



# BOARD OF ADJUSTMENT REGULAR MEETING

City Council Chambers, 448 E. 1st Street, Salida, CO  
June 26, 2023 - 6:00 PM

## AGENDA

Email public comments to: [publiccomment@cityofsalida.com](mailto:publiccomment@cityofsalida.com)

Please register for the Board of Adjustment meeting: <https://attendee.gotowebinar.com/rt/1909092342220683277>

### CALL TO ORDER BY CHAIRMAN

### ROLL CALL

### APPROVAL OF THE MINUTES

1. December 13, 2022 - Draft Minutes

### UNSCHEDULED CITIZENS

### AMENDMENT(S) TO AGENDA

### PUBLIC HEARINGS

Public Hearings will follow the following procedure:

- |   |  |
|---|--|
| A. Open Public Hearing                      | E. Public Input                          |
| B. Proof of Publication                     | F. Close Public Hearing                  |
| C. Staff Review of Application/Proposal     | G. Commission Discussion                 |
| D. Applicant's Presentation (if applicable) | H. Commission Decision or Recommendation |

2. **306-310 Old Stage Road Variance Request (The public hearing needs to be continued to the July 24, 2023 Board of Adjustment meeting).**

Applicants Chris Vaith and Peter Schaefer of P&C Enterprises LLC, are requesting approval for two variances on the property located at 306 Old Stage Road, legally known as Lot 57 Two Rivers Subdivision.

3. **Kuhn Variance request - 147 West Fourth Street** - The applicants, Martin & Adriane Kuhn, are requesting approval for a variance from the minimum side yard setback for the existing accessory structure.

Accessory structures in the Medium Density Residential (R-2) zone district require a minimum side yard setback of three (3) feet. The applicants are requesting a minimum allowed side yard setback of 16" for an existing accessory building.

### BOARD COMMENTS

### ADJOURN

\*\*An alternate can only vote on, or make a motion on an agenda item if they are designated as a voting member at the beginning of an agenda item. If there is a vacant seat or a conflict of interest, the Chairman shall designate the alternate that will vote on the matter. If a Voting member shows up late to a meeting, they cannot vote on the agenda item if the alternate has been designated.



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City Council Chambers, 448 E. 1st Street, Salida, CO  
December 13, 2022 - 6:00 PM

## MINUTES

Email public comments to: [publiccomment@cityofsalida.com](mailto:publiccomment@cityofsalida.com)

Please register for the Board of Adjustment meeting: <https://attendee.gotowebinar.com/rt/1909092342220683277>

### CALL TO ORDER BY CHAIRMAN

### ROLL CALL

#### PRESENT

- Board Member Chairman Greg Follet
- Board Member Co-Chair Francie Bomer
- Board Member Judith Dockery
- Board Member Giff Kriebel
- Board Member Michelle Walker
- Alternate Board Member Aaron Derwingson
- Board Member Brian Colby

### APPROVAL OF THE MINUTES

1. May 23, 2022 - Draft Minutes

Motion made by Board Member Co-Chair Bomer to approve the minutes, Seconded by Board Member Colby.

Voting Yea: Board Member Chairman Follet, Board Member Co-Chair Bomer, Board Member Dockery, Board Member Kriebel, Board Member Walker, Alternate Board Member Derwingson, Board Member Colby

### THE MOTION PASSED.

**UNSCHEDULED CITIZENS:** NA

**AMENDMENT(S) TO AGENDA:** NA

### PUBLIC HEARINGS

Public Hearings will follow the following procedure:

- |   |  |
|---|--|
| A. Open Public Hearing                      | E. Public Input                          |
| B. Proof of Publication                     | F. Close Public Hearing                  |
| C. Staff Review of Application/Proposal     | G. Commission Discussion                 |
| D. Applicant's Presentation (if applicable) | H. Commission Decision or Recommendation |

2. **Smedly / Brown Variance Application – 649 West 2nd Street** - The purpose of the request is to receive variances from the R-2 dimensional standards for front setback, rear setback, lot size, and parking requirement. The applicants are requesting these variances to allow for future subdivision of a corner lot that has an existing primary home and ADU. The intention is to subdivide the lot so that the ADU may/can become a primary home on its own lot.

- A. Open Public hearing – 6:03pm
- B. Proof of Publication
- C. Staff Review of Application –

Planner, Dunleavy, reviews the application and recommends approval subject on two conditions.

*Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting the City Clerk at 448 E. 1st Street, Ste. 112, Salida, CO 81201, Ph.719-530-2630 at least 48 hours in advance.*

The first condition is that the future subdivision plat shall contain a note requiring that an off-street parking space be provided by the existing primary unit at time of future building permit for the property.

The second condition is the future subdivision plat shall contain a note stating that neither of these lots shall be allowed a short-term rental license.

Commission asked:

- What are the sizes of the other corner units that were referenced?
- How do the utilities factor in and how will they be separated?

D. Applicant’s Presentation –

Applicant, Abigail Smedly, spoke about the application

E. Public Input –

Julie Nutter spoke to show support for the application

Judy Brown, owner of the property, spoke to show support for the application.

F. Close Public Hearing – 6:15pm

G. Board of Adjustment Discussion –

Commission discussed the following:

- Whether a corner lot would constitute a special circumstance?
- Whether the special circumstances were the result of the applicant?
- Whether the lot had the necessary minimum variance and whether it was injurious to the neighborhood?

H. Board of Adjustment decision –

Motion made by Board Member Co-Chair Bomer to deny the variance request, the motion was seconded by Board Member Walker.

Voting Yea: Board Member Co-Chair Bomer, Board Member Kriebel, Board Member Walker  
Voting Nay: Board Member Chairman Follet, Board Member Dockery, Alternate Board Member Derwingson, Board Member Colby

**THE MOTION FAILED.**

Motion made by Board Member Colby to approve the variance request with the two conditions recommended by staff, the motion was seconded by Board Member Dockery.

Voting Yea: Board Member Chairman Follet, Board Member Dockery, Alternate Board Member Derwingson, Board Member Colby

Voting Nay: Board Member Co-Chair Bomer, Board Member Kriebel, Board Member Walker

**THE MOTION PASSED.**

**BOARD COMMENTS**

**ADJOURN** With no further business to come before the Board, the meeting adjourned at 6:44 p.m



## STAFF REPORT

**MEETING DATE:** June 26, 2023  
**AGENDA ITEM TITLE:** Kuhn Variance Application  
**AGENDA SECTION:** Public Hearing

### REQUEST:

The purpose of the request is to receive a variance from the minimum side yard setback for an existing accessory building under twelve (12) feet in height. Accessory buildings in the Medium Density Residential (R-2) zone district require a minimum side yard setback of three (3) feet.

