

Empire Planning Commission Supplemental Meeting Agenda

June 14, 2023 ~ 6:30 pm

Remote Meeting using the Zoom Platform. Meeting ID: 854 8349 7876 Passcode: 401499  
<https://us02web.zoom.us/j/85483497876?pwd=dWV2MzUwcWdwVGtJdlZYblpwWEZGZz09>

*If you would like to address The Planning Commission at this meeting, please place your name on the sign-up sheet or indicate that through the chat function on the online Meeting Platform. You will be recognized to speak during the "Public Comment" portion of the agenda. Discussion is limited to 5 minutes and please state your name and address your comments to the Planning Commission. Thank you for your cooperation.*

1. **Call Meeting to Order**
2. **Roll Call** – The Empire Planning Commission requires a simple majority of three commission members present at the meeting for a quorum.
3. **Approval of Agenda**
4. **Approval of the Minutes** – May 31, 2023 Planning Commission & Board of Adjustment Minutes and Attachments (4)
5. **Harmony Domes Site and Building Plans** –
  - a. Review plans with Site Plan Check list
  - b. Recommend to Clear Creek County acceptance if Empire requirements are met
6. **Avoriaz, LLC proposed subdivision – Variance Application Discussion**
  - a. Presentation of Discussion Materials
  - b. Planning Commission Discussion
  - c. Public statement/question
  - d. No action or vote will be taken on this application until June 28<sup>th</sup>, 2023.
7. **Avoriaz, LLC proposed subdivision – Review of Sketch Plan**
  - a. Chair summary of activities to date
  - b. Request a motion to continue the Sketch Plan determination until such time as the Variance decision is complete.
  - c. Planning Commission Discussion
  - d. Public statement/question
  - e. No vote will be taken on this application until after the Variance is complete
8. **Public Comment:** Public comment is limited to 5 minutes per person. The Planning Commission does not respond to questions during this time. For operational questions, please email the clerk.
9. **The Next Regular Meeting** of the Empire Planning Commission is June 28, 2023, at 6:30 pm. In-person with remote access
10. **Adjourn Meeting**

  
\_\_\_\_\_  
(Planning Commission Chair Sally Rush)

  
\_\_\_\_\_  
(Town Clerk Jeannette Piel)

**Town of Empire**  
**30 East Park Avenue/P.O. Box 100 Empire, Co 80438**  
**303.569.2978 - 303.569.2282 fax**

**Town of Empire Planning Commission and BOA Supplemental Meeting Minutes**  
June 14, 2023 ~ 6:30 pm

In Person and Remote Meeting using the Zoom Platform.

**1. Called Meeting to Order**

Chairperson Sally Rush called the meeting to order at 6:35 PM. The meeting was held in person and through Zoom.

2. **Roll Call** – The Empire Planning Commission requires a simple majority of three commission members present at the meeting for a quorum.

**Present:** Chairperson Sally Rush, Mayor Wendy Koch, and Members Denise Tennant, Eileen Wheelock and Lon Fulton. Also in attendance was Clerk Piel.

**3. Approval of Agenda**

**MAYOR KOCH MOTIONED TO APPROVE THE AGENDA FOR MAY 31, 2023, WHEELOCK SECONDED THE MOTION, CLERK PIEL CONDUCTED A ROLL CALL VOTE, ALL WERE IN FAVOR, MOTION PASSED.**

The Agenda was approved.

4. **Approval of the Minutes** – May 31, 2023 Planning Commission & Board of Adjustment Minutes and Attachments (4)

**WHEELOCK MOTIONED TO APPROVE THE MEETING MINUTES FOR MAY 31, 2023, TENNANT SECONDED THE MOTION, CLERK PIEL CONDUCTED A ROLL CALL VOTE, ALL WERE IN FAVOR, MOTION PASSED.**

The May 31, 2023 PC Meeting Minutes, including Attachment B,C,D and staff report, were approved.

5. **Harmony Domes Site and Building Plans** –  
a. Reviewed plans with Site Plan Checklist

The first time this site plan was presented was in July of 2021 and has been an ongoing process for the past two years. In reviewing the plan, Chairperson Rush requested a new plan with minor mistakes cleared up. The Developer has provided the plan with more clearly readable information and scales that show today's date.

The members used the revised plans as they reviewed the Town of Empire's Ordinance 170 Site Checklist and determined it was complete.

- b. Recommend to Clear Creek County acceptance if Empire requirements are met

The checklist and supporting documents will be filed with the County.

6. **Avoriaz, LLC proposed subdivision – Variance Application Discussion**

- a. Presentation of Discussion Materials

Piel again emphasized that there is a detailed process to approve the Sketch plan and proposed subdivision. All steps that go through the BoA or PC will be formally approved (with conditions or recommendations) or denied (with justifications). Public Hearings at decision steps will be properly noticed.

The public hearing was held on May 31, 2023. Clerk Piel presented an overview of the process and provided examples of questions and asked the members to respond with the goal of developing criteria to produce conditions to include with variance and/or professional outreach.

Public and the Developer were allowed to discuss and ask questions regarding the process.

- b. Planning Commission Discussion
- c. Public statement/question

All comments with members, developer, staff and the public may be found in Attachment E: Staff Critical Thinking Exercise.

- d. No action or vote will be taken on this application until June 28<sup>th</sup>, 2023.

**TENNANT MOTIONED TO ADJOURN AS PLANNING COMMISSION AND CONVENE AS THE BOARD OF ADJUSTMENT, MAYOR KOCH SECONDED THE MOTION, CLERK PIEL CONDUCTED A ROLL CALL VOTE, ALL WERE IN FAVOR, MOTION PASSED.**

The motion was approved.

The Board of Adjustment members and staff used Attachment B for discussion: the Ordinance 170, Article III, Section 2.3 language and developer application language are also copied below.

