

**TOWN OF MOUNTAIN VILLAGE
DESIGN REVIEW BOARD WORKSESSION
THURSDAY AUGUST 31, 2017 10:00 AM
2nd FLOOR CONFERENCE ROOM, MOUNTAIN VILLAGE TOWN HALL
455 MOUNTAIN VILLAGE BLVD, MOUNTAIN VILLAGE, COLORADO
AGENDA**

	Time	Min.	Presenter	Type	
1.	10:00		Chair		Call to Order
2.	10:00	1:30	Bangert/Haynes/ Mahoney	Worksession	Worksession to discuss General Easements in the Town of Mountain Village
3.	11:30				Adjourn

Please note that this Agenda is subject to change. (Times are approximate and subject to change)
455 Mountain Village Blvd., Suite A, Mountain Village, Colorado 81435
Phone: (970) 369-8242 Fax: (970) 728-4342

Individuals with disabilities needing auxiliary aid(s) may request assistance by contacting Town Hall at the above numbers or email: cd@mtnvillage.org. We would appreciate it if you would contact us at least 48 hours in advance of the scheduled event so arrangements can be made to locate requested auxiliary aid(s).



**PLANNING & DEVELOPMENT SERVICES DEPARTMENT
PLANNING DIVISION**

455 Mountain Village Blvd.
Mountain Village, CO 81435
(970) 728-1392

TO: Design Review Board
FROM: Michelle Haynes, Planning and Development Services Director
FOR: Meeting of August 31, 2017
DATE: August 28, 2017
RE: Worksession Regarding General Easements

OVERVIEW

At the August 3, 2017 Design Review Board (DRB) regular meeting the DRB requested a worksession to discuss general easements (GE).

WHAT ARE GENERAL EASEMENTS

GE's are found on a majority of the lots outside of the Village Center Zone District. They are 16 feet in width and among their other functions, create a building setback around the perimeter of the lot.

The original plats further described the beneficiary of the GE's and uses. The GE language is also found in the Definitions section of the Community Development Code (CDC) and reads as follows:

General Easement: There exists for the benefit of the TSG Ski & Golf, LLC ("TSG"), and/or its assigns, a perpetual easement sixteen feet (16") in width over, across and under all areas designated as sixteen foot (16') general easement on this replat for any and all uses, improvements and activities deemed necessary by TSG; Mountain Village Metropolitan District; Telluride Mountain Village Resort Company, a Colorado non-profit corporation, doing business as the Telluride Mountain Village Owners Association (TMVOA) and the Town for the safe and efficient operation of the Telluride Ski Area, Telluride Golf Course and the Town, which include but are not limited to the following: utilities, drainage, electrical service, communication service, ski slope maintenance, bicycle access, skier access, roadway access, equestrian access, pedestrian access, golf cart access, snow making, waterways, slope maintenance, snow storage, retaining walls, snowmobile access, snow removal, snowcat access, water, sanitary sewer and storm sewer.

TSG and the TMVOA assigned their rights to certain general easements within the town to the Town at reception numbers 305359 and 339588. This represented a majority of the general easement; therefore, TSG and TMVOA are not a party to the general easement as set forth in such legal instruments.

General Easement Requirements: The requirements and provisions for general easements as outlined in Chapter 3.

GENERAL EASEMENT SETBACK CDC SECTION 17.3.14

Attachment #1 is CDC Section 17.3.14 General Easement Setbacks, that establish how the DRB and staff administer the GE's along with the criteria the DRB uses to evaluate when a GE can be modified or waived. Below I will generally summarize the CDC section.

The following regulations apply to GE's.

17.3.14.C. All general easements setbacks or other setbacks shall be maintained in a natural, undisturbed state to provide buffering to surrounding land uses and to maintain the ability to conduct any of the general easement allowed uses.

17.3.14.D. All above and below grade structures or structural components (soil nailing, etc.), earth disturbance, or ground level site development such as walks, hardscape, terraces and patios shall be located outside of the general easement setback or other setbacks on each lot within the allowable building area of a lot.

