications only if they “better meet the applicable design guidelines”

Citation: *Michaelson v. City of Portland*, 296 Or. App. 248, 2019 WL 969652 (2019)

OREGON (02/27/19)—This case addressed the issue of whether a city appropriately applied its “better meets” standards in its comprehensive plan.

The Background/Facts: A developer (the “Developer”) sought to develop a multi-story residential building with ground floor retail and below-grade parking on property within the City of Portland's (the “City”) Con-Way Master Plan (“CMP”) area. Development within the CMP was subject to design standards, including building height limits. Pursuant to the City Code, the Developer applied to the City for design review approval and proposed amendments to the CMP, along with “five ‘modifications,’ a type of variance to CMP design standards.”

The City ultimately issued a detailed decision, walking through the community design guidelines and CMP Design Guidelines, and made findings as to how the proposed project design met each of those guidelines. The City also addressed the five proposed modifications to the CMP Design Standards and made findings as to why each modification could be allowed under the City Code.

Opponents of the development (the “Opponents”) challenged the City's findings in an appeal to the Land Use Board of Appeals (“LUBA”). Among other things, the Opponents argued that the City's interpretation of its “better meets” standard was “insufficient” and/or “implausible.” Under the City Code (PCC 33.825.040), design standards may be modified if, among other things, “[t]he resulting development will *better meet* the applicable design guidelines.”

LUBA affirmed the City's decision.

The Opponents appealed.

DECISION: Judgment of LUBA affirmed.

The Court of Appeals of Oregon first concluded that, contrary to the Opponents' argument, the City's decision included “sufficient explanation to determine how the [C]ity was interpreting and applying the better-meets standard in PCC 33.825.040.” The court found that the City explained, with respect to each modification, “how the overall design of the building with the modification better meets the applicable guidelines than if the design adhered to the particular design at issue.”

The court acknowledged that the City “did not expressly set out an ‘interpretation’ of the better-meets standard,” but found that the City's “understanding of the meaning of that standard and how it is to be applied [was] readily discernible from the [C]ity's findings and explanation”—which, the court found, was sufficient. More specifically, the court found that the City's interpretation required “looking at the ‘resulting development’ (that is, the overall project design with modifications) and determining whether that design [would] ‘better meet’ the guidelines ‘applicable’ to the modification at issue than a design would without the requested modification at issue (that is, compared to a design that meets the design standard at issue).” The court found that, contrary to the Opponents' argument, the City “did not merely consider whether the applicable guidelines were ‘met,’ ” but rather found that the “City expressly considered whether the applicable guidelines were ‘better’ met by the resulting development by explaining what was ‘better’ about the resulting design with the modification at issue.”

The court also rejected the Opponents' argument that the City's interpretation of the better-meets standard was implausible because it allowed the City to use a comparator that did not simultaneously meet all guidelines and standards without modifications. In other words, the Opponents had argued that the City's interpretation was implausible because it allowed the city to look at each design-standard modification in isolation. The court concluded that the City's interpretation was “plausible because it account[ed] for all of the text of the standard and [gave] the [C]ity a functional way in which to apply that standard to the proposed project, without having to also create a fully-related, different, and hypothetical project that [was] not being proposed.”

Case Note:

The Opponents also challenged the City's specific better-meets

determinations on certain modifications as “applying an implausible interpretation.” The court rejected those challenges.

Nonconforming Use— Property owner seeks permit to remodel residential structure to add bedrooms without changing the number of apartment units

Property owner and city dispute whether the proposed remodel would increase the intensity of the property’s nonconforming use

Citation: *Ames 2304, LLC v. City of Ames, Zoning Board of Adjustment*, 2019 WL 1086853 (Iowa 2019)

IOWA (03/08/19)—This case addressed the issue of interpreting a municipal zoning code to determine whether a proposed interior remodel of a residential structure, which added bedrooms but not apartment units, was a prohibited increase in the intensity of the property’s nonconforming use.

The Background/Facts: Ames 2304, LLC (“Ames”) owned property in the City of Ames (the “City”). The property was built as a single-family structure, but in 1928 was converted to its current four one-bedroom apartment units. The property was zoned low density residential, which under the City’s Municipal Code (the “Code”) permitted only single-family detached residential dwellings. However, the property was grandfathered in as a legal nonconforming use as it had been operating as a four-unit apartment building prior to the City’s current zoning ordinance.

In April 2016, Ames sought a building permit to remodel the property’s interior. Under the proposed remodel, Ames sought to increase the number of bedrooms from four to seven while maintaining the same number of apartments after the remodel. The City’s zoning enforcement office (“ZEO”) concluded that the proposed remodel would increase the intensity of the nonconforming use and therefore was not permitted.

The City’s Code allowed for legally nonconforming uses to continue so long as they remain lawful, subject to limitations such as on “enlargement.” The Code provided that a nonconforming use:

“may not be increased in intensity and may not be enlarged, expanded or extended to occupy parts of another structure or portions of a lot that it did not occupy on the effective date of this Ordinance, unless the enlargement, expansion or extension complies with all requirements for the zone, does not create an additional nonconformity, and is approved for

a Special Use Permit by the Zoning Board of Adjustment, pursuant to the [specified] procedures . . . , except . . . [a]ny building or structure containing a nonconforming use may be enlarged up to 125% of the floor area . . . provided that the expanded building or structure complies with all density, coverage and spatial requirements of the zone in which it is located”

The Code also specifically addressed interior remodeling to a structure containing a nonconforming use, permitting such remodeling “provided that any proposed enlargement, expansion or extension” shall be subject to the Code’s enlargement limitations. (See Ames, Iowa, Municipal Code § 29.307(2)(a) (2012).)

