

**TOWN OF MINTURN, COLORADO
RESOLUTION NO. 11 – SERIES 2015**

**A RESOLUTION TO APPROVE A PERMIT APPLICATION
FOR AN ENCROACHMENT AGREEMENT BETWEEN
THE OWNERS OF 102 NELSON AVENUE AND THE
TOWN OF MINTURN.**

WHEREAS, Section 11-3-10 of the Minturn Code prohibits the location of any encroachment on Town property except with permit or approval as contemplated in the Code.

WHEREAS, Section 11-3-80 of the Minturn Code provides for a Permit Application for Encroachment: Any person desiring to erect a building, fence, barrier, post or other obstructions or encroachment upon any street, avenue, alley, sidewalk, highway, public right-of-way, or other public ground within the Town shall file a written application for a permit thereof upon a form prepared and provided by the Town.

WHEREAS, the applicant has provided a complete application and description of the encroachment on Town Property.

WHEREAS, the encroachment is for a retaining wall to hold a hillside in place.

WHEREAS, the encroachment does not constitute a nuisance, destroy or impair the use of the right-of-way by the public or constitute a traffic hazard.

WHEREAS, the applicant has paid all fees associated with this permit application.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN
OF MINTURN, COLORADO:**

1. The Minturn Town Council hereby approves the Encroachment Application for 102 Nelson Avenue.
2. Applicant shall enter into an encroachment agreement with the Town that complies with the provisions of the Minturn Town Code.
3. A copy of this Resolution and the encroachment agreement may be recorded in the public records of Eagle County.

INTRODUCED, READ, APPROVED, ADOPTED AND RESOLVED this 7th day of October, 2015.

TOWN OF MINTURN

By: George Brackli
Mayor pro Tem

ATTEST: [Signature]
Town Clerk



ENCROACHMENT AGREEMENT

This ENCROACHMENT AGREEMENT (“Agreement”) entered into this 7th day of October, 2015, by and between the Town of Minturn, a Colorado Home Rule Municipality, (“Minturn”) and Dina Berg, the owner of real property located at 102 Nelson Ave, Minturn Colorado (“Owner”).

RECITALS

WHEREAS, Minturn owns a parcel of property on Nelson Ave, Town of Minturn, Eagle County, Colorado, Eagle County Parcel Number 2103-263-00-021.

WHEREAS, Owner owns a parcel of property at 102 Nelson Ave, Town of Minturn, Eagle County, Colorado, Eagle County Parcel Number 2103-263-23-003.

WHEREAS, Owner’s predecessor-in-interest constructed a retaining wall that encroaches upon Minturn’s property. The Owner has applied for an encroachment agreement with Minturn.

WHEREAS, the Town Council of Minturn approved Resolution No. 11, Series 2015 that authorizes the Town to enter into an encroachment agreement with Owner.

WHEREAS, the encroachment does not interfere with public use of Minturn’s property, public roads nor does it create a public safety hazard.

NOW, THEREFORE, for and in consideration of the covenants and agreements contained herein, the parties do hereby agree as follows:

TERMS

1. **Encroachment:** Owner may maintain the retaining wall encroachment on Minturn’s property, depicted on **Exhibit A**, to hold the hillside from eroding down onto Owner’s property and home. Without written permission of Minturn, Owner shall not enlarge, replace, nor substantially modify the retaining wall. Owner shall not use Minturn’s property for any other purpose.
2. **Term:** This Agreement shall extend from the date of the execution of this Agreement until the aforementioned retaining wall is removed, allowed to substantially deteriorate, or destroyed.
3. **Fee:** A onetime application fee payable upon execution of this agreement shall be paid by the Owner to Minturn in the amount of \$500.00.

