

TELLER COUNTY BOARD OF ADJUSTMENT

REGULAR MEETING – May 18, 2016

AGENDA ITEM I

Consider a request by A Royal Construction Co., LLC, Willard Queen, (Applicant and property owner) to vary the A-1 setback requirements for an existing shed in the Town of Lawrence, Lot 6A, Block 57 230 North Dewey Avenue, Victor, Teller County Colorado 80860

STAFF REPORT

File No. VAR-Z15-0056

APPLICANT: A Royal Construction Co., LLC (Owner), Willard Queen, Agent
REQUEST: Variance to a setback in an A-1 zone for an existing shed.
STAFF: Dan Williams, Teller County Planner
LEGAL DESCRIPTION: Lot 6A, Block 57, Lawrence
Tax Parcel Identification No. 1003.311080050/R0001595
See Appendix A; Site Map
ZONE DISTRICT: Agricultural (A-1)

Posted Notice: April 18, 2016
Publication Date: April 27, 2016 (Pikes Peak Courier View)
Staff Report Date: April 26, 2016

STAFF RECOMMENDATION: Approval with Conditions

1. SUMMARY OF REQUEST

The Applicant is requesting a variance from the 50 foot A-1 setback requirements for an existing shed on Lot 6A in the town of Lawrence near Victor. While the shed meets the A-1 setback requirement from three property boundary lines, it is only 30.3 feet from the wood porch attached to the shed to the northern property line which runs parallel to Dewey Avenue.

Development History. The Applicant built the shed on his property in the belief that due to its size and type of use a building permit was not required. The building envelope on Lot 6A is severely limited and restricted by rock outcroppings and steep and narrow terrain and the Applicant located the shed on the only suitable and flat location on the Lot. After being informed that a building permit would be required, the Applicant applied for and obtained the appropriate building permits. In the subsequent permitting process, it was determined that a setback violation had occurred to A-1 zoning standards from one property line.

Additionally, when the Applicant constructed the shed he held the belief that the zoning for Lot 6A was R-1 due to the small size which is typical of the Lots found in the historic town of Lawrence. The Town of Lawrence near Victor was platted in 1899 with small lots, many on steep or unsuitable terrain which can present challenges to current A-1 zone setbacks. Existing access to lots in Lawrence are from unimproved platted roads established as part of the Town of Lawrence in 1899 and may or may not conform to modern Teller County standards for access, including grade and steepness. Access to Lot 6A is from Seventh Street, to Lee Avenue, to Harrison Avenue to Third Avenue.

Zoning. Zoning for Lots of Block 57 and the Town of Lawrence is A-1, with lots originally platted in 1899. The majority of the lots in the Town of Lawrence are between ¼ and ½ of an acre and are comprised of less than ideal building lots due to steep and narrow terrain or large rock formations and outcroppings, all of which present challenges to current residents due to the 50-foot setback requirements required in A-1 zoning in our Teller County LURs.

Zone		Immediately Abutting Land Uses
North	A-1	Vacant Land
East	A-1	Vacant Land
West	A-1	Vacant Land
South	A-1	Vacant Land

Site Description. Lot 6A is comprised of what was Lots 6-12 inclusive as depicted on the 1899 plat of the town of Lawrence. The original lots were consolidated on November 12, 2013 through the Teller County Lot Line Vacation process and recorded on December 4, 2013 at reception number 668317. The parcel is .49 acres or 20,818.9 square feet.

Access. The property has legal access and has a Teller County access permit on file [A49015 issued November 13, 2015]. The access route to Lot 6A is via Seventh Street then Third Avenue.

Sewage Disposal. There is no existing septic system on the property.

Water. There are no wells registered with the property or naturally occurring streams, springs or outflows.

Service Providers. The property lies outside the City of Victor Fire Department’s fire protection district. Black Hills Energy provides electricity to adjacent property within the town of Lawrence but there is no electricity to the shed or the Applicants property currently.

Critical Areas Teller County GIS databases indicate that no part of this property is in a FEMA floodplain, or US Fish and Wildlife Wetland and it is a low wildlife impact area with no known archeology or geologic sites.