Ames appealed the ZEO’s decision to the City’s Zoning Board of Adjustment (“ZBA”). The ZBA determined that the City Code did “not allow increases in intensity for nonconforming structures undergoing internal remodeling.”

Ames appealed the ZBA’s determination to district court. The district court affirmed the ZBA’s decision.

Ames again appealed, and the court of appeals concluded that since Ames was not increasing the number of dwelling units at the property, it was not increasing the intensity of the property’s use, and therefore the proposed remodel did not violate the City’s prohibition on the increase in the intensity of the nonconforming use.

The ZBA appealed. On appeal, the ZBA argued that the City Code should be interpreted such that the subsection governing interior remodeling incorporated the prohibition on increase in intensity of the nonconforming use such that the Code did “not allow increases in intensity for nonconforming structures undergoing internal remodeling.” Based on that interpretation, the ZBA argued that it was appropriate to deny Ames’ remodeling permit because an increase in the number of bedrooms constituted a prohibited increase in the intensity of the nonconforming use.

DECISION: Judgment of court of appeal affirmed and matter remanded.

Rejecting the ZBA’s interpretation of the Code, the Supreme Court of Iowa held that Ames’ proposed remodel did not constitute a prohibited increase in the nonconforming use under the City Code.

The court so held based on its interpretation of the City Code, looking at the text of the Code and its intent. The court noted that the City’s purpose in limiting the expansion of nonconforming uses was to “reasonably limit property owners from expanding nonconformities that could potentially adversely impact the surrounding area and greater community.” Consequently, the court agreed with the ZBA that the City Code should be interpreted such that the subsection governing interior remodeling incorporated the prohibition on increase in intensity of the nonconforming use.

However, disagreeing with the ZBA, the court concluded that Ames’ proposed interior remodel did not constitute a prohibited increase in intensity of a nonconforming use. The court explained that although the City Code did not define “intensity,” reading the Code as a whole gave a “clue as to the meaning of intensity concerning residential structures that operate as a nonconforming use.” The court

pointed to another section of the Code that governed the restoration of damaged nonconforming structures, which allowed for rebuilding “provided such rebuilding does not increase the intensity of the use, as determined by the number of dwelling units (for residences).” (See Ames, Iowa, Municipal Code § 29.307(3)(c).) Thus, the court found that section of the Code “connect[ed] the intensity of a residential nonconforming use to the number of dwelling units,” and concluded that the Code’s prohibition on increases in the intensity of nonconforming uses prohibited the increase in the number of dwelling units (but not the number of bedrooms as Ames proposed). Thus, since Ames’ proposed remodel increased the number of bedrooms, and not the number of dwelling units, the court concluded that it did not increase the intensity of the nonconforming use. Accordingly, the court concluded that the ZBA erroneously denied Ames’ permit on the basis that the remodel would increase the intensity of the nonconforming use.

Zoning News from Around the Nation

CALIFORNIA

The Bay Area Rapid Transit Authority’s board of directors has endorsed SB 50 (aka the “More Homes Act”), which seeks to “remake zoning around both major transit hubs and job centers across the state.” SB 50 would prohibit “‘hyper-low-density zoning’ near major transit hubs, effectively upzoning most of the land within half a mile of rail lines, bus lines, and ferry terminals.” BART expects that “SB 50 will help ensure the production of more housing around BART stations,” and “BART plans to build 20,000 housing units on land it owns around stations by 2040.”

Related—the sponsor of SB 50, Senator Scott Wiener, recently announced a series of amendments to the bill. In addition to rezoning around bus and rail lines, amendments to the bill would also rezone around ferry stations. The amendments would also set minimum inclusionary zoning requirements of 15% to 25% low-income homes. Amendments to the bill also extend its displacement protections to mobile home residents. And the amendments would “reduce or entirely do away with minimum-parking requirements across California.”

Source: *Curbed San Francisco*; <https://sf.curbed.com>

COLORADO

The state Senate recently passed Senate Bill 19-181, which would authorize cities and counties to “use their planning and land-use powers to regulate oil and gas.” The bill does set “standards that cities and counties can exceed but cannot modify,” and allows “the state oil and gas commission director to deny permits potentially harmful to the public health and safety and environment or that require input from local governments.”

Source: *The Denver Post*; www.denverpost.com

ILLINOIS

The state Senate is considering Senate Bill 1675, which would allow Illinoisans “to construct temporary structures for gardening throughout the colder months, often referred to as ‘hoop houses.’ ” Opponents of the bill, including municipalities and related organizations, have expressed concern about the bill usurping “local control over zoning and structures.”

Source: *Peoria Journal Star*; www.pjstar.com

SOUTH CAROLINA

The City of Conway is reportedly “considering putting potential zoning restrictions on vape shops in the future.” In the meantime, a bill pending in the state legislature would “forbid any city in South Carolina from passing ordinances governing vape products and the stores that sell them.”

Source: *WBTW*; www.wbtw.com

TEXAS

Pending in the state legislature, House Bill 2496 would prohibit a municipality from designating a property as a local historic landmark without the owner’s consent to the designation. Opponents of the bill contend it would “fundamentally weaken our ability to save important historic places.” Proponents of the bill say it limits “unnecessary government overreach and regulations that infringe on individual private property rights.”

Cyrier said he was likely to change the bill to require a super-majority approval of city commissions to deem a home historic.

