

Town of Oak Creek Land Use Application Staff Report

PETITIONER:	Stephen A Roberts
PETITION:	Land Use Change of Major Impact (LUCMI) and Variance request. Petitioner seeks to resubdivide Lots 1, 2, 3 & 6, Block 4, 3 rd Addition to Oak Creek and create two (2) lots to build single-family homes on each of the two new lots. A variance request is made as one lot will be less than the required minimum lot size in Performance District 2.
PLANNING COMMISSION REVIEW DATE:	July 20, 2022
TOWN BOARD REVIEW DATE:	July 28, 2022
STAFF CONTACT:	David Torgler Town Administrator/Clerk
ATTACHMENTS:	Proposed Site Map 1 - REVISED Map, 404 Bell Avenue, topography Map, 404 Bell Avenue, Lots 1, 2, 3 & 6, Block 4, 3 rd Addition to Oak Creek Public Notice

HISTORY AND PROJECT DESCRIPTION:

The applicant is proposing to create two buildable lots from four lots. Presently there is an unoccupied, legally non-conforming house located on Lot 3, Block 4, 3rd Addition to Oak Creek. The home has been unoccupied for several years; the legal non-conformity is the home is physically located within the required 8-foot side yard setback. Lot 3 is 2,125

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square feet in size and the minimum lot size in Performance District 2 is 4,000 square feet. Lots 1, 2 & 6, Block 4, 3rd Addition to Oak Creek fall under one tax I.D. as assigned by Routt County. Lots 1, 2 & 6 combined equals 7,405 square feet. Lots 1, 2 & 3 each measure 25' x 85'.

The applicant proposes to dedicate 11-feet from Lot 2 to Lot 3, expanding Lot 3's width from 25-feet to 36-feet and increasing Lot 3 to 3060 sq. ft. This will create a building envelopes on Lot 3 that is approximately 20'x60' and on a combined Lot 1 and 2 that is 31'x60'. The applicant proposes to legally combine the remainder of Lot 2 with Lots 1 & 6 creating a lot that is approximately 6500 sq. ft.

It is noteworthy that an alley owned by the Town divides Lot 6 from Lots 1, 2 & 3. It is also noteworthy that Lot 6 is 25'x125' (3125 sq. ft.), providing a building envelope of approximately 9' x 100'. In order to avoid future legal challenges and to create a legally conforming minimum lot size of 4000 sq. ft. legally joining Lots 1, 2 & 6 will prevent the creation of additional homes on Lot 6 without approval of the Town Board.

COMPLIANCE WITH THE TOWN OF OAK CREEK COMPREHENSIVE PLAN

Section 17.01.03 (A) of the Land Use Code (Code) states that the Code is enacted to "[i]mplement the policy recommendations of the Town of Oak Creek Comprehensive Plan Update" (Plan.) Therefore any proposal should be considered in light of the applicable policies of the Plan. While the Plan contains numerous policies regarding land use, staff has selected the following checklist to highlight the policies most directly applicable to this petition. Interested parties are encouraged to review the Plan to determine if there are other policies that may be applicable to the review of this petition.

Chapter Two – Environment & Natural Resources

Environmental Constraints – Geologic Hazards and Unstable Soils

Complies		Section	Policies
Yes	No		
<u> </u>	<u> √ </u>	3.	Development shall be allowed in areas with minor geologic hazards, but soil limitations such as shrink-swell potential and low permeability and strength shall require mitigation on a case-by-case basis through proper soils testing and foundation design. <i>Staff comment: The Routt County Regional Building Department standards will require that a soils test be completed to inform the foundation design for the proposed construction and that such be submitted with the application for a building permit along with an appropriate foundation design. A condition is suggested</i>

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below that stipulates that a building permit be obtained for the proposed construction.

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| _____ | ✓
_____ | 6. | A plan identifying erosion control measures, revegetation, and drainage shall be submitted with all development proposals. <i>Staff comment: Building plans will need to show that adequate erosion control measures are in place during all construction phases as required herein. A condition suggesting this is included below.</i> |
|-------|------------|----|---|

Chapter Three – Economy, Land Use & Community Character

Housing Complies Yes	Section No	Policies
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|------------|-------|----|--|
| ✓
_____ | _____ | 2. | The Town should maintain provisions in the Land Use Code offering general guidelines for construction of new units that assure new units blend into the existing character of the neighborhood. <i>Staff comment: The applicant has indicated that they plan to move and reconstruct a residential structure on Lot 3.</i> |
| ✓
_____ | _____ | 4. | The Town should investigate all available means to implement housing initiatives. <i>Staff comment: The proposed lot subdivision will provide two (2) lots for development in an existing residential neighborhood. A requirement is suggested below that a plat is created by the land owners for the dedication of 12.5-feet from Lot 2 to Lot 3, dedicating the southerly 87.5-feet from Lot 6 to Lot 3, dedicating the northerly 37.5-feet from Lot 6 to Lots 1 and 2 and combining Lots 1 and 2; and the Plat stating the rear yard building setbacks for the newly created lots will be measured from the easterly alley line.</i> |