4. **Condition of Site:** During the term of this Agreement, Owner shall keep Minturn's property in good and safe condition, free from debris or refuse. At all times Owner shall comply with the terms of the Minturn Code related to encroachments.
5. **Insurance:** The Owner shall obtain and provide the Town with a copy of an umbrella liability policy covering the encroachment area and in limits of no less than one million dollars (\$1,000,000.00). Such policy shall be renewed by the Owner each year for the life of the encroachment, and a copy of each new policy shall be furnished to the Town upon the anniversary date of this Agreement. The Town shall be a named insured on Owner's umbrella liability policy. Failure to provide the policy as required shall automatically nullify this Agreement further notice and shall require the Owner's removal of the encroachment at the Owner's sole expense. Should the applicant fail to remove the encroachment within a reasonable time, the Town may declare the encroachment a public nuisance, undertake removal and attach a lien to the applicant's property for the costs of the removal.
6. **Release from Liability:** Owner releases and discharges Minturn from any and all liability arising from the execution and performance of this Agreement.
7. **Indemnification:** Owner agrees that it will indemnify, defend and hold harmless Minturn and its officers, employees, and agents from and against any claim, liability, obligation, loss, damage, assessments, judgment, cost (including attorney fees) or expense incurred as a result of this Agreement, Owner's activities on and use of Minturn's property, or the proximity of Owner's property to Minturn's property, with respect to investigating, preparing or defending against any litigation or claim, action, suit, proceeding or demand of any kind or character.
8. **Disclaimer:** Owner and Owner's successors-in-interest disclaim any and all rights or claims, whether now or in the future, against any and all parts of Minturn's property by virtue of adverse possession or easement by prescription.
9. **Runs with Land:** So long as Owner is in compliance with the terms of this Agreement and such other provisions of the Minturn Code that apply to encroachments, this Agreement shall be deemed to run with the land for the benefit of the property described as:

Lot 3 of the Farrell Subdivision
Reception Number: 200615175
Address 102 Nelson Avenue, Minturn
10. **Recording:** The Agreement may be recorded in the public records of Eagle County.
11. **Binding Agreement:** It is understood and agreed that this Agreement shall be binding upon the assigns and successors in interest of the parties hereto.

IMPROVEMENT LOCATION CERTIFICATE

IN ACCORDANCE WITH C.R.S. 38-51-108 (EFFECTIVE JULY 1, 2013)
THIS CERTIFICATE IS VALID ONLY FOR USE BY:

DINA A. BERG

LEGAL DESCRIPTION

Lot 3, according to the Nelson Avenue Minor Subdivision Final Plat thereof, as recorded September 11, 1998, Document No. 669894, in the Office of the Clerk and Recorder, County of Eagle, State of Colorado.

NOTES:

- 1) Survey Date: June, 2010.
- 2) Location of improvements, lot lines, and existing adjoining property information, as shown on the attached plat, were established by a professional land surveyor. Subdivision and Survey Measurements found at the time of this survey as shown hereon. This survey was performed without the aid of a title commitment.
- 3) POSTED STREET ADDRESS: 102 Nelson Avenue.
- 4) Acreal Units of the U.S. Survey Foot were used herein. Building foot to boundary are perpendicular.
- 5) Platted, showplaces on Lot 3, Nelson Avenue Minor Subdivision do not close mathematically. Measurements on the instrument to achieve Lot closure and, validate found instruments.
- 6) This Improvement Location Certificate was prepared for the exclusive use of those parties entitled to benefit, and is valid only if printed on original and signed by a surveyor.
- 7) An Improvement Survey Plat is recommended due to lost, obliterated and/or conflicting property corner monumentation (if any).

C.R.S. 38-51-108 (Effective July 1, 2013)

IMPROVEMENT LOCATION CERTIFICATE

I hereby certify that this Improvement Location Certificate was prepared for

DINA A. BERG,

and that it is NOT a Land Survey Plat, an Improvement Survey Plat, and that it is not to be used as evidence for the establishment of title, building or other future improvement lines.

THIS CERTIFICATE IS VALID ONLY FOR USE BY

DINA A. BERG

AND DESCRIBE THE PARCELS APPEARANCE ON

AUGUST 26, 2015

I further certify that the improvements on the above described parcel on this date, August 26, 2015, except for utility connections, are entirely within the boundaries of the parcel as shown on the attached plat. This certificate is not to be used as evidence for the establishment of title, building or other future improvement lines. There is no explicit evidence or sign of any encroachment existing or hereafter any part of said parcel except as shown.