Source: *Austin-American Statesman*; www.statesman.com

Zoning Bulletin

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Validity of Zoning Ordinance/Use— After college derecognizes fraternity, town deems fraternity's residential use in violation of town ordinance

Town ordinance allows only student residence "in conjunction with" institutional use

Citation: *New Hampshire Alpha of SAE Trust v. Town of Hanover*, 2019 WL 1349412 (N.H. 2019)

NEW HAMPSHIRE (03/26/19)—This case addressed the issue of whether a town zoning ordinance defining a permitted use of "student residence" as a building occupied by students and operated "in conjunction with another institutional use" was an unconstitutional delegation of zoning power to the local college. The case also addressed whether the town's zoning board of adjustment properly determined that property used by a fraternity for student housing violated the zoning ordinance because the fraternity no longer operated "in conjunction with" the college.

The Background/Facts: In the 1920s, New Hampshire Alpha of SAE Trust (SAE) built property in the Town of Hanover (the "Town") to accommodate the Dartmouth College (College) chapter of the Sigma Alpha Epsilon fraternity. SAE's use of the property as a student residence was permitted as of right from the time the Town first adopted a zoning ordinance in 1931 until the ordinance was amended in 1976. Since 1976, the property on which SAE's fraternity building existed had been zoned in the "I Institution" district. Student residences in that district were not permitted as of right, but could be permitted by special exception. A "student residence" permitted by special exception was defined in the Town's zoning ordinance as a "building designed for and occupied by students and operated in conjunction with another institutional use."

In 2016, the College revoked its official recognition of SAE. In light of the College's derecognition, the Town's zoning administrator deemed SAE's use of the property in violation of the Town zoning ordinance because it was "not operating 'in conjunction with' an institutional use."

SAE appealed the zoning administrator's decision to the Town's Zoning Board of Adjustment (ZBA). SAE argued that its use of the property was a lawful nonconforming use because its use of the property existed prior to the 1976 zoning amendment that added the "in conjunction with another institutional use" requirement, and the property never operated "in conjunction with" the College.

The ZBA agreed with SAE.



The College then requested a rehearing, which was granted. The College presented evidence that it provided fire safety services to SAE through the early 1970s, and that it established an independent governing board for fraternities in 1971 and appointed a business manager for fraternities in 1971. The College argued that such evidence established that SAE operated “in conjunction with” the College prior to the 1976 zoning amendment.

The ZBA agreed with the College. It thus concluded that SAE’s student residence use was not a legal nonconforming use, but rather a permitted use that had recently come out of compliance with the “in conjunction with” zoning requirement because of its derecognition by the College.

SAE then requested a rehearing, which the ZBA denied.

SAE then appealed to the superior court. The court affirmed the ZBA’s decision.

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SAE again appealed. On appeal, SAE argued, among other things that the Town’s zoning ordinance “unlawfully delegate[d] the ZBA’s authority to the College” because the “in conjunction with” requirement “effectively conceded zoning power to the College because the College ‘reserve[d] the right’ to recognize or derecognize a fraternity for any reason it desire[d].” SAE also argued that it was itself an “institution” as defined by the zoning ordinance and thus was continuing to operate “in conjunction with an institutional use” as required by the zoning ordinance.

DECISION: ZBA decision affirmed in part, vacated in part, and remanded.

The Supreme Court of New Hampshire first held that, contrary to SAE’s argument, the Town’s zoning ordinance did not unconstitutionally delegate the zoning powers to the College. Looking at the dictionary definition of “conjunction,” the court found that the zoning requirement meant that “a property’s use ‘must have some union, association or combination’ with the College.” The court acknowledged that if formal recognition by the College were dispositive of the “in conjunction with” requirement, then there might be an unconstitutional delegation problem. However, the court found it “clear” that it was not the College that controlled whether the “in conjunction with requirement” was met, but rather that determination was controlled by the ZBA. The court concluded that, when the ZBA determined whether the “in conjunction with” requirement had been met, derecognition by the College was “merely one factor to be considered by the ZBA.” Even with derecognition by the College, the ZBA could find other circumstances that showed a fraternity such as SAE was continuing to use its property “in conjunction with” the College or another institutional use in the district, said the court.

Based on that construction of the ordinance, the court concluded that “the ZBA was justified in finding that SAE ‘offered no evidence of any association or relationship with the College,’ and thus was no longer operating ‘in conjunction with’ the College.” In fact, the court pointed to evidence of SAE’s efforts to distance its relationship with the College.

The court next addressed SAE’s argument that it was itself an “institution” as defined by the zoning ordinance and thus was continuing to operate “in conjunction with an institutional use” as required by the zoning ordinance. The ZBA had concluded that the term “institution” as used in the zoning ordinance was intended to cover only “major institutions” such as the College, and not including SAE itself. But the court found that the language of the Town’s zoning ordinance did not limit the scope of “institutions” to “major institutions.” Accordingly, the court held that the ZBA’s interpretation of “institution” was “erroneously narrow.”

The court remanded the case back to the ZBA to consider whether SAE was itself an “institution” under the zoning ordinance and, if so, whether SAE’s residential use was therefore allowed.

See also: *Dartmouth Corporation of Alpha Delta v. Town of Hanover*, 169 N.H. 743, 159 A.3d 359 (2017).

Case Note:

SAE had also argued that the Town enforced the ordinance unequally between fraternal institutions that severed ties with the College before 2015 as compared to those that severed ties after 2015. The court found this was a mere recast of SAE's selective enforcement claims, which the court had previously rejected. Moreover, the court noted that "the mere fact that a Town may have been lax in its enforcement in the past does not prohibit enforcement in the present."

