

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PITKIN COUNTY,  
COLORADO APPROVING THE HORSESHOE ASPEN MOUNTAIN LLC  
SITE PLAN REVIEW**

**Resolution No. 013-2019**

**RECITALS**

1. Pursuant to Section 2.8.4 (Actions) of the Pitkin County Home Rule Charter ("HRC"), all matters not required to be acted upon by ordinance or formal resolution may be acted upon by informal resolution.
2. Horseshoe Aspen Mountain LLC ("Applicant") has submitted an application to the Board of County Commissioners of Pitkin County, Colorado ("BOCC") for approval of a Site Plan for development within the approved Activity Envelope.
3. The property is located on Midnight Mine Road and is more specifically described as the Horseshoe Lode, U.S. Mineral Survey No. 6010, located in Section 25, Township 10 South, Range 85 West of the 6<sup>th</sup> P.M.
4. The property is zoned Rural and Remote and contains 10.11 acres.
5. The parcel was created by patent in 1892. A cabin was built on the property without County approval or permit in the 1980s.
6. The Community Development Director ("Director") denied an application to establish an Activity Envelope on the parcel, pursuant to Administrative Decision No. 58-2015. The Director found that two areas included in the Activity Envelope were within the High Hazard/Red Avalanche Zone, where Land Use Code Sec. 7-20-50(a)(1) prohibits development. The owner submitted a request for a takings determination pursuant to Sec. 2-40-150 of the Code to determine whether the Director's denial of the application constituted a taking of private property without just compensation. In Resolution No. 098-2015, the BOCC found that a taking had occurred, and remediated the taking by approving an Activity Envelope that avoided the High Hazard/Red Avalanche Zone at the southern end of the envelope and acknowledged that the envelope could not be accessed on the existing driveway without crossing the High Hazard/Red Avalanche zone. The Activity Envelope Plan was recorded in Plat Book 114 at Page 77. The cabin was removed as required by Condition #2 of the Resolution (Permit #0131.2016.pgr).
7. The BOCC approved an amendment to the Activity Envelope to extend the envelope to the south into an area determined to be within the Avalanche Moderate Hazard Zone ("Blue Zone"), pursuant to Resolution No. 070-2017. The First Amended Activity Envelope Plan was recorded in Plat Book 121 at Page 5.
3. The BOCC considered this application at a duly noticed public hearing on February 13, 2019, at which time evidence and testimony was presented with respect to the application.
4. The BOCC finds that the proposed Site Plan complies with the applicable provisions of the Land Use Code and the conditions of Resolution Nos. 098-2015 and 070-2017 as follows:

- A. The development is within the previously approved Activity Envelope.
  - B. A certified professional engineer has designed the structure to mitigate the avalanche hazard, based on the site-specific avalanche hazard analysis. The Colorado Geological Survey (CGS) and Colorado Avalanche Information Center (CAIC) confirmed that the methods used to calculate the snowpack height, avalanche flow height and avalanche flow pressure are reasonable.
  - C. To ensure the safety of users of the driveway, the Applicant has committed not to use the driveway from December 1 to April 30 each year. The cabin would be accessed from the switchback on Midnight Mine Road directly to the cabin and avoiding the portion of Midnight Mine Road and the driveway that are within the High Hazard/Red Avalanche Zone. This route would be within the avalanche Blue Zone. According to the CAIC, this use pattern would dramatically reduce the probability of being in the driveway during a large avalanche event. No access to the cabin shall occur on the driveway during those dates.
  - D. No development will occur on slopes in excess of 45%.
  - E. The building setbacks proposed by the Applicant - 10 feet to the south; 50+ feet to the north; 50+ feet to the east; and 50+ feet to the west – comply with the special review standards in Sec. 2-30-30(h)(2) of the Code. The setbacks accommodate development within the approved Activity Envelope, where impacts to the natural environment, constrained areas, and the surrounding area are minimized.
  - F. No improvements to the existing driveway are required.
  - G. An On-Site Wastewater Treatment System has been designed to be accommodated within the Activity Envelope. Environmental Health has reviewed the design, which complies with the applicable standards.
  - H. The property is within the mapped Scenic View Protection Area as seen from Castle Creek Road, but is not visible from Castle Creek Road.
5. The BOCC finds that it is in the best interests of the citizens of Pitkin County to approve this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the BOCC that it hereby approves the Horseshoe Aspen Mountain LLC Site Plan Review, subject to the following conditions, which shall run with the land and be binding on all successors in interest: and authorizes the Chair to sign on behalf of the county:

1. The Applicant shall adhere to all material representations made in the application or in public meetings or hearings and shall consider those representations to be conditions of approval, unless amended by other conditions.
2. The conditions of this Resolution shall replace all conditions of BOCC Resolution Nos. 098-2015 and 070-2017.
3. Prior to submission of any building permit applications, the Applicant shall be required to submit for approval by the County Attorney and Community Development Director Site Plan in accordance with Land Use Code Section 2-30-20(g) and Application Manual Section 2.1.1. The above referenced approvals shall be a condition precedent to finalization and recordation. The Site Plan shall be amended as follows prior to recordation:
  - A. Include the components of the On-Site Wastewater Treatment System.
  - B. Include the 100' setback from the stream.
  - C. Label the mechanical and storage buildings.

- D. Depict the corridor to be utilized to access the cabin from December 1 to April 30 in order to avoid use of the driveway. The corridor shall not be improved.
- E. Include the following "Owner(s) Warning and Waiver Disclaimer" on the Site Plan:

*The Applicant acknowledges that he/she has been informed by Pitkin County of the existence of "environmental hazard areas" that might affect the property, any improvements, and the occupancy thereof. The provisions of the Pitkin County regulations do not in any way assure or imply that areas outside of designated hazard areas will be free from hazards, or that approved mitigation measures will guarantee the safety of the property.*

*The Applicant acknowledges that he/she has been informed that any change in vegetation above the development, such as through wildfire, disease, debris flow, landslide, erosion or other disturbance is likely to increase the avalanche risk, and additional mitigation may be needed to protect occupants and improvements.*

*The Applicant acknowledges that he/she has been informed that the driveway is in a High Hazard/Red Avalanche zone and that the driveway shall not be utilized for access from December 1 to April 30 each year.*

- 4. With the building permit application for the residence, the Applicant shall:
  - A. Provide proof of an adequate water supply (in terms of quantity and availability) for domestic and fire protection purposes, and for irrigation purposes, if applicable.
  - B. Submit a drainage and erosion control plan for review and approval by the Planning Engineer. All historic and natural drainage patterns shall be maintained. Stormwater shall be detained onsite and allow infiltration of runoff prior to discharge.
  - C. Submit a construction management plan for review and approval by the Planning Engineer.
  - D. Complete a fireplace/woodstove permit from the Community Development Department.
  - E. Submit a detailed revegetation plan for disturbed areas with appropriate seed mixes.
  - F. Submit a tree mitigation plan if any trees with larger than 6" DBH are to be removed.
  - G. Submit a lighting plan.
  - H. Submit an on-site wastewater treatment system permit to Environmental Health. The permit shall demonstrate how the Soil Treatment Area will be protected from vehicles on the driveway.
- 5. Prior to issuance of a building permit application, the Applicant shall pay the applicable road and employee housing impact fees.
- 6. Prior to final inspections for the new residence, the Applicant shall complete the avalanche and debris flow mitigation and submit a report to the Community Development Department that outlines the adequacy of all hazard mitigation measures. The report shall be stamped and signed by a licensed engineer in the State of Colorado.
- 7. Prior to commencement of any earthmoving or construction activity, the Applicant shall stake the corners of the activity envelope and install construction fencing around the perimeter of the envelope. The fencing shall remain in place until a Certificate of Occupancy is issued for the residence.
- 8. The parcel is exempt from growth management up to 1,000 square feet plus additional floor area as allowed in the Rural/Remote zone district pursuant to the Code.