Mineral Rights There are no mineral estate owners identified in the records of Teller County nor any requests for notification filed in the office of the Teller County Clerk and Recorder, and therefore no further action or notice is necessary under article 65.5 C.R.S

2. SUBMITTAL REQUIREMENTS

SUBMITTAL REQUIREMENT	COMMENT
<i>Section 3.2</i>	
Application Form	Submitted
Disclosure of Ownership	Submitted
Adjacent Property Owners (APO) List & Mailing Labels	Submitted
Mineral Interest Owners List	Submitted
Written statement/narrative describing request, reasons, and how standards are met.	Submitted
Special Reports/Studies	Not Applicable
Fees	Submitted

SUBMITTAL REQUIREMENT	COMMENT
<i>Specific Variance Submittal Materials</i>	
Boundary survey of affected portion of site showing existing and proposed features and those limitations of the underlying zone district relevant to the variance review. BoCC Resolution 4-30-98 (42)	Submitted

3. REVIEW AGENCY RESPONSES See Appendix C

REVIEW AGENCY	COMMENTS
Teller County Attorney	Comments incorporated throughout Staff Report.
Black Hills Energy	Nothing received at the time of the writing of this report/No service to the Lot.
Teller County Building Department	See Memo dated November 3, 2015. “The following items will have to be looked at during the building inspection of the shed, piers, post connections to piers and floor framing, floor, walls and roof framing, porch framing, and a limited inspection of the chimney since it is already built. Any corrections noted will require a second inspection.” Terry Brunette, Teller County Building Official
Teller County Public Works - TCDOT	See Memo dated December 11, 2015 “There currently exists in our system an existing driveway/access permit, A49015 which was finalized on November 13, 2015. No issues with the proposed setback variance”. Bryan Kincaid, Teller County Rights-Of-Way Supervisor
Teller County Environmental Health	See letter dated December 16, 2015. No issues or concerns. Note there are no existing septic systems on the property. Any new development that includes an OWTS (Septic System) will be subject to Teller County OWTS Regulations in effect at that time. Aaron Doussett, TC Environmental Health Officer.
City of Victor	See email dated January 4, 2016. The City of Victor’s Fire Department is not responsible to provide fire services to this specific property. Debra Downs, City Administrator, City of Victor

4. DISCUSSION OF MAJOR CONCERNS AND ISSUES

General Variance Issues. As defined in the Teller County Land Use Regulations (*Chapter 12*), the term “hardship” refers to matters associated with the uses of the property under zoning, those things that are uses by right, by Special Review Use Permit, or not allowed. The term “practical difficulties” refers to matters associated with the dimensional limitations (setbacks, height, impervious coverage) of a particular zone district. In certain cases, some extraordinary and exceptional situation or condition of the property *may* result in a practical difficulty substantial enough to constitute a hardship. Almost all Variance requests are requests for relief from a zone district’s established dimensional limitations.

Zoning and zoning requirements are established for the purpose of protecting the public good. Setbacks are basic provisions of all zoning codes, and convey to those in the zone district a set of reasonable expectations concerning proximity of neighbors, areas free from development, etc. Yet, all building sites have some measure of constraint that needs consideration when purchased and when improvements to it are designed, particularly since the cost of improvements normally vary from improvement to improvement and from site to site. In the case of a variance, a hardship or practical difficulty normally exists only when, through no action of the property owner, land uses allowed by existing land use regulations could not take place unless the variance were granted. In most cases, this is *solely* because of some feature of the land unique to that specific piece of land. As long as the land can reasonably be used according to existing regulations, there is no hardship or practical difficulty. If a property owner *wants* to do something not otherwise allowed, it does not constitute hardship or practical difficulty if he finds he cannot have what he wants.

Hardship or practical difficulty must also be peculiar to the specific property owner, that is, a hardship or practical difficulty not generally shared by others. This means that there is no hardship or practical difficulty if the purchaser of a property finds he must re-locate or re-design desired structures or incur more expense than someone else in order to meet the requirements of any regulation. Unless extreme, “It would cost me more” is not normally considered a hardship or practical difficulty. Most owners of property with varied terrain or unusual lot configuration share some degree of hardship or practical difficulty yet still build according to the setbacks of the zone district.

Hardship or practical difficulty cannot in any way be self-inflicted. This means it cannot be caused by any action of the property owner, including the purchase of property he knows to have restrictions that may preclude or restrict his intended use or construction, if that use is other than the minimum reasonable use of the land or a structure. Nor can his actions include ignoring land use regulations, building code, other code requirements, or conditions of previously granted approvals.