Religious Use—Yeshiva proposes summer religious study facility on property zoned to allow "places of worship"

Town says proposed use is prohibited, but yeshiva contends "places of worship" definition includes such use

Citation: Yeshiva Talmud Torah Ohr Moshe v. Zoning Board of Appeals of the Town of Wawarsing, 2019 WL 1389114 (N.Y. App. Div. 3d Dep't 2019)

NEW YORK (03/28/19)—This case addressed the issue of whether a yeshiva, a not-for-profit school for boys of the Orthodox Jewish faith, was a "place of worship" within the meaning of the municipal code, and thus was permitted in the zoning district in which it was located. The case also addressed the issue of whether the municipal code permitted residential facilities for the yeshiva.

The Background/Facts: Yeshiva Talmud Torah Ohr Moshe (YTTOM) operated a yeshiva, a not-for-profit school for boys of the Orthodox Jewish faith, in the City of Brooklyn. YTTOM also owned property (the Property) in the Neighborhood Settlement zoning district (NS District) in the Town of Wawarsing (the Town). The NS District permitted the use of "[p]laces of worship."

In October 2016, YTTOM applied to the Town for site plan approval for its proposed development and use of the Property. YTTOM sought to rehabilitate and convert existing buildings on the Property for ongoing religious studies "throughout the summer months" by approximately 150 students. YTTOM's proposed facility would contain two synagogue classrooms, a residence for the supervising rabbi, and dormitory and dining facilities for the students.

The Town's Municipal Code Officer (MCO) determined that YTTOM's proposed use of the Property was not a permitted use in the NS District because "a camp or any type of occupancy that permits overnight residence of students, staff or families [was] not allowable."

YTTOM appealed the MCO's determination to the

Town's Zoning Board of Appeals (ZBA). The ZBA affirmed the MCO's determination, concluding that the YTTOM's proposed use was more "akin" to a prohibited "school or a camp" use than a permitted "place of worship" use.

YTTOM appealed to the Supreme Court. YTTOM argued that its proposed use fell within the Town Municipal Code's definition of "place of worship," and was thus a permitted use in the NS District.

Again, the Municipal Code permitted places of worship in the NS District. The Code defined "places of worship" as the "[u]se of land, buildings, and structures for religious observance, including a church, synagogue, or temple and related on-site facilities such as monasteries, convents, rectories, retreat houses, and fellowship or school halls."

The Supreme Court found that there was a "rational basis to support the ZBA's determination," and dismissed the petition.

YTTOM appealed.

DECISION: Judgment Supreme Court reversed, and matter remanded.

The Supreme Court, Appellate Division, Third Department, New York, held that YTTOM's proposed uses of the Property were "unambiguously permitted by the plain language of the zoning ordinance." The court found that "[o]n-site school halls that provide religious instruction incident to the use of a structure for religious observance, such as the proposed synagogues," were "expressly included in the definition of place of worship and, accordingly, [were] permitted uses under the Town's zoning ordinance." The court also found that the zoning ordinance's definition of "place of worship" specifically allowed "related on-site facilities," which the court found included "facilities that permit residential occupancy, such as monasteries, convents and retreat houses." Thus, the court concluded that the zoning ordinance definition "unambiguously include[d] the living facilities proposed for students of the school, particularly in light of [YTTOM's] representation that its purpose in constructing the facility [was] to provide religious instruction . . .," a use permitted under the Town's zoning ordinance.

See also: *Sullivan v. Board of Zoning Appeals of City of Albany*, 144 A.D.3d 1480, 42 N.Y.S.3d 428 (3d Dep't 2016).

Case Note:

In its decision, the court made note that it had previously recognized that New York courts "have been very flexible in their interpretation of religious uses under local zoning ordinances."

Proceedings/Conflicts of Interest—Development project opponents claim zoning board members had disqualifying conflicts of interest

Opponents point to board members' potential relationship as employee or medical patient of applicant's family member

Citation: *Piscitelli v. City of Garfield Zoning Board of Adjustment*, 2019 WL 1371557 (N.J. 2019)

NEW JERSEY (03/27/19)—This case addressed the issue of whether any members of a city's zoning board of adjustment had a disqualifying conflict of interest because of their relationship with an applicant's family member who supported a development application that was under the consideration of the zoning board of adjustment.

The Background/Facts: The Conte family applied to the City of Garfield (City) for site plan approval and variances related to the proposed development of three lots. Two of the lots had been co-owned by the irrevocable trusts of Dr. Kenneth S. Conte (Dr. Kenneth) and his brother, Dr. Daniel P. Conte, Jr. (Dr. Daniel), but prior to the zoning applications those two lots were transferred to a trust benefitting Dr. Kenneth's nephew—Dr. Daniel P. Conte, III (Dr. Daniel III)—and his two nieces. Dr. Daniel personally owned the third lot. The zoning applications sought approval for the proposed development of a gas station, car wash, and quick lube.

Vincent Piscitelli and his daughter, Rose Mary, (the Piscitellis) objected to the Contes' proposed development project. They claimed that a conflict of interest barred certain members of the City's zoning board of adjustment (ZBA) from hearing the application because: (1) Dr. Kenneth, as a City Board of Education president, voted on school-district personnel matters and five of the ZBA members were employed or had immediate family members employed by the City Board of Education; and/or (2) ZBA members may have been patients of, or had immediate family members who were patients of, Dr. Kenneth, Dr. Daniel, or Dr. Daniel III.

