

July 21st, 2008

Riverside Place Board of Directors (RPHA)
(Randy Glover, Diane Hunt, and Paula Boyd)
Riverside Place Homeowners' Association
Frisco, Colorado 80443

Hello there Randy, Diane, and Paula,

Per the letter I received from Randy Glover dated March 29th, 2008, it has been required that I formally request a variance from the Declaration of Covenants for the RPHA in order to have the Board continue consideration of the re-platting of my lot. For this reason, I am submitting the attached formal request for a variance.

As a full-time resident of Riverside Place (who plans to live here for a very, very long while), I have no desire to see variances granted that would be detrimental to our neighborhood. I want to see our area stay beautiful and be kept orderly as I grow older here.

Thus, as a fellow concerned, committed, and involved homeowner here, I am requesting a variance for what is a truly unique situation. My situation cannot possibly be replicated by any other property here, meaning that this variance request could never be reasonably requested by any other property owner within the Association.

I deeply and sincerely thank you for taking the time to review my request, and for giving my unique situation your thought and consideration.

Sincerely,

Erin Pheil
Lot 14, Riverside Place
101 Sunset Drive
Frisco, Colorado 80443
(970) 668-0709

**RIVERSIDE PLACE HOMEOWNERS' ASSOCIATION
REQUEST FOR VARIANCE, LOT 14
JULY 2008**

Introduction

As a rule, the Board should only grant variances under unique, very specific circumstances. My situation with Lot 14 in Riverside Place is both unique and specific, which is why I am requesting that the Board grant a Declaration of Covenant variance that would permit a resubdivision to allow for two separate stand-alone “townhomes”.

Before I begin, I would like to make it clear that the resubdivision I am requesting meets all Town Code requirements. ***Please see page 2 in Attachments Packet.***

In this document I'll do three things:

1. Explain why this situation is unique.
2. Explain the hardships associated with this situation.
3. Review the implications for other Riverside Place homeowners, including how the resubdivision and any possible structures on it would fit in harmoniously with the neighborhood.

**PART 1:
WHY THIS SITUATION IS UNIQUE**

A) Natural Division of Land

The primary and by far most distinctive consideration causing Lot 14 to be different than all other Riverside Place lots is its division into two substantial sections of land by its own terrain.

Lot 14 consists of two separate, substantial sections of land separated by an unalterable division created by the ~15' wide creek that runs through the middle of the property. *Please refer to page 3 in Attachments Packet.*

Additionally, on the north half of the lot there is a prominent slope in the topography that rises up from the creek, emphasizing the lot's separation into two pieces – a high, flat plain of land in the north and a lower, flat plain of land in the south where my house is sited.

The creek's separation of land may bring to mind Lots 15 and 16 to the east (owned by the Mahoneys and Carolyn Kettering, respectively); the creek splits these lots into 2 sections as well. However, the areas of these properties north of the creek are small and of no consequence--as they're not buildable.

Please refer to page 4 in the Attachments Packet to view how Lot 15 has approximately 180 sq. ft (or 5.4% of its total) buildable area north of the creek. This amount of land in combination its triangular shape would not support even the smallest of buildings.

Please refer to page 5 in the Attachments Packet to see the proportions of Lot 16's property north and south of the creek. A phone call with the Town of Frisco's Community Planner, Suzanne Kelley, on April 18th, 2008 confirmed— that because of creek, property, and road setbacks—a structure could never be approved by the Town north of the creek on Lot 16.

Lot 14 is the *only* lot in Riverside Place that is naturally, unalterably divided into two substantial sections of land.

B) Direct Access to Land

Other than the owners of Lots 15 and 16, who have less than 10 – 14% of their land sitting north of the creek, all other homeowners in Riverside Place can easily access 100% of their property. Due to the topography and natural features of my property, I am physically unable to access approximately 40% of my property without wading across the creek or walking around the block and accessing it from Creekside Drive, which at 1/5 of a mile, takes me approximately 4 – 5 minutes.

Additionally, as extensively documented by the Town of Frisco Planning Department case files #179-95-AP, 008-96-VA, and 207-95-AP, a bridge over or rock-path across the creek will never be allowed on this property--and this eliminates any possibility of creating direct access to the northern half of the lot.