The applicant is requesting a minimum allowed side yard setback of 16” on the southwest side of the property for the existing accessory building.

### APPLICANT:

The applicants are Adriane & Martin Kuhn, 147 W. 4<sup>th</sup> Street, Salida, CO 81201.

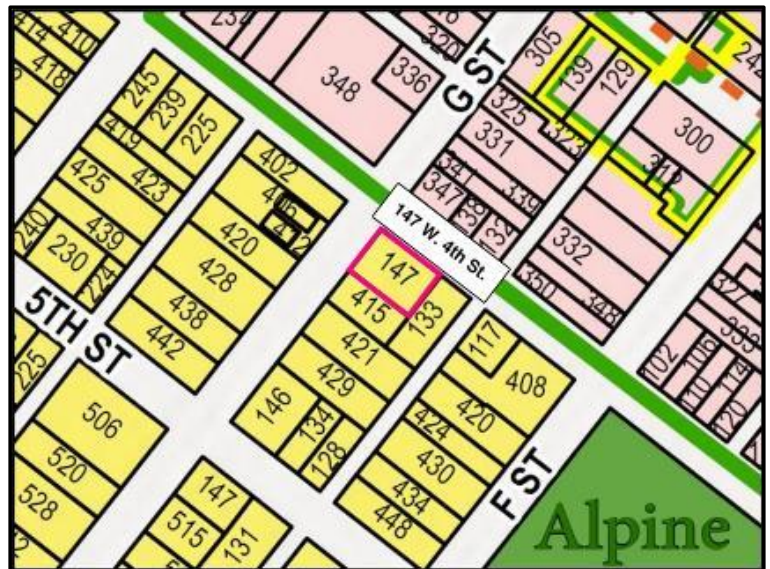
### LOCATION:

The property is legally known as Part of Lots 24, 25, & 26, Haskells Addition, City of Salida, Chaffee County, Colorado.

### PROCESS:

Variations are addressed in the City’s Code of Ordinances, Section 16-4-180, Zoning Variations. Variations may be granted from the standards of the underlying zone district and shall be authorized only for maximum height, minimum floor area, maximum lot coverage, minimum lot size, minimum setbacks, and parking requirements.

The Board of Adjustment holds a public hearing after fifteen days advance notice of the hearing. The public hearing shall be held, at which any person may appear or be represented by an agent or attorney. The Board may describe appropriate conditions and safeguards in conformity with the Zoning title of the City Code.

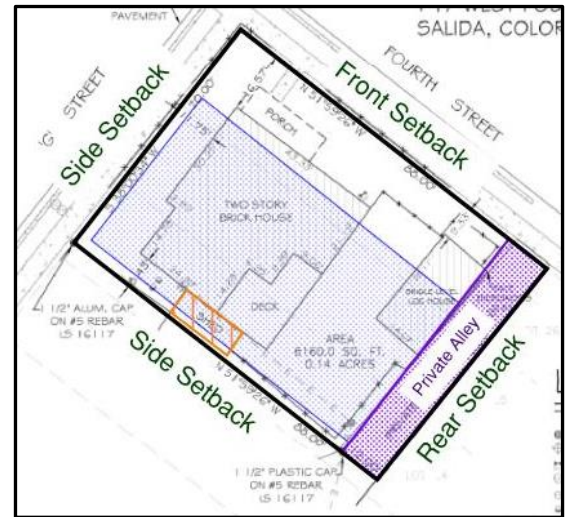


**OBSERVATIONS:**

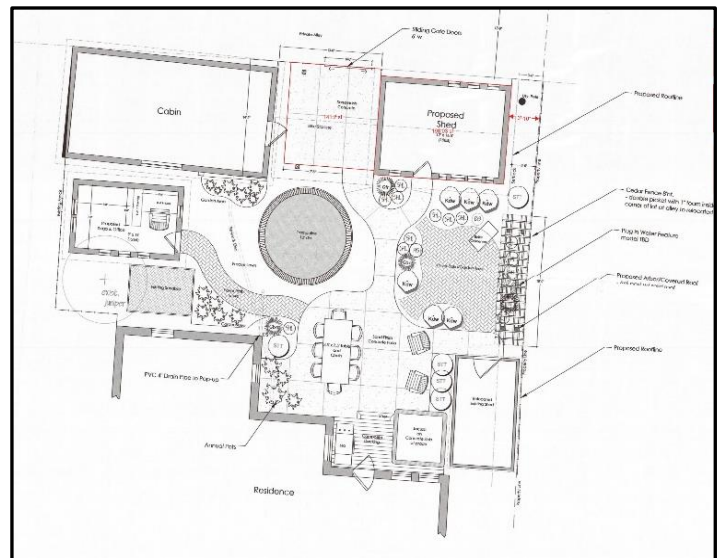
1. The subject property is located in the Medium Density Residential (R-2) zone district. Directly across 4<sup>th</sup> street is the Central Business District (C-2) zone district and Historic Protection Overlay (HPO).

2. The southwesterly 12' portion of the property is a paved driveway (private alleyway easement) for the neighboring property at 415 G Street. The property is constrained by curb and gutter in all other places for on-site parking.

3. The primary building is a nonconforming building that does not meet the current front setback. The accessory building (single level log house) permitted in 1946, according to City documents, does not meet the current front setback. *On a corner lot, the front lot line shall be designated by the location of the primary entrance or front porch. On a corner lot, the owner shall choose which lot line is designated the rear lot line.*



4. A written request in October 2021 was made to the Administrator to construct an 8' fence. The request was granted and in January 2022, the owners permitted and built an 8' fence between their property and the neighboring, 415 G Street, property.



5. On May 16<sup>th</sup>, 2023, a code violation letter was sent to the owners regarding the accessory building in question. Staff was made aware, by formal grievance in March 2023, that the accessory building was encroaching on the neighboring property in 2016 and the current owners relocated the accessory building entirely on their property in its current location in 2021.

6. The request is to receive relief from the minimum 3' side yard setback for an accessory building. The applicant has relocated the building 16" from the current side yard property line. This does not include building eaves.

