

**CITY OF CRAIG  
PLANNING COMMISSION**

Staff Report  
November 27, 2023

Applicant: Craig Tribal Association

Requested Action: Variance to allow a structure encroach up to 8 ft into the 10' side yard setback

Location: Lot 2, Block 18, USS 1430 (404 Main Street)

Lot Size: 6,500 SF

Zoning: Commercial

Surrounding Uses: North: Commercial  
West: Commercial  
South: Public/Commercial  
East: Commercial/High-Density Residential

**Analysis**

Craig Tribal Association owns the property located at Lot 2, Block 18, USS 1430. Although the property is zoned commercial, a residential building has been on the site since before the zoning was established. The property currently contains a single-family residential structure with an extended deck. The deck was built in 2022 and encroaches at least 7'11" into 10' the property setback on the northwestern side of the lot. The deck was built by previous owner Aimee Demmert whose primary representative was Tammy Demmert. Although a building permit was submitted by the representative, the measurements were incomplete and the available information was deemed insufficient to approve the building permit, particularly due to the proposed encroachment. Due to the language of the code, an open deck may encroach into the setback if it is under 30" from grade due to it qualifying as a non-structure. From the original building plan, it was unclear what the deck height would be. After a few days with no further updates, the construction project commenced despite no approved building permit being in place.

After it was determined that the deck height in the northwest corner was too high to qualify as a non-structure (46" from grade) based on the framed decking, a red card was issued ceasing all work until a building permit was submitted with complete measurements and a plan to remedy the issue of encroachment. A building permit was approved with the understanding that the owner would increase the grade of the property so that the deck qualified as a non-structure. A 60 day period with the option to extend the period upon request was granted. Multiple extensions were granted. After nearly a year and no successful negotiation of the issue, a notice of violation was issued. The property was put up for sale and promptly purchased by the Craig Tribal Association prior to a notice of enforcement being issued.

The deck violates sections 18.05.005.4.d of the Craig Municipal Code which establishes that structures which are not reviewed by the State Fire Marshal must remain 10 feet from all property lines.

Options to remedy the issue are to remove the encroaching portion of the structure, increase the grade of the property so that the deck qualifies as a non-structure as defined in section 18.00.020 Definitions under “Structure”, or have a variance approved allowing the structure to encroach into the 10’ setback.

### **Criteria Analysis**

Section 18.06.003 of the Craig Land Development Code lists the seven specific criteria that must be met before a variance may be granted.

Criteria 1. There are exceptional physical circumstances or conditions applicable to the property or to its intended use or development which make the variance necessary. *The property is a historic lot located in west Craig and therefore is smaller than typical modern lots. As a commercial lot, there is typically an allowance to encroach into the side-yard setback with approval of the State Fire Marshall. As a residential building, the structure/use would not qualify for a Fire Marshall review. The applicant states that removing the large deck would be very costly and would accomplish nothing. The planning commission should discuss this criteria further to determine if it is met.*

Criteria 2: The strict application of the provisions of this title would result in practical difficulties or unnecessary hardship. *The current owners state that adding grade under an existing structure to allow for the proper height would be a practical difficulty. The previous owner stated that there was a concern with drainage if the grade was increased along the encroaching portion of the deck. The planning commission should discuss this criteria further to determine if it is met.*

Criteria 3: Granting the variance will not result in physical damage or prejudice to other properties in the vicinity nor be detrimental to the public health, safety or welfare. *The 10’ property setbacks are enforced to ensure ease of firefighter access and limit the spread of fire across property boundaries. Since this is an uncovered deck, fire response would be largely unencumbered. The deck height at the back end could make access a little more difficult for fire response if other portions of the deck were inaccessible, but ultimately would be unlikely to hinder fire access. The close proximity of the deck to the property line does have the chance of prejudicing the neighbor due to the requirement for structures to be at least 6’ apart. The planning commission should discuss this criteria further to determine if it is met.*

