



HIDEOUT, UTAH
KLAIM VARIANCE PUBLIC HEARING MEETING
September 28, 2022
Agenda

PUBLIC NOTICE IS HEREBY GIVEN that the Administrative Law Judge of Hideout, Utah will hold a Public Hearing Meeting at 10860 N. Hideout Trail, Hideout, Utah and electronically via Zoom for the purposes and at the times as described below on **Wednesday, September 28, 2022 at 2:00 p.m.**

All public meetings are available via ZOOM conference call and YouTube Live.
Interested parties may join by dialing in as follows:

Zoom Meeting URL: <https://zoom.us/j/4356594739> To join by telephone dial: US: +1 408 638 0986
Meeting ID: 435 659 4739
YouTube Live Channel: <https://www.youtube.com/channel/UCKdWnJad-WwvcAK75QjRb1w/>

Public Hearing
2:00 PM

- I. Call to Order
 - II. Public Hearing Item
 1. Public Hearing regarding the Variance Application for the KLAIM Phases 3 and 4 subdivisions, located at 708 SR-248 in Hideout, Utah
 - III. Agenda Items
 1. [Consideration and possible decision by the Administrative Law Judge on the Variance Request for the KLAIM Phase 3 and Phase 4 subdivisions, located at 708 SR-248 in Hideout, Utah](#)
 - IV. Meeting Adjournment
-

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the Mayor or Town Clerk at 435-659-4739 at least 24 hours prior to the meeting.

HIDEOUT TOWN COUNCIL

10860 N. Hideout Trail
Hideout, UT 84036
Phone: 435-659-4739
Posted 9/27/2022



Staff Report for KLAIM Subdivision – Variance Request for Phases 3 & 4

To: Craig Hall, Esq.
Administrative Law Judge for the Town of Hideout

From: Thomas Eddington Jr., AICP, ASLA
Town Planner

Re: KLAIM Phases 3 & 4 – Variance Request

Date: September 15, 2022

Submittals: Subdivision Plat for KLAIM Phase 3, dated December 6, 2021

Subdivision Plat for KLAIM Phase 4, dated May 17, 2022

Background

The KLAIM subdivision received Final Plat Approval on December 14, 2017 for the full subdivision (all four or five phases; the exact phasing plan was not fully defined at the time). At the December 14, 2017 meeting (and at the prior week’s meeting - December 7, 2017 Planning Commission meeting) a site plan was provided but there was never a Subdivision Plat provided in a form that could be recorded. As such, while the minutes of the December 14, 2017 meeting indicate Final Subdivision Approval, technically a complete plat was never submitted for review.

The Applicant and the Town agreed that the most efficient approach to final subdivision approval was to submit in a series of project phases (1 through 4). Phases 1 and 2 received final plat approval prior to the update of the Hideout/Municipal Town Code in November 2020 and are well under construction.

However, phases 3 and 4 received favorable final subdivision recommendations by the Planning Commission and Town Council after the adoption of the new Town/Municipal Town Code in November 2020.

Project Details

KLAIM Total Units: 88 attached units

Total Project Area: 58.95 acres (42.73 acres preserved as open space/untouched land)

Actions Preceding the Variance Request

This Preliminary Subdivision approvals for Phases 3 and 4 are generally vested per the Master Development Agreement (MDA) that was signed on June 27, 2019, however, Section 3.2.7 of the MDA allows the Town to require the Applicant to adhere to new planning and zoning modifications that generally address design, setbacks, and similar item provided allocated density is not reduced. The Applicant has generally committed to coordinate future improvements in compliance with the Town's updated Zoning Code (November 2020).

The new Town Code has updated Building and Development Standards (new Section 10 of the Town Code as of November 2020) that the subdivision must meet. The following section of the Zoning Code includes architectural requirements that, if enforced to the letter of the law, would present a significant hardship for the Applicant as they prepare to construct the final two phases of the 88 lot project:

- 11.07.101 Zoning: Mountain (M): w/ a Planned Performance Development Overlay allowing deviation from setbacks.
- 10.08.06.C General Standards-Monotony Clause and 1008.08 Design Standards: Major Subdivisions (6 lots or more) shall not have greater than twenty (20%) of the structures with the same elevation and, in no case, shall any two (2) similar structures be located adjacent to each other or directly across the street. The differentiation of each structure shall be a combination of unique roof lines, garage step-backs, entry/porch location and canopy, fenestration, building materials, and colors.

The Planning Commission favorably recommended both phases of the project (final subdivision) to the Town Council who ultimately reviewed and approved the final subdivision for Phases 3 and 4 on January 27, 2022 and August 11, 2022 respectively. The approved subdivisions included the following condition of approval:

Per the Planning Commission's recommendations, the Applicant shall ensure a variety of architectural designs (primarily color variation where applicable) for the remaining phases of the project to meet the intent of the Town's monotony clause (10.08.06). The Applicant shall also work with the Town Planner to ensure color variation for various buildings and phases of the project. With almost half the project complete, the Applicant will not be able to meet the requirements of the monotony clause and will have to request a variance from the Town's Administrative Law Judge.