7. As of Friday, June 23<sup>rd</sup> staff have not received letters or comments on the variance request.



**Variance Approval Criteria Section 16-4-180(e):** Variances from requirements of this Chapter shall be considered an extraordinary remedy. When considering, reviewing, and deciding on whether to approve a variance application, the Board of Adjustment must find that all the following criteria have been met:

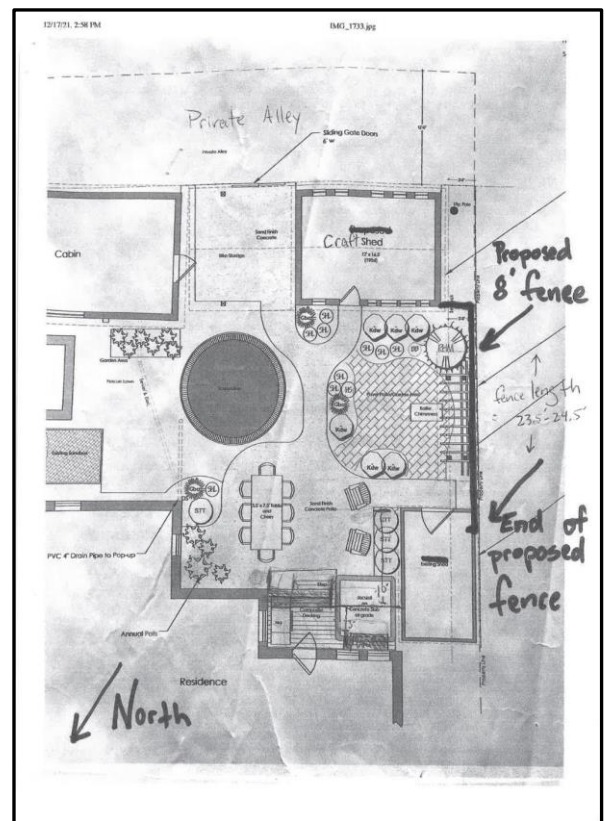
- 1. Special Circumstances Exist. Strict application of the standards adopted in this Chapter would result in undue hardship or practical difficulties for the owner of such property. Special circumstances include, but are not limited to, exceptional or peculiar limitations to the dimension, shape, or topography of the property, such as slope, standing or moving water, wetlands, floodplain, rock features, narrowness, shallowness or irregular shape of a lot.



Applicant's response:

*The special circumstances are:*

- *Our house is old, with limited storage. We need the storage space.*
- *Our lot is constrained by an easement for our neighbors.*
- *The shed has been there for many years without complaint.*
- *Our master plan for our backyard space is now complete.*
  - o *We were granted multiple permits related to this project and a site plan showing the location of the shed was submitted and approved twice. The fence permit specifically spelled out that the fence was to be attached to this shed.*
  - o *Concrete has been poured right up to and adhering to the skirting of the shed on 2 sides.*
  - o *A hot tub has been placed next to the shed, according to the site plan, and permitted electrical has been installed on the side of the shed.*
  - o *A small deck was just completed this winter that fills up the remaining space between the house and the shed. Custom fencing attached to the shed by permit could not be extended in the same fashion if the shed were removed.*



- The existing permitted 8' fence attached to the accessory building was approved by the City on January 4<sup>th</sup>, 2022. On the site plan, the demarcation of where the 8' fence is affixed to the "Exiting Shed" and "Craft Shed" that are off the property line.
- At the time of fence permitting, staff assumed the accessory building was an existing nonconforming building as is the nature of the other buildings on the property. Therefore, we were unaware that this was indeed relocated to its current location a couple of years ago.

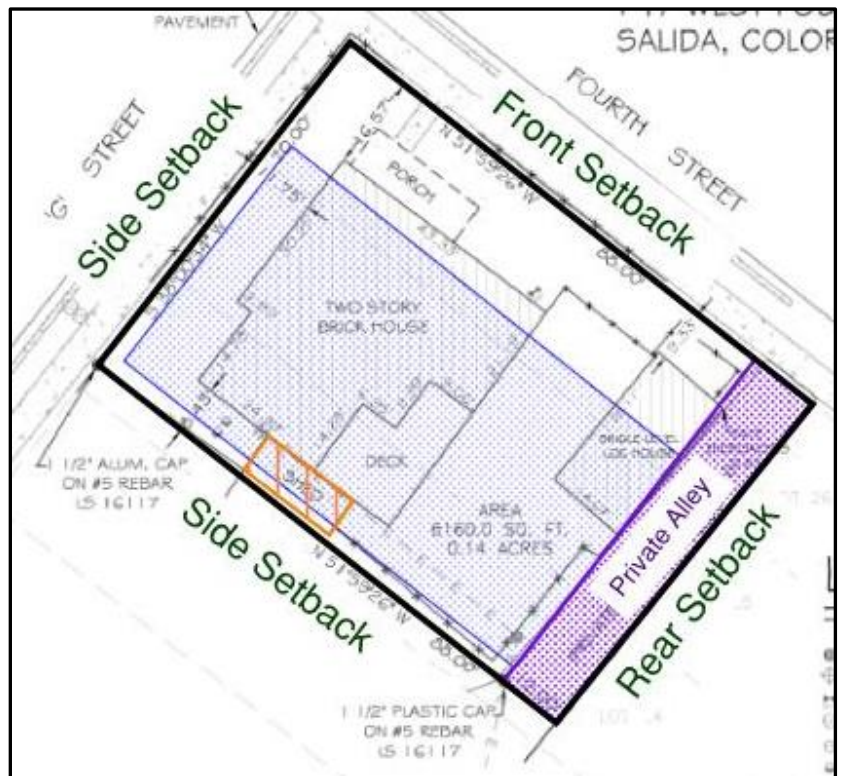
- The definition of setback in the Land Use Code: *the distance required by this Chapter between the face of a building or structure and the lot line opposite that building face, measured perpendicularly to the building.* According to the applicant, the accessory building was encroaching into the neighbor’s property at 415 G Street and moved completely onto their property, per the ILC. Relocating the accessory building must meet the standards of the zone district for all permitted and permit exempt buildings.

2. **Substantial Detriment.** The requested variance would not create a substantial detriment to the public good and would not substantially impair the intent and purpose of this Chapter, this Code or the City’s Comprehensive Plan.

*Applicant’s response: No impact. The shed has been in about the same location for years and there was a shed with no setback in the same place for years before that. Many other properties in the neighborhoods around downtown have similar sheds with no setbacks, including our neighbors. We now understand that our shed is not considered nonconforming according to the Land Use code. We’ve learned that it was placed by the prior owner after the setback requirements went into effect. However, we believe allowing the shed to remain where it is satisfies the spirit, though not the letter, of Section 16-4-160 because there has historically been a shed in basically the same location for a long time.*

- The applicant had removed the encroachment of the accessory building completely onto their property at the current location.
- The accessory building is behind the primary building, not very visible to the public; if at all.

