



PLANNING & DEVELOPMENT SERVICES

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

TO: Mountain Village Town Council
FROM: Claire Perez, Planner II
FOR: Town Council Public Hearing, January 18, 2024
DATE: January 8, 2024
RE: Vested Property Rights Extension for Lot 27A, Parcel Three -R, TBD Lost Creek Lane

Project Geography

Legal Description:

Lot 27A, Parcel 3R, Belvedere Park Condo,
According to the Second Amendment to the Condo map for Belvedere Park Condos,
Recorded June 15, 2006 in Plat Book 1 at page 3674-3675 under Reception Number 384818, County of San Miguel, State of Colorado

Address: TBD Lost Creek Lane

Applicant/Agent: James Mahoney

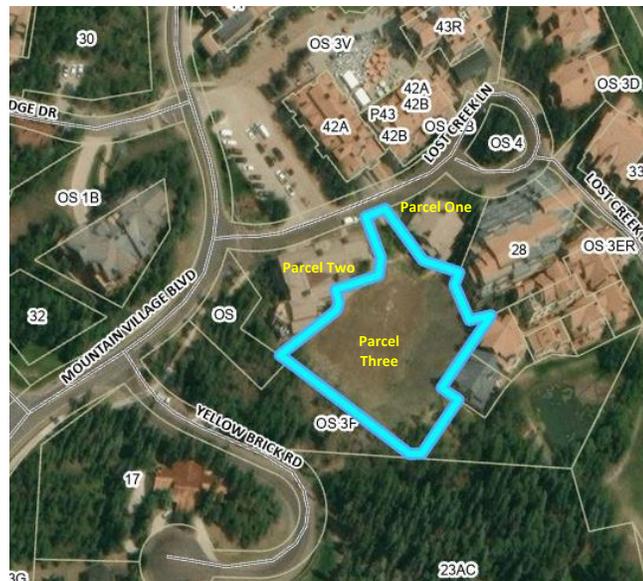
Owner: MV Lot 27A, LLC

Zone District: Multi-Family

Zoning Designation: Condo; Employee Condo

Existing Use: Vacant

Proposed Use: 19 Condominiums and 2 Employee Condominiums



Adjacent Uses:

- **North:** Multi-Family Residential
- **South:** Vacant Land and Single-Family Residential
- **East:** Multi-Family Residential
- **West:** Multi-Family Residential

Attachments

Exhibit A: Applicant Narrative

Exhibit B: Ordinance and Application Materials

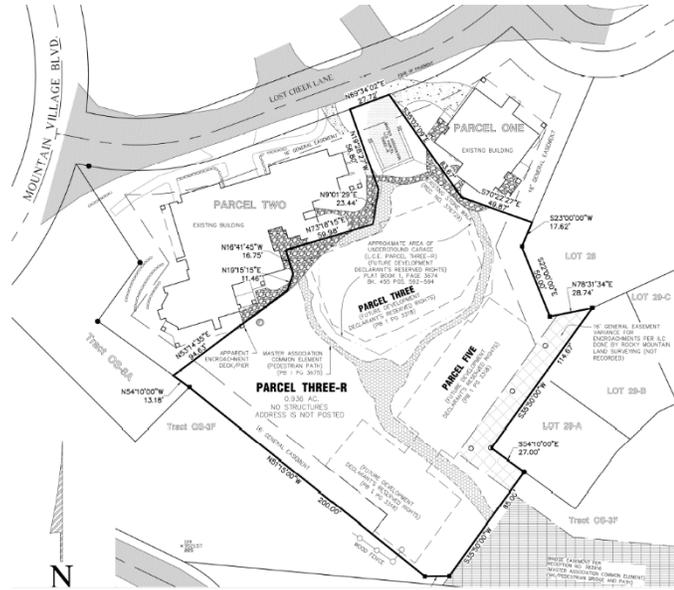
Full Application (including approved plan set) can be found at this link:

<https://mtnvillage.files.com/f/d9492cfb677c3b06>

Current Entitlements

Lot 27A was approved for a new multi-family Condominium development, comprised of 19 condominium units and 2 employee condominium units by the DRB on October 6, 2022. The applicant has submitted an application for a three-year Vested Property Rights Extension for this property.

