
Town of Minturn

Planning Commission Agenda

Wednesday, November 12, 2008

Regular Meeting - 7:00 p.m.

Minturn Town Center – 302 Pine Street

Call to Order/Roll Call

The meeting was called to order at 7:02 p.m. by vice-chair, Kristi Bloodworth. Commissioners Lynn Teach and Stuart Brummet were also present. Commissioners Woody Woodruff and Michael Gallagher were absent.

Staff present included Victor Villarreal – Planning Director and Chris Cerimele – Assistant Town Planner.

Approval of Agenda Items

Lynn Teach made a motion to approve the agenda. It as seconded by Stuart Brummet. The motion passed 3-0

Approval of Minutes – Minutes from October 8, 2008 and October 22, 2008

Both sets of minutes were tabled until the December 10, 2008 meeting

DISCUSSION ITEM # 1 – VAR 08-04; Variance

Applicant: Rob Baumgartner

Address of Property: 564 Taylor Street. The legal description is Lots 8, 9 and 10, Block E, of the Taylor Addition to the Town of Minturn

Proposal: To seek approval to build on land sloping in excess of 30%

Zoning: Residential – Game Creek Character Area

Recommendation: Denial

Chris Cerimele introduced the application and recommended that the application be tabled until the applicant can submit more detailed information. He did proceed to give a PowerPoint presentation that illustrated the location of the proposed project. He stated that the applicant was seeking a variance to build on a hill that slopes in excess of 30%. If approved for the variance, the applicant would seek subdivision to create an additional lot. A new home would be constructed on the rear lot where the applicant seeks the variance and the front house would eventually be torn down to accommodate a new single-family home. Chris added that the property sloped in excess of 50% and up to 70% in certain areas.

Chris outlined the approval criteria and findings that the Planning Commission and Town Council shall make before granting a variance. These criteria are outlined in section 16-21-690 of the Minturn Municipal Code.

Chris then stated his staff findings. They were: the criteria for granting a variance have not been met in this application. No practical or physical hardship will result from the denial of this request. Cost or inconvenience to the applicant of strict or literal compliance with a regulation shall not be considered a reason for granting a variance. Additionally, there is insufficient information contained within the application upon which a sound decision can be based. Therefore, Chris recommended that the application be tabled until the following information was submitted and reviewed: signed and stamped soils study from a licensed geotechnical engineer; detailed slope analysis from a licensed engineer; site section illustration of how the proposed site work will work with the slope of the property; and a detailed letter of intent that outlines the reasons for the variance request and what is planned for the site.

Stuart Brummet asked whether the applicant wanted a definitive vote on the application or whether the commission should table the application until they received the additional information.

Victor Villarreal addressed the Planning Commission. He stated staff is recommending that the application be tabled until we have the additional information that was outlined earlier by Chris Cerimele. As it stands now the application is incomplete. We want the applicant to assemble a complete application so that when the item is presented again, the commission can make a more informed ruling. Right now we have a site plan with some slope lines and a building footprint- the application is incomplete. It probably should not have gotten to this point. You are certainly free to vote on it but staff would strongly recommend denial due to the lack of sufficient information. The applicant would be free to appeal the decision to the Town Council but no additional information would be able to be presented as part of the application. The application could not be supplemented. The appeal must be based on the application as originally presented and heard at tonight's meeting. In the interests of the property owner seeing this process through, we recommend that the applicant be given the time to assemble a complete application. We need accurate information regarding the slope of the land, soils, and cross section drawings illustrating how a proposed building will be integrated into the site.

Lynn Teach inquired if the Minturn mile trail would be affected by this application.

Chris Cerimele stated that the trail does not run through the subject parcel. He then proceeded to introduce the applicant and his representative