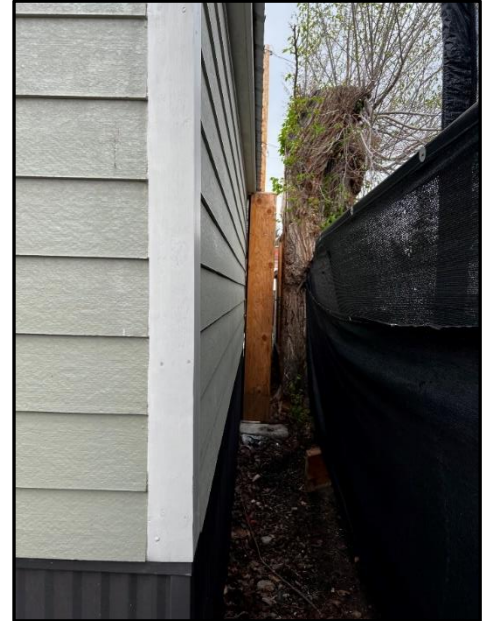
- The area in blue (image right) describes the buildable area of an accessory building that is under 12’ in height, utilizing 3’ side yard setbacks in the R-2 zone district. The rear setback is hampered by the 12’ private alleyway, which would typically be a 5’ rear setback for accessory buildings. The accessory building is highlighted in orange.



3. Adverse Impacts. The requested variance would not result in significantly adverse impacts to the natural environment or to the surrounding properties and neighborhoods.

Applicant's response: *No adverse impacts. The neighbors have expressed a desire for privacy at prior points in time. In addition, they approved our request to build an 8-foot-tall fence along the property line. The shed continues this line of privacy and as you can see in the attached pictures, it is minimally higher than the fence in the required setback area.*

- A formal complaint regarding the location of the accessory building was made by a neighbor. The neighbor advised Staff in March 2023, that the accessory building was about a foot over onto their property and had been moved in 2021. It was moved without regard to the accessory building setbacks creating difficulty for the neighbor to construct a fence in that area.
- The granting of the variance may impact the surrounding properties as it will be in close proximity to the side property line, the applicant may explain that maintaining the accessory building is feasible.



4. Minimum Variance. The granting of the request is the minimum variance necessary for reasonable use of the property or building and the least deviation required from the applicable zoning standard to afford relief.

Applicant's response: *The minimum variance necessary for continued reasonable use is to allow the shed to stay where it is. I am unable to be as precise as I would like by placing a string line along the lot line due to the neighbors' encroaching fence. The shed is approximately 16 inches from the lot line. The setback should be 36 inches. Please grant a variance for a setback of 16 inches and allow the shed to stay where it is.*

- Setbacks help provide privacy and to address basic safety issues: distances between buildings decrease the potential damage in case of a fire, provide the room necessary for a homeowner to maintain his/her buildings on his/her own property and provide for solar access and ventilation. As mentioned by the Building Department Official, "If a permit was required there would have been fire rating of the structure and no projections permitted with the close vicinity of the lot line."
  - Sec. 18-2-10 of the Salida Municipal Code references the adoption of the International Residential Code (IRC) 2015 edition. In IRC 2015 section R105.2 Work Exempt from permit: "One-story detached accessory structures, provided that the floor area does not exceed 200 square feet. Although this work is exempt from permit the IRC states: "Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction."

**Land Use Code Sec. 16-4-180(f)** The Board, in approving the variance, may impose such restrictions and conditions on such approval, and the premises to be developed or used pursuant to such approval, as it determines are required to prevent or minimize adverse effects from the proposed variance on other land in the neighborhood and on the general health, safety and welfare of the City. All conditions imposed upon any variance shall be set forth in the granting of such variance.

**REVIEW AGENCIES:**

**Fire Department – Assistant Fire Chief, Kathy Rohrich** – Fire Department has no concerns at this time.

**Public Works Department – David Lady** – This has no impact on Public Works.

**Chaffee County Building Department – Chad Chadwick** – See attached comments.

**REQUIRED ACTIONS BY THE BOARD:**

1. The Board shall confirm that adequate notice was provided.
2. The Board shall conduct a public hearing.
3. The Board shall make the findings that points 1 through 4 of the above section are met by the applicant.

**POSSIBLE DECISION OPTIONS:**

**Option A:** Based on the findings below, the Board of Adjustment may recommend **APPROVAL** of the variance request based on the following findings of fact:

- Special circumstances exist such that strict application of the standards adopted in this Chapter would result in undue hardship or practical difficulties for the owner of such property.
- The requested variance would not create a substantial detriment to the public good and would not substantially impair the intent and purpose of this Chapter, this Code or the City's Comprehensive Plan.
- The requested variance would not result in significantly adverse impacts to the natural environment or to the surrounding properties and neighborhoods.
- The granting of the request is the minimum variance necessary for reasonable use of the property or building and the least deviation required from the applicable zoning standard to afford relief.

**Or**

**Option B:** Based on the findings below, the Board of Adjustment may recommend **DENIAL** of the variance requests based on the following findings of fact:

- No special circumstances exist such that strict application of the standards adopted in this Chapter would result in undue hardship or practical difficulties for the owner of such property.
- The requested variance would create a substantial detriment to the public good and would substantially impair the intent and purpose of this Chapter, this Code or the City’s Comprehensive Plan.
- The requested variance would result in significantly adverse impacts to the natural environment or to the surrounding properties and neighborhoods.
- The granting of the request is not the minimum variance necessary for reasonable use of the property or building and is not the least deviation required from the applicable zoning standard to afford relief.

**RECOMMENDED MOTION (OPTION A):** “I make a motion to approve the Kuhn Variance request as the request meets all of the review criteria for Zoning Variances.”

**RECOMMENDED MOTION (OPTION B):** “I make a motion to deny the Kuhn Variance request as the request does not meet all of the review criteria for Zoning Variances.”

BECAUSE THIS APPLICATION IS FOR A VARIANCE, THE SALIDA BOARD OF ADJUSTMENT SHALL MAKE THE FINAL DECISION ON THIS APPLICATION. DECISIONS BY THE BOARD SHALL BE FINAL AND MAY NOT BE APPEALED FURTHER EXCEPT IN COURT.

Attachments: Proof of Publication  
Application materials  
Agency reviews  
Figure 16-1 Detached Accessory Building Side Lot Line Setback Parameters

**PUBLIC NOTICE  
NOTICE OF A PUBLIC HEARING DATE  
BEFORE THE BOARD OF ADJUSTMENT  
FOR THE CITY OF SALIDA CONCERNING  
A VARIANCE APPLICATION**

**TO ALL MEMBERS OF THE PUBLIC AND INTERESTED PERSONS: PLEASE TAKE NOTICE:** that on Monday, June 26, 2023 at or about the hour of 6:00 p.m., a public hearing will be conducted by the City of Salida Board of Adjustment at City Council Chambers, 448 East First Street, Suite 190, Salida, Colorado and online at the following link: <https://attendee.gotowebinar.com/rt/1909092342220683277>

The applicants, Martin & Adriane Kuhn, are requesting approval for one variance on the property located at 147 W. 4th Street, legally known as Part Lots 24, 25, & 26 Block 60 Haskells Addition, City of Salida, Chaffee County, Colorado.