The development is the third phase of a Master Development Plan which was approved as early as 2004 and amended several times. Ordinance No. 2021-14, included in the application, provided approval for the density transfer and rezone on Lot 27A which was critical to the Final Architectural Review approval. The applicant is requesting a three-year extension on the issued approval in order to move forward with the planned development on Lot 27A, Parcel Three-R. They cite construction and construction financing difficulties as the primary deterrent to being able to commence construction immediately.



Vested Property Rights

A vested property rights extension allows a developer to extend their existing approvals through a Class 4 development application process for a period longer than the initial 18-month period. Town Council can elect to approve an extended vested period that is specific to their site-specific development plan (approved design drawings), typically for an additional three-year period. This is the most logical way for a developer to request additional time to construct their project without losing their current entitlements.

Section 17.4.17 of the CDC lists the following criteria for the Town Council to approve a vested property right application.

Please note staff comments in blue:

a. A vested property right is warranted in light of relevant circumstances, such as the size and phasing of the development, economic cycles and market conditions;

Staff: The significant size of the Master Development Plan necessitated a phased approach, which the Town Council approved as part of the rezoning approval in Ordinance 2021-14. The applicant indicated that the development plan for Parcel Three-R and adjacent parcels (developed under phases I and II) were approved as a whole and are coordinated to work together. However, the applicant states that “the existing financial and financing markets over the past year and uncertainty into the future as well as the tight trade and labor markets may make construction and construction financing difficult for the near term, warranting a three-year vested rights in the above noted approvals” for the last phase of development on Parcel Three-R. It is the staff’s understanding that the applicant intends to construct within the three years and would not require an extension beyond the three-year period.

b. The site-specific development plan is consistent with public health, safety and welfare;

Staff: The design review went through a lengthy assessment prior to unanimous approval, and staff feels that the final approval represents site-specific development that meets these criteria.

c. The site-specific development plan provides for the construction and financing of improvements and facilities needed to support the proposed development;

Staff: The design review went through a lengthy assessment prior to unanimous approval, and staff feels that the final approval represents site-specific development that meets these criteria. In addition, the applicant affirms that “The construction plans are near building permit plan set ready and provide for the construction of the project. The Owner is confident that with its financing relationships if granted the three-year vested rights financing of the construction will be feasible.”

d. The site-specific development plan meets the criteria for decision for concurrent, required development application(s); and

Staff: Staff finds this condition met. As indicated in the application, there are no concurrent development applications, as the site-specific plans have been approved.

e. The proposed vested property right meets all applicable Town regulations and standards.

Staff: Staff finds this condition met.

General Comments:

The criteria listed under subsection (a) are the most pertinent to the board’s discussion. If DRB finds that the claimed site-specific circumstances, such as size and phasing of development, and economic circumstances, such as economic cycles and market conditions, to be valid obstacles for initiating construction currently, then a vested property right extension seems reasonable. DRB should also discuss the length of vesting, whether they would recommend the typical three-year period requested by the applicant or a different length.

Design Review Board Recommendation: The Design Review Board reviewed the application to extend Vested Property Rights for Lot 27A, TBD Lost Creek Lane at the January 4, 2024 Design Review Board meeting and voted unanimously to recommend to Town Council approval of a Vested Property Rights Extension for Lot 27A, TBD Lost Creek Lane for a period of 3 years.

Staff Note: *DRB should note the reasons for approval or rejection in the findings of fact and motion.*

Staff Recommendation: Staff recommends that Town Council approves this application and if Town Council moves to approve, staff suggests the following motion:

Proposed Motion:

I move to approve, the first reading of an Ordinance regarding the extension of a Vested Property Right at Lot 27A, Parcel 3R, TBD Lost Creek Lane, from April 6, 2024, to April 6, 2027, pursuant to CDC Section 17.4.17 based on the evidence provided within the Staff Report of record dated January 8, 2024, and to ask the Town Clerk to set a public hearing for February 15, 2024.