**2.3.1: If the applicant complies strictly with the provisions of this Ordinance, he can make no reasonable use of his property.**

*Developer: The site has significant sloping that creates a unique hardship that is not the result of our own actions.*

Chairperson Rush said she turned it into questions: Is this unique or unusual in this area? Was this hardship created by his own actions? With plan that the developer has, is it the slope that creates a hardship, or because the developer needs a variance to build on this property? Is the sloping of his own making? Did the developer do something to create the hardship?

Other discussion included:

- Is this really a unique hardship or is this slope different from anywhere else in town? If this action is a result of building 21 homes, then the developer is making his own hardship. You don't have to build on all of the property that you buy. Does not have to have 21 homes on it. To go through with the 21 homes is the result of his own actions that this is a hardship.
- If he wants a road variance, even with fewer houses, the plan itself is separate from the slope.
- What is a hardship?

Chairperson Rush explained that the town's ordinance does not define hardship in the definitions. We then look to state-level definitions, and Title 9, article 5-101 of the Colorado Revised Statute states:

**“Undue hardship” means a substantial and unusual hardship that is the direct result of unique physical site conditions such as topography or geology, or that is the direct result of other unique or special conditions encountered on a property, but that are not typically encountered in the jurisdiction in which such property is located. Constraints, complications, or difficulties that may arise by complying with these statutory standards for accessibility but that do not constitute an undue hardship shall not serve to justify the granting of an exception or variance.**

Discussion included the following:

- Not unique to that piece of property. Art. II, Sec. 2.3.3, “shared by surrounding properties.”
- If a person goes in to do something...like rocks, excavation, does not mean they need a variance.
- Each town determines their definitions of hardship. We have to come up with what our definition is for this project. The town attorney can not define it for us but did say that topography is a common reason for variances.
- Can roads be altered so they do not require a variance? Has anyone asked the Developer why they put the roads there? Which came first, the roads or the houses? Easy to build a road where the grade is better for it, but if 21 buildable lots are considered in subdivision, a 50 ft ROW does not work exactly. Was it cost, or less fill required, or what is the motivation?
- Simplest question? How many houses do you need to meet your bottom line?
- Why are roads laid out the way they are? Why did you design the roads there? They say it's not the result of their own actions, so why do you need the roads to be laid out this way?
- Why does the overall road width and ROW need to be varied? Why are the roads here? Does this solve the problem for the ROW.
- Are there other plans prior to this, to reduce the need for a variance?
- Can roads be altered so as not to need a variance? Why are roads laid out the way they are so a variance is required?
- Why does the slope create hardship?

- Could there be 2 different sections, one higher and one lower, maybe fewer houses, to lessen the slope impact? Could they be earth bermed?
- Could houses be built on the property that would not require a road? Could Cowles be finished off going south to have houses. Could you build on the property without having a road that does not require a variance.
- Does the location of the roads create a significant, unique hardship?
- Is there a way the hardship could be avoided?
- Can the roads be laid out to avoid a variance? If the answer is no:, then why not?

**The Developer addressed the following questions on Zoom:**

1. Can the roads be laid out to avoid a variance?

**Andre Suissa:** Yes. Developer's definition of reasonable use of property is based on feasibility of project. Stated that the proposed plan is what is feasible for their purposes and that they believe it is the level of reasonable use required for the ordinance.

2. Have you done soil testing?

**Andre Suissa:** not yet. Has spoken to soil technical person, but is early to have soil studies done. Typically this comes when building individual foundations, in the final plat process. Survey points have been installed on the property boundaries

Discussion continued, focusing on the language in the ordinance:

**2.3.2: A literal enforcement of the provisions of this ordinance would result in unnecessary hardship. Hardships shall not be limited to the individual owner, but a variance may be given based upon the determination that a hardship may be imposed upon adjacent neighbors and/or the Town as a result of not authorizing the variance.**

**Developer:** *It was reviewed by Town Officials and it was noted that this would be one of the widest roads in town with the exception of U.S. 40. All roads in town are on average 10-12' or less with gravel paving.*

- Is this stated correctly? 10 to 12' Lanes is what they meant, not roads.
- Are the layouts of roads in town pertinent to this subdivision? This will be its own subdivision. For example with parking, the subdivision is its own entity, so is this pertinent to look at all the other roads in town.
- Historically, the roads in town were laid out and sometimes not well. If you look at other clusters of homes, they vary greatly. This is new and does not have to be compared to Empire as a whole. This is a unique situation.
- The development will be a part of Empire, not its own community; covenants for subdivision cannot be treated differently.
- Staff reported the request meets the minimum requirements that makes it a viable road. They have looked at code, talked to public works, and considered snow storage.

Developer asked the town about minimums to make sure they met the minimum standards.

- The Board questions if the developer's statement and testimony fulfills the requirements of 2.3.2.

**2.3.3: The hardship is unique and unusual, or nearly so, rather than one shared by many surrounding properties**

*Developer: We are highly interested in purchasing the Town's asphalt millings at \$3/ton to make a road that is easier to plow, maintain, and repair than gravel or road-based paved roads that is prevalent in the Town of Empire.*

Chairperson Rush stated that this piece is not applicable.

**2.3.4: The hardship is not the result of the applicant's own actions**

*Developer: The lower 24-foot size results in less area to maintain. The Town gets easement rights to 8 feet on each side of the 24-foot ROW for any town services needed such as maintenance and repair of the road and snow plowing.*

No questions.

**2.3.5: The variance requested is the minimum that will afford relief and the least possible modification of the requirements of this Ordinance.**

*Developer: Each owner has to pay the property taxes on the additional income for the local taxing districts (i.e. Town of Empire) and less cost of maintenance to the Town.*

*The variance requested is the minimum that will afford relief and the least possible modification of the requirements of this Ordinance.*

Discussion included the following:

- Do we know what additional income will be brought in to Empire?
- His justification is an assumption.
- Road maintenance depends on materials, size of road is what he is referring to.