Despite the Piscitellis' concerns, no ZBA member disqualified himself or herself on conflict-of-interest grounds. And, the ZBA granted site plan approval and the requested variances for the Contes' proposed development project.

The Piscitellis then filed a legal action, asking the Superior Court to vacate the ZBA's approvals because of the alleged ZBA members' disqualifying conflicts of interest.

The ZBA maintained that Dr. Kenneth's relationship to

the development project and the ZBA members was "too attenuated to result in disqualification" based on conflicts of interest. The ZBA also contended that there was no disqualifying conflict of interest if a ZBA member had a patient-physician relationship with any of the three Conte doctors because "a patient [ZBA] member's hypothetical treatment with one of the Conte physicians would not reasonably be expected to impair his or her objectivity."

The Superior Court found there were no conflicts of interest that impaired the ZBA members, and upheld the ZBA approvals.

The Piscitellis appealed, and the Appellate Division affirmed.

The Piscitellis again appealed.

DECISION: Judgment of Appellate Division reversed, and matter remanded.

The Supreme Court of New Jersey held that there was insufficient factual information on the record to determine whether or not ZBA members had disqualifying conflicts-of-interest, and so reversed the Appellate Divisions' determination and remanded for further proceedings to evaluate the potential ZBA members' conflicts of interests. Specifically, the court stated that, on remand, the trial court had to assess the two separate bases for a potential conflict of interest: (1) whether Dr. Kenneth, as president or a member of the Board of Education, had the authority to vote on significant matters relating to the employment of ZBA members or their immediate family members; and (2) whether any ZBA members or their immediate family members had a "meaningful patient-physician relationship" with any of the three Conte doctors. The court concluded that if the answer to either of those issues was "yes," "then a conflict of interest mandated disqualification [of the relevant ZBA member(s)] and the decision of the [ZBA] must be vacated."

In so concluding, the court discussed the "objective" and "sources" of conflict of interest law. The court explained that the objective of conflict of interest laws was "to ensure that public officials provide disinterested service to their communities" and to "promote [the public's] confidence in the integrity of governmental operations." The court pointed to the sources of conflict of interest law: the Local Government Ethics Law, N.J.S.A. 40A:9-22.2; the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-69; and the common law, "which is now codified in those conflict statutes and still guides us in understanding their meaning."

Looking at the statutory language and the common law guidance, the court found that "[a] conflict of interest arises whenever a public official faces 'contradictory desires tugging [him or her] in opposite directions.'" The court also explained that the issue here was "whether the 'private interests' of certain [ZBA] members—their possible concerns over their employment and their families' employment in the school district—clash[ed] with the exercise of their 'public duties'—the faithful and impartial review of a development application." (See N.J.S.A. 40A:9-22.2.) In other words, reading the ethics code

together with the MLUL and the common law, the court concluded that a ZBA member's "personal and financial interest would be implicated" if: (1) "a vote might adversely or favorably impact his or her employment, or immediate family member's employment, in the school district"; or (2) the ZBA member or his or her immediate family member had a meaningful patient-physician relationship with any of the three Conte doctors in light of the "legitimate privacy concerns" related to the "potential disclosure of highly intimate and personal health-care information." (See N.J.S.A. 40:55D-69; N.J.S.A. 40A:9-22.5(d).) The court explained that, "[c]learly, if [ZBA] members had reason to consider their 'private interests' in casting a vote, that alone could undermine public confidence in their impartiality."

See also: *Wyzykowski v. Rizas*, 132 N.J. 509, 626 A.2d 406 (1993).

Case Note:

In its decision, the court gave guidance on how to evaluate whether a patient-physician relationship is "meaningful" such that it disqualifies a zoning board member who recognizes the applicant as one with whom he or she has a meaningful patient-physician relationship. The court advised that, "if in doubt" as to whether that type of "meaningful relationship exists, after some explanation by the zoning board attorney," the zoning board members should "[e]rr[] on the side of disqualification" "with nothing more being said." Further, the court suggested that, in those cases where a zoning board member, or the member's immediate family, "has had a patient-physician relationship that the member may not consider meaningful, but where an objector could conclude that the relationship is one that 'might reasonably be expected to impair [the member's] objectivity or independence of judgment,' " the board member "should not be required to disclose anything more than that he or she, or a family member, was at one time a patient of the applicant or objector or someone with a property interest at stake in the outcome of the proceedings."

Proceedings/Ripeness for Review—Zoning applicant challenges validity of zoning ordinance

Zoning board says challenge is not "ripe for review" because applicant had not yet obtained federal and state permits for the proposed use

Citation: *In re Penneco Environmental Solutions, LLC*, 2019 WL 1086638 (Pa. Commw. Ct. 2019)

PENNSYLVANIA (03/8/19)—This case addressed the

issue of whether an oil company's challenge to the substantial validity of a zoning that prohibited its proposed use was ripe for review when the company had not yet obtained federal and state permits for the proposed use.

The Background/Facts: Sedat, Inc. (Sedat) owned property (Property) in the Borough of Plum (Borough). Since 1989, Penneco Oil Company (Penneco Oil) has operated a gas production well on the Property. In March 2016, Penneco Environmental Solutions, LLC (Penneco), an affiliate of Sedat (whose association with Penneco Oil was unknown) sought to convert the well from a producing well to an underground injection well (which would allow disposal of exploration and production fluids from the oil and gas operations into porous geologic formations). Penneco's proposed use as an underground injection well required permits from the United States Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Protection (DEP).