Chapter Four – Transportation & Infrastructure

Fire and Ambulance Complies Yes	Section No	Policies
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|------------|-------|----|---|
| ✓
_____ | _____ | 2. | The Town shall work with Routt County Addressing Department to ensure accurate data is available to emergency response teams for efficient emergency response through the Master Address Database (MAD). The Town shall continue to encourage residents to provide adequate address signage to assist in emergency response. <i>Staff comment: A condition is included below that requires that address numbering signage be in place</i> |
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prior to the issuance of a Certificate of Occupancy for the proposed structure.

COMPLIANCE WITH THE TOWN OF OAK CREEK LAND USE CODE

While the Land Use Code (Code) contains numerous regulations regarding land use, staff has selected the following checklist to highlight the regulations directly applicable to this petition. Interested parties are encouraged to review the Code to determine if there are other regulations that may be applicable to the review of this petition.

Chapter 17.02 – Definitions

Complies		Section	Policies
Yes	No		
<u>√</u>	<u> </u>	05.	"Single-family dwelling" means a dwelling designed for, or used as a dwelling unit exclusively by one family as an independent housekeeping unit. A single-family unit contains no more than one dwelling unit and does not include mobile homes. <i>Staff comment: The proposed single-family home would be the only such unit on the property. Vehicle access to the property is from the rear alley side.</i>

Chapter 17.03 – Development Applications, Review and Procedures

Section 17.03.07 – Land Use Changes of Major Impact

These require review by the planning commission and the Board of Trustees and include:

Complies		Section	Policies
Yes	No		
<u>√</u>	<u> </u>	B.	Subdivision into three or more parcels. <i>Staff comment: The original application involved four lots and multiple variance requests requiring following the LUC-Major Impact. After meeting with the property owner the subdivision request has been amended as illustrated on the Proposed Site Map 1 – REVISED which will create two lots and no variance requests. It is recommended that the application be revised to a Land Use Change – Minor Impact.</i>

Section 17.03.09 – Land Use Changes of Minor Impact

These require only one review each by the Planning Commission and the Board of Trustees and include:

Complies	Section	Policies
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Yes	No	
<u>√</u>	<u> </u>	<p>B. Notice by publication in newspaper. The Town shall cause notice of any required public hearing as follows:</p> <p>1. Notice shall be given to potential interested persons by publishing a notice one time in a newspaper having general circulation in the area not less than fifteen days prior to the hearing for Land Use Changes of Minor Impact and not less than thirty days for Land Use Changes of Major Impact.</p> <p>2. This notice shall state the date, time and place of the hearing, reasonably identify the lot, parcel or property that is the subject of the application or appeal and give a brief description of the action requested or proposed. <i>Staff comment: Notice was properly published.</i></p>
<u>√</u>	<u> </u>	<p>C. Surrounding property owner notice. Where required by statute or this code to give notice to surrounding property owners, the Town shall cause notification to be sent at the applicant's expense, to surrounding property owners by mailing a written notice by first-class mail to those persons who have listed for taxation any real property located within three hundred feet of the lot, parcel or property area that is the subject of the application or appeal. Notification of surrounding property owners shall be mailed no later than fifteen days before the planning commission hearing for a land use change of minor impact or thirty days before the planning commission hearing for a land use change of major impact. <i>Staff comment: Notice was properly mailed..</i></p>
<u>√</u>	<u> </u>	<p>D. Notice by property posting. 1. If notice by posting of the property is required by statutes or this code, such notice shall occur by prominently posting signs on the property that is the subject of the proposed action. Such signs shall be posted no less than fifteen days prior to the hearing for land use change of minor impact and no less than thirty days prior to the hearing for land use change of major impact and shall be easily legible from the nearest public streets. For projects that include more than one lot or one acre, the Town Clerk may require additional signs to be posted.</p> <p>2. Posting shall be required for all applications for land use changes of minor impact and all applications for land use changes of major impact.</p>

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3. The Town clerk shall cause to be prepared, and the applicant shall post signs upon the parcel under consideration which provide notice of the kind of action requested; the hearing authority; the time, date and location of hearing; and the location of the parcel by physical address, legal description or by Routt County Assessor parcel number.