**2.3.6: The variance will neither result in the extension of a nonconforming situation in violation of Art. VI, Section 2 (Non-Conforming Development), nor conflict with the goals and policies of the Comprehensive Plan.**

*Developer: Jeremy Jones, Assistant Fire Chief of Clear Creek Fire Authority, has supported our road design, materials, and width of our proposed ROW and easements to be adequate for emergency purposes.*

*The variance does not directly conflict with the goals and policies of the Town's Comprehensive Plan (i.e. Master Plan).*

Discussion included the following:

- Even if he builds one house he needs to build at least one road.
- Will need to have a way in, can't drive from East to West side.
- Why can't there just be a driveway to the property? If he puts a driveway to one house, why would that require a variance? Can he use it within the R-1 zone any other way?
- We are looking at the variance for road as part of the subdivision process.
- With 2 to 4 houses, would the slope be an issue?
- Can he make no reasonable use of his property? Is a reasonable use to have a major subdivision? What is his reasonable use?
- Can he put a 50 ft road on his property and still have reasonable use of the property?

**The Developer was asked this question on Zoom:** do you have to have the variance to use the property?

**Andre' Suissa:** says "reasonable use" with lots of minimum of 4,800 sq ft so trying to do a development (with 6,000 average). Not reasonable for him not to achieve the density they are looking for. Not "no" use, is subjective...he does not feel he can achieve the densities the Ordinance and Master Plan support. Yes, you can physically put anything you want on the property.

The Board of Adjustment continued to walk through the steps of the ordinance, focusing more questions on the Developer's application.

**2.3.2:** Discussion included the following:

- First half, a literal enforcement creates the question: If variance is not authorized, is this a hardship on the neighbors or the town? If it doesn't pass, there would be no hardship to the neighbors or the town was discussed.
- The variance does not assume any other requirements would be put on the town. If we think it might, we can create the conditions.

**2.3.3:** Discussion included the following:

- If topography is the hardship.
- Does the town lawyer give advice on the "not shared by many surrounding properties"? Would it help to look at the property to answer this question?

The Developer gave permission for the Planning Commission to walk the property. Scheduled a Planning Commission site visit to the property for Monday, June 19th at 11 AM. Meet at the corner of Ball St. and property.

**2.3.4:** Discussion included the following:

- Does the planning of the development create the hardship? if I buy property, I will assess the topography first.

- Did they visit the property before purchasing? If visited, would you be able to discern the topography would be a hardship.
- A site visit could help us answer this question.
- you don't always know the condition of a house you buy.
- an "acknowledgement variance" is for a pre-existing problem that helps get up to code. One is a choice, the other is a surprise.

**The Developer was asked this question:** When looking at this property before it was purchased, did you have an idea it was a rocky, sloping site to build on?

**Andre Suissa:** He knew it was a sloped site, but did not know until his Engineer visited to say the 50 ft ROW would be a problem. Clearly, the cliff was unbuildable. He underestimated how the hill would impact his plans for the property.

Tennant stated that everybody has the right to apply for the land entitlement (variance). Doesn't have to be approved.

**2.3.5:** Discussion included the following:

- Is modification of this ordinance the only way to build on this property? This variance may be the only way he can build.
- Is this reasonable use for the development he has planned.
- The deed dispute mentioned is a civil issue and why the condition in Attachment B was created.
- Questioned if this is the "least" that can be done? it ties back to #1: what is the reasonable use for the person who owns the property?
- The ask is to lower the Right of Way from 50 ft to 24 ft. Is this the least possible modification of the ordinance? Only asking for this one thing. So is the distance the least modification? Is this a simple change or huge change?

**2.3.6:** Discussion included the following:

- Is it an extension of a non-conforming situation? There is no non-conforming situation on the property.
- Master plan and the introduction "preserve, protect small mountain town...slow managed growth" has been quoted multiple times by the public.
- Does this road variance request conflict with the Master Plan?
- The density where the road leads is more of a concern than lane width.
- The variance could be approved, the sketch plan may not be approved by the number of houses.

**MAYOR KOCH MOTIONED TO CONTINUE THE VARIANCE APPLICATION HEARING TO JUNE 28, 2023, TENNANT SECONDED THE MOTION, CLERK PIEL CONDUCTED A ROLL CALL VOTE, ALL WERE IN FAVOR, MOTION PASSED.**

The motion was approved.



**TENNANT MOTIONED TO APPROVE TO ADJOURN AS BOARD OF ADJUSTMENT AND RECONVENE AS PLANNING COMMISSION, WHELOCK SECONDED THE MOTION, CLERK PIEL CONDUCTED A ROLL CALL VOTE, ALL WERE IN FAVOR, MOTION PASSED.**

The motion was approved.

**7. Avoriaz, LLC proposed subdivision – Review of Sketch Plan**

- a. Chair summary of activities to date

Received the 14-page packet, had a pre-application conference on 4/20/23. Accepted the sketch plan and site plan documents, with revisions. From here, the goal will be to review the sketch plan and make recommendations. This was when the Variance was discovered to be necessary.

- b. Request a motion to continue the Sketch Plan determination until such time as the Variance decision is complete.  
c. Planning Commission Discussion

The developer shared his sketch plan electronically: No comments or questions at this time.

- d. Public statement/question

**Tony Robertson:** no comment

**Jacob Belcher:** Speaking as a concerned citizen. Has anyone talked to the Colorado Division of Insurance because he has: they said the subdivision will cause increased risk for everyone in the Town of Empire of losing their home insurance policies due to Fire Hazard which can be ascertained by the insurance companies if there is an increased risk of fire due to density of structures. Monthly premiums will go up and will have problems getting fire coverage. Encouraged the Planning Commission to contact the Colorado Division of Insurance for a professional opinion. Nobody will benefit except Justin and Andre' and they don't live here. Andre' has done nothing but belittle us. Vote no.