While Penneco's permit application was pending with the EPA, Penneco challenged to the Borough's Zoning Hearing Board (ZHB) the substantive validity of the Borough's zoning ordinance. Penneco claimed that the zoning ordinance was *de jure* (i.e., as a matter of law) exclusionary and invalid because it excluded the operation of underground injection wells (a recognized, legitimate business activity) in all zoning districts. Penneco also claimed that the zoning ordinance was preempted by state and federal law.

The ZHB denied Penneco's substantive validity challenge to the zoning ordinance on the ground that it was not ripe for review where Penneco had not yet obtained federal and state permits for the proposed oil and gas well conversion. Among other things, the ZHB explained that the issue of whether the zoning ordinance was invalid was "of no consequence if the EPA and DEP [did] not grant the required approvals."

Penneco appealed the ZHB's denial.

The trial court reversed. It found that under Pennsylvania law, municipalities could not require outside agency permits before providing zoning approval. Thus, the court determined that the ZHB erred in concluding that Penneco's substantive validity challenge was not ripe for review. Moreover, the court concluded that Penneco had "met its burden of proving the zoning ordinance improperly exclude a recognized, legitimate business activity," and that the zoning ordinance was thus *de jure* exclusionary and invalid.

The Borough appealed. On appeal, the Borough only appealed the issue of whether the ZHB properly denied Penneco's substantive validity challenge for lack of ripeness. Among other things, the Borough argued that "[r]ipeness has been defined as the presence of an actual controversy; it requires a court to evaluate the fitness of the issues for judicial determination, as well as the hardship to the parties of withholding court consideration." The Borough contended that, here, no actual controversy existed since Penneco had "yet to receive final, unappealable approval from either the EPA or DEP." Thus, the Borough asserted that, "absent approval of both outside

agencies, and the issuance of necessary permits, Penneco was deprived of no legal rights.”

Penneco countered with an assertion that its substantive validity challenge was ripe for review by the ZHB “because the zoning ordinance’s failure to provide for the use of an underground injection well anywhere in the Borough directly and presently prevented Penneco’s proposed use of the property.” Specifically, Penneco contended that Pennsylvania law was clear that “municipalities [could] not require outside agency permits before providing zoning approval.”

DECISION: Judgment of Common Pleas Court affirmed.

The Commonwealth Court of Pennsylvania agreed with Penneco, holding that Penneco’s substantive validity challenge was ripe for review. The court found that Penneco had asserted that the zoning ordinance, on its face, directly prohibited its proposed use, and thus concluded that the issue of the ordinance’s validity was “sufficiently developed for review by the ZHB.” The court also noted that Penneco would “suffer hardship” if consideration of its challenge was delayed since Penneco had “already expended resources surveying the site and creating a plat map in connection with its validity challenge” and “applying for an EPA permit to operate its proposed underground injection well.” Further, the court noted that Penneco’s petition was ripe for review because it impacted Penneco’s ability to obtain a DEP permit (because DEP requires information as to a proposal’s compliance with applicable local ordinances). In addition, the court noted its repeated prior holdings that “where permits from an agency outside a municipality are required for a land development proposal, approving the proposal with a condition that outside agency permits are received, as opposed to outright denial, is appropriate.”

Accordingly, the court concluded that the ZHB erred in concluding that Penneco’s substantive validity challenge to the zoning ordinance was not ripe for review.

See also: *Lehigh Asphalt Paving and Const. Co. v. Bd. of Supervisors of East Penn Township*, 830 A.2d 1063 (Pa. Commw. Ct. 2003).

See also: *Whitehall Manor, Inc. v. Planning Com’n of City of Allentown*, 79 A.3d 720 (Pa. Commw. Ct. 2013).

See also: *In re Borough of Blakely*, 25 A.3d 458 (Pa. Commw. Ct. 2011).

Conditional Zoning/ Rezoning/Spot Zoning— Town adopts ordinance approving the conditional zoning of a property

Neighbors contend the conditional zoning ordinance is invalid as beyond the municipality’s authority and amounts to illegal spot zoning

Citation: *Eisenbrown v. Town of Lake Lure*, 824 S.E.2d 211 (N.C. Ct. App. 2019)

NORTH CAROLINA (03/05/19)—This case addressed the issue of whether a newly enacted conditional zoning ordinance was invalid as: beyond the authority of the municipality; and/or as the product of an “arbitrary and capricious decision-making process”; and/or as a form of illegal spot zoning.

The Background/Facts: Lake Lure Lodge, LLC (the Lodge) owned a lodge and private dining club in an R-1 Residential zoning district in the Town of Lake Lure (Town). In August 2015, the Lodge submitted an application to the Town to rezone the Lodge’s property to an R-3CD Resort Residential conditional district. Among other things the Lodge proposed a restaurant, as well as a parking expansion on two offsite R-1 zoned residential properties that it had recently purchased.

Ultimately, the Zoning and Planning Board (ZPB) recommended approval of the conditional zoning application. The Town Council then adopted an ordinance (the Ordinance), approving the conditional zoning for the Lodge’s property.

In February 2016, nearby landowners of residential homes or vacation rentals (the Neighbors) sued. The Neighbors sought to invalidate the Ordinance. Among other things, they argued that: (1) the Town acted *ultra vires* (i.e., exceed its legal authority) when it enacted the conditional zoning Ordinance; (2) even if it was in the Town’s power to enact the conditional zoning Ordinance, the Ordinance was the “product of an arbitrary and capricious decision-making process and thus invalid; (3) the Ordinance was a form of illegal spot zoning; (4) the Ordinance was procedurally defective and should be invalidated because it allowed the Lodge to have a lakeside restaurant which was a ‘substantial addition or modification to the general development plans,’ as the Lodge had first proposed a boathouse restaurant; and (5) the offsite parking provision in the Ordinance was an illegal rezoning of those residential properties.”