Rob Baumgarten, owner and applicant – 564 Taylor Street, stated he thought his application was no different from the variance application of his neighbors. The slope analysis that staff is asking for is not on the application checklist. I did get a request for a geotechnical analysis on November 7th and the 10th was Veteran Day so staff was not in the office. That is why you guys don't have it. Basically HP Geotech said as you get building your plans need to be structurally sound. I basically have shown you a footprint for the requested variance. I really thought I followed the requirements of the checklist. I know that this isn't the first thing in town that isn't exactly following all of the code requirements but I wish you would treat me equally as other people because not every code is followed to a T in this town. The hardship that I feel exists is the same as for the Dixon's project. It is an outdated code that the Town Council agrees needs updating. How it starts is as soon as you come into Dowd Junction you look up on Bell Flower and there are 30 homes that are built on a steeper grade than this. As you go further into Vail there are another 30-40 homes that are built into steeper hillsides than this. As you go into East Vail, it is more of the same. So it is a hardship and the Town Council agreed when Tom Sullivan submitted his application. I really feel I have done everything I could to get us to this point and I am now facing twice the resistance since there was a new planning director hired. It hasn't been easy so bear with me. I have three lots so I am trying to get a bigger footprint. My other option is to build something smaller on each lot. I feel this is something that is outdated for the Town. I'm just trying to get two places out of three lots- that's why I need the variance because it requires going into the hillside. I thought the precedence was already set.

Stuart Brummet – Is Mike Pukas going to speak as well?

R. Baumgarten – I think so. I was just trying to voice what my concerns are. Ideally you know the slope analysis and geotech were not stuff that was required in the application. The Town Council required Tom Sullivan to get and obviously I have to get it too but I'm not trying to spend a bunch of money to get to that point and get denied. I would rather be accepted and then spend the money. Lots of things will change I'm sure but it's just the initial variance that allows me to go forward otherwise it is wasted money.

Michael Pukas, Gypsum, Colorado, A couple things I would like to state. First, I would like to clarify what Robbie's intentions are. Robbie owns three lots that are 25 feet wide. He intends to resubdivide the three narrow lots into two slightly more equal lot. There is an existing non conforming house that Robbie currently occupies on the west lot. His intention is to get the variance to build on a slope greater than 30 % so he can build himself a new house on the newly created east lot. Once that is built he will occupy that and either modify the existing house to make it conform to lot lines and set backs or knock it down. At that point he will either sell it or build a new dwelling on the front lot. The goal is to subdivide the three lots into two lots. The lot on the east side will be entirely over 30% in grade. That is one of the hardships we are presenting as a reason for the variance. As I understand it, the subdivision could be denied on those grounds. Another hardship on the site is the existence of some sort of utility line that crosses the property diagonally. It makes it challenging to build. Because of the location of the line, it is logically to split the lot into an east lot and a west lot. It is not feasible or advisable to build under the line. As far as the application goes, I have a slight disagreement with staff in our approach to presenting information for the variance. My position is that the slope is buildable, and the conditions of the slope will present themselves during the design process. I don't feel that we should have to spend any significant effort in designing a driveway or establishing what sort of cuts will be made for the building design because we don't know what they are at this point. We don't want to invest time and money into any sort of site or building design until we know we can move forward with the variance.

S. Brummet. - It looks to me like you are creating your own hardship. If we are supposed to vote on the variance based on a lot that is not yet subdivided, I don't feel it is unreasonable for us to ask you to show us how you will actually build a driveway, house and garage on this property. Unlike the Dixon's property, your entire proposal is on land that slopes in excess of 50%. How do say it is unreasonable for us to request additional information when you are the one creating the problem?

M. Pukas – We did very basic design. In some ways I feel that was too much. From my standpoint we should be granted the variance or not based on hardship. I don't feel any design work would present any sort of hardship. Those things would be addressed under high scrutiny if we were granted the variance and we were moving forward. If the committee wants the items that Victor and Chris asked for we will certainly do that. We would rather not do that right now.

S, Brummet – A key difference with the Dixon proposal is that we had a house that was already designed and showed how it stepped up the sloped and how the whole site worked. I'm not saying that we wouldn't consider allowing development on the sloped portion of the lot. As it stands now, there is 26 feet of grade change between the rear of lot A and the start of the garage. Before we get to the first floor of the new house, there will be 20 feet of retaining wall. I don't feel that it is reasonable to say that this is a good proposal. I back staffs' request for the additional information. If you start your house at grade, the first floor would be twenty feet above the driveway. I need to see how you propose to build a home that works on this site.

R. Baumgarten – The site where the Dixon's are building was not always flat. The ground was leveled at a time when the codes were not enforced. Things change in town.

S. Brummet – You can't change the grade beyond your property line. We work with what is there. No matter how much you manipulate the contours, you can only do so much. I have pretty good experience with site planning and I just don't see how you can build here. If you bring in a side section and a massing plan that illustrates how a house can be built there, it could be considered.