**Bernie Huebner:** passed.

**Peggy Huebner:** passed.

**Lyndy Modestat:** Posed a clarifying question to the Board: The board changed the language in some document to state that the "town of empire recognized...given the size of the development" added by Eileen Wheelock. Is the vote on the width of the road variance. Did the chart integrate any of the points that the public brought up? What document was it decided the above concern? Did you agree on language change of the Ordinance itself? In revised Master Plan, the 50 ft variance was put into place to "preserve, enhance" the people of the valley from developers like Justin and Andre', who want to put as many houses together as possible. Is a fire hazard...50 ft road variance was put into place to make sure developers didn't do what they are trying. Let us know what document...consider the 200 people who have signed a petition. GREED.

**Robin Rolf-Sager:** Chicken and an Egg problem. Being told to separate the variance from the sketch plan. Are we doing this out of order? He still needs to get a rezoning because of R-1. Too dense of a population in the Sketch Plan. Developers are talking about hardship, which will come up again in rezoning. If such a hardship, why not accept the offer of 20% over purchasing price. But they are greedy. What is the legal definition of "any reasonable use? I think it's reasonable to put a mega mansion on and move on.

Chairperson Rush clarified that he does not have to rezone but will be subdividing. Legally, when a variance is involved must do the variance first and then must do the subdivision.

**Larry Modeset:** Thanks for the overview, better late than never, of the timeline. Process of questions, thanks. Town staff called and told him that this June 14th meeting was occurring. Word did not get out. He feels YOU (the town) are limiting public involvement. Public comments are from two weeks ago, when they didn't know about the situation which makes it difficult. Not given the adequate documents on CORA, didn't get the application for Variance until the night before the last meeting. Hard to come up with public comments, want more information with more notice. Does not make it an equal situation. He has a problem with Andre saying he is defining reasonable as this is the only reasonable way to make his plan work. Not his actions, but it is his plan. Do what you said you'd do: not define the situation. Master Plan was to have wider roads to have less dense developments and more openness. We want good development that suits us.

**Allen Fistell:** Have been asked to separate the Variance from the Sketch Plan. If no sketch plan, don't need a road. He can see the whole plateau from his house, so incorrect statement earlier. The five houses will obstruct his view. The road is within 20 ft of his back porch. The road will be a hardship on his family. Developer has not offered to do anything about the deed problem. He has met with the developer personally, but has not sent what he said he would. Other neighbors may have problems with deed. Is there a way to build a development without a road? How will they build a road off of Cowles, where they proposed a road is 20 ft down. He does not see how they can do it.

**Ann Milner:** Was out of town for previous meetings. Has questions. Has picture of a river through Clear Creek Drive that comes from Daly street runoff. If a road is put in there, it will also come through Cowles and create a lake, not a river. Has concerns about the water, and can the sewer system handle it. Appreciates what the PC and staff is doing. If the PC approves something, in general, does it then go to the board? They recommend to the Board, who has been voted in.

e. No vote will be taken on this application until after the Variance is complete

**TENNANT MOVED TO CONTINUE THE SKETCH PLAT AND PLAN TO JUNE 28, 2023, MAYOR KOCH SECONDED THE MOTION, CLERK PIEL CONDUCTED A ROLL CALL VOTE, ALL WERE IN FAVOR, THE MOTION PASSED.**

The motion passed.

**8. Public Comment:** Public comment is limited to 5 minutes per person. The Planning Commission does not respond to questions during this time. For operational questions, please email the clerk.

**Linda Robertson:** Thanked members for extra time. Not being serviced as well, about getting information. The town is having difficulty taking care of business in spite of adding staff. She still has no answers to her questions: 4 weeks ago CORA request for minutes. Minutes are not online. Waiting for how many water taps are in use. Asked for monthly bills as the Board: hope to see them soon and have not seen them for 6 months. Want water and sewer data, not just someone saying we have enough. This is a major subdivision: adds 10% to our town. FACTS: when Developers bought property it was zoned R-1. Can still put in 4,800 sq ft lots, just with a bigger road. Have any roads been built since the Ordinance was written? They had our best interest in mind. Access to property is a negotiating point when buying. They should have known about the 50 ft road requirement.

**Robin Rolf-Sager:** passed.

**Larry Modeset:** passed.

**Tony Robertson: (from submitted testimony)** My comments focus on the Master Plan's Vision Statement because it potentially impacts the number of houses and the need for a variance. For brevity, I'm going to ask several questions containing the vision statement text rather than reading the statement that you should all now be very familiar with.

In what way does high-density track housing enhance the historic integrity of the town? How does high-density track housing on a prominent hill in the middle of town preserve our small, mountain town atmosphere? Is the proposed development in a town the size of Empire slow, managed growth?

Is this project fiscally sound? We don't have an economic assessment yet, nor do we know anything about the developer's financial backing. Aside from the town's arguably short-sighted focus on tap fees, what longer-term benefit, financial or otherwise, does this project provide the Town and community? We know for sure that it will place more demand on our resources and services and more burden on our aging infrastructure. The Town can't maintain the roads we have now. How will this development, requiring additional services, improve that situation? Why aren't the developers offering any infrastructure upgrades or improvements, for example to our sewer system and wastewater treatment facility?

What exactly have the developers offered the community? They've said they would build to minimum code requirements. Well, that's a given, because have no choice. Trying to sell that as a benefit to the Town is quite a stretch. Burying the power lines will be an improvement, but that too is a required action, at least for their current proposal. Aside from mandatory requirements, what have the developers offered the Empire community? They've said they are considering a foot path down to the creek trail so that West Fork Village residents don't have to

trespass on neighboring properties to get down to the creek where they will then trespass on neighboring properties.

That brings me to the last part of the vision statement. Empire desires growth that does not impact the town in a negative way. I'll argue that this project, though still only in the proposal phase, is already impacting the town in a very negative way. It has caused nothing but stress, anger and other emotional turmoil, putting residents at odds with the town's mayor, Board, and Planning Commission. Going forward, we the residents see no obvious long-term benefit from this project to the town or community, only negative impacts on existing residents, especially the neighboring property owners.

