

**RESOLUTION APPROVING A VARIANCE TO INCREASE THE MAXIMUM HEIGHT AS
REQUIRED BY THE COMMUNITY DEVELOPMENT CODE FROM 40 FEET TO
APPROXIMATELY 47 FEET AND FOUR INCHES FOR LOT GH-11, 11 CABINS LANE**

Resolution No. 2016-1117-19

RECITALS:

- A. Jason and Natalie Horwath as Joint Tenants ("Owner") is the owner of record of real property described as Lot GH-11 ("Property").
- B. The Owner has authorized Luke Trujillo, Principal of TruLinea Architecture, to submit application for a Class 4 Variance to allow the maximum height for Lot GH-11 to be approximately 47 feet and four inches where 40 feet is the applicable maximum height ("Application 1").
- C. Application 1 was submitted in compliance with the provisions of section 17.4.16 of the Community Development Code ("CDC").
- D. The Owner has authorized Luke Trujillo, Principal of TruLinea Architecture, to submit a Class 3 Design Review application for a new home on Lot GH-11 for approval by the Design Review Board ("Application 2"). Application 1 and Application 2 are collectively referred to as the "Applications".
- E. The Application 2 was submitted in compliance with the provisions of section 17.4.11 of the CDC.
- F. The Design Review Board ("DRB") considered Application 1, along with evidence and testimony, at a public meeting held on November 7, 2016. Upon concluding their review, the DRB recommended approval of Application 1 by a unanimous vote of 4 to 0 to the Town Council.
- G. The DRB considered Application 2, along with evidence and testimony, at a public meeting held on November 7, 2016. Upon concluding their review, the DRB approved Application 2 by a unanimous vote of 4 to 0, subject to conditions including the Town Council's approval of Application 1.
- H. The Town Council considered and approved Application 1, along with evidence and testimony, at a public hearing on November 17, 2016.
- I. The public hearings referred to above were preceded by publication of public notice of such hearings on such dates and/or dates from which such hearings were continued on the Town website, and by mailing of public notice to property owners within four hundred feet (400') of the Property, as required by the public hearing noticing requirements of the CDC.
- J. After the public hearings referred to above, the DRB and the Town Council each individually considered the Applications' submittal materials, and all other relevant materials, public letters and public testimony, and approved the Applications with conditions as set forth in this Resolution.

- K. The Owner has addressed, or agreed to address, all conditions of approval of the Applications imposed by Town Council and Design Review Board.
- L. The Town Council finds the Applications meets the variance criteria for decision contained in CDC Section 17.4.16(D) as follows:

Variance Findings:

1. The strict application of the CDC building height regulations would result in exceptional and undue hardship upon the property owner in the development of the property because of special circumstances applicable to the lot including its steep topography or other extraordinary or exceptional physical conditions which in this case includes over 50 feet of elevation drop from the front of the lot to the back; a 55 foot "No Build Zone"; only 27 feet of lot frontage on Cabins Lane; and private covenants that limit height adjacent to Cabins Lane and restrict the building size;
2. The variance can be granted without substantial detriment to the public health, safety and welfare due to the height variance will not be visible to the general public, is not out of scale with the other homes which front on Cabins Lane and the request has been reviewed by the Telluride Fire District and Mountain Village Police Department and no concerns have been raised;
3. The variance can be granted without substantial impairment of the intent of the CDC, because the combination of private restrictions, and topography makes this an exceptional case;
4. Granting the variance does not constitute a grant of special privilege in excess of that enjoyed by other property owners in the same zoning district because as stated above, the property is burdened by topography, private height and building size requirements; and a "No Build Zone" that are not found on similar lots in the Single-Family District. In addition the home is located in a separated enclave of homes and the variance has received a recommendation of approval by the Gold Hill Homeowners Association;
5. Reasonable use of the property is not otherwise available without granting of a variance, and the variance being granted is the minimum necessary to allow for reasonable use as the proposed development of the lot is 10% below the allowed building coverage and within the average building height requirements of the CDC, but because of the above restrictions on the property, particularly the topography, the proposed development cannot meet the maximum height requirement;
6. The lot for which the variance is being granted was not created in violation of Town regulations or Colorado State Statutes in effect at the time the lot was created;
7. The variance is not solely based on economic hardship alone as the variance does based on any economic hardship; and
8. The proposed variance meets all applicable Town regulations and standards and the applicant has received design variations through the Design Review process as provided for in the CDC.

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWN COUNCIL HEREBY APPROVES A VARIANCE TO ALLOW FOR THE MAXIMUM HEIGHT FOR A SINGLE FAMILY HOME TO BE LOCATED ON LOT GH-11 TO BE APPROXIMATELY 47 FEET AND FOUR INCHES WHERE 40 FEET IS THE APPLICABLE MAXIMUM HEIGHT AND AUTHORIZES THE MAYOR TO SIGN THE RESOLUTION SUBJECT TO DEVELOPMENT OF THE HOME BEING IN SUBSTANTIAL CONFORMANCE TO THE APPROVAL OF APPLICATION 2 BY THE DESIGN REVIEW BOARD.

Be It Further Resolved that GH-11 may be developed as submitted in accordance with Resolution NO. 2016-1117-19.

Section 1. Resolution Effect

- A. This Resolution shall have no effect on pending litigation, if any, and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the resolutions repealed or amended as herein provided and the same shall be construed and concluded under such prior resolutions.
- B. All resolutions, of the Town, or parts thereof, inconsistent or in conflict with this Resolution, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

Section 2. Severability

The provisions of this Resolution are severable and the invalidity of any section, phrase, clause or portion of this Resolution as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of this Resolution.

Section 3. Effective Date

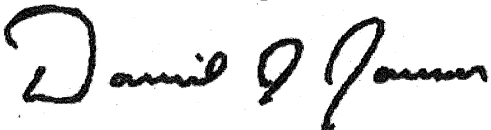
This Resolution shall become effective on November 17, 2016 (the "Effective Date") as herein referenced throughout this Resolution.

Section 4. Public Hearing

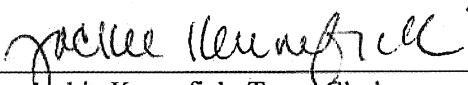
A public meeting on this Resolution was held on the 17th day of November, 2016 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

Approved by the Town Council at a public hearing held on November 17, 2016.

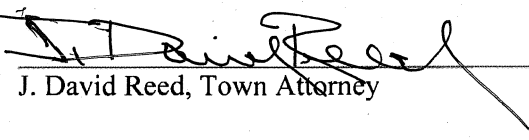
Town of Mountain Village, Town Council

By: 
Dan Jansen, Mayor

Attest:

By: 
Jackie Kennefick, Town Clerk

Approved as to Form:


J. David Reed, Town Attorney