



Memorandum

TO: Vail Town Council

FROM: Community Development Department

DATE: July 17, 2018

SUBJECT: An appeal, pursuant to Section 12-3-3, Appeals, Vail Town Code, of the final decision of the Town of Vail Design Review Board on June 20, 2018 denying a request to amend the design of the proposed Solar Vail Employee Housing development, located at 501 N. Frontage Road West / Lot 8, Block 2, Vail Potato Patch Filing 1, and setting forth details in regard thereto. (TC18-0002)

Appellant: Sonnenalp Properties, Inc. represented by GPSL Architects
Planner: Chris Neubecker

I. SUBJECT PROPERTY

The subject property is Solar Vail, located at 501 N. Frontage Road West / Lot 8, Block 2, Vail Potato Patch Filing 1.

II. VAIL TOWN COUNCIL JURISDICTION

Pursuant to Section 12-3-3C-1, Appeal of Planning and Environmental Commission Decisions, Design Review Board Decisions And Art In Public Places Board Decisions: Authority, and Section 14-1-6, Appeals, Vail Town Code, the Town Council shall have the authority to hear and decide appeals from any decision, determination or interpretation by the Design Review Board with respect to the provisions of Title 12, Zoning Regulations, and Title 14, Development Standards, Vail Town Code.

III. PROCEDURAL CRITERIA FOR APPEALS

Pursuant to Section 12-3-3C-2 and 12-3-3C-3, Appeal of Planning and Environmental Commission Decisions, Design Review Board Decisions And Art In Public Places Board Decisions: Initiation and Procedures, Vail Town Code, there are three basic procedural criteria for an appeal:

A. Standing of the Appellants

Pursuant to Section 12-3-2, Appeals, Vail Town Code, the appellant, Sonnenalp Properties, Inc., has standing as an aggrieved or adversely affected party to appeal the Design Review Board's decision of June 20, 2018 decision (DRB18-0216). The appellant was the applicant for the Design Review Board permit and owner of the property that is the subject of the appeal.

B. Adequacy of the Notice of the Appeal

A copy of the Public Notice of the Vail Town Council July 17, 2018 public hearing was mailed to adjacent property owners on June 27, 2018, and published in the Vail Daily on June 29, 2018, pursuant to Section 12-3-3C-3, Procedures, Vail Town Code. (Attachment B)

C. Timeliness of the Notice of Appeal

Section 12-3-3C-3, Procedures, Vail Town Code, requires a written notice of appeals to be filed with the administrator within twenty (20) calendar days of the Design Review Board decision. On June 21, 2018, the appellant, Sonnenalp Properties, Inc., filed an appeal of the Design Review Board's June 20, 2018 decision. (Attachment A)

IV. SUMMARY

The question to be answered by the Vail Town Council regarding this appeal is:

Were the requirements of the Vail Town Code, specifically Title 12, Zoning Regulations and Title 14, Chapter 10, Design Review Standards and Guidelines, properly applied in the decision to deny a request to amend the design of the proposed Solar Vail Employee Housing development, located at 501 N. Frontage Road West / Lot 8, Block 2, Vail Potato Patch Filing 1 (DRB18-0216)?

Pursuant to Section 12-3-3, Appeals, Vail Town Code, the Vail Town Council shall uphold, uphold with modifications, or overturn the Design Review Board's decision of June 20, 2018.

V. BACKGROUND

The subject property was annexed into the Town of Vail by Ordinance No. 8, Series of 1969, which became effective on August 23, 1969. The Solar Vail building was initially developed as employee housing in 1978 and serves as off-site housing for employees of the Sonnenalp Hotel, also owned by the appellant.

The existing three (3) story building includes 24 one-bedroom units totaling 13,104 square feet of GRFA, including 11 deed restricted employee housing units. Due to the age and condition of