4. The applicant shall submit an affidavit of posting in the form provided by the Town prior to the scheduled meetings and hearings confirming that the property was properly posted.

.Staff comment: Notice was properly posted; applicant shall submit an affidavit of posting.

17.03.013 – Review Procedure for Land Use Changes of Minor Impact

 √ C. The planning commission shall consider the application and other information and materials submitted for their consideration at the public hearing and forward its recommendation to approve, deny or approve subject to conditions. Conditions and limitations as the Town may prescribe should consider the conditional use criteria listed in [Section 17.03.017](#). As part of an approval, the Planning Commission may recommend that the board grant the approval for a limited time period and/or require periodic reviews of the development once completed to ensure compliance with the approved conditions.

 D. The Board of Trustees shall consider the application, other information and materials submitted for their consideration, and the recommendation of the planning commission at a public hearing and make a decision thereon within thirty days of such public hearing; provided that during this time, the board determines that the application should be for a major land use change, in which case the procedure in [Section 17.03.013](#) shall be followed. The Board may place any conditions upon its approval, including without limitation, submission of performance bonds, deed restrictions, and improvement agreements. *Staff comment: Suggested conditions are included below.*

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Section 17.03.016 – Standards By Which the Planning Commission and the Board of Trustees Will Be Guided

In reviewing all applications for development approvals, the planning commission and board of trustees shall be guided by the compatibility of the proposed land use with adjacent land uses and by the following additional considerations:

Complies		Section	Policies
Yes	No		
<u>√</u>	<u> </u>	A.	Conformance of the proposed land use change with the policies and principals in the Oak Creek Comprehensive Plan Update, pursuant to C.R.S., 1973, Section 31-23-203; <i>Staff comment: A finding in this regard is included below.</i>
<u>√</u>	<u> </u>	B.	Conformance with the requirements and performance standards established in this code; <i>Staff comment: See the analysis contained in this report.</i>
<u>√</u>	<u> </u>	C.	Preservation of the health, safety and welfare of the citizens of the Town of Oak Creek, Colorado. <i>Staff comment: See the analysis contained in this report..</i>

Chapter 17.08 – NONCONFORMING USES, BUILDINGS AND LOTS

17.08.05 - Discontinuance.

Complies		Section	Policies
Yes	No		
<u>√</u>	<u> </u>		Whenever a nonconforming use has been discontinued for a period of nine months it shall not thereafter be reestablished and any future use shall be in conformance with the provisions of this code. <i>Staff comment: the structure on Lot 3 has been unoccupied for longer than nine months.</i>

Chapter 17.10 – Community Design Standards

17.10.02 - Bufferyards and setback requirements.

Complies		Section	Policies
Yes	No		
<u>√</u>	<u> </u>	A..	Setbacks shall be provided between structures and parcel boundary lines as listed in Section 17.11 . Setback requirements for corner and double frontage lots are as follows: 1. On corner lots, one side of the lot (generally that with

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the shortest length) with street frontage shall meet the applicable front yard setback.

2. On double frontage lots, the street that has the unit's address shall be considered the front street for purposes of calculating front yard setbacks.

Staff comment: The proposed new lots will have a Town owned alley crossing them; for purposes of establishing a rear yard setback the land owner proposes the rear yard setback shall be measured from the easterly alley property line.

Section 17.10.09 – Parking standards

Complies		Section	Policies
Yes	No		
<u>√</u>	_____	B.	Paved off-street parking outside of Performance District 1 shall be provided according to the minimum requirements for single-family detached homes two (2) spaces per unit are required and these must be outside of all rights-of-way. <i>Staff comment: land owner will need to identify where these parking spaces will be located on the property. This can be done when the land owner submits building and site plans approvals.</i>
<u>√</u>	_____	J.	Residential Parking. Homes, not garages, should have the emphasis on residential streets. The intent is that residential streets have variety and that garages not dominate homes and streets. Alley accessed garages are strongly encouraged. For those homes that are not accessed by alleys, garages shall be recessed five feet from the front door or side loaded. <i>Staff comment: land owner will need to identify where these parking spaces will be located on the property. A recommendation included below requires that parking is provided from the alley at the rear of the property.</i>

Section 17.10.010 – Lighting

Complies		Section	Policies
Yes	No		
		A.	Exterior lighting, except for overhead street lighting; warning, emergency or traffic signals; sports field lighting; temporary holiday lighting; or lighting required by the building or fire code, shall be installed in such a manner that the light source will not detract from the dark sky enjoyed by the residents of Oak Creek. The following

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shall be required of all lighting fixtures: *Staff comment: A condition is included below that addresses compliance with the applicable criteria of this section.*

Chapter 17.11 – Performance Districts

Section 17.11.04 – Performance District Two

The following regulations only govern land within Performance District Two.