The Applicant coordinated with the Design Review Committee (DRC) - one Town Council member (R. Severini) and one Planning Commissioner (B. Woelfle for Phase 3 and Glynnis Tihanskey for Phase 4) and the Town Planner - to review the submittals for the final two phases. Specifically, DRC worked with Chris Ensign and the architect to integrate differentiating design components – specifically color combinations for each building – to ensure general compliance with the intent of this section of the Town's Zoning Code recognizing the effort would not meet the specific language of the new Zoning Code. The DRC understood that changes to height, building articulation, materials, etc. would be very costly due to the fact that all of the architectural and engineering work had been completed for all four phases well before the adoption of the new Zoning Code requirements in November 2020.

The following color combinations were ultimately approved for the project by the DRC:



KEY

OPTION 1 DESIGN BOARD				OPTION 3 DESIGN BOARD			
LAP SIDING Color: CEDAR KNOTTED PINE	SOFFIT Color: CEDAR KNIGHT'S ARMOR	STUCCO Color: Dove Grey #403 (HS)	BOARD AND BATTEN Color: IRON ORE BY SHERWIN WILLIAMS	LAP SIDING Color: CEDAR COOL CHARCOAL	SOFFIT Color: CEDAR COOL CHARCOAL	STUCCO Color: Coral Gables #1582 (HS)	BOARD AND BATTEN Color: COLDE MARCH BENJAMIN MOORE DRAGON'S BREATH
OPTION 2 DESIGN BOARD				DOWNHILL RESIDENCES UPHILL RESIDENCES			
LAP SIDING Color: CEDAR BARK	SOFFIT Color: CEDAR BARK	STUCCO Color: Sherwin #403 (HS)	BOARD AND BATTEN Color: EAGLE ROCK BY BENJAMIN MOORE				

While the Town Council and the Design Review Committee (DRC) believe the color variation provided for the KLAIM project adequately address the intent of the new monotony clause, both entities also recognize this approach falls short of meeting the letter of the law of the clause as written and a variance will be necessary to allow the Applicant to move forward with the project as presented. The specific code requirement is noted as follows:

- 10.08.06.C General Standards-Monotony Clause and 1008.08 Design Standards: Major Subdivisions (6 lots or more) shall not have greater than twenty (20%) of the structures with the same elevation and, in no case, shall any two (2) similar structures be located adjacent to each other or directly across the street. The differentiation of each structure shall be a combination of unique roof lines, garage step-backs, entry/porch location and canopy, fenestration, building materials, and colors.

Variations Requested

1. Relief from the requirement to have different elevations/facades for more than 20% of the proposed structures – to allow 100% of the building elevations/facades to have the save general elevation/façade (building materials, siding, door and window configuration, etc.)
2. Relief from the requirement that no two (2) structures with similar facades shall be located adjacent to each other – to allow all structures with similar facades to be located next to each other.

August 25, 2022

RE: Request of Variance with Town of Hideout for Monotony Clause

To Whom It May Concern:

To provide a brief background, the Klaim project consisting of 88 townhomes was approved in 2018 and has since gone through many approval extensions and city requested updates in order to stay current with town standards.

During construction of approx. one third of the units being constructed the town adopted a new ordinance to protect against repetitiveness in construction and asked us to evaluate how we could best meet the intent of the new clause while understanding where we were already in motion.

Together, the Town of Hideout and the members of the Klaim project worked together to come up with a solution to provide more variation to the exterior of the units. We worked with the staff, DRC, Planning Commission, and Town Council to come up with the acceptable solution.

The attached exhibit shows how each building will provide color and material variation to both provide the desired variation and maintain cohesiveness in the community.

It is my understanding that all parties (including Klaim) feel the outcome is a success and will be a positive enhancement to the greater community as a whole.

We appreciate your consideration.

Thank you,
Klaim Project



Chris Ensign

Staff Review

The following page includes the site plan (all phases), the proposed color combinations, and renderings of the proposed condo buildings:

The following five (5) criteria must be satisfied for a variance to be granted:

1. Literal enforcement of the Zoning Code would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the Zoning Code;
2. There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone;
3. Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone;
4. The variance will not substantially affect the General Plan and will not be contrary to the public interest; and
5. The spirit of the Zoning Code is observed and substantial justice done.

Literal enforcement of the Zoning Code would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the Zoning Code

Literal enforcement of the Zoning Code would require the Applicant to redesign all of Phases 3 and 4 and would create a very disconnected project. Approximately half of the units have been constructed as originally envisioned – with a very similar façade for each building to ensure a specific character is carried out throughout the project. The Applicant worked very closely with the Town Planner and the Design Review Committee (DRC) to create three (3) color combinations that will be integrated throughout the KLAIM project, including some buildings in Phase 1 and Phase 2. If the Applicant had to redesign Phases 3 and 4, the A & E costs would be significant and would create delays for those who have pre-purchased many of the units. More importantly, Phases 3 and 4 would appear to be a very different neighborhood separated from Phases 1 and 2 that have buildings integrated throughout the project’s boundary.