With the following findings:

- 1) The proposal to extend the Lot 27A vested property rights meets all of the Criteria for Decision listed in 17.4.17(D)(1)

And, with the following conditions:

- 1) *Prior to the recordation of the Ordinance approving the Extended Vested Property Rights and site-specific development plan, the Owner shall revise all documents to include the following statement: "Approval of this site-specific development plan may create a vested property right pursuant to C.R.S. § 24-68-101 et seq. and subject to the Town of Mountain Village's Community Development Code."*
- 2) *The Town shall publish a notice in the newspaper of record within 14 days of approval a notice describing that a vested property right has been created/extended consistent with CDC Section 17.4.17(E)(4)*
- 3) *All previous conditions of approval from the original 2022 Design Review approval remain applicable for any future development.*

This motion is based on the evidence and testimony provided at a public hearing held on January 18, 2024, with notice of such hearing as required by the Community Development Code.

/cp

ORDINANCE NO. 2024-__

**ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE,
COLORADO APPROVING A VESTED PROPERTY RIGHTS EXTENSION FOR LOT 27A,
TDB LOST CREEK LANE**

RECITALS

- A. The Town of Mountain Village (the “**Town**”) is a legally created, established, organized and existing Colorado municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado (the “**Constitution**”) and the Home Rule Charter of the Town (the “**Charter**”); and,
- B. Pursuant to the Constitution, the Charter, the Colorado Revised Statutes and the common law, the Town has the authority to regulate the use and development of land and to adopt ordinances and regulations in furtherance thereof; and,
- C. MV Lot 27A LLC (“the **Applicant**”) is the owner of record of real property described as Lot 27A, Parcel 3R, Town of Mountain Village as further described on the plat recorded on June 15, 2006, in Plat Book 1 at Page 3674-3675 at Reception Number 384818 (the “**Property**”); and,
- D. The Design Review Board approved an application in October 2022 for a development consisting of a total of nineteen (19) Condominium Units and two (2) Employee Condominiums; and,
- E. The Applicant submitted a Vested Property Right Extension development application on August 16, 2023, seeking a further extension of the Vested Property Right to April 6, 2027 (the “**Vested Property Rights Extension Application**”); and,
- F. The Vested Property Rights Extension Application has been processed and evaluated pursuant to the Town of Mountain Village Community Development Code (the “**CDC**”); and,
- G. The Design Review Board conducted a public hearing on the Vested Property Rights Extension Application in accordance with the CDC on January 4, 2024 and with public notice of such application as required by the public hearing noticing requirements of the CDC. The DRB considered the Applications, testimony, and public comment and recommended to the Town Council that the Vested Property Rights Extension Application be approved with conditions pursuant to the requirement of the CDC; and,
- H. At its regularly scheduled meeting held on January 18, 2024 the Town Council conducted a first reading of an ordinance and set a public hearing, pursuant to the Town Charter.
- I. The meeting held on January 18, 2024 was duly publicly noticed as required by the CDC Public Hearing Noticing requirements, including but not limited to notification of all property owners within 400 feet of the Property, posting of a sign and posting on the respective agendas.
- J. The Town Council finds the proposed Vested Property Rights Extension Application meets the Vested Property Rights criteria for decision contained in CDC Section 17.4.17 as follows:
 - 1. A vested property right is warranted in light of relevant circumstances, such as the size and phasing of the development, economic cycles, and market conditions.
 - 2. The site-specific development plan is consistent with public health, safety, and welfare.

3. The site-specific development plan provides for the construction and financing of improvements and facilities needed to support the proposed development.
4. The site-specific development plan meets the criteria for decision for a concurrent, required development application(s);
5. The proposed vested property right meets all applicable Town regulations and standards.

NOW, THEREFORE, BE IT ORDAINED THAT THE TOWN COUNCIL HEREBY APPROVES THE APPLICATION SUBJECT TO THE FOLLOWING CONDITIONS.

1. The Town shall publish a notice in the newspaper of record within 14 days of approval a notice describing that a vested property right has been created extended consistent with CDC Section 17.4.17 (E)(4).
2. All previous conditions of approval from the original 2021 Design Review approval remain applicable for any future development.