Lot 14 is the *only* lot in Riverside Place that has a substantial section of land which cannot be directly accessed by its owner.



C) Empty Area, Fence Variance, and Liability

In 1994, the Riverside Place Architectural Committee granted a variance (to section 10.11 of the Declaration of Covenants) for the previous owners of Lot 14 to erect a fence surrounding the northern portion of the property. The previously non-fenced area created serious liability issues which arose from having an apparent open space sitting on a well-traveled, public street. Without the fence, the land was treated as a local park/playground – and due to the uniqueness of the situation, the Board acknowledged the hardship of dealing with these issues that could not be monitored due to the creek's physical separation of the property.

Lot 14 is the *only* lot in Riverside Place regularly dealing with substantial trespassing liability issues, and is the *only* lot for which a fence has been permitted due to the uniqueness of its location and layout.

D) Existing Layouts and Footprints

Based on Town Code and existing unit footprints, and excluding empty lot #8, Lot 14 is the sole Riverside lot upon which a second stand-alone townhome could be built without having to first level, then relocate, an existing structure.

In regards to empty lot #8, however – the owner could never reasonably request a similar variance as that lot ...

- is not naturally, permanently, and severely divided by its terrain.
- ... due to its location facing a private street, does not require fencing because of liability concerns now, and will not require fencing if a structure is built upon it.
- is laid out in a simple quadrangle that allows for easy access, use, and maintenance of 100% of its area.
- doesn't have 2 separate access points for driveways/private areas on 2 different streets (see part E)
- ...with 2 standalone townhomes on it, would not be compatible (from a design and architectural standpoint) with the surrounding neighbors.

Lot 14 is the *only* lot in Riverside Place upon which a separate stand-alone townhome would seamlessly, unobtrusively, and naturally fit – without the demolition or relocation of the property's existing structure.

E) Unique Streets & Access Areas

Lot 14 is located and laid out in an interesting manner where, with the remaining structure as-is and a second townhome built, that second townhome driveway would access an entirely different street from an entirely different direction than the driveway to the existing structure. In addition to the driveways, the yards and "personal areas" of the two structures would neither be adjacent nor even close, providing each homeowner with privacy, personal space, and unique access areas.

Technically, there are three other lots in Riverside Place where, *IF* the existing structures were demolished and then relocated, and then *if* a second stand-alone townhome were built, the two driveways and access areas would face different streets. These townhomes, however, would almost certainly not fit into the neighborhood in a harmonious manner in terms of size, appearance, and proximity to one another. Nor do any of these three lots have any of the 4 unique characteristics of Lot 14 mentioned in parts A, B, C, and D in this section.

Lot 14 is the *only* lot in Riverside Place where two separate structures would make good sense and fit harmoniously and unobtrusively into the neighborhood.

**PART 2:
UNDUE HARDSHIPS CAUSED BY
EXISTING SITUATION**

A) Property Maintenance Hardship

According to Section 10.9 in the Declaration of Covenants, *“Every lot, including its improvements, shall be kept and maintained by the Owner in a clean, safe, and attractive condition and in good repair...”*

According to Section 16, part B of Riverside Place’s Architectural Standards, property owners are required to *“revegetate, replace topsoil, and restore ground cover to prevent erosion and maintain aesthetics,”*, and according to part H of the same section, property owners are required to *“prune dead branches on existing trees and remove stumps and slash from the entire Site,”*.

Additionally, in reviewing all the Architectural Committee’s Annual Reports made available (1996 – 1999), it became obvious that *“preserving the natural appearance of all properties, as indicated in the Architectural Standards”* is of tremendous importance to our Homeowners’ Association. Statements such as *“We want to emphasize the importance of continuing to maintain the attractive, high-quality appearance of our homes, yards, and vacant lots in the neighborhood”*, *“...the association should take a stronger stand to insure the property owners maintain their property in the manner outlined in the standards,”* and *“...certain vacant lots could also use some work”* were also found in each Annual Report.

As I cannot conveniently nor directly access the northern half of my property, being required to abide by these various rules within the Declaration of Covenants and Architectural Standards causes an undue hardship. Any lawnmower, tree-trimming devices, weed-wacker, soil, maintenance tools, gardening materials, etc. would need to be driven or wheel-barrowed around and over to Creekside Drive – a distance of 1/5 of a mile. Moreover, carting any dead branches, tree trimmings, etc. *back* to the south portion of my property would be even more of a burdensome task.