Permitted development activities: (the comprehensive list is found at CDC Section 17.3.14.E)

- Accessways for direct access, including driveways, walkways, and ski trails and ski lifts for ski area access. – **Staff note: we typically see driveway access.**
- Utilities
- Address Monuments
- Natural landscaping
- Fire mitigation and forestry management
- Construction staging – with conditions

GENERAL EASEMENT ENCROACHMENTS and THE DRB'S REVIEW CRITERIA (CDC 17.3.14.F)

The DRB may waive the general easement setback or other setbacks and allow for prohibited activities provided:

1. The applicant has demonstrated that avoiding grading and disturbance in the general easement setback would create a hardship, and there is not a practicable alternative that allows for reasonable use of the lot;
2. The disturbance in the general easement setback is due to natural features of the site, such as steep slopes, wetlands and streams;
3. No unreasonable negative impacts result to the surrounding properties;
4. The general easement setback or other setback will be revegetated and landscaped in a natural state;

5. The Public Works Department has approved the permanent above-grade and below-grade improvements;
6. The applicant will enter into an encroachment agreement with the Town with the form and substance prescribed by the Town; and
7. Encroachments into the general easement setback or other setbacks are mitigated by appropriate landscaping, buffering and other measures directly related to mitigating the encroachment impacts.

STAFF REVIEW AUTHORITY (17.3.14.G)

Staff can review and approve activities in the general easements if:

- It is associated with a prior approval or was found to lawfully exist.
- The owner is maintaining or improving a prior approved or lawful encroachment in the general easement.
- The lot owner enters into a revocable encroachment agreement with the Town if one does not exist.

OTHER PROVISIONS (17.3.14.H-M)

- The DRB can impose greater setbacks under certain conditions.
- All buildings must otherwise conform to Building Code setbacks.
- Ski access can be provided with specific approvals and conditions.

STAFF OBSERVATIONS & EXPERIENCE

- Typically the DRB has allowed encroachments into the general easements provided the encroachment meets the review criteria outlined above. Recently there were denials of several encroachment applications on lots with site constraints.
- We are administering more general easement encroachment requests with originating applications and as an amendment to an existing approval that did not originally indicate a general easement encroachment. These applications all must go to the DRB for approval. (There are a variety of reasons for the increase in requests for GE encroachments. The remaining vacant properties sometimes come with more site constraints such as steep slopes, shared driveways or wetlands. Sometimes, owners desire to maximize their development potential pushing building elements or landscape features into the GE.)
- Properties with existing GE encroachment agreements that expand the GE encroachments, per the CDC, must submit an application to be reviewed by the DRB at a public hearing for the expanded GE encroachment.

OTHER CONSIDERATIONS

Supporting Exceptional Architecture

The nature of DRB review is subjective with an aspirational goal of supporting exceptional architecture. If the GE encroachments support exceptional architecture, provide a meaningful functional design and meet the review criteria then the DRB should not hesitate to approve a GE encroachment.

Many undeveloped remaining lots have site constraints such as narrow lot width, steep slopes, wetlands, or shared access which in many circumstances may require a building or access to a building to have elements within the GE. These types of properties are the premise for the approval of GE encroachments, the premise being reasonable use of property for the purposes of constructing a single family home. As referenced above, there are a handful of development proposals that simply want to maximize the development potential of a property and ask for encroachments that may not be necessary or meet the DRB criteria. The criteria is adequate for the DRB to evaluate whether the GE encroachments help facilitate reasonable use of the property.

Social and Community Implications

The Mountain Village community for some time has worked proactively with development proposals to assure successful outcomes. Applicants like consistency of decision making and predicable outcomes from decision making boards like the DRB. Staff is most supportive of the DRB when we can bring forward approvable projects. The DRB GE discussions and decision making lately has created less certainty for both the development community and staff in understanding what can be approved or not approved in GE's. Inherent in the worksession today is the anticipated outcome that the DRB will better understand their site specific decision making authority.

STAFF ANALYSIS

Staff believes the review authority granted to the DRB is appropriate for general easement encroachments per the CDC. Site specific development review is the very essence of the purview of a design review board.

Staff does not recommend amendments to the CDC, because we believe the established review authority and criteria is clear. Staff notes that simplifying the review process for expanded encroachments into the GE when an existing encroachment agreement is in place could be considered with direction given to staff on this discrete discussion point.