This Variance. When reviewing Variance requests, it is imperative to consider each case independently upon its individual merits or demerits as the case may be. Staff contends that practical difficulty exists for the Applicant in terms of the shed. Lot 6A is exceptionally steep and narrow and even after combining lots 6-12 from the original town of Lawrence Plat, there is only a small building envelope suitable for a structure. Additionally, due to the small Lot size at the time of construction and its proximity to the town of Victor, the Applicant incorrectly assumed the property was zoned R-1.

The Applicant is asking for a variance for the shed’s northern property boundary line running parallel to Dewey Avenue to 30.3 feet. Due to the exceptional steepness and narrowness of the lot and foundation type and materials used in the construction of the shed, moving the shed would be unpractical. All other A-1 setbacks against the remaining three property boundary lines are met.

The circumstances and conditions encountered by the Applicant in terms of exceptional narrowness, steepness and rocky outcroppings limiting the selection of a suitable building envelope have not resulted from any act of the Applicant. The Applicant was unaware of A-1 zone 50-foot setback requirements when he built the shed on the small parcel incorrectly assuming it was zoned R-1. The Applicant is now knowledgeable of current setback and other zoning requirements for Lot 6A and has therefore requested a variance for compliance.

A strict application of the current 50 feet setback for this A-1 zoned lot in the town of Lawrence, a Town platted with small lots in 1899, would potentially prevent the issuance of any future building permits for many accessory and agricultural structures unless the buildings are granted a variance in advance. Staff believes that this strict application of zoning setbacks for the Applicant’s property would result in peculiar (dimensional limitations) and exceptional difficulty to or exceptional and undue practical difficulties (dimensional limitations) on the property owner. The Applicant’s Lot has steep terrain in over 1/2 of its surface, rocky outcroppings and narrowness, which severely limits the site selection of a building envelope. Granting the variance is necessary to relieve the property owner of these peculiar and exceptional practical difficulties. Subject to the conditions recommended by Staff, we believe that no negative impacts to the Town of Lawrence or adjacent neighbors will result from the granting of this variance for the existing shed.

Granting the variance will allow the Applicant to legally leave intact the presently located shed. The Applicant will also comply with the requirements outlined in the Building Official’s November 3, 2015 letter for building inspections to insure code compliance and life, health safety standards have been met.

Public Comment. Notices were mailed to immediately adjacent property owners. A poster providing notice of the Board of Adjustment hearing has been placed on the property and is visible from adjacent property owners and the major access road to the Lot. As of the writing of this Staff Report, staff has received no public comment.

5. STAFF FINDINGS

Variance applications are evaluated with the criteria in *Section 2.12.G* of the Teller County *Land Use Regulations*. The Board of Adjustment must find that ALL of the *Section 2.12.G* standards are met.

