

RESOLUTION APPROVING A VARIANCE TO THE COMMUNITY DEVELOPMENT CODE REQUIREMENTS FOR LOT GH-11 TO ALLOW THE MAXIMUM HEIGHT TO INCREASE FROM 40 FEET TO 47.4" AND THE MAXIMUM AVERAGE HEIGHT TO INCREASE FROM 35 FEET TO 35.15 FEET.

Resolution No. 2019-0321-06

- 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 Eric Cummings, Principal of Eric Cummings Architecture, to submit application for a Class 4 Variance to allow the Maximum Height to increase from 40 feet to 47.4" and the Maximum Average Height to increase from 35 feet to 35.15 feet (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 Eric Cummings, Principal of Eric Cummings 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).
- E. 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 March 7, 2019. Upon concluding their review, the DRB recommended approval of Application 1 by a unanimous vote of 5 to 0 to the Town Council.
- G. The DRB considered Application 2, along with evidence and testimony, at a public meeting held on March 7, 2019. Upon concluding their review, the DRB approved Application 2 by a unanimous vote of 5 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 March 21, 2019.
- 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 an antenna must have adequate height to clear surrounding trees, provide adequate cellular coverage and meet the Town's colocation requirement;
2. The variance can be granted without substantial detriment to the public health, safety and welfare due to visual mitigation, and will actually will help protect the public health, safety and welfare by ensuring the provision of critically needed cellular infrastructure;
3. The variance can be granted without substantial impairment of the intent of the CDC, with the proposed use meeting the Telecommunication Antenna Regulations;
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;
5. Reasonable use of the property for a telecommunications antenna is not otherwise available without granting of a variance, and the variance being granted is the minimum necessary to allow for reasonable use;
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; and
8. The proposed variance meets all applicable Town regulations and standards unless a variance is sought for such regulations or standards.

NOW, THEREFORE, BE IT RESOLVED THAT THE TOWN COUNCIL HEREBY APPROVES A VARIANCE TO THE COMMUNITY DEVELOPMENT CODE REQUIREMENTS FOR LOT GH-11 TO ALLOW THE MAXIMUM HEIGHT TO INCREASE FROM 40 FEET TO 47.4" AND THE MAXIMUM AVERAGE HEIGHT TO INCREASE FROM 35 FEET TO 35.15 FEET 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. 2019-0321-06.

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 March 21, 2019 (the "Effective Date") as herein referenced

throughout this Resolution.

Section 4. Public Hearing

A public meeting on this Resolution was held on the 21st day of March 2019 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

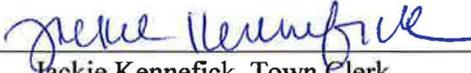
Approved by the Town Council at a public hearing held on March 21, 2019.

Town of Mountain Village, Town Council

By: 

Laila Benitez, Mayor

Attest:

By: 

Jackie Kennefick, Town Clerk

Approved as to Form:



Jim Mahoney, Town Attorney