Without a bridge or path across the creek (which is not allowed), there is no direct access to the northern half of my lot allowing me to properly maintain the area, which I’m required to do per the governing rules of the Association.

B) Liability Hardships

To the best of my knowledge, Lot 14 is the *only* lot in Riverside Place that has experienced and continues to experience a serious liability problem with trespassers.

As the variance-allowed fence on the north side of the property cannot extend to the creek, a large open area exists on the southwest portion of the northern half of the lot, allowing children and pet-owners to easily access



Shots above provide a glimpse of the shrubbery, trees, etc. that I am required to maintain in an appealing manner -- yet cannot access without first traveling 1/5 of a mile.

the open area behind the fence. The building to the west is Brook Forest Condos, and are typically rented out by tourist families with children who explore their backyard...and subsequently mine as well.

Though I have only lived here since the end of August 2007, I have already experienced numerous counts of having to shout across the creek to request people not venture onto the northern portion of my property. As a seemingly-deserted piece of land bordering a creek, the area is a desirable attraction for exploring/playing kids and occasional dog-walkers, especially those residing or staying at the Brook Forest condos. Additionally, children are especially drawn to the open area that meets the creek on the northern portion of our lot. While much of the access to the creek on the north is blocked by thick shrubs, bushes, trees, or boulders, our lot has an appealing opening of approximately 10–12' on a gentle slope that makes for easy creek access.

Because the Association's rules do not take into account the lot's unique layout, they 1) increase my liability risk and 2) require me to deal with the hassle of trespassers.



C) Fence

Because of Lot 14's liability issue, the previous lot owners found it necessary to erect a fence to keep trespassers out. Now that I am required to manage the same liability concerns, I've found that the existing fence is not only an inadequate solution, it's a costly and maintenance-intensive one as well.



Additionally, during winter and spring, my primary access is closed off due to snowplowing; the gate accessing the lot cannot open or close, and after years of having snow shoved against it, it's now broken in areas and in need of repair. These repairs create a hardship of costly financial responsibilities.

The responsibility of having to keep and maintain a fence on a portion of my property that I cannot directly access in attempts to reduce my liability concerns is costly, maintenance-intensive, and not effective.

D) Hardship Due to Covenant Responsibilities

The Declaration of Covenants limit over-development of our area while still providing property owners with the right to build duplexes if they so choose. Due to the unique circumstances outlined in Part 1, however, these rules seem to apply to just about all lots in Riverside Place *except* for Lot 14.

Though the Covenants allow two families to live on one property via a duplex, it is almost impossible for me to ever consider the construction of a duplex on the southern half of my property. I'm therefore the only HOA member who is restricted from utilizing a large section of my own property without a variance.

Because of the unique features and location of this lot, allowing me to resubdivided this lot and solve my hardships would compromise neither the atmosphere of the neighborhood nor the spirit of the Covenants.

**PART 3:
IMPLICATIONS FOR
OTHER HOMEOWNERS**

A) The Board and Association Retain Full Power & Final Say

If Lot 14 were resubdivided to allow two stand-alone townhomes, a Townhome Association for Lot 14 would need to be founded. The two sole Board Members would be myself and Joshua Petrucci, and we would have final say over what is allowed and what is not allowed on the property – from landscaping to new structures. We have drafted preliminary Townhome Association documents, and are agreeable to a contingency requiring the Riverside Board's review and approval for our requested variance.

This being said, I'd like to propose that the granting of a variance that would allow the resubdivision would be contingent upon the RPHA Board's full approval of Lot 14's Townhome Association Declaration of Covenants. This would mean the Riverside Place Board could review and edit the Declaration of Covenants I'm proposing be adopted, and that the Board would thus have final say over what can and cannot happen on the resubdivided lot.

B) Harmonious Inclusion

If the purchaser of the north end of the lot opted to build a stand-alone townhome, he/she would *only* be allowed to build one that fit in seamlessly and harmoniously with our neighborhood.