9. The driveway shall not be maintained during the winter. The driveway shall not be utilized from December 1 to April 30 of each year to avoid the avalanche Red Zone along the driveway. The Applicant shall place a sign at the end of the driveway stating that the driveway shall not be used to access the property during those dates. The Cabin shall be accessed during that time from the switchback on Midnight Mine Road directly to the cabin.
10. No development, including well, on-site wastewater treatment system, grading, excavation, fill placement, berming, landscaping, entry or ranch gates, and vegetation removal or disturbance shall occur outside of the approved Activity Envelope, except as required for wildfire mitigation.
11. The Applicant shall comply with the following measures to mitigate impacts to wildlife:
  - A. Native vegetation shall be maintained outside of the activity envelope.
  - B. Provide waste storage that complies with the County Code regarding bear-proof containers.
  - C. Avoid fruit-bearing trees and shrubs in any landscaping.
  - D. Construction workers shall be prohibited from bringing dogs on-site during construction.
  - E. All outside doors shall utilize only solid round handled door knobs unless another type is required by the applicable building code for disabled accessibility purposes.
  - F. Bird feeders, including hummingbird feeders, shall be hung away from any deck or window, and shall be at least 10' from the ground suspended between 2 trees or posts. All seed feeders shall include a seed catchment pan to catch discarded seeds.
  - G. Fencing shall comply with the fencing regulations in the Land Use Code regarding wildlife friendly fencing requirements.
12. The Applicant shall comply with the applicable codes and requirements of the Aspen Fire Protection District.
13. The Applicant shall comply with the following landscaping and wildfire defensible space mitigation standards:
  - A. Defensible Space: The area around all buildings/structures, limited by property boundaries that may limit a property owner's ability to comply with this section, shall incorporate landscaping with wildfire defensible space considerations as follows (note: actual vegetation manipulation to meet these conditions may not be necessary where the natural vegetation patterns have already fulfilled these conditions):
    - 1) Brush, debris, and non-ornamental vegetation shall be removed within a minimum 10 foot perimeter around the structure.
    - 2) Vegetation shall be reduced to break up the vertical and horizontal continuity of the fuels a minimum of a 30 foot perimeter around the structure.
    - 3) Spacing between clumps of brush and vegetation within the 30 foot perimeters shall be a minimum of two times the height of the fuel. Maximum diameter of the clumps shall not exceed 10 feet. All measurements shall be from the edges of the crowns of the fuel.
    - 4) All branches from trees and brush within the 30 foot perimeter shall be pruned to a height of 10 feet above the ground and ladder fuels from around trees and brush shall be removed.
    - 5) Tree crown separation within the 30 foot perimeters shall have a minimum of 10 feet between the edges of the crowns.
    - 6) All branches which extend over the roof eaves shall be trimmed and all branches within 15 feet of the chimneys shall be removed.

- 7) The density of fuels within a 100 foot perimeter of the structures shall be reduced.
  - 8) All deadfall up to a 100 foot perimeter shall be removed.
  - 9) No new conifer trees shall be planted within 10 feet of a residence.
  - 10) No flammable mulches shall be placed within two feet of a residence.
  - 11) The applicant shall be responsible for the continued maintenance of the defensible space vegetation requirements.
- B. Roofing Materials: Roofs shall be constructed with a Class A roof covering or a Class A assembly as defined in the building code. Wood shake/shingle roof coverings are prohibited. Roofs with less than a 3:12 pitch are not permitted unless they comply with the following:
- 1) All roof coverings shall be constructed of non-combustible materials and installed on a Class A roof assembly.
  - 2) All roof coverings shall have a surface that shall facilitate the natural process of clearing the roof.
  - 3) All roof designs shall facilitate the natural process of clearing debris. Protrusions above the roofline, such as parapets, shall be prohibited.
  - 4) Roofs shall be installed as required by the approved building code and shall have a minimum slope of 1:48.
  - 5) All roof designs, coverings or equivalent assemblies shall be specifically approved by the Fire Marshal prior to submittal of a building permit application.
- C. Roof Venting
- 1) Soffit venting shall be located in the outer 1/3rd portion of the overhang.
  - 2) Attic, soffit and other roof venting shall be of non-corrosive metal mesh with maximum ¼" openings.
- D. Projections at the Roofline, including Soffits, Rafters, Porch or Deck Roofs, Fascias, or Other:
- 1) Sheath with non-combustible materials, or
  - 2) Combustible materials underlain with 5/8" Type X gypboard or equal, or
  - 3) Minimum 4x6 rafters with 2x T&G decking.
- E. Decks, Decking, Cantilevered Floors, or Other Projections Below the Roofline: Minimum 6x6 posts, 6x10 beams, 3x8 joists, 3x decking, and 2x railings, or equivalent log construction.
- F. Additional wildfire mitigation standards:
- 1) Roof vents shall be screened with corrosive resistant wire mesh with mesh ¼ inch maximum.
  - 2) Roofs and gutters shall be kept clear of debris.
  - 3) Yards shall be kept clear of all litter, slash, and flammable debris.
  - 4) All flammable materials and firewood/wood piles shall be stored on a parallel contour a minimum of 15 feet away from any structure.
  - 5) Swimming pools or ponds shall be accessible to Fire Department vehicles, if required.
  - 6) Fences shall be kept clear of brush and debris.
  - 7) Wood fences shall not connect to the structure.
  - 8) Fuel tanks shall be installed underground with an approved container.
  - 9) Propane tanks shall be installed according to NFPA 48 standards and on a contour away from the structure with standard defensible space vegetation mitigation around any above-ground