Returning to the variance request, the developers knew what they were buying, and they got a "suspiciously good" deal on the price. To now turn around and say that they are surprised they bought hilly terrain in the mountains is beyond laughable. Let's be honest. This variance request isn't about the terrain, it's about packing as many sardines into a can as can possibly fit. The developers have made no effort to compromise with residents and have offered nothing meaningful to the town or community. Instead, they are asking us to make an exception to our ordinance to accommodate them so they can maximize their profits at our expense. I side with the majority who say no.

The developers claim there are residents who support their proposal. I personally have yet to meet one. On the other hand, I am aware of growing opposition. I will end my comments by presenting this petition with 222 signatures to date opposing the West Fork Development project. I urge the developers to reassess and propose a less intrusive development that fits the stated values in the Town's vision statement and adds value to the community.

**Corey Novak:** It is almost 11 pm. Just listening to you all, thanks for being here. I am afraid of subjectivity. Mentioned being sued. Lots of emotion and fear for our own safety. We all can have representation too, so there can be a real strong movement too. Reasonable use, her dream of building a cabin they could enjoy the land for what it is, by the creek. Didn't have \$500,000 to buy it. Wants to see the minutes. Caution for the process. Wants to get a lawyer in the room. The dome project wined and dined residents. These developers have hurt her feelings, and are not a good addition to our community. Domes didn't need variances. Wants to plan an event at Minton park. When will the bathrooms be open?

**Jacob Belcher:** Thanks. Sorry for the outburst., Edits to Agenda can be made late and could have prevented some confusion. Invited the planning commission to visit his house during their site visit.

**Allen Fistell:** Wants the town lawyer's number for his lawyer.

**Peggy Hubner:** She appreciates Town Board members and PC members.,. Wishes the best, pick it apart...what you don't know is that we love Empire. They have put in over 100 research hours and have read the Master Plan and are learning and being prepared. Hard to imagine

this subdivision, she is concerned about the year round maintenance. Town maintenance has troubles now with weed eating or mowing the park. Snow plowing ignores them, and not alone. Town asked to write down issues to be addressed, so they just take care of their neighbors instead. What will this major subdivision do to our town? You hold the future in your hands.

**9. The Next Regular Meeting** of the Empire Planning Commission is June 28, 2023, at 6:30 pm. In-person with remote access.

**10. Adjourn Meeting**

**MAYOR KOCH MOTIONED TO ADJOURN THE MEETING, TENNANT SECONDED THE MOTION, CLERK PIEL CONDUCTED A ROLL CALL VOTE, ALL WERE IN FAVOR, MOTION PASSED.**

The meeting was adjourned at 11:03 PM.



(Planning Commission Chair Sally Rush)



(Town Clerk Jeannette Piel)

Date of Approval: \_\_\_\_\_

Version# \_\_\_\_\_

## **Town of Empire**

### **Ordinance 170 Site Checklist**

Ordinance 170 Site Checklist for New construction and/or additions to existing Construction within the Town of Empire. Projects expanding the square footage of a structure require Planning Commission review. Projects **not** expanding the square footage only require the signature of the Zoning Officer and Planning Commission Chair.

**This project  does  does not expand the square footage of the structure.**

**The following applies to proposed structure additions or new construction for projects which expand the footprint.**

An applicant desires to perform new construction or an addition to the existing structure at \_\_\_\_\_, Empire Colorado which is located in a [R1], [R2], [R3], [RC], [MH] District in the Town of Empire.

The following conditions are required by the Ordinance 170, Town of Empire, for new construction or additions to Existing construction:

1. Does the new construction or addition submitted fall entirely on the parcel of property owned by the applicant?  
**Yes [ ] No [ ]**
  
2. Does the new construction or addition fall within the Town of Empire?  
**Yes [ ] No [ ]**
  
3. Is there a minimum parcel area of 4800 SF or greater as required by Article VII, Standard Table in Section 3, and Section 4.3.1?  
**Yes [ ] No [ ]**
  
4. Will there be a minimum dwelling area/space of 700 SF as required by Article VII, Standard Table in Section 3, and Section 4.3.2?  
**Yes [ ] No [ ]**

Date of Approval: \_\_\_\_\_

Version# \_\_\_\_\_

5. Will the building structure have a minimum set back of 10 ft from any street adjacent to the parcel as required by Article VII, Section 2.5 and the Standard Table in Section 3, and Section 4.4.1?

Yes [ ] No [ ]

6. Will the building structure have a minimum offset of 5 ft from any adjacent property owner's lot lines as required by Article VII, Section 2.5 and the Standard Table in Section 3, and Section 4.4.2?

Yes [ ] No [ ]

7. Will there be a required minimum open space of 1500 SF per dwelling unit as required by Article VII, Section 2.6, and the Standard Table in Section 3, and Section 4.5?

Yes [ ] No [ ]

8. There is a structure height restriction of maximum 36 ft as required by Article VII, Section 2.7 and the Standard Table in Section 3. Will the height restriction be met?

Yes [ ] No [ ]

9. Will there be a maximum of 2 stories as required by Article VII, Standard Table in Section 3?

Yes [ ] No [ ]

10. There is a minimum off street parking area of 2 spaces per dwelling, each space 440 SF, as required by Article VII, Section 4.6. Will the parking requirement be met?

Yes [ ] No [ ]

11. Ordinate 170 Article VI, 2.1.1(a) allows for non-conforming structures on a property to be expanded without requiring a variance provided, the expansion does not further encroach on required setbacks, offsets, and does not violate density and open space requirements. Does the new addition meet these restrictions?

Yes [ ] No [ ]

12. Are all invoices paid and not more than 30 days past due?

Yes [ ] No [ ]

Date of Approval: \_\_\_\_\_

Version# \_\_\_\_\_

If the answer to any of questions 1 thru 11 is "[NO]", then the applicant has failed to conform to the requirements of ordinance 170 and a letter advising the of the failing Items should be sent to the applicant.