Finding there were no material issues of fact in dispute, and deciding the matter based on the law alone, the trial court granted summary judgment to the Neighbors on their claim that the Ordinance’s offsite parking provisions were

invalid. The court found those provisions were “arbitrary and unreasonable” because “they allowed offsite parking ‘to be established anywhere without relationship to the location of the Conditional District.’” The court also found that those “modifications resulted from ‘inadequate’ notice procedures because the [O]rdinance effectively rezoned the two residential properties to permit commercial parking” without proper notice. Finally, the trial court granted summary judgment to the Town and the Lodge on all the remaining claims, and upheld the remaining portions of the Ordinance.

The Neighbors appealed, and the Lodge cross-appealed. The Neighbors raised the same claims on appeal, and the Lodge argued that the offsite parking provisions in the Ordinance were a valid exercise of the Town’s conditional zoning authority and not a rezoning.

DECISION: Judgment of trial court affirmed in part and reversed in part.

The Court of Appeals of North Carolina first held that, contrary to the Neighbors’ claim, the conditional zoning Ordinance was not *ultra vires*. Rather, the court held that the Town’s enactment of the conditional zoning regulations were “well within the authority conveyed [to the Town] by the General Assembly,” and that the Town “enacted the conditional zoning [O]rdinance . . . under the authority established by its general conditional zoning regulations.”

In so holding, the court explained the difference between “zoning” and “conditional zoning.” “Zoning,” said the court, is a “regulation by a local governmental entity of the use of land within a given community, and of the buildings and structures which may be located thereon, in accordance with a general plan.” It is “a legislative act and is generally subject to judicial intervention only if it is exercised ‘arbitrarily or capriciously.’” Zoning or rezoning actions require “a formal amendment to the municipality’s zoning ordinance comprised of text and a map, and requiring a public hearing and certain notice requirements.” (N.C. Gen. Stat. § 160A-384.) Comparatively, the court explained that “conditional zoning” is a legislative action consisting of a rezoning decision made concurrently with approval of the site-specific standards or site plan. Moreover, the conditional zoning process is codified under North Carolina statutory law—N.C. Gen. Stat. § 160A-382(a)—which authorizes a town to place property into a conditional zoning in response to a petition from the property’s owner, who may propose “[s]pecific conditions” and “site-specific standards.”

Here, the court found that the Town adopted a zoning regulation permitting “conditional districts,” consistent with the statutory law and “well within” the Town’s authority. And, the court concluded that the Ordinance here was not *ultra vires* since it was enacted under the authority of the Town’s conditional zoning regulations.

Next, the court held that the conditional zoning Ordinance was not a “product of an arbitrary and capricious decision-making process” because the record showed that the Town’s legislative process was “a reasoned one.” Even if the outcome could be viewed as “fairly debatable,” the

court found it was “not arbitrary and capricious as a matter of law.”

The court also rejected the Neighbors’ claim that the conditional zoning ordinance was a form of illegal spot zoning. The court explained that spot zoning occurs where a zoning ordinance: “(1) singles out and reclassifies a relatively small tract owned by a single person”; “(2) that is ‘surrounded by a much larger area uniformly zoned’”; “(3) and that either imposes greater restrictions on the smaller tract or ‘relieve[s] the small tract from restrictions to which the rest of the area is subjected.’” The court noted that spot zoning is illegal, “but only in the absence of a ‘clear showing of a reasonable basis’ for it.”

Here, the court determined that the conditional zoning Ordinance did not amount to illegal spot zoning because there was a “reasonable bases for [the] zoning that serve[d] the public interest” since there was a diversity of types of zoning of property in the area surrounding the Lodge, and the Town’s future development plan would also have zoned the property for even broader development for resort or hospitality uses.

The court next concluded that the Ordinance was not procedurally defective, as alleged by the Neighbors, because the Lodge’s “switch” from the initially proposed boathouse restaurant to the approved lakeside restaurant was “not a substantial change that required an entirely new zoning proposal and corresponding procedure.” The court found the change in restaurant was a change made to accommodate public concerns, and that such a change during the zoning process did not require new notice and an entirely new zoning hearing.

Finally, the court agreed with the trial court, and rejected the Lodge’s related argument, finding that the offsite parking requirements of the conditional zoning Ordinance effectively rezoned the residential properties to permit commercial parking without the required notice or procedural protections.

In conclusion, the appellate court found that the conditional zoning Ordinance was valid but for the offsite parking provision properly invalidated by the trial court.

See also: *Massey v. City of Charlotte*, 145 N.C. App. 345, 550 S.E.2d 838 (2001).

See also: *Kerik v. Davidson County*, 145 N.C. App. 222, 551 S.E.2d 186 (2001).

See also: *Chrismon v. Guilford County*, 322 N.C. 611, 370 S.E.2d 579 (1988).

See also: *Heaton v. City of Charlotte*, 277 N.C. 506, 178 S.E.2d 352 (1971).

See also: *George v. Town of Edenton*, 294 N.C. 679, 242 S.E.2d 877 (1978).

Case Note:

The trial court had also determined that the provisions of the conditional zoning Ordinance that permitted offsite parking “at distances greater than 400 feet” from the Lodge was “invalid because it permitted the Lodge to use remote parking established anywhere without any relationship to the Conditional District.”