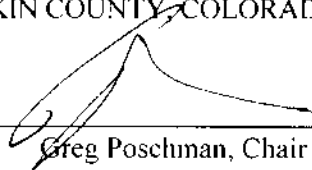
- tank. Any wood enclosure around the tank shall be constructed with materials approved for 2 hour fire-resistive construction on the exterior side of the walls.
- 10) Each structure shall have a minimum of one 10 pound approved ABC fire extinguisher placed in a visible and accessible location.
  - 11) Addresses shall be clearly marked with 2 inch non-combustible letters and shall be visible and installed on a non-combustible post.
  - 12) New utility lines shall be buried within the driveway.
14. All areas disturbed by construction shall be revegetated with native shrubs and grasses within one growing season of the project's completion.
  15. The Applicant shall comply with the County's Noxious Weed Management Plan.
  16. No calculations for height, bulk, setbacks, size, floor area, or any other building and zoning requirements have been conducted. These requirements will be considered at the time of building permit. Any structures represented in the application may not be permitted under building and zoning regulations.
  17. Failure to comply with the conditions of this approval may result in revocation of this approval, or any subsequent permit(s) or approval(s) related to this property, or vested rights associated with this property.
  18. Statutory vested rights for the approval contained herein are granted pursuant to the Pitkin County Land Use Code and Colorado Statutes, subject to the exceptions set forth in Pitkin County Land Use Code, § 4-140 and C.R.S., § 24-68-105. The statutory vested rights granted herein shall expire on February 13, 2022.

**NOTICE OF PUBLIC HEARING PUBLISHED IN THE ASPEN TIMES WEEKLY on the 11<sup>th</sup> day of October, 2018.**

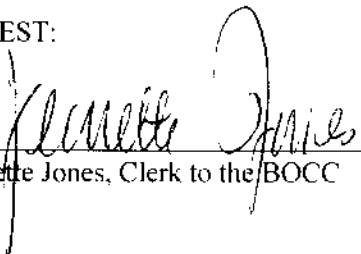
**APPROVED AND ADOPTED** on the 13<sup>th</sup> day of February, 2019.

**PUBLISHED AFTER ADOPTION FOR VESTED REAL PROPERTY RIGHTS** in the Aspen Times Weekly on the 7<sup>th</sup> day of March, 2019.

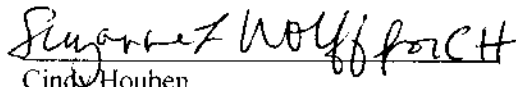
BOARD OF COUNTY COMMISSIONERS,  
PITKIN COUNTY, COLORADO

By  \_\_\_\_\_  
Greg Poschman, Chair

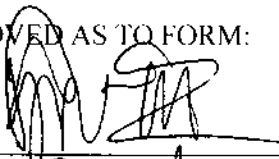
ATTEST:

  
\_\_\_\_\_  
Jeanette Jones, Clerk to the BOCC

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Cindy Houben  
Community Development Director

APPROVED AS TO FORM:

  
\_\_\_\_\_  
~~John Fly~~ Richard Y. Neikay  
Asst County Attorney