§2.12.G.1-7: STANDARDS**STAFF FINDINGS**

<p>1. <u>Special Circumstances Exist.</u> At least one of the following circumstances or conditions exists with respect to the specific piece of property:</p> <ul style="list-style-type: none"> a. Exceptional narrowness, shallowness or shape of the property at the time of the enactment of the affecting regulation in question. b. Exceptional topographic conditions of the property. c. Other extraordinary and exceptional situation or condition of the property. 	<p>This standard is met. Staff finds that special circumstances exist, namely that exceptional topographic conditions exist on approximately 1/2 of the property, including steep and narrow terrain and rocky outcroppings severely limiting the selection of a building envelope that meets A-1 zone setback requirements. Parcels of this size zoned A-1 present unique challenges to modern structure construction due to the 50-foot setback requirement. The Town of Lawrence and its Lots were platted in 1899 and have been zoned A-1 since Teller County enacted zoning regulations on July 23, 1973.</p>
<p>2. <u>Not a Result of the Actions of Applicant.</u> The special circumstances and conditions found pursuant to <i>Paragraph 2.12.G.1.</i> [above] have not resulted from any act of the Applicant.</p>	<p>This standard is somewhat met. Although the special circumstances found in §2.12.G.1 above are not self-inflicted nor are they a result of any action of this Applicant, in terms of the existing shed, the Applicant did construct the shed incorrectly assuming that due to its size a building permit was not required and that due to the Lot size the lot was zoned R-1 and met the setback requirements of the R-1 zone. The Applicant now fully understands the setback requirements of the A-1 zone and is requesting the variance from the County to become compliant.</p>
<p>3. <u>Strict Application Consequences.</u> Because of the special circumstances and conditions found pursuant to <i>Paragraph 2.12.G.1</i> the strict application of the regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship on, the owner of the property.</p>	<p>This standard is met. Because of the special circumstances found in §2.12.G.1 above, the strict application of the setback limitation relating to the existing shed would result in peculiar and exceptional practical difficulty insofar as it obstructs and prevents the issuance of any future building permits and the shed cannot be moved due to the construction and materials used in the foundation and the limited building envelope of the Lot.</p>
<p>4. <u>Variance is Necessary for Relief.</u> The granting of the Zoning Variance from the strict application of the provisions of the regulation is necessary to relieve the owner of the peculiar and exceptional practical difficulties or exceptional and undue hardship.</p>	<p>This standard is met. A variance from the strict application of the provisions of the setback regulations is necessary to relieve the owner of the peculiar and exceptional practical difficulties identified. The variance request is the minimum necessary to validate the existing shed. The granting of this variance is considered by staff to be of limited magnitude where the injury to the Applicant would be of a significant magnitude if he were required to move or destroy the structure.</p>
<p>5. <u>Not Detrimental to the Public Good.</u> Granting the Zoning Variance will not cause substantial detriment to the public good.</p>	<p>This standard is met. Setbacks are basic provisions in all zoning codes, and convey to those in the zone district a set of reasonable expectations concerning proximity of neighbors, areas free from development, <i>etc.</i> Staff believes that granting this variance would not be injurious to the neighborhood or otherwise detrimental to the public welfare and will not cause substantial detriment or impact to the public good. [The Town of Lawrence is unique in that small parcels and Lots remain zoned A-1, with livestock, horses, sheds and outbuildings being a norm on many properties, most of them comprised of steep, rocky and narrow lots.] The setback violation with reference to</p>

§2.12.G.1-7: STANDARDS	STAFF FINDINGS
	the shed is limited in nature and is only required against one property boundary line which abuts Dewey Avenue. Additionally, the variance is the minimum necessary to afford continued reasonable use of the shed. The request will not cause substantial detriment to the public or the Town of Lawrence.
<p>6. <u>Variance Will Not Impair the Zoning Plan and Resolutions.</u> Granting the Zoning Variance will not impair the intent and purpose of the zone plan and the zoning regulations.</p>	<p>This standard is met. Granting <u>any</u> variance from the requirements of the <i>Land Use Regulations</i> created to protect the public welfare theoretically impairs the validity of the Regulations. Therefore, staff considers all requests for variances judiciously. Staff believes that granting this variance will not impair the intent and purpose of the A-1 zone district of zoning regulations for the small parcels in the Town of Lawrence. The Town of Lawrence has been existence since 1899; many of its residents have livestock, horses and outbuildings on relatively small parcels that are zoned A-1. Granting this variance will not impair the zoning plan for Teller County or any of its Resolutions.</p>
<p>7. <u>Is Not Exempt from Prosecution.</u> The Appeal to the Board of Adjustment is not for building use violations that may be prosecuted pursuant to CRS §30-28-124(1)(b) (misdemeanor subject to fine upon conviction of violation of provisions of zoning).</p>	<p>This standard is not applicable. This Variance is not for building use violations that may be prosecuted pursuant to CRS §30-28-124(1)(b) (misdemeanor subject to fine upon conviction of violation of provisions of zoning). The shed would be an outright permitted use in A-1.</p>

6. RECOMMENDED MOTION

I move that the Teller County Board of Adjustment approve the request by A Royal Construction Co., LLC (Applicant and Property Owner) and Willard Queen (agent) to vary the setback for the existing shed as depicted in the site plan attached to the April 26, 2016 staff report in Appendix B, from 50 feet as required in the Agricultural (A-1) zone to the dimensions listed below and in the site plan attached to the staff report:

The “Shed”– located on Lot 6A (formerly Lots 6-12), Block 57, Town of Lawrence, **Amend to 30.3 feet from the northern property line which runs parallel to Dewey Avenue.**