Section 1. Vested Property Right Extension

- A. The Vested Property Right is hereby extended for a period of three (3) additional years until April 6, 2027

Section 2. Ordinance Effect

All ordinances, of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

Section 3. Severability

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

Section 4. Effective Date

This Ordinance shall become effective on February 15, 2024, following public hearing and approval by Council on second reading.

Section 5. Public Hearing

A public hearing on this Ordinance was held on the 15th day of February 2024 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 18th day of January 2024.

TOWN OF MOUNTAIN VILLAGE

**TOWN OF MOUNTAIN VILLAGE,
COLORADO, A HOME-RULE
MUNICIPALITY**

By: _____
Martinique Davis Prohaska, Mayor

ATTEST:

Susan Johnston, Town Clerk

**HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village,
Colorado this 21st day of September 2023**

**TOWN OF MOUNTAIN VILLAGE
TOWN OF MOUNTAIN VILLAGE,
COLORADO, A HOME-RULE
MUNICIPALITY**

By: _____
Martinique Davis Prohaska, Mayor

ATTEST:

Susan Johnston, Town Clerk

Approved as To Form:

David McConaughy, Town Attorney

I, Susan Johnston, the duly qualified and acting Town Clerk of the Town of Mountain Village, Colorado ("Town") do hereby certify that:

1. The attached copy of Ordinance No. _____ ("Ordinance") is a true, correct and complete copy thereof.

2. The Ordinance was introduced, read by title, approved on first reading with minor amendments and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on _____, 2024, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Martinique Davis Prohaska, Mayor				
Scott Pearson, Mayor Pro-Tem				
Tucker Magid				
Peter Duprey				
Huascar E. Gomez (Rick)				

Harvey Mogenson				
Jack Gilbride				

3. After the Council’s approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on _____, 2024 in accordance with Section 5.2b of the Town of Mountain Village Home Rule Charter.

4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on _____, 2024. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

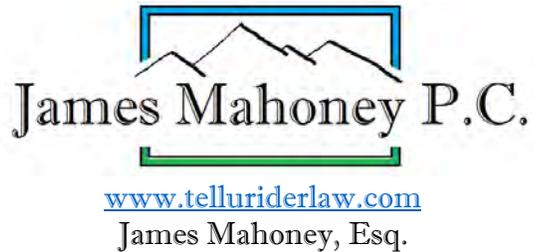
Council Member Name	“Yes”	“No”	Absent	Abstain
Martinique Davis Prohaska, Mayor				
Scott Pearson, Mayor Pro-Tem				
Tucker Magid				
Peter Duprey				
Huascar E. Gomez (Rick)				
Harvey Mogenson				
Jack Gilbride				

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this ____ day of _____, 2024.

Susan Johnston, Town Clerk

(SEAL)



LOT 27A PARCEL THREE -R VESTED PROPERTY RIGHTS APPLICATION NARRATIVE

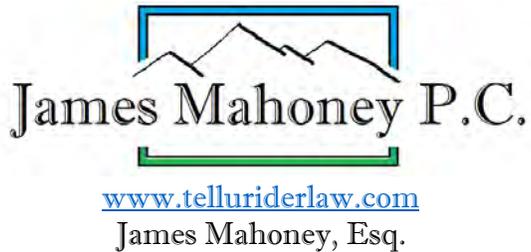
To: Town of Mountain Village
From: James Mahoney and Chris Chaffin
Date: August 16, 2023
Re: Lot 2A, Parcel Three R - Vested Property Rights Application Narrative

On behalf of the owner of Lot 27A, Parcel Three-R (Parcel Three-R), MV Lot 27A, LLC, we have submitted an application to secure vested property rights for the current site-specific development approvals for Parcel Three-R which consist of the following:

1. The Design Review Board (DRB) approved the Final Architectural Review on October 6, 2022 allowing for the construction of a new multi-family building consisting of 19 Condominium Units, and 2 Employee Condominium Units. These approvals also include the specific approvals and design variations as noted therein.
2. Master Development Plan for Lot 27A including the phased approach as approved in 2004 and amended from time to time including ordinance No. 2021-14.
3. 2006 Parcel Three-R Condo Plat and Resolution No.2006-0509-03. These documents are recorded and not subject to expiring; however, they are important to the overall development and Master Development Plan as it combined and altered that plan to create one final parcel for development and its density which was amended by Ordinance No 2021-14 as noted below.
4. Ordinance No. 2021-14 Approving a Density Transfer and Rezone at Lot 27A removing efficiency lodge and lodge density to have 19 Condo Units and 2 Employee Condo Units. While this Ordinance was recorded on January 12, 2022 at reception number 474709 and is not subject to expiring due to the recording, this is a key piece to the site specific development plan for Lot 27 as it drove the Final Architectural Review and was the last piece of the master development plan for Lot 27A.
5. January 13, 2022, Density Transfer of the lodge and efficiency lodge density to the density bank and 2 condo units to the Parcel Three-R.

Pursuant to the Community Development Code (“CDC”) in order for the Town to approve a vested property rights application the Town must consider the following criteria:

- a. A vested property right is warranted in light of relevant circumstances such as the size and phasing of the development, economic cycles and market conditions:

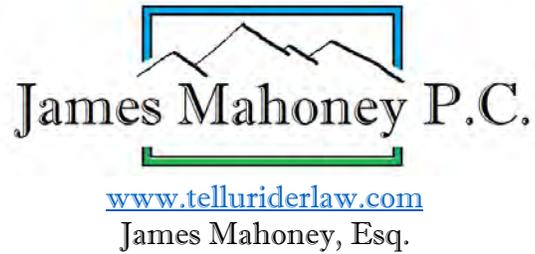


- i. Applicant: The development is of a significant size and is phased through the Master Development Plan of parcel 27A of which Parcel Three-R is the final phase. Ordinance 2021-14 on rezoning clearly contemplates the development pursuant to the Final Architecture Review Approval in that it references and requires a submittal of that application within 18 months (which was complied with) as a condition of the rezone and Master Development Plan. Further, the existing financial and financing markets over the past year and uncertainty into the future as well as the tight trade and labor markets may make construction and construction financing difficult for the near term, warranting a three-year vested rights in the above noted approvals.
- b. The site-specific development plan is consistent with public health, safety, and welfare:
 - i. Applicant: Extension of the current approvals would not negatively impact public health, safety or welfare as they were discussed and approved with the same considerations and standards. No changes have altered this analysis.
- c. The site-specific development plan provides for the construction and financing of improvements and facilities needed to support the proposed development:
 - i. Applicant: The construction plans are near building permit plan set ready and provide for the construction of the project. The Owner is confident that with its financing relationships if granted the three-year vested rights financing of the construction will be feasible.
- d. The site-specific development plan meets the criteria for decision for a concurrent, required development application(s):
 - i. Applicant: There are no concurrent development applications as the site-specific development plans outlined above are already currently approved.
- e. The proposed vested property rights meet all applicable Town regulations and standards:
 - i. Applicant: At the time of their approvals the site-specific development plans outlined above were approved as meeting all applicable Town regulations and standards as does this application.

The CDC also requires two general standards regarding document notation and duration of vested rights consideration. First the CDC states that each document that comprises a site-specific development plan shall contain the following language:

Approval of this site-specific development plan may create a vested property right pursuant to C.R.S. § 24-68-101 et seq. and subject to the Town of Mountain Village's Community Development Code.

The Applicant and Owner request that upon approval of this application the resulting ordinance would have the above required language and that the applicant shall add to all approval letters and plans that consist of the site-specific development plan the above required notation as is consistent with prior



vested rights approvals of a similar nature. The typical vesting period is three years and no consideration need to be given to vesting beyond three years.

As you can see the above listed documents which constitute the site-specific development plan for Parcel Three-R taken as a whole describe with great certainty the type and intensity of use for Parcel Three-R. They are coordinated to all work together and the applicant believes it would not only be in the applicants interest to get vested property rights for this project, but it would be in the Town's and communities best interest as there exists an approved coordinated plan that is acceptable to the community, meet all standards of approval, was not controversial and would not require the town staff, boards and Council to process and review an entire new application should the approvals expire. For these reasons the Applicant and Owner request that the Town grant the three-year vested rights requested herein.