- First, the townhome would need to meet all Town Code and Planning Department guidelines.
- Second, the townhome would need to meet with the approval of myself and Josh Petrucci – as we would be sole Board members of the lot's Townhome Association – and the Declaration of Covenants would already have been approved in full by the RPHA Board.
- Third, any stand-alone townhome to be built on the northern portion of the Lot would also be required to meet with the direct approval of Riverside Place's Architectural Committee.

Thus, with these guideline enforcements in place, it is essentially impossible for a structure to be built on the north end of Lot 14 that wasn't harmonious and agreeable to the other residents of Riverside Place.

C) Additional Association Dues

The addition of a stand-alone townhome on Lot 14 would result in another set of dues for the Riverside Place Homeowners' Association.

D) Traffic

Due to the location of the northern half of Lot 14 and the fact that its entrance faces Creekside Drive, the Riverside Place neighborhood would not experience an increase in traffic or cars if a stand-alone townhome was built there.

E) Protection of Natural Beauty

The fact that I am a permanent full-time resident of Riverside Place who plans to stay and grow old here means that I'm devoted, committed, and invested in our neighborhood. No more than any other involved homeowners here do I wish to see any oversized, ugly, or non-conforming buildings erected. I have no desire to see any changes occur to the Association that would be detrimental to our neighborhood. More than anything, I want to preserve the integrity of the Association and our nice little area of town.

Please refer to page 6 in the Attachments Packet to see how I've added in an easement that will keep the lot's large trees from being cut down. I've also set up property lines to ensure maximum privacy for myself, the future property owner across the creek, and my neighbors.

Additionally, I've included clauses in my proposed Townhome Association's Declaration of Covenants that, in combination with Town Code, would ensure the primary natural features of the lot (large trees, sloped bank down to the creek, wetlands bordering the creek, creek path) would remain intact and that the lot's topography could not be reworked.



These trees would be protected by the common area allowance in the plat I've had created.

F) Structure Size

I've ensured that the property lines in my proposed plat would not allow a monstrosity of a structure to be built. In fact, the practical maximum footprint for a townhome on the north end of Lot 14 would be 1,600 square feet, garage included.

Please refer to page 7 in the Attachments Packet to view two potential building footprints on the northern half of Lot 14.

And of course, if approved by the Town, the Townhome Association's Board and Riverside Place's Architectural Committee, the property owner could build a second story onto the first of the same size, meaning the square footage of the home could potentially reach 3,200 square feet (garage included).

G) Royal Would Still Be There

Not one single Riverside Place property owner would have any views obstructed. Mt. Royal would still be there for everyone!

The north end of Lot 14 borders an empty easement that belongs to Lot 15 on the east. On the West lies the end of the Brook Forest Condominium Complex.

While a new unit would likely be partially visible to the owners of lots 13 and 15 from certain spots within their backyards during the winter, no other Riverside Place homeowners would be able to see it from anywhere on their properties.



This is the view from the north side of Lot 14 looking toward Lot 13, owned by the Hunts. The area with the trees seen in this photo cannot be built upon, and in the spring/summer, these trees will block this view completely. The small bit of green roof that can be seen on the left edge of this photo belongs to my house on the south side of Lot 14.



This is the view from the north side of Lot 14 looking toward Lot 15, owned by the Mahoneys. The area with the trees seen in this photo cannot be built upon, and in the spring/summer, these trees will block this view completely.

The photos shown here show what can be seen of lots 13 and 15 from the North end of Lot 14. These views were taken in early April with no foliage on the trees at all.

In the spring/summer, leaves will provide a beautiful, natural privacy screen for lots 13, 14, and 15. *Please refer to pages 8 – 12 in the Attachments Packet to view additional photos taken from the northern half of Lot 14.*

H) No Stress for the Board

Riverside Place's Board of Directors would need not worry about considering similar variance requests in the future, as all the specific circumstances pertaining to Lot 14 making this situation so unique simply **cannot** be replicated by any other property owner in Riverside Place.

Lastly ... Association members should be able to be comfortable knowing that, in addition to all the above and the fact that I love where I live, I will be the only property owner in Riverside Place who would be substantially

affected by a stand-alone townhome built across the creek from my home – thus it will actually be in *my* best interest to see to it that anything built is reasonable, conforming, and harmonious with our neighborhood.