Criteria 4: Granting the variance is consistent with the objectives of the comprehensive plan. The proposed use, zoning and location are consistent with the Craig Comprehensive Plan. *Decks are allowed within commercially zoned areas/ areas with residential uses and are consistent with objectives of the comprehensive plan. This criteria appears to be met on the face of the application.*

Criteria 5: The special conditions that require the variance are not caused by the person seeking the variance. *The encroaching structure was erected by the previous owner of the property, Aimee Demmert. During the purchasing process, all individuals requesting information on the property were informed of the outstanding issue with the encroaching deck. The Craig Tribal Association appears to have willingly purchased a property with a known enforcement problem, although it cannot be verified if the appropriate information went up the chain of command. Due to the active enforcement surrounding this issue, this criteria poses a problem where non-conforming construction on properties about to go up for sale are rewarded with a variance once the property changes hands. The planning commission should discuss this criteria further to determine if it is met.*

Criteria 6: The variance will not permit a land use in a zone in which that use is prohibited. The proposed use and construction is allowed in the zone that the property is located in. *The residential property use is a grandfathered-in feature of the property despite its commercial zoning. Strictly speaking, the use does not appear to be consistent with the zoning, but would fit with the grandfathered use of the property. The planning commission should discuss this criteria further to determine if it is met.*

Criteria 7: The variance is not sought solely to relieve monetary hardship or inconvenience. *The applicant's primary listed hardship is inconvenience of removing the structure and that doing so does not accomplish much. The previous proposed remedy that does not entail removing the encroaching portion of the deck does not appear to be practicable. The planning commission should discuss this criteria further to determine if it is met.*

### **Recommendation**

On its face, the variance application is complicated by the unusual status of this lot, but Criteria 1, 2, 4, 6 appear to be met. Criteria 3, 5, and 7 require the most discussion. If a variance is not granted, removal of the encroaching portion of the deck appears to be the most practical remedy. If the Planning Commission determines that the criteria are adequately met, with no expressed concern from the neighboring properties, the variance should be approved.

**CITY OF CRAIG  
PLANNING COMMISSION  
RESOLUTION 622-23-PC**

APPROVING A REQUEST BY THE CRAIG TRIBAL ASSOCIATION FOR A VARIANCE TO RETAIN A STRUCTURE 8' INTO THE 10' PROPERTY SETBACK.

WHEREAS, the Planning Commission held a public hearing on November 30, 2023; and,

WHEREAS, public notice was given in accordance with Section 18.06 of the Craig Land Development Code; and,

WHEREAS, the Planning Commission finds that the criteria as shown in Section 18.06.003 of the Craig Land Development Code are met.

NOW, THEREFORE, BE IT RESOLVED the Craig planning commission approves the request for a variance to allow the encroachment of an oversized deck up to 8' into the 10' property setback.

Resolution Approved this 30<sup>th</sup> day of November, 2023.

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Chairman Sharilyn Zellhuber

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Samantha Wilson, City Planner

**CITY OF CRAIG  
PLANNING COMMISSION  
RESOLUTION 622-23-PC**

DISAPPROVING A REQUEST BY THE CRAIG TRIBAL ASSOCIATION  
FOR A VARIANCE TO RETAIN A STRUCTURE 8' INTO THE 10'  
PROPERTY SETBACK.

WHEREAS, the Planning Commission held a public hearing on November 30, 2023;  
and,

WHEREAS, public notice was given in accordance with Section 18.06 of the Craig Land  
Development Code; and,

WHEREAS, the Planning Commission finds that the criteria as shown in Section  
18.06.003 of the Craig Land Development Code are not met.

NOW, THEREFORE, BE IT RESOLVED the Craig planning commission disapproves the  
request for a variance to allow the encroachment of an oversized deck up to 8' into the 10'  
property setback.

Resolution Approved this 30<sup>th</sup> day of November, 2023.

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Chairman Sharilyn Zellhuber

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Samantha Wilson, City Planner