The aforementioned shed being located on Lot 6A, (Formerly Lots 6-12), Block 57, Town of Lawrence, located in Section 31, Township 15 South, Range 69 West, 6th P.M., Teller County Colorado 80860, and adopting the staff findings contained in the staff report dated April 26, 2016, with the following **Conditions of Approval:**

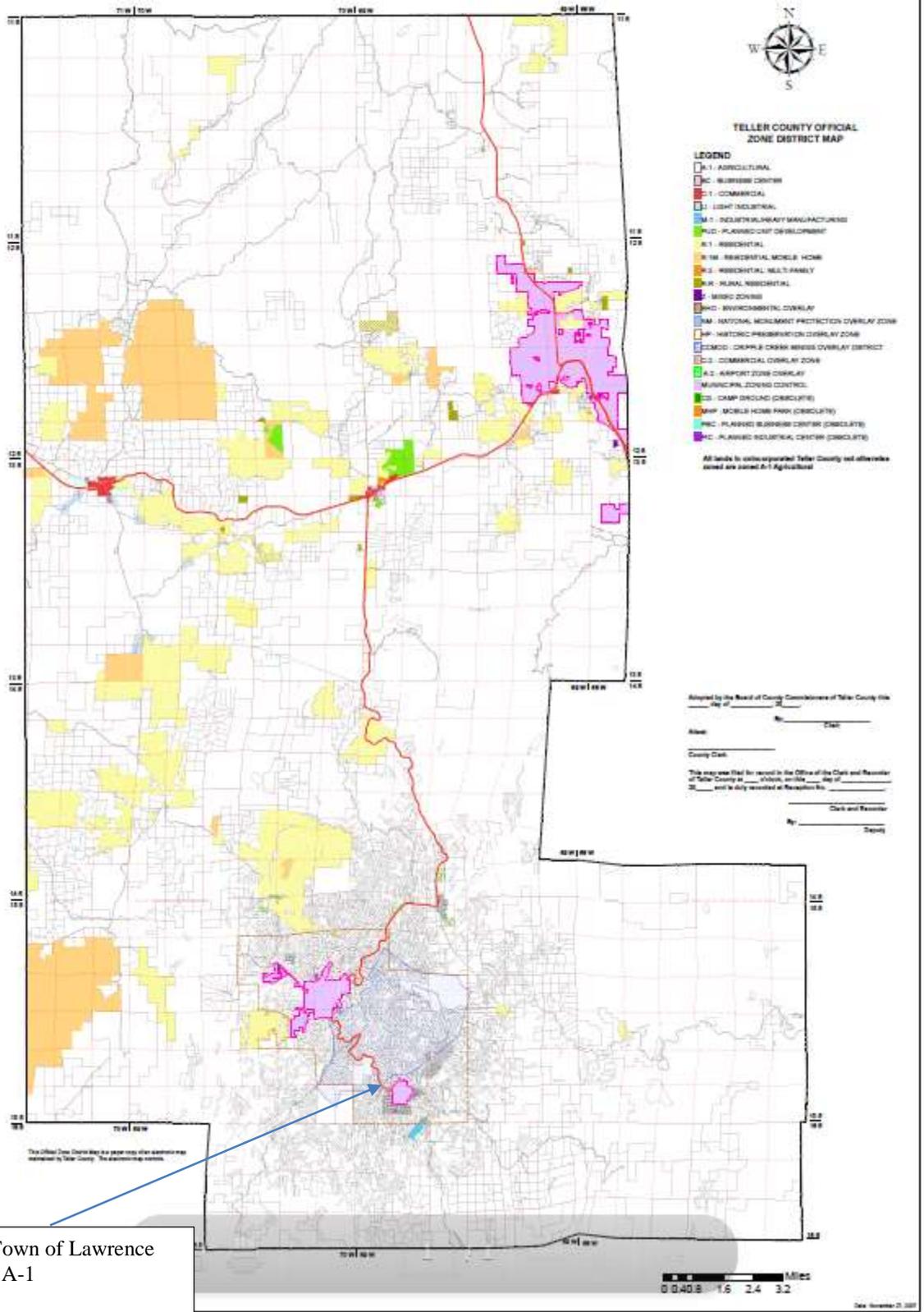
- 1) This variance is granted solely for the shed in compliance with and as depicted on the boundary survey signed by Mel March of March Surveying dated January 20, 2015.
- 2) The Shed shall not be used for habitation, a place of residence, dwelling, abode, or place to reside, live, sleep or cook.
- 3) This variance approval shall not apply to any new construction of buildings or structures that may be proposed or contemplated by the Owner/Applicant or Mr. Queen anywhere on the property or new construction that may be associated with these structures.
- 4) On May 19, 2016, A Royal Construction Co., LLC and Mr. Queen shall pay for [\$100.00] and pick up the required building permits from the Teller County Building Department at 800 Research Drive in Woodland Park, Colorado, which will then allow the shed to be inspected on that date by the Teller County Building Department as outlined in the November 3, 2015 letter from the Teller