Complies		Section	Policies
Yes	No		
		A.	Character and Vision
		1.	Current use: This section of Oak Creek holds the bulk of the residential housing stock. The homes are predominantly small former miner's cottages on small lots connected by a gridded network of streets and alleys. Small commercial uses and/or cottage industries are interspersed within the residential neighborhoods.
		2.	Vision for the performance district: This district should work to encourage residential infill on the several vacant lots throughout Town. Infill homes shall be compatible in both character and size and scale to the existing homes. Commercial, institutional and multi-family developments are allowed as conditional uses if accompanied by measures to ensure compatibility with the surrounding neighborhood. <i>Staff comment: the lots are located in the southwesterly corner of Bell Avenue and Williams Street.</i>
<u>√</u>	_____	B.1	Permitted use: a. Single family residential <i>Staff comment: The existing single-family structure is non-conforming due to its encroachment into the side yard setback. The property owner proposes to relocate the structure within the building envelope.</i>
<u>√</u>	_____	C.	Dimensional standards for properties within Performance District Two:

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Performance District Two	Single Family Residential	Multi-Family	Duplex	Office	Commercial	Institutional
Minimum Floor Area/Dwelling Unit (square feet)	--	450	800	--	—	--
Units per Lot	2*		2			
Setbacks (feet):						
Front	15	15	15	15	15	15
Rear Yard	10	10	10	10	15	15
Side Yard	8	10	8	8	15	15
Lot Width (feet):						
Minimum	37.5	75	75	50	50	100
Minimum Lot Area (square feet)	4000	6000	6000	4000	4000	8000
Maximum Lot Coverage (percent)	35%	35%	35%	50%	50%.	50%
Maximum Building Height (feet)	35	35	35	35	35	35

OPTIONS

1. **Recommend approval as proposed** if it is determined that the proposal meets the standards of the Town of Oak Creek's Land Use Code and Comprehensive Plan and preserves the health, safety and welfare of the citizens of the Town of Oak Creek.
2. **Recommend denial** if it is determined that the proposal changes do not meet the standards of the Town of Oak Creek's Land Use Code and Comprehensive Plan nor preserves the health, safety and welfare of the citizens of the Town of Oak Creek.
3. **Table action** if it is determined additional information is needed to evaluate the proposal. Specific direction must be given to applicant.
4. **Recommend approval** if it is determined that certain changes or conditions are necessary to ensure that the proposal meets the standards of the Town of Oak Creek's Land Use Code and Comprehensive Plan and preserves the health, safety and welfare of the citizens of the Town of Oak Creek.

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FINDINGS OF FACT that may be appropriate:

1. The proposal meets the standards of the Town of Oak Creek's Land Use Code, is in general conformance with the intent and purpose of the Town of Oak Creek Comprehensive Plan Update, and preserves the health, safety and welfare of the citizens of the Town of Oak Creek
2. The existing lot and structures thereon are considered to be non-conforming with the use and dimensional standards of PD2 for the purposes of this application and report. The proposed lot changes and moving an existing residential structure into the building envelope, or removing the structure from the property will provide two (2) conforming lots with the use and dimensional standards of PD2 subject to the following conditions of approval:

CONDITIONS OF APPROVAL:

1. The effective date of this approval is the date upon which the Oak Creek Board of Trustees approves the land use change application. The land use change approval shall expire three (3) years from its effective date, unless application for a building permit is made within the term of the land use change approval or unless application for renewal of the land use change approval is approved by the Board of Trustees.
2. A building permit shall be obtained for and prior to the proposed construction.
3. The building plans shall note adequate measures that will need to be taken to ensure that proper erosion control measures are taken.
4. A plat shall be created by the land owners, and approved by the Town Attorney, for the dedication of 12.5-feet from Lot 2 to Lot 3, dedicating the southerly 87.5-feet from Lot 6 to Lot 3, dedicating the northerly 37.5-feet from Lot 6 to Lots 1 and 2 and combining Lots 1 and 2; and the Plat stating the rear yard building setbacks for the newly created lots will be measured from the easterly alley property line. The plat shall note the alley will remain for public access and utilities.
5. Address numbering signage shall be in place prior to the issuance of a Certificate of Occupancy for the proposed structure.
6. Parking shall be provided from the alley at the rear of the property.
7. Any lighting installed on the property such shall conform to Section 17.10.010, Oak Creek Land Use Code, including the requirements that lighting be downcast and not spill onto other adjoining properties.