The purpose of the request is to receive a variance from the minimum side yard setback for an accessory structure. Accessory structures in the Medium Density Residential (R-2) zone district require a minimum side yard setback of three (3) feet. The applicants are requesting a minimum allowed side yard setback of 16" for an existing shed.

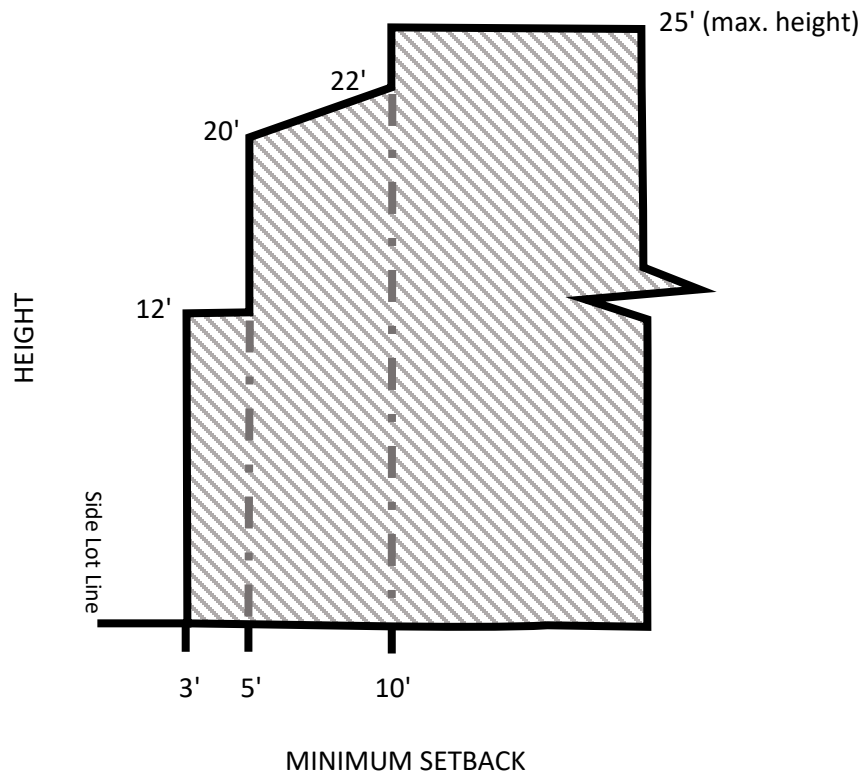
Interested persons are encouraged to attend the public hearing. Further information on the application may be obtained from the

Community Development Department at (719) 530-2638.

\*Please note that it is inappropriate to personally contact individual City Councilors, Planning Commissioners and Board Members, outside of the public hearing, while an application is pending. Such contact is considered ex parte communication and will have to be disclosed as part of the public hearings on the matter. If you have any questions/comments, you should email or write a letter to staff, or present your concerns at the public meeting via the above GoToWebinar link so your comments can be made part of the record. Published in The Mountain Mail June 9, 2023



Fig. 16-1 Accessory Buildings Side Lot Line Setback Parameters





PLANNING DEPARTMENT
PROJECT REVIEW TRANSMITTAL FORM

ATTENTION: \_\_\_\_\_ DATE: 06/13/2023

- Salida Public Works, Salida Fire Chief, Salida Police Chief, Salida Finance Department, Salida Sanitation Plant Supervisor, Salida Water Plant Supervisor, City Consulting Engineer - Streets, City Consulting Engineer - Water/Sewer, City Attorney, Centurylink Communications, Atmos Energy, Historic Preservation Commission, Xcel Energy, Charter Communications, Chaffee Co. Planning, Army Corps of Engineers, U.S. Postal Service, U.S. Forest Service, CO Dept. of Transportation, Chaffee Co. Building Dept., School District R-32-J, Division of Wildlife, Town of Poncha Springs, Other:

APPLICANT: Adriane & Martin Kuhn PHONE: 206-769-2805 FAX: \_\_\_\_\_

EMAIL: kuhnlandia@gmail.com

PROPERTY LOCATION: 147 W. 4th Street

PROJECT DESCRIPTION: The owners have applied for one variance from the required 3' side yard setback for an accessory structure. The request is to receive a variance from the minimum side setback of three (3) feet required for a side yard setback an accessory structure under 12' in height. The applicant is requesting a minimum allowed side yard setback of 16" on the southwest side of the property for the existing accessory structure.

TENTATIVE MEETING DATES:

- Planning Commission, City Council, Board of Adjustment with dates and times: @ P.M., @ P.M., 06/26/23@ 6:00 P.M.

TRANSMITTAL INCLUDES:

- Application Form/Cover Letter, Site Plan, Plat, Vicinity Map, Other:

NOTE: A written response, even if only to advise that you have no concerns, is requested.

REPLY: The square footage of the shed is not included in this report, if the shed is less than 200 sq ft. it would be exempt from a building permit however it would still have to meet zoning set backs. If a permit was required there would have been fire rating of the structure and no projections permitted with the close vicinity of the lot line.

RESPONSE NEEDED BY: 06/20/22

RECEIVED: \_\_\_\_\_

PLANNING STAFF: Franco Palumbo

Building Department comments



# GENERAL DEVELOPMENT APPLICATION

448 East First Street, Suite 112  
Salida, CO 81201  
Phone: 719-530-2626 Fax: 719-539-5271  
Email: [planning@cityofsalida.com](mailto:planning@cityofsalida.com)

## 1. TYPE OF APPLICATION (Check-off as appropriate)

- Annexation
- Pre-Annexation Agreement
- Appeal Application (Interpretation)
- Certificate of Approval
- Creative Sign Permit
- Historic Landmark/District
- License to Encroach
- Text Amendment to Land Use Code
- Watershed Protection Permit
- Conditional Use
- Administrative Review: (Type) \_\_\_\_\_
- Limited Impact Review: (Type) \_\_\_\_\_
- Major Impact Review: (Type) \_\_\_\_\_
- Other: Variance

## 2. GENERAL DATA (To be completed by the applicant)

### A. Applicant Information

Name of Applicant: Adriano and Martin Kuhn  
 Mailing Address: 147 W 4th ST Salida CO  
 Telephone Number: 206-769-2805 FAX: \_\_\_\_\_  
 Email Address: Kuhlandia@gmail.com  
 Power of Attorney/ Authorized Representative: \_\_\_\_\_  
 (Provide a letter authorizing agent to represent you, include representative's name, street and mailing address, telephone number, and FAX)

### B. Site Data

Name of Development: Kuhn Variance  
 Street Address: 147 W 4th ST  
 Legal Description: Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision \_\_\_\_\_ (attach description)  
 Disclosure of Ownership: List all owners' names, mortgages, liens, easements, judgments, contracts and agreements that run with the land. (May be in the form of a current certificate from a title insurance company, deed, ownership and encumbrance report, attorney's opinion, or other documentation acceptable to the City Attorney)

I certify that I have read the application form and that the information and exhibits herewith submitted are true and correct to the best of my knowledge.