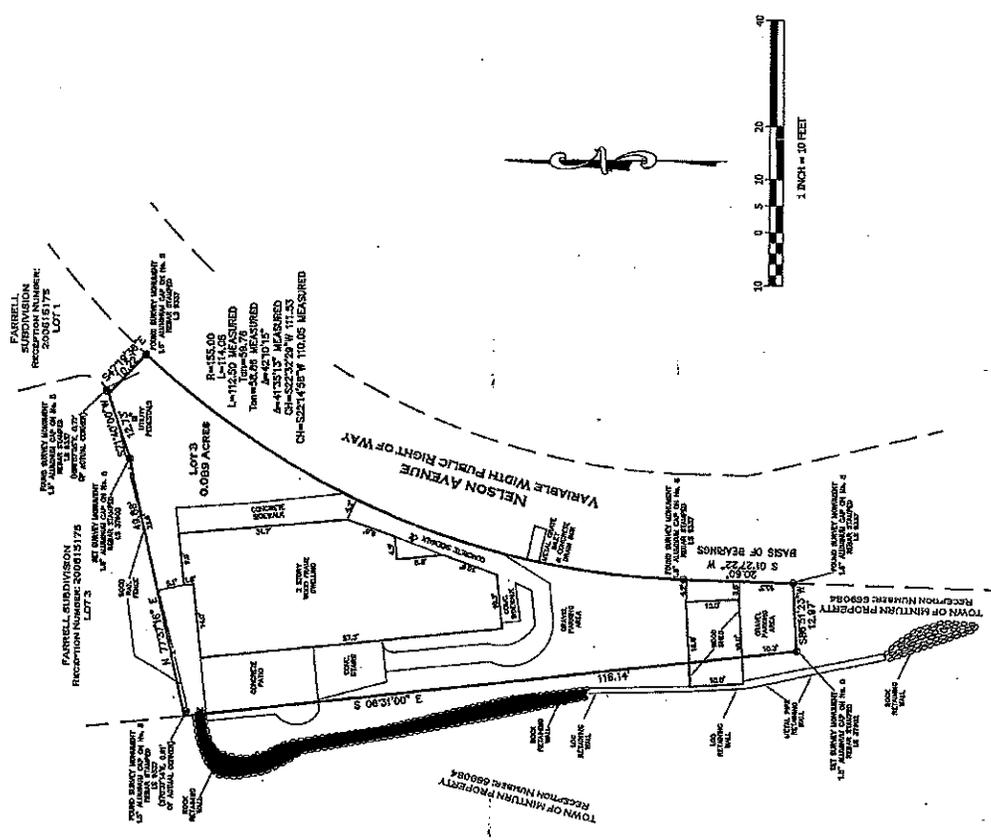


Therese J. Anselberger, PLS 2592
Colorado Professional Land Surveyor

IMPROVEMENT LOCATION CERTIFICATE			
DINA A. BERG			
TOWN OF MONTROSE, COUNTY OF GARFIELD, STATE OF COLORADO			
DATE	10/29	1979	10/29
PLAT	1	OF 2015	10/29
PLAT	1	OF 2015	10/29

Archibque Land Consulting, Ltd

Professional Land Surveying & Mapping
115 Locust Street, Suite 400, Montrose, CO 81401
970.328.4020 office 970.328.4021 fax
INFO@PEOLANDSURVEY.COM



THIS CERTIFICATE IS VALID ONLY FOR USE BY DINA A. BERG AND IS NOT TO BE USED AS EVIDENCE FOR THE ESTABLISHMENT OF TITLE, BUILDING OR OTHER FUTURE IMPROVEMENT LINES. THERE IS NO EXPLICIT EVIDENCE OR SIGN OF ANY ENCROACHMENT EXISTING OR HEREAFTER ANY PART OF SAID PARCEL EXCEPT AS SHOWN.