There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone

This property is unique given the timing and phasing proposed for the project. Originally presented to and approved by the Town Council in 2017, a subsequent review by Town Staff in 2019/2020 as the project began construction confirmed a formal final subdivision plat had never been submitted for approval. The Applicant agreed to submit the final subdivision plats in phases for Planning Commission and Town Council review. Both bodies were supportive of the project as planned/designed but when the final two phases, Phases 3 and 4, were presented the Zoning Code had been updated to include a new Monotony Clause. The Monotony Clause, if enforced, would create a project in which half (Phases 1 and 2) have a design continuity, and the other half (Phases 3 and 4) that has a very different design and neighborhood character. The resulting design would result in a neighborhood that feels disconnected and oddly designed.

Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone

Granting a variance to allow the project to proceed as originally designed assures the KLAIM project will be designed as a cohesive neighborhood that is not divided into two apparent character districts. Many of the Town's existing subdivisions – Rustler and Deer Waters to name a couple – have structures designed in a similar manner. The structures in these neighborhoods are similar in terms of elevation/façade design.

It is worth noting that staff would not support relief from the Monotony Clause if the project were not already half built out (Phase 1 and 2). If the project were just beginning construction, a variation of elevations/facades with differing designs, materials, colors, heights, and building articulation would be required. But to create a visible, very discernable, division in this neighborhood at this point in its development. Application of the Monotony Clause is an all or none proposition for a neighborhood or subdivision.

The variance will not substantially affect the General Plan and will not be contrary to the public interest

A variance from the Monotony Clause will not substantially affect the Town's General Plan. The 2019 General Plan envisions a community with a variety of housing types to accommodate a variety of residents – single family, town houses, condos, and apartments. The housing unit type proposed at the KLAIM is different than what has been built in nearby Soaring Hawk and Deer Waters. Additionally, the proposed project, as currently designed, is not contrary to the public interest.

The spirit of the Zoning Code is observed and substantial justice done

The spirit of the Zoning Code will generally be observed by the Applicant's proposed color combination variations that will create differentiation among buildings within the KLAIM project. Additional commitments to upgraded landscaping and trail connections also ensure that substantial justice will be done.

Appendix A Hideout Town Code – Variances

3.04.12 VARIANCES

1. Authorized: Any person or entity desiring a waiver or modification of the land use requirements as applied to a parcel of property that they own, lease, or in which they hold some other beneficial interest may apply to the Administrative Law Judge for a Variance from the land use requirements.
2. Applications. Applications for Variance shall be filed with the Town of Hideout Offices. Applications shall contain the following information:
 1. A description of the requested Variance together with a designation of that section of the Town Code from which relief is being requested;
 2. An accurate Plot plan, if appropriate, indicating the manner in which the Variance will be applied and its effect upon adjacent properties; and
 3. A filing fee as established by ordinance.
3. Public Hearing. Upon receipt of a complete application as determined by the Town Planner, a public hearing shall be set with the Administrative Law Judge.
4. Burden of Proof. The applicant for a Variance shall bear the burden of proving that all of the foregoing conditions are satisfied as determined by the Town Planner.
5. Findings Required. The Administrative Law Judge may authorize Variances from the requirements of this Title, only when those Variances serve the public interest, and are consistent with State law. In addition, the Administrative Law Judge may not grant use Variances.
6. Requirements for Granting a Variance. The Administrative Law Judge may grant a Variance only if all of the following conditions are met:
 1. Literal enforcement of the Land Use Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Ordinance;
 2. There are special circumstances attached to the property that do not generally apply to other properties in the same districts;
 3. Granting the Variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
 4. The Variance will not substantially affect the General Plan and will not be contrary to the public interest; and
 5. The spirit of the Land Use Ordinance is observed, and substantial justice done.
7. Unreasonable Hardship. In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship under 6(a), above, the Administrative Law Judge may not find an unreasonable hardship unless the alleged hardship:
 1. Is located on or associated with the property for which the Variance is sought; and
 2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 1. In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship under Section 6(a), above, the Administrative Law Judge may not find an unreasonable hardship if the hardship is self-imposed.
 2. In determining whether or not there are special circumstances attached to the property under Section 3.04.12(6), the Administrative Law Judge may find that special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the property of privileges granted to other properties in the same district.
8. Meeting Conditions. The applicant shall bear the burden of proving that all of the conditions justifying a Variance have been met.
9. Variance Applicability. Variances run with the land.

10. Use Variance. Neither the Administrative Law Judge nor any other body may grant use Variances.
11. Additional Requirements. In granting a Variance, the Administrative Law Judge may impose additional requirements on the applicant that will:
 1. Mitigate any harmful effects of the Variance; or
 2. Serve the purpose of the standard or requirement that is waived or modified.