Signature of applicant/agent \_\_\_\_\_ Date \_\_\_\_\_

Signature of property owner Adriano Kuhn Date 6-9-23



# VARIANCE APPLICATION

448 East First Street, Suite 112  
Salida, CO 81201

Phone: 719-530-2626 Fax: 719-539-5271

Email: [planning@cityofsalida.com](mailto:planning@cityofsalida.com)

**A. TYPE OF VARIANCE REQUESTED (Fill In Applicable Requests)**

- 1. **Variance from Maximum Height:** Existing Height (in feet): N/A Proposed Height (in feet): N/A
- 2. **Minimum Variance from Floor Area:** Required Floor Area: N/A Proposed Floor Area: N/A
- 3. **Variance from Maximum Lot Coverage:** Allowed Lot Coverage: N/A Proposed Lot Coverage: N/A
- 4. **Variance from Parking Requirements:** Existing Spaces: N/A Required Spaces: N/A  
Total Spaces Proposed: N/A Percent Reduction Proposed: N/A

**5. Variance from Minimum Setback Requirements**

a. Setback Variance Information:

- i. Type of setback:  Front yard  Rear yard  Side yard
- ii. Which direction:  North  South  East  West  
 Northeast  Northwest  Southeast  Southwest
- iii. Type of Building:  Principal  Accessory Building
- iv. Current Setback: 16"
- v. Proposed Setback: 16"
- vi. Required Setback: 36"

b. Second Setback Variance Information (if applicable):

- i. Type of setback:  Front yard  Rear yard  Side yard
- ii. Which direction:  North  South  East  West  
 Northeast  Northwest  Southeast  Southwest
- iii. Type of Building:  Principal  Accessory Building
- iv. Current Setback: \_\_\_\_\_
- v. Proposed Setback: \_\_\_\_\_
- vi. Required Setback: \_\_\_\_\_

6. **Variance from Land Use Code Section:** 16-4-180

**B. DEVELOPMENT PROCESS (City Code Section 16-4-180)**

- 1. Pre-Application Conference. Optional.
- 2. Submit Application.
- 3. Staff Review. Schedule Hearing. Forward Report to Applicant and Board.
- 4. Public Notice Provided For Hearing.
- 5. Public Hearing Conducted by Board and Action Taken.



**C. APPLICATION CONTENTS**

A digital copy of all application materials is required.

- 1. **General Development Application**
- 2. **Site Plan.** A site plan of the subject property, showing existing and proposed features, buildings, etc. which are relevant to the review of the application. **The copies shall be accepted on 8½" x 11", 11" x 17" or 24"x 36" paper or electronically.**
- 3. **Required Showing.** The applicant shall indicate the way the proposal meets the required showing as outlined in the application.
- 4. **Public Notice**
  - a) **List.** A list shall be submitted by the applicant to the city of adjoining property owners' names and addresses. A property owner is considered adjoining if it is within 175 feet of the subject property regardless of public ways. The list shall be created using the current Chaffee County tax records.
  - b) **Postage Paid Envelopes.** Each name on the list shall be written on a postage-paid envelope. Postage is required for up to one ounce. Return Address shall be: City of Salida, 448 E. First Street, Suite 112, Salida, CO 81201.
  - c) Applicant is responsible for posting the property and submittal of proof of posting the public notice.
- 5. **Application Fee.** \$500 cash or check made out to City of Salida.

**D. REQUIRED SHOWING (If necessary, attach additional sheets)**

**Variance Approval Criteria.** Variances from requirements of this Chapter shall be considered an extraordinary remedy. When considering, reviewing and deciding on whether to approve a variance application, the Board of Adjustment must find that all of the following criteria have been met:

1. **Special Circumstances Exist.** Strict application of the standards adopted in this Chapter would result in undue hardship or practical difficulties for the owner of such property. Special circumstances include, but are not limited to, exceptional or peculiar limitations to the dimension, shape or topography of the property, such as slope, standing or moving water, wetlands, floodplain, rock features, narrowness, shallowness or irregular shape of a lot.

*See attached*

2. **Substantial Detriment.** The requested variance would not create a substantial detriment to the public good and would not substantially impair the intent and purpose of this Chapter, this Code or the City's Comprehensive Plan.

*See attached*

3. **Adverse Impacts.** The requested variance would not result in significantly adverse impacts to the natural environment or to the surrounding properties and neighborhoods.

*See attached*

**4. Minimum Variance Necessary for Reasonable Use.** The granting of the request is the minimum variance necessary for reasonable use of the property or building and the least deviation required from the applicable zoning standard to afford relief.

*See attached*

**Additional Information:**

*See attached*

**Additional Information:**

Our house at 147 W 4th street was built in 1887. We like to say that as owners we are really just the current caretakers of this old house. As you can imagine there is not a lot of storage area. Certainly not for a modern family of 4. We have no garage and there is no room for one due a 12 ft wide easement on the SE lot line that serves as driveway access to our neighbors' lot at 435 G St. There used to be a garage but it was converted to a studio apartment by a prior owner and serves as long term affordable housing for a home-grown Salidan. This shed is very necessary for us for all the things you would expect: yard and maintenance tools, camping and rafting gear, kids' stuff. There is nowhere else practical on our lot for the shed, and we can't imagine figuring out what we would do without it.

We moved to our home in August 2017. The utility shed in question was already here. We had no idea for how long. We were concerned about the shed being over the property line and discussed this with our realtor (see attached email). An ILC was required. It showed that the shed was not encroaching. However, when the property line was surveyed in 2020, we discovered the ILC was in error and the shed did encroach by about 6 inches, more with the eye.

In early 2021 we began preparing for a backyard improvement project. We feel it is important to say that we don't have deep pockets. Someday we hope to do some remodeling to improve on the 1970s kitchen and bathroom and fixing the floors in the dining and living room. But with our beautiful weather we decided we first wanted to make our backyard space special - and secure. We put all of our available resources into this project.