The appellate court disagreed that the provision was invalid as “arbitrary” or “unreasonable.” Rather, the court found it was designed to preserve the local lake’s “appeal” while “also advancing the Town’s long-term plan and vision for the community.”

Zoning News from Around the Nation

CALIFORNIA

Palo Alto recently removed a zoning code provision that had prevented conversion of grandfathered buildings. Under the revised zoning code, owners of grandfathered downtown buildings now can convert to another use as long as the conversion does not result in the loss of housing units. The new ordinance also reportedly contains a waiver provision that would allow those wanting to switch from a residential to a non-residential use to appeal for an exception.

Source: *Palo Alto Online*; <https://paloaltoonline.com>

FLORIDA

After being denied a special zoning exemption to operate a school with more than 25 students, Englewood Christian School is reportedly suing Sarasota County, claiming religious discrimination. The school contends that similarly situated secular charter schools are not required to obtain such a special permit to operate.

Source: WWSB; www.mysuncoast.com

RHODE ISLAND

State Senator Frank Lombardi has introduced a bill (2019-S 0414) that would allow cities and towns to regulate wind farms through zoning ordinances. Among other things, the bill would allow municipalities to “issue special use permits, approve variances and require notice . . . to all property owners within not less than 500 feet of a proposed small wind energy system, or 1,000 feet of a proposed large wind energy system.” The bill would also require that zoning ordinances regulating wind farms “establish requirements and guidelines consistent with the latest technical paper on renewable energy siting guidelines for terrestrial wind energy systems published by the statewide planning program.” The bill has been referred to the Senate Committee on Environment and Agriculture.

Source: *State of Rhode Island General Assembly News*; www.rilegislature.gov/pressrelease

WEST VIRGINIA

The City of Charleston is considering a draft ordinance that would allow medical cannabis dispensaries and growing sites at all retail spaces, provided they are “at least 1,000 feet from day-care centers and schools, as mandated by state law.” Reportedly, city leaders don’t want to put “too many additional regulations into the ordinance because the state already ha[s] specific rules in place,” and the city doesn’t want “to miss out on economic opportunities these facilities could bring.”

Source: *Charleston Gazette-Mail*; www.wvgazettemail.com

How to Avoid a Conflict of Interest

LET'S SAY YOU HAVE JUST been appointed to your local planning commission. You are now a public official who must abide by certain ethical standards—and, most important, avoid conflicts of interest. But what exactly is a conflict of interest?

The short answer: As a public official, you are prohibited from doing business in a private capacity that conflicts in any way with the board or commission on which you serve. Most states have conflict of interest laws that require public officials to steer clear of any involvement with work that is in any way related to their government activities or that could lead to legal entanglements. As the Illinois Supreme Court ruled in the 1976 case of *Brown v. Kirk*, “the faithful performance of official duties is best secured if a governmental officer . . . is not called upon to make decisions that may advance or injure his individual interest.”

The long answer

The general rule is that commissioners or board members should not have a personal or financial interest in any contractual, work-related, or business matter put before the board or commission. This would include working for or personally benefiting from any board or commission action.

A personal benefit could include a non-financial benefit like free office space or a zoning change.

As a member of a planning commission or a zoning board of appeals (or similar body), you should review the rules with the department staff before accepting your new position. This does not mean you can no longer participate in other community activities, but it does mean your actions will be scrutinized. Not only will you be subject to federal and state conflict of interest laws, but you will also have a responsibility to represent the public by demonstrating integrity and fairness.

As a member of the commission, you must represent the public with integrity and fairness.



Free office space or a zoning change could be a conflict of interest.

Living conflict-free

In my more than 40 years of experience as a board member and a professional planner in various communities around the U.S., I have been very conscious of avoiding ethical violations. I currently hold elected office as a member of the independent park district board in my suburban Chicago community. Before my election, my wife served on the board of a nonprofit group in the same suburb. Legally, she could have remained on the nonprofit's board. However, she decided to step down in order to avoid even the appearance of a conflict of interest.

Another example: Early in my planning career, I worked for another suburb. A local architect who held elective office on the village board lobbied staff members and planning commissioners to support a project his client was proposing. I reported the matter to the village

manager, who referred it to the village attorney. That was the end of the architect's contact with the commission or the staff.

Conflict of interest is also a violation of ethical practices. It is unethical for public officials to use the knowledge and power of their position to further their private interests. Citizens have a right to expect fair and honest treatment in a transparent climate that supports high ethical standards.

Avoiding even the appearance of a conflict of interest bolsters public confidence in government and in the planning process.

In small communities, where only a few people step forward to serve on boards and commissions, often in a volunteer capacity, it can be challenging to establish and maintain boundaries with friends and neighbors who have special requests or opinions. But when citizens agree to join a board or commission, their first duty is to serve the public interest.

If, for example, you are both a planning commissioner and a member of the board of directors of your homeowners association, there are times when you must recuse yourself. An example might be when the association is fighting the rezoning of a neighborhood property. That's when you recuse yourself from the plan commission's discussion, even leaving the room while discussion and voting are taking place. Above all, you do not cast a vote on the topic.

The best path is to be mindful of pending actions before the commission and avoid even the appearance of a conflict of interest. For a more in-depth discussion of conflict of interest and other ethical issues, I recommend *Everyday Ethics for Practicing Planners*, by Carol D. Barrett, FAICP (published by APA's Planners Press in 2001) and *The Ethical Planning Practitioner* by Jerry Weitz, FAICP (APA Planners Press 2015). ■

—Dudley Onderdonk, FAICP

Onderdonk is past president of the Glencoe, Illinois, park district and a current member of the village plan commission.