If the DRB prefers, staff can outline each criteria of review associated with GE encroachments in future memos and ask the applicant to address each criteria in a narrative form or verbally during the meeting. For example, staff would outline in the memo the criteria for review #1-7 to remind the DRB of the established criteria. The criteria lay the groundwork for approval, denial or modifications of an encroachment that is premised on the following:

- 1) An encroachment into the general easement cannot otherwise be ***reasonably (emphasis added)*** avoided.
- 2) Disturbance in the general easement is due to natural features or natural site constraints.
- 3) There would be no unreasonable negative impacts to the surrounding properties.
- 4) It will otherwise remain in a natural and vegetated state.
- 5) Public Works has approved the proposed improvement.
- 6) An encroachment agreement will be entered into with the Town.
- 7) Encroachments are mitigated by landscaping and buffering to mitigate the impact.

Finally, the DRB can evaluate whether a GE encroachment may facilitate a better design product, a reasonable consideration by the DRB while applying the criteria of evaluation which is listed above.

/mbh

17.3.14 GENERAL EASEMENTS SETBACKS

- A.** The majority of all lots outside the Village Center Zone District are burdened by a sixteen (16) foot general easement creating a building setback sixteen (16) feet around the perimeter of the lot.
- B.** For lots outside the Village Center Zone District where a general easement does not exist and lots where the general easement has been vacated, the review authority may require the establishment of a building setback as determined by the DRB at the time of review of a development application.
 - 1.** The review authority may not require a setback for such lots if the Town has established other design allowances by a recorded development agreement or other legally binding approval that establishes a different general easement setback or other setback.
- C.** All general easement setbacks or other setbacks shall be maintained in a natural, undisturbed state to provide buffering to surrounding land uses and to maintain the ability to conduct any of the general easement allowed uses.
- D.** All above- and below-grade structures or structural components (soil nailing, etc.), earth disturbance, or ground level site development such as walks, hardscape, terraces and patios shall be located outside of the general easement setback or other setbacks on each lot within the allowable building area of a lot.
- E.** The following development activities are permitted in the general easement setback or other setbacks subject to the applicable review process and Design Regulations:
 - 1.** Review authority approved accessways for direct access, including driveways, walkways, and ski trails and ski lifts for ski area access.
 - a.** Accessway impacts to the general easement shall be minimized to the extent practical, such as a perpendicular crossing of the easement setback area.
 - b.** Accessways shall not exceed the minimum Town standards for construction, such as the minimum width.
 - 2.** Utilities;
 - a.** To the extent practical, all utilities shall follow a driveway alignment.
 - 3.** Address monuments;
 - 4.** Natural landscaping without any man-made materials or hardscape;
 - 5.** Fire mitigation and forestry management without substantial earthwork;
 - 6.** Construction staging provided:
 - a.** The area proposed for such staging is devoid of naturally occurring trees or other naturally occurring vegetation; or
 - b.** The DRB is approving disturbance in the general easement for another proposed improvement such as a driveway, utility cut, or skier access, and the area can be used for staging until the approved improvement is constructed; and
 - 7.** Other uses as provided for in the definition of general easement.
- F.** The DRB may waive the general easement setback or other setbacks and allow for prohibited activities provided:

1. The applicant has demonstrated that avoiding grading and disturbance in the general easement setback would create a hardship, and there is not a practicable alternative that allows for reasonable use of the lot;
 2. The disturbance in the general easement setback is due to natural features of the site, such as steep slopes, wetlands and streams;
 3. No unreasonable negative impacts result to the surrounding properties;
 4. The general easement setback or other setback will be revegetated and landscaped in a natural state;
 5. The Public Works Department has approved the permanent above-grade and below-grade improvements;
 6. The applicant will enter into an encroachment agreement with the Town with the form and substance prescribed by the Town; and
 7. Encroachments into the general easement setback or other setbacks are mitigated by appropriate landscaping, buffering and other measures directly related to mitigating the encroachment impacts.
- G.** Planning Division staff is authorized to review and approve soil disturbance, grading and structures in the general easement setback provided it finds:
1. Such activities were approved by the Town as a part of a prior approval or were found to lawfully exist;
 2. The owner of the lot is simply trying to maintain or improve prior approved or lawful encroachments into the general easement setback; and/or
 3. The lot owner enters into a revocable encroachment agreement with the Town if one does not exist.
- H.** The DRB reserves the right, at the time of Design Review Process, to impose setbacks up to twenty (20) feet for tennis courts, swimming pools, hot tubs and other areas of active use. Noise for such uses shall be buffered from adjacent properties.
- I.** All buildings will be required to maintain or provide for the required Building Codes' setbacks.
- J.** The DRB reserves the right, at the time of Design Review Process, to impose greater setback requirements of up to ten (10) additional feet (i.e., a maximum of twenty-six (26) feet) for the protection of trees and natural rock outcroppings and other significant natural and environmentally sensitive features that are located in the general easement setback or other setbacks and to safeguard surrounding significant natural and environmentally sensitive features from the impacts of construction. If construction outside of the general easement or other setbacks will not impact trees or other significant natural and environmentally sensitive features in the area of the general easement setback or other setbacks, disturbance may be permitted by the DRB provided the disturbed area is re-landscaped.
- K.** When a proposed development is approved that is five (5) feet or less from the general easement setback, other setback or a lot line, the review authority approval shall include a condition that a monumented land survey shall be prepared by a Colorado public land surveyor to ensure there are no above-grade or below-grade encroachments into the general easement setback.
- L.** One function of the general easement is to provide for skier access to the ski area.
1. A lot owner may seek skier access to the ski area by the general easement through an intervening lot(s) only if the Town Council approves a class 5 development application for such request, and provided the following criteria are determined by the Council to be met:
 - a. No disturbance or snow grooming activity is proposed or shall occur in the

general easement on the intervening lot(s) without the permission of the intervening lot owner(s).

- b. There is adequate buffering and setback between the general easement and any existing home(s) on the intervening lot(s).
 - c. The owner(s) of the intervening lots are notified of the Council's consideration of the class 5 development application following the public hearing noticing requirements' mailing notice details, with at least 30 days notice provided prior to the Town Council meeting at which the development application will be considered.
 - d. The location of the access to the ski area is approved ski resort operator if there is any disturbance or snow grooming activity creating a formal entry into the ski area.
- M.** The review authority may not apply a general easement or setback to a subdivision, lot or development if the Town has previously established a general easement for the whole subdivision, or different setbacks, easements or other restrictions that limit development to a certain area of a lot.

17.3.15 HOTBED DEVELOPMENT AND CONDOMINIUM-HOTEL REGULATIONS

- A.** Any rezoning, subdivision, density transfer, PUD (SPUD or MPUD) or PUD amendment process and related Design Review Process development applications shall be in general conformance with the Comprehensive Plan's hotbed policies and the hotbed policies of the CDC, including the Condominium-hotel Regulations.
- B.** Any development application on a site identified as a flag hotel site in a subarea plan's development table shall include a rezoning development application to rezone such site to the PUD Zone District to ensure the provision of hotbed development as envisioned in the Comprehensive Plan pursuant to the Condominium-hotel Regulations and to allow variations to the requirements of the CDC to strive to achieve the density and building heights listed in each subarea plan's development table consistent with the policies set forth in the CDC.
- C.** Other lots not identified by the Comprehensive Plan for a flag hotel may submit a rezoning development application following the class 4 development application process to apply the Condominium-hotel Regulations to a lot as an overlay zoning requirement upon a property.
 - 1.** The development application for a rezoning shall include the appropriate homeowners association consent and a copy of resolution of the homeowners association consenting to such application.
- D.** The Condominium-hotel Regulations are set forth in the supplementary regulation of the CDC and are considered a part of these Zoning and Land Use Regulations.

17.3.16 SITE MAINTENANCE

- A.** A lot owner, or owner of improvements on a lot, shall maintain that lot or improvements in a clean, safe and orderly condition and in compliance with any Town approvals granted under this CDC or the prior land use regulations. If the lot or improvements owner fails to perform any acts of maintenance or repair, the owner will be in non-compliance with this CDC and subject to the enforcement provisions contained herein.
- B.** Neither the Town nor any of its designees or employees or agents shall be liable for any incidental or consequential damages for failure to inspect any lot or improvements or portion thereof or to repair or maintain the same.