County Building Official, a copy of which was attached to the Staff Report at Appendix C, to include inspection of the piers, post connections to piers and floor framing, floor, walls and roof framing, porch framing, roofing attachment, CMU chimney and any other items observed during the inspection. A Royal Construction Co., LLC and Mr. Queen shall comply with any corrections noted by the Building Department and shall allow follow up inspections as may be needed to ensure compliance with all Building Department requirements in order for a Building Permit to be issued.

- 5) Unless otherwise modified by these conditions, all material representations of the Applicant and Mr, Queen, in the submitted materials and in the hearings shall be considered binding.

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- **STAFF REPORT**
 - **APPLICANT PRESENTATION**
 - **PUBLIC COMMENT**
 - **APPLICANT RESPONSE**
 - **BOARD OF ADJUSTMENT DELIBERATION**

Appendix A – Maps



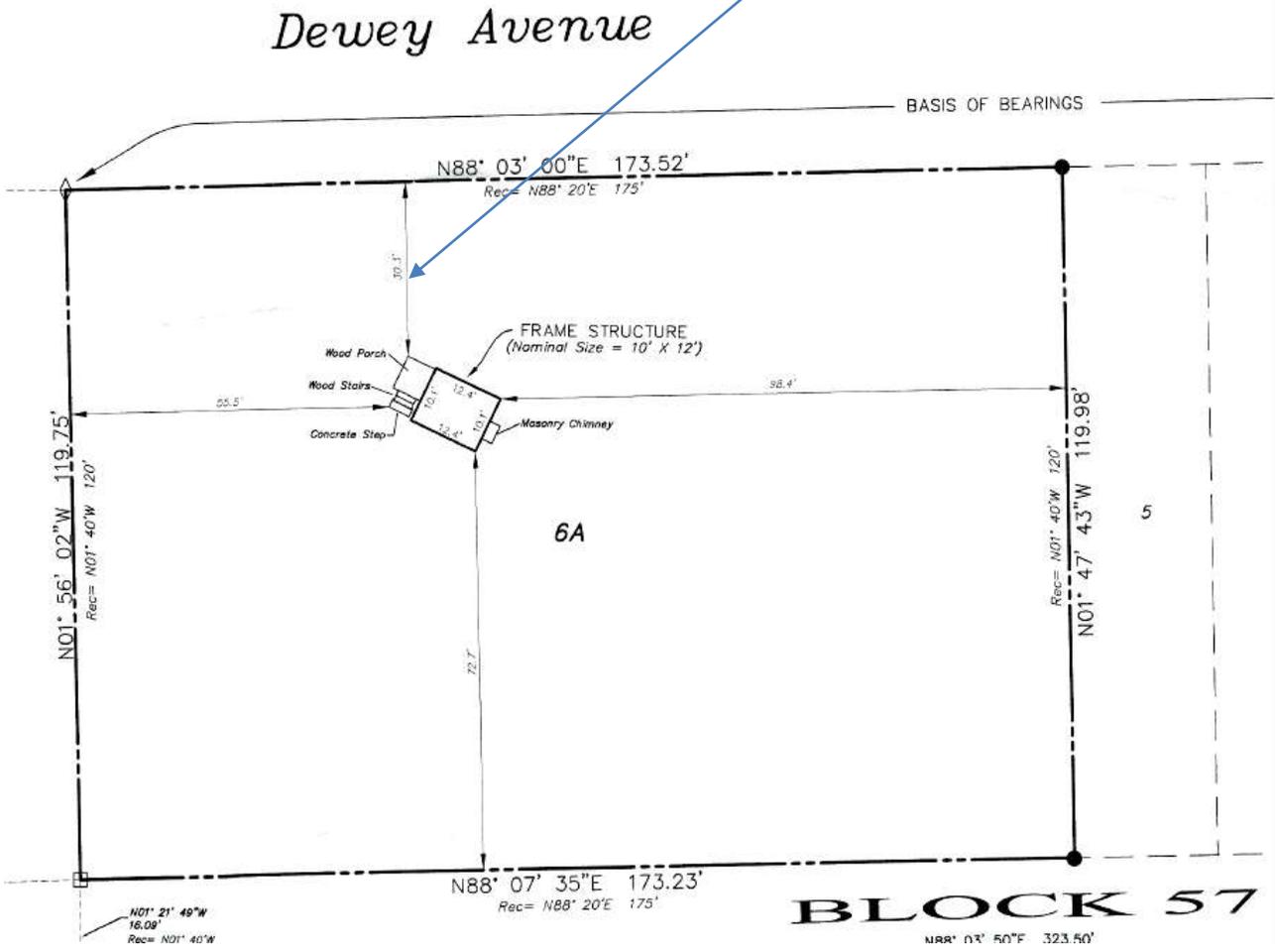
Lot 6A, Block 56 Town of Lawrence near Victor, Zoned A-1