\_\_\_\_\_  
(Zoning Officer)

\_\_\_\_\_  
(Planning Commission chair)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Date Signed)

Version # \_\_\_\_\_

Date of Approval \_\_\_\_\_

Version #1 date approved \_\_\_\_\_

Version #2 date approved \_\_\_\_\_

Version #3 date approved \_\_\_\_\_

Version #4 date approved \_\_\_\_\_

Version #5 date approved \_\_\_\_\_



# Town of Empire

30 East Park Avenue –P.O. Box 100 Empire CO 80438-0100  
303/569-2978 – 303/569-2282 fax

## *Petition for Variance* (Article III, Section 2.3, Page 16)

### General Information

Petitioner: Avoriaz, LLC

Mailing Address: 2347 S Loveland St Lakewood CO 80228

Telephone Number: 720-608-0123 Fax Number \_\_\_\_\_

Email Address: Westforkvillageempire@gmail.com

### Property Information

Location: 0 S. Ball St., Empire, CO (Between S. Ball and S. Cowles Streets, south of Mountain Ave.)

Tax Identification Number: R164535  
R164846 Deed Book: 1041 Page: 518

Zoning District: R-1

### Variance Information

Section of Ordinance 170 for which variance is requested: Article V, 10.2.6.7

On a separate page, please present your request, and the necessary justification:

Additional Requirements:

The names and addresses of the owners of all properties within one hundred (100) feet of any part of the land or adjacent to the property line of the property in question.

I certify that I am the owner of the property or have provided written notarized authorization that I am acting in his behalf in petitioning for this variance. Further, all information presented in this petition is accurate to the best of my knowledge and belief. Further, I grant permission for members of the Board of Adjustment and Town Staff to visit the site in question for informational and advertisement needs. I agree that if this variance is granted on any of the information presented, it may be revoked in the event of any breach of representation or conditions which may be attached.

Property owner André N. Suissa, Managing Member  
of Avoriaz, LLC Date April 30, 2023

Received by \_\_\_\_\_ Date \_\_\_\_\_ Fee \_\_\_\_\_

Avoriaz, LLC is requesting a variance to lower the Right-of-Way (ROW) from the 50-foot requirement per Article V Section 10.2.6.7 to 24 feet.

We will also be providing 8' easement rights to the Town of Empire on both sides of the 24-foot ROW. The easement does not give ownership, but rights to enter, re-enter, occupy, and use the Easement Property for the purposes of maintaining and repairing the road as well as an area for plowed snow to be placed. We will draft a permanent easement document per your Town Attorney's guidance and direction that includes all rights the Town needs. The easement areas will also include underground electric, underground natural gas, and underground communications lines. Lastly, it will include drainage ditches.

The total width of the ROW and easements is 40 feet that is needed for designing the road per Clear Creek standards based on the bottom half of Page 91 of the Clear Creek Roadway Design and Construction Manual Revised April 27, 2021.

The road will be 24-feet in width with two 10-foot lanes and two 2-foot shoulders. The 24-foot-wide road we will build will be dedicated to the Town and the remaining 16 feet (8 feet x 2) is owned by the lot owners where the easement traverses. There will be two cul-de-sacs with a 32-foot-wide radius also part of the ROW dedication. This also includes 8-foot easements around the cul-de-sac that are not part of the ROW.

The reasons we believe this variance is justified:

1. The site has significant sloping that creates a unique and undue hardship that is not the result of our own actions.
2. It was reviewed by Town Officials and it was noted that this would be one of the widest road in town with the exception of U.S. 40. All roads in town are on average 10-12' or less with gravel paving.
3. We are highly interested in purchasing the Town's asphalt millings at \$3/ton to make a road that is easier to plow, maintain, and repair than gravel or road-based paved roads that is prevalent in the Town of Empire.
4. The lower 24-foot size results in less area to maintain. The Town gets easement rights to 8 feet on each side of the 24-foot ROW for any town services needed such as maintenance and repair of the road and snow plowing
5. Each owner has to pay the property taxes on the additional 8-foot easements at full value of the lot resulting in additional income for the local taxing districts (i.e. Town of Empire) and less cost of maintenance to the Town.
6. Jeremy Jones, Assistant Fire Chief of Clear Creek Fire Authority, has supported our road design, materials, and width of our proposed ROW and easements to be adequate for emergency purposes.

7. The variance does not directly conflict with the goals and policies of the Town's Comprehensive Plan (i.e. Master Plan).
8. The variance requested is the minimum that will afford relief and the least possible modification of the requirements of this Ordinance.

List of owners within 300 feet:

Property ID	Owner	Address
R007226	BRAUGE PATRICK F & KATHLEEN E	188 E PARK AVE
R007228	KOCH TOMMY HAROLD &	158 E MOUNTAIN AVE
R007229	WHILLOCK PAUL A & KATRINA R	292 E PARK AVE
R007230	HUBNER BERNARD G & PEGGY J	207 E MOUNTAIN AVE
R007231	SPIES HENRY R AND LOIS F JOINT TENANCY TRUST	267 E MOUNTAIN AVE
R007232	SPENCER KATE	63 BALL ST
R007233	LEWIS CAROL J & KENNETH L ERWIN	256 E PARK AVE
R007234	ROMINE ERIC & JEANNIE ANN CARNES ROMINE	268 E PARK AVE
R007235	WSTEAD HOLMHURST LIMITED LIAB CO	208 E PARK AVE
R007273	ROBERTSON JAMES ANTHONY	216 S AVERY ST
R007274	BLACK JOHN F & SHERRIE BLACK & ERICA C BLACK	201 BALL ST
R007276	NICKEL TM & SK LIVING TRUST & AMIEE PRIOLO PERRI	None
R007293	ROBERTS GEORGE I	405 E MOUNTAIN AVE
R007313	CRAWFORD JOHN M	None
R007314	MILNER DAVID B & ANN N	177 E CLEAR CREEK DR
R007315	GRAY TERRANNCE M	190 E MOUNTAIN AVE
R007316	STITZER NORMAN P	191 E CLEAR CREEK DR
R007317	LACSINA ISABELITA	210 E MOUNTAIN AVE
R007318	CRAWFORD JOHN M	None
R007319	BELKNAP MAXWELL JEFFREY & ANGELICA KAYE BELKNAP	270 E MOUNTAIN AVE
R007320	MODESITT CARL LAWRENCE	294 E MOUNTAIN AVE
R007321	CMCH LIVING TRUST	None
R007322	CMCH LIVING TRUST	312 E MOUNTAIN AVE