R. Baumgarten – I would have to do that as we got into the planning process.

L. Teach – I am not comfortable with the amount of information that has been presented with this application. I'd like to have an engineering report that says the hillside is stable.

R. Baumgarten – One thing to take into consideration is that Tom's place goes back twice as far as what I am requesting. I could probably do something smaller.

V. Villarreal – I would like address a couple things that the applicant and his representative have said thus far. First, they stated several times that they felt this wasn't the appropriate time to provide the additional information and they don't see

the applicability to the project. Even though the applicant stated that the additional items being requested by staff are not on the application, our code allows us to ask for additional information to review and process the application. These items: soils info, exact nature of the slope, and cross section drawings are applicable to this request. These items need to be part of the application – not presented at the podium. It is clear through the discussion that is taking place tonight that there is not enough information being presented to grant this variance. We can't just give a blanket variance to develop on steep slopes. Developers must spend money to support their positions to get land entitled. We are only asking for information to support the application. We are not trying to prohibit the applicant from developing.

R. Baumgarten – Can I comment on that?

K. Bloodworth – Sure.

R. Baumgarten – I was already here once for a planning commission meeting. None of this stuff was brought up then. I am worried what is going to be brought up and required at the next meeting. I really just want to get to where I can either be approved or denied for this variance to build in the hillside. A lot of people have gotten away with even having to apply for a variance.

L. Teach – We are just doing our job. We are not responsible for what happened in the past.

S. Brummet – The safe route would be to build a house that isn't entirely built into the hillside. With the current proposal you are planning on building a house on a slope up to 70%. There will be 20 feet of retaining between the driveway and the front of the house. I don't see anyway to make this look good.

M. Pukas – I don't think anything you are saying Stewart is off base. I just question whether now is the appropriate time to ask for this information. The technology exists to develop this property. We should be granted this variance. We are only going through this process because we have an outdated code.

K. Bloodworth – The code that we have now is the one we have to follow. You have property that you can build on now. You are just proposing to rearrange the lots which creates the hardship.

R. Baumgarten – I could build three small houses.

S. Brummet – Is this three individual lots?

R. Baumgarten – The hardship is the code being outdated.

V. Villarreal – The code is not going away. The applicant and their representative are suggesting that we just do away with the code.

K. Bloodworth – If we grant a variance to build without the additional information, the case is done.

M. Pukas – So what. The building would still need to be scrutinized during the design review process.

S. Brummet – You have to guarantee that you can build a house on the lot. You are suggesting that we are requesting unreasonable information.

R. Baumgarten – Let's talk about building three small houses.

S. Brummet – You could build three small houses or one 65 foot wide house. Could he get a variance to get two 37.5' lots?

R. Baumgarten – It was done right next door.

V. Villarreal – It is a completely different scenario. We can't talk about hypothetical situations.

K. Bloodworth – Do you want us to table the application or vote on it?

R. Baumgartner – I don't understand the difference. I have already been here once. This is the second time and I need to come up with more information. I don't trust Victor and Chris.

K. Bloodworth – We didn't hear the application that night. It was tabled due to a lack of a quorum.

A 5 minute break was called for

K. Bloodworth – At this point we have nothing more to add. Does the public have anything more to add?

There was no public comment.

K. Bloodworth – We need some input from the applicant. Do you want us to vote or table the application?

R. Baumgarten- I worry about the next tabling.

K. Bloodworth – If we vote on it and deny it, you will not be able to add any additional information to the application.

R. Baumgarten – I don't see why you wouldn't want it.

K. Bloodworth – Procedurally, the same application must be heard by the Town Council.

A discussion ensued regarding the particulars of the additional items being requested. Chris Cerimele stated he was asking for the following: signed and stamped soils study from a licensed geotechnical engineer; detailed slope analysis from a licensed engineer; site section illustration of how the proposed site work will work with the slope of the property. This drawing should include proposed drives, building pads, cuts and fills; and a detailed letter of intent that outlines the reasons for the variance request and what is planned for the site.

Lynn Teach made a motion to table the application until the additional information outlined by Chris is submitted and reviewed. Stewart Brummet seconded the motion. It passed 3-0.

Planning Director's Report: V. Villarreal informed the commission that amendments to Chapter 16 will be forthcoming in the coming months.

Commissioner Comments: none

Adjournment: 8:40