30.3 feet from northern property boundary running parallel to platted 1899 road (Dewey Avenue) requiring a variance from 50-foot A-1 setback

Applicant's shed on Lot 6A, Block 57. Note steep and narrow terrain and rocky outcroppings

Variance needed on northern side from porch on the shed to 30.3 feet. All other side setbacks meet or exceed 50 feet.



Appendix C – Formal Agency Referrals

**Teller County
Building Department**



719-687-3048 ☐ Fax 719-687-5256 ☐ PO Box 1886 ☐☐ Woodland Park, CO
80866

11/03/2015

Bill Queen
RE: Shed with Loft
230 N. Dewey, Victor
Lot 6 thru 12 Blk. 57 Lawrence CO

The following items will have to be looked at during the building inspection for the shed.

- The piers (owner states 30" deep or to bedrock)
- Post connections to piers and floor framing
- Floor, walls and roof framing
- Porch framing
- Roofing attachment
- CMU chimney will be a limited inspection since it is already built.

The above should be able to be accomplished in one inspection. If corrections are noted at the time of the inspection a second inspection will be required.

Regards,

Terry Brunette
Building Official
719-686-5408



PUBLIC WORKS
308-A Weaverville Road
P.O. Box 805
Divide, CO 80814
(719)687-8812 Fax (719)686-5454

MEMORANDUM

TO: CDSD - Planning
FROM: TCPW - TCDOT *Bk*
DATE: December 11, 2015
RE: Setback Variance – 230 N. Dewey Ave., Queen

After review of the submittal, I offer the following:

1. There currently exists in our system an existing access permit, A49015 which was finalized 11/13/2015.
2. No issues with the proposed setback variance.

If you have any questions or concerns, please feel free to ask.



TELLER COUNTY
ENVIRONMENTAL HEALTH DEPARTMENT
PO BOX 928 * DIVIDE, CO 80814 * (719) 686-5415 * FAX (719) 687-6501

December 16, 2015

RE: Variance Z15-0056; Bill Queen Variance

The Teller County Environmental Health Department does not have any issues or concerns with the above referenced project as submitted in its *Zoning Variance*.

However, please note that it is acknowledged that there are no existing septic systems on the property located at 230 N Dewey Avenue, Victor, Colorado 80860. Any new development that includes an OWTS (Septic system) will be subject to the Teller County OWTS Regulations in effect at that time.

Regards,

A handwritten signature in blue ink that reads "A. Doussett".

Aaron Doussett, M.S., REHS
Environmental Health Officer
Teller County Environmental Health Division
P.O. Box 928
11115 W. Hwy 24, Unit 2C
Divide, Colorado 80814
doussetta@co.teller.co.us
office: 719-686-5415
cell: 719-640-1384

Email received January 4, 2016

The City of Victor's Fire Department is not responsible to provide fire services to this specific property located outside our city boundaries. This property does not sit within any organized fire department or district. In addition, the city will likely not extend water or sewer service outside our city boundaries in the vicinity of this subject property. We also do not intend to extend any of our streets to accommodate access to this property outside our city boundaries.

Thanks,
deb

Debra Downs

City Administrator
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Appendix D – Public Comment