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)
10/01/2015

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY StateFarm COMERFORD INSURANCE AGENCY INC P O BOX 4079 EAGLE CO 81631		PHONE (A/C, No, Ex): 970 328-4000		COMPANY State Farm Fire and Casualty Company		NAIC # 25143	
FAX (A/C, No): 970 328-4956		E-MAIL ADDRESS:		LOAN NUMBER		POLICY NUMBER 86-BS-H797-3	
CODE:		SUB CODE:		EFFECTIVE DATE 10/27/2014		EXPIRATION DATE 10/27/2016	
AGENCY CUSTOMER ID #:						<input checked="" type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
INSURED BERG, DINA P O BOX 291 MINTURN, CO 81645				THIS REPLACES PRIOR EVIDENCE DATED:			

PROPERTY INFORMATION

LOCATION/DESCRIPTION
102 NELSON AVE
MINTURN, CO 81645

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
LIABILITY	\$1,000,000	0

REMARKS (Including Special Conditions)

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS TOWN OF MINTURN P O BOX 309 MINTURN, CO 81645	MORTGAGEE	ADDITIONAL INSURED
	LOSS PAYEE	
	LOAN #	
	AUTHORIZED REPRESENTATIVE	

Sec. 11-3-80. - Permit application for encroachment.

Any person desiring to erect a building, fence, barrier, post or other obstructions or encroachments upon any street, avenue, alley sidewalk, highway, public right-of-way or other public ground within the Town shall file a written application for a permit therefor upon a form prepared and provided by the Town. Said application shall state therein the following:

(1)

The applicant's name, address and telephone number.

Dina Berg, 102 Nelson Avenue, PO Box 291, Minturn, CO 81645

(2)

The location of the proposed encroachment, obstruction or structure

See survey

(3)

The type of encroachment, obstruction or other structure.

Retaining wall

(4)

The purpose of the proposed encroachment or other structure

Protect our home from damage caused by erosion of or run-off from the hill behind it.
Enhance visual appeal

11-3-90 - Insurance

11-3-120 License Agreements

Encroachment
License Agreement
- Resolution

(Ord. 4, 2009 §1)

Sec. 11-2-90. - Investigation; fee; revocation of permit.

(a)

The application provided for in Section 11-3-80 above shall be made to the Town Administrator. The Town Administrator shall make an investigation of the information contained in the application and, prior to the issuance of a permit, shall determine that the proposed encroachment, obstruction or other structure does not constitute a nuisance, destroy or impair the use of the right-of-way by the public or structure does not constitute a traffic hazard. The encroachment applicant shall provide overwhelming evidence that the requested encroachment cannot be reasonably accommodated on the applicant's own property and outside of the right-of-way. The requested encroachment shall not be the result of a situation created by the applicant or the applicant's agents. The applicant affirmatively shall demonstrate with evidence that a hardship exists necessitating the encroachment and that the hardship was not created by the applicant or his or her agents. No permit shall be issued where the above conditions are found to exist. At the time of issuance of a permit hereunder, the applicant shall pay a fee set by the Town. Any such

My late husband, Donald Jerome (Jerry) Berg, was working with Chris in the planning department for the Town of Minturn. They met in person to review the planned improvements to the property, including the small encroachment for a retaining wall necessary to restrain run-off from or erosion of the hill behind it. Chris gave Jerry permission to proceed with the project.

Before he passed away Jerry began removing the crumpling concrete blocks that the former owners had stacked unsecured behind a small portion of the house. The Town of Minturn offered to help him haul away dirt, but he declined, not wanting his project to become a nuisance to the Town. Reynolds Corporation, a company specializing in excavation and landscaping, completed the work. They built a substantial retaining wall that runs the entire length of the house and incorporates a sidewalk and small patio. The upgrades benefit the homeowner and the Town by minimizing risk of damage to the structure. In addition to safety, the before and after pictures show how much visual appeal the land improvements added.

My husband lived in the valley since 1972, and was accustomed Minturn doing business in the small town way - on a handshake. I can understand how paperwork would have been neglected on his part. Chris no longer lives in Minturn and any "form prepared and provided by the Town" that he might have had in his personal records is lost. The only evidence I have of communication between them is an email regarding reconstruction of the home office space, aka tiny house, located at the base of the excavation project.

The encroachment has been in place for over 3 years. The improvements are of a permanent nature and there has been no public need for the permit area. I am willing to pay all fees and insurance required to comply with Town ordinances.