R007323	MOREHOUSE JESSICA A	360 E MOUNTAIN AVE
R007324	WILSON REGINALD R & KAREN L WILSON	384 E MOUNTAIN AVE
R007325	NOVAK COREY & JACOB BELCHER	336 E MOUNTAIN AVE
R007330	ANDREWS JAMES & STAMO ANDREWS	412 E MOUNTAIN AVE
R007332	COLORADO STATE OF	None
R007333	WESTFORK CLEAR CREEK LLC	None
R017217	ROBERTSON LINDA M & JAMES A ROBERTSON	192 E CLEAR CREEK DR
R017218	MCWILLIAM DANARAY	188 E CLEAR CREEK DR
R017605	JURNEY RICHARD A & TERRESA	None
R017606	JURNEY RICHARD A & TERRESA	None
R162022	KONSELLA STEPHEN F & SUSAN A KONSELLA	322 E PARK
R162028	TOWN OF EMPIRE	None
R162029	TOWN OF EMPIRE	None
R162030	TOWN OF EMPIRE	None
R164410	HERSHBERGER HEIDI	58 S AVERY ST
R164411	CALDWELL JOHN A & CHARLOTTE L BROWN	64 S AVERY ST
R164412	BLUE SPRUCE HABITAT FOR HUMANITY	None
R164413	LEAGUEPIKE WALKER	64 S BALL ST
R164553	SINGMASTER LORRAY M	375 E MOUNTAIN AVE
R164646	HERRIN CORAL L	325 E MOUNTAIN AVE
R164647	ZINKEL RICHARD & SUSAN ZINKEL	345 E MOUNTAIN AVE
R164648	ARTEMIS KAREN	355 E MOUNTAIN AVE
R164744	SPARKS ROBERT	None

**TOWN OF EMPIRE**  
30 East Park Avenue –P.O. Box 100 Empire CO 80438-0100  
303/569-2978 – 303/569-2282 fax  
[TownOfEmpire@Colorado.Gov](mailto:TownOfEmpire@Colorado.Gov) / [Clerk@EmpireColorado.US](mailto:Clerk@EmpireColorado.US)

To: Property Owners within Three Hundred Feet  
From: Town of Empire  
Re: Road Variance for West Fork Village LLC.

May 15, 2023

As property owners within three hundred feet, please be advised as follows:  
Town of Empire Notice of Public Hearing for Road Variance for West Fork Village LLC  
Application.

Pursuant to the provisions of Empire’s Ordinance 170, notice is hereby given that the Empire  
Planning Commission will hold a public hearing at 6:30 p.m. on Wednesday, May 31<sup>st</sup>, 2023, at  
Empire Town Hall.

Remote access via Zoom

<https://us02web.zoom.us/j/87345797556?pwd=eDdLR2lqM3RwV05saHE3VGJNOU1BZz09>

Meeting ID: 873 4579 7556    Passcode: 198316

The purpose of this hearing is to consider a variance application for the property described as:

**EMPIRE COUPON PLACER #1298 PARCEL ONE**

**0 BALL STREET EMPIRE COLORADO 80438  
COUNTY OF CLEAR CREEK, STATE OF COLORADO**

Interested persons are encouraged to attend and give comment at the public hearing.

Thank you,

*Jeannette Piel*  
Empire Town Clerk

Please read through these questions and think about how you would answer them. These are the questions and concerns from Public Comment from every public meeting since this process began. Many of these questions have been answered, but I want you to think through each question anyway. Anything that has a factual answer, I will provide that information in the meeting when we are discussing it, or it is provided in italics.

This is an exercise in critical thinking. If you think the answer to a question is no, see if you can come up with an answer or change that would make it work. If you think the answer to a question is yes, see if you can come up with an exception that would make it not work. We need to train our brains to see both sides so we can make informed, unbiased decisions. (Pretend you are in a debate class, and this is your assignment)

If we allow our minds to look for solutions to the problems presented, not only will we find the best solutions and/or conditions for this Variance and Sketch Plan, but it will also help us find solutions to the same problems that are happening in other areas of Town and inspire ideas for improvements.

**Project:**

21 Single-family, single-story houses with garages. Each house is larger than our minimum house square footage, and each lot is larger than our minimum lot square footage.

**Water**

Can the Town supply water to 21 single family homes.

Can the Town's Sewer Plant accommodate 21 single family homes.

**Roads**

How is the Town going to pay for road maintenance for additional roads.

How is the Town going to pay for road maintenance on current roads that will gain more traffic. Cowles is a specific concern: Slope of the road coming into the subdivision from Cowles, "Drive West", street needs to be widened and graded, drainage needs to be improved.

Tony Robertson is concerned about water runoff this development will cause. Summer gulley washers happen, and the development will increase risks of flooding their house.

Allen Fistell is concerned that rain and snow runoff from the slope of "Drive West" will drain toward his house and lead to flooding.

Water issues such as drainage, less absorption.

With an 8-foot easement on both sides will the electric, gas, cable fit into the ditch leaving enough room for drainage and for extra cars to park.

Need space for snow and emergency vehicles.

Does not like the fact that the street does not go all the way through as it is a fire risk.

Would like to see a road with a grid pattern of the current Town roads.

**Density**

Fire hazard and mitigation

The developers are not offering anything to improve our infrastructure. When water or sewer fail, we will have to fix them.

21 homes will make it a very crowded unconventional subdivision.

Concerns about density.

How does this project help the residents.

We already have affordable housing.