Included Documents:

- i. Title Commitment
- ii. 2021 Deed to Property
- iii. Lot 27A DRB Approval
- iv. Lot 27A 2006 Parcel Three-R Plat
- v. Lot 27A Parcel Three-R Ordinance and Density Cert Approvals



PLANNING & DEVELOPMENT SERVICES DEPARTMENT

PLANNING DIVISION

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

November 10, 2022

MV Lot 27A, LLC
C/o Chris Chaffin
PO Box 2107
Telluride, CO 81435

RE: Lot 27A, Notice of Action for Class 3 Design Review Process Application

Dear Mr. Chaffin:

At the October 6, 2022, Design Review Board (DRB) meeting the board voted unanimously to approve the Design Review Process application for a new multi-family Condominium on Lot 27A, TBD Lost Creek Lane. The development application was approved with the following conditions:

1. Prior to building permit, the applicant will revise the landscaping plan for review by staff to address concerns raised by the Town Forrester.
2. A reflective surface is required on the address monument in case of power outage.
3. Prior to certificate of occupancy the applicant shall provide the Town with a two (2) year landscaping financial guarantee on all plant materials planted as part of the approved landscape plan. The developer shall enter into an improvements agreement with the Town to ensure performance.
4. Concurrent with Certificate of Occupancy, the condominium map and condominium declarations need to be submitted to the Town for review.
5. Prior to issuance of the certificate of occupancy, the deed restrictions associated with the two employee condominiums need to be executed. The 1997 ordinance/acknowledgment applies.
6. The deed restricted units must receive certificate of occupancies prior to our concurrent with the free market units.
7. The Mountain Village Housing Authority will perform a walk-through inspection of the two deed restricted units prior to issuance of a certificate of occupancy.
8. Consistent with town building codes, Unenclosed accessory structures attached to buildings with habitable spaces and projections, such as decks, shall be constructed as either

noncombustible, heavy timber or exterior grade ignition resistant materials such as those listed as WUIC (Wildland Urban Interface Code) approved products.

9. A monumented land survey of the footers will be provided prior to pouring concrete to determine there are no additional encroachments into the setbacks.

10. Prior to the Building Division conducting the required framing inspection, a four-foot (4') by eightfoot (8') materials board will be erected on site consistent with the review authority approval to show:

- a. The stone, setting pattern and any grouting with the minimum size of four feet (4') by four feet (4');
- b. Wood that is stained in the approved color(s);
- c. Any approved metal exterior material;
- d. Roofing material(s); and
- e. Any other approved exterior materials

11. It is incumbent upon an owner to understand whether above grade utilities and town infrastructure (fire hydrants, electric utility boxes) whether placed in the right of way or general easement, are placed in an area that may encumber access to their lot. Relocation of such above grade infrastructure appurtenances will occur at the owner's sole expense and in coordination with the appropriate entity (fire department, SMPA, Town of Mountain Village) so that the relocated position is satisfactory.

DRB Specific Approval:

1. Exterior Materials – metal hardie-board fascia, board form concrete of 8" horizontal spacing
2. GE Encroachments – Patio surface, retaining walls, decks, green roof, emergency turnaround (subgrade)
3. Green roof

Design Variations:

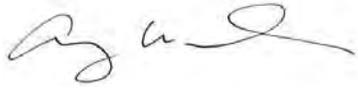
1. Exterior materials- less than 25% stucco, more than 25% wood, less than 25% stone
2. Loading/Unloading Zone Waiver

Findings:

1. The door and window cladding material approved is specified as metal to match the roof

Length of validity shall be for 18 months from the date of approval, expiring on April 6, 2024. If the development has not commenced, legal instruments not recorded, or if a building or development permit has not been issued, as applicable, the approval shall expire unless a Renewal Process development application is approved. Once all of the conditions set forth above are met, unless such condition is deferred until after a building or development permit has been issued, the Town will issue a development permit for the project in accordance with the requirements set forth in the Community Development Code.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amy Ward', with a stylized flourish at the end.

Amy Ward

Community Development Director
Town of Mountain Village

O :: 970.369.8248 M :: 970.729.2985