We knew that first we should address the shed. At the time, we just assumed it was "grandfathered" in like all the other sheds in the neighborhood that don't have proper setbacks, including our neighbors' shed along the same property line. We did what we thought made sense at the time by shifting it about 4 feet to the SE to clear the corner of the house, enabling us to shift it 2 feet to the NE and off the property line. Any more and the shed would have been obstructing a house window. In addition to moving the shed, we improved its appearance at this time by re-siding it on all sides, to match other elements of the project.

We did this of our own accord. The neighbors had never complained or said a word about the shed. We weren't trying to circumvent the rules. We thought what we did was okay and made sense. We became aware of setback requirements during our backyard project planning process, but didn't realize they applied to the shed. Again, we thought it was "grandfathered" in. There had always been a shed there (and again, we didn't know when this shed was placed). In fact the 2017 ILC was incorrect because Landmark Survey made an assumption that the shed in question was the same shed that was present when a previous ILC was done. That previous shed, which is (incorrectly) shown in the attached 2017 ILC, was in the same location, with no setback, but was not as wide so it did not encroach. Our shed, which by 2021 had apparently been there for 5 years had never been a problem. In our conversations with the neighbors at 435 G St over the years, it had never been brought up, except in one conversation

a few years ago where Aaron Stephens said it was odd that the prior owner put his shed over the property line. Because of the incorrect ILC, we shared with him that we believed it wasn't encroaching, but regardless, he didn't indicate he had any problem with it.

As we started our backyard project we wanted to take this opportunity to fix the encroachment. We thought getting it off the neighbors' property was the only consideration, since we believe it to be "grandfathered". Our intention was to be thoughtful, considerate, and proper by doing this unasked.

All of our incorrect assumptions about the legality of this shed were further strengthened by the several permits we obtained for elements of our project. A site plan, showing the current location of the utility shed, was submitted for a permit for the new craft shed (see attached). Permitted electrical infrastructure is mounted to the shed, in 2022 the site plan was again submitted for an 8 ft fence that was permitted to be "connecting to the shed" (see attached). Speaking with Franco in late May, he admitted that he didn't know how long the shed had been there and, like us, assumed it was "grandfathered".

If the shed was a problem, and if a legitimate complaint was to be made, it should have been made when it was placed (apparently in 2016). We believe shifting the shed only had a positive impact on the neighboring property. Why is this complaint made now in 2023, after we've finished our backyard improvements? Why is this complaint made two years after the shed was shifted off their property and 7 years after it was initially placed by a previous owner with a negative setback?

Now a concrete slab and walkway to the door have been poured right up to and adhered to the shed's skirting. A hot tub was placed in early 2022 (with a permitted electrical panel connected to the shed), a permitted fence that attaches to the shed has been constructed, and the deck was just completed this past winter going between the hot tub and the house, filling the space and leaving no room to move the shed (see attached site plan). Is it fair or reasonable to uphold the Land Use Code to the letter, now that our project is complete?

If the shed were to be removed, the custom fence could not be extended in the same fashion because it is constructed with reclaimed boards from our old fence, the rest of the boards have been given away, and the fence builder just moved to Wisconsin.

We ask you to consider the practical difficulties, hardship, and cost that would obviously ensue if we are forced to adhere to the 3 foot setback.

**1. Special Circumstances Exist.** Strict application of the standards adopted in this Chapter would result in undue hardship or practical difficulties for the owner of such property...

The special circumstances are:

- Our house is old, with limited storage. We need the storage space.

- Our lot is constrained by an easement for our neighbors.
- The shed has been there for many years without complaint.
- Our master plan for our backyard space is now complete.
  - We were granted multiple permits related to this project and a site plan showing the location of the shed was submitted and approved twice. The fence permit specifically spelled out that the fence was to be attached to this shed.
  - Concrete has been poured right up to and adhering to the skirting of the shed on 2 sides.
  - A hot tub has been placed next to the shed, according to the site plan, and permitted electrical has been installed on the side of the shed.
  - A small deck was just completed this winter that fills up the remaining space between the house and the shed.
  - Custom fencing attached to the shed by permit could not be extended in the same fashion if the shed were removed.

**2. Substantial Detriment.** The requested variance would not create a substantial detriment to the public good and would not substantially impair the intent and purpose of this Chapter, this Code or the City’s Comprehensive Plan.

- No impact. The shed has been in about the same location for years and there was a shed with no setback in the same place for years before that. Many other properties in the neighborhoods around downtown have similar sheds with no setbacks, including our neighbors. We now understand that our shed is not considered nonconforming according to the Land Use Code. We’ve learned that it was placed by the prior owner after the setback requirements went into effect. However, we believe allowing the shed to remain where it is satisfies the spirit, though not the letter, of Section 16-4-160 because there has historically been a shed in basically the same location for a long time.

**3. Adverse Impacts.** The requested variance would not result in significantly adverse impacts to the natural environment or to the surrounding properties and neighborhoods.

- No adverse impact. The neighbors have expressed a desire for privacy at prior points in time. In addition they approved our request to build an 8 foot tall fence along the property line. The shed continues this line of privacy and as you can see in the attached pictures, it is minimally higher than the fence in the required setback area.

**4. Minimum Variance Necessary for Reasonable Use.**

The minimum variance necessary for continued reasonable use is to allow the shed to stay where it is. I am unable to be as precise as I would like by placing a string line along the lot line due to the neighbors’ encroaching fence. The shed is approximately 16 inches from the lot line. The setback should be 36 inches. Please grant a variance for a setback of 16 inches and allow the shed to stay where it is.



This fence will be near the back (south) corner of our lot from the west corner of our recently built structure up to (but not on) the property line, and then along (but not on) the property line for 23.5 to 24.5' to a point 3 - 4' past the nearest (south) corner of the existing shed, and from there (with a right angle) connecting to the existing shed.

The fence will be constructed with 4x4 cedar posts with 8' spacing, sunk 32" below grade in concrete. It will have 1 inch foam board insulation (for sound dampening) sandwiched between some combination of metal roofing and wood boards on the inside of the fence and painted plywood on the outside. The foam board insulation will be covered with a dark fabric to prevent it from showing through with any board shrinkage.