Concerned about high-density development taxing the town's aging infrastructure.

\$500K is not a high estimate, so homes do not quality as "affordable."

Extra housing brings down value and desire to live here.

Need to use less flammable building materials.

One thousand square feet is pretty small.

Neighbors and friends live here because of the small-town atmosphere, and we have each other's back.

How long will it take to build twenty-one homes? (approx. 6 months)

Do we need a park?

Are the lot sizes 4800 square feet.

On the north side of the property have you spoken to the other homeowners.

**Master Plan:**

42 new residents is more than a 10% growth of our current households and residents. This is not slow growth and is in direct conflict with our vision statement and comprehensive plan.

The density does not fit in our vision statement and comprehensive plan.

This high-density development adversely affects the view corridor and does not fit with the town's values as stated in the recently completed Master Plan.

**Hardship / Variance:**

Hills are not a hardship.

There are plenty of uses for the hills, like sledding, that would not create hardship.

They made the choice to have 22 houses, is a personal hardship, is not a valid basis to grant a variance.

They can make use of the property by putting fewer homes on the lot.

The hardship is due to the desire to create 21 lots is not a hardship due to topography of the property, a different development would not require a variance.

The property exists in the middle of the Rocky Mountains significant sloping is hardly a unique hardship to the developer.

The developer knew the slope of the land when they bought it, so how is this a unique hardship.

The 50 ft roads in the Ordinance was planned to apply to everyone going forward, which were the wishes. Past roads are irrelevant to this variance.

Existing zoning would not require a variance. (1 House)

Zoned for R1 and they purchased it knowing this.

Is One lot, zoned R1 for one house.

Develop less homes and roads would not need to be narrowed.

A narrow road on a hill with a 90 degree turn on a section of Cowles is just plain not a good idea. This is currently doable with four residents, not with 21 more.

**Clarify:**

Concerns about the 8 ft easement, but ordinance requires 10 ft. Explain easement verse setback from structure to road. The plan shows a 10 ft. setback as per code, and 8 ft. of that setback is the easement. *That means that the house is at least 10 ft. back from the edge of the shoulder of the road. Within that 10 ft., 8 ft. must be clear – no fences or obstructions of any kind – to allow for space to plow snow and to park off the road.*

The Planning Commission states that the ordinance for the road width is excessive for development this size, but the town never envisioned a development the size. *This statement is incorrect. No one ever said that the road size was excessive for a development of this size. The Attorney and a consultant said the road size is excessive for any rural mountain town.*

Can't grant a variance to this piece of property as his deed shows he owns part of the property where the road easement is planned. *The purchase of the property included purchasing an easement that cuts across the corner of the property. The developers are honoring this existing easement and it has no bearing on the validity of the Variance or the Sketch Plan.*

**Process:**

Will approval of this variance mean we have established precedence for the future. *No.*

Will like all email communications from the Developers, including the recent 6-page memo, is it public knowledge that can be shared with other community members and the boards? *Yes, but they haven't sent it to the clerk yet.*

People around this development area should have all the details. *Yes, all information can be viewed in the Town Hall and any question can be emailed to the clerk.*

**Question for later in the process:**

When can the PC have the tax information that will cover maintenance.

Concerns about water usage. Has there been a recent study.

Can you afford to complete this development or are you going to leave us a pile of unfinished homes.

Will they be able to sell all of the houses.

Who pays for the feasibility study, water, and sewer changes.

Has any of the water and sewer knowledge changed? Does the Town have this information.



## Public Comment for Sketch Plan

### Sign-up Sheet

June 14, 2023

If you would like to address the Empire Planning Commission at this meeting, please place your name on the sign-up sheet. You will be recognized to speak during the "Public Comment" portion of the agenda.

This is a governmental meeting held to conduct the business of the Town of Empire. We welcome you here and thank you for your time and concern. If you wish to address the Commission, this is the time set on our agenda for you to do so. **When you are recognized, please stand, state your name and then address the Commission.** Your comments will be limited to 5 minutes. This is the appropriate time on the meeting agenda for you to address the Commission on matters that are not scheduled for public hearing. The Planning Commission may not respond to your comments during this meeting, rather they may take your comments and suggestions under advisement and your questions will be directed to the appropriate person or department for follow-up.

The Planning Commission request that all speakers conduct themselves in a respectful and civil manner and avoid disorderly behavior or personal attacks against any individual. In the event any person interrupts the business of the Commission or acts in a disorderly or disrespectful manner, the Commission may require such person to cease the offensive behavior and/or to leave the meeting. Thank you.

Please sign your name below if you wish to speak to the Commission.

NAME

Tony Robertson  
~~Tony Robertson~~  
Jacob Belcher  
Bernie Hubner  
Peggy Hubner  
Ann Milner Lyndy Modesitt  
Robin Rault  
Jerry Modesitt  
Allen Frisell  
Ann Melner

ADDRESS

192 E Clear Creek Dr.  
336 E Mtn Ave.  
207 E Mtn Ave  
207 E Mtn Ave  
~~294 E Mtn Ave~~  
177 Clear Creek Dr.  
313 Main St  
299 E Mtn Ave  
210 E Mtn Ave  
177 Clear Creek Dr.

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**Town of Empire**  
30 East Park Avenue/P.O. Box 100 Empire, Co 80438  
303.569.2978/f303.569.2282

**Public Comment**

**Sign-up Sheet**

June 14, 2023

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Please sign your name below if you wish to speak to the Commission.

NAME

ADDRESS

Linda Robertson

216 S Avery St

~~Ann Hubner~~

~~107 Clear Creek Drive~~

Robin Pault-Seger

313 Main St

Kynda Madson

294 E. Mountain Ave

Farry Madson

294 E Mountain Ave

Tony Robertson

216 S. Avery

Coley Nauak

330 E. Mountain Ave

Jacob Belcher

336 E. Mountain

Allen Fistell

210 E Mt Ave

Yeggy Hubner

207 E Mtn Ave