**APPROVED**  
**FRANCO PALUMBO**  
01/04/2022

City of Salida requirements:  
All exterior light fixtures must be fully shielded  
per Section 16-8-100 (2)

City of Salida requirements:  
Number of trees required per Section 16-8-90(6)  
**3 TREE(S) REQUIRED**

**Schedule inspection of concrete  
post footings prior to placing  
concrete**

**REVIEWED AND APPROVED FOR CODE  
COMPLIANCE UNDER THE 2015 I-CODES AND  
2020 NEC. PLANS ARE APPROVED AS  
CORRECTED**  
01/18/2022  
*Chad Chadwick*

**Schedule inspection of all framing  
connections prior to covering**

Approved plans shall be on site during all inspections  
per IRC R106.3.1



5:13



**Kim Boudin**  
To: Marty, Adriane >

5/24/17

## ILC

Hi Marty and Adriane,

I've attached the ILC and Invoice. I've also forwarded to the title company. Landmark may prefer payment prior to closing since it's so far out, but generally payment can happen at settlement. Should you have any questions, you can contact Syd at Landmark Survey, at [719-539-4021](tel:719-539-4021). It doesn't look to me like the shed is encroaching, so that is good news!

*Asked about  
Shed in person*

Can you please send me your lender information?

Thanks,

--

Kim Boudin, Broker Associate  
[kbouldin@pinonrealestate.com](mailto:kbouldin@pinonrealestate.com)  
[www.pinonrealestate.com](http://www.pinonrealestate.com)

Pinon Real Estate Group







From: Kim Bouldin kbouldin@pinonrealestate.com  
Subject: ILC  
Date: May 24, 2017 at 4:01:41 PM  
To: Marty Kuhn thekuhndog@gmail.com, Adriane Kuhn  
adriane@johnlscott.com

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Hi Marty and Adriane,

I've attached the ILC and Invoice. I've also forwarded to the title company. Landmark may prefer payment prior to closing since it's so payment can happen at settlement. Should you have any questions, you can contact Syd at Landmark Survey, at [719-539-4021](tel:719-539-4021). It do shed is encroaching, so that is good news!

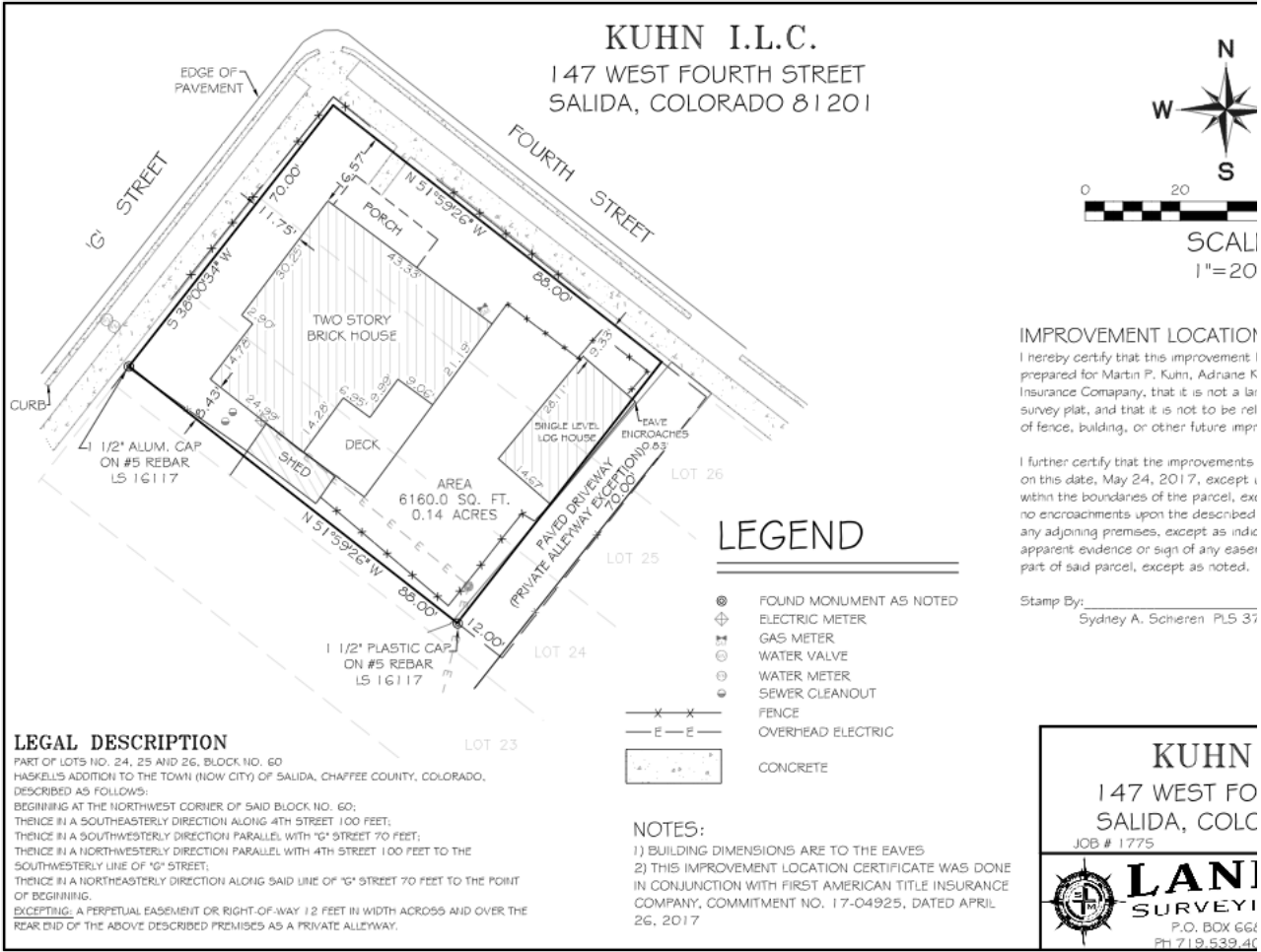
Can you please send me your lender information?

Thanks,

--

Kim Bouldin, Broker Associate  
[kbouldin@pinonrealestate.com](mailto:kbouldin@pinonrealestate.com)  
[www.pinonrealestate.com](http://www.pinonrealestate.com)

Pinon Real Estate Group  
201 F Street, Salida, CO 81201 Cell: [719-539-7135](tel:719-539-7135)  
Office: [719-539-0200](tel:719-539-0200) Fax: [719-539-0201](tel:719-539-0201)  
Toll free: [1-877-539-0200](tel:1-877-539-0200)





PO Box 668  
Salida, CO 81201  
719-539-4021

### Invoice

| PROJECT # | DATE      | INVOICE # |
|-----------|-----------|-----------|
| 1775      | 5/24/2017 | 17-200    |

**BILL TO**  
Central Colorado Title & Escrow  
1055 E. Hwy 50  
Salida, CO 81201

| DATE      | TASK   | DESCRIPTION                      | RATE/HR | HOURS        | AMOUNT   |
|-----------|--------|----------------------------------|---------|--------------|----------|
| 5/24/2017 | I.L.C. | Improvement Location Certificate | 300.00  |              | 300.00   |
|           |        |                                  |         | <b>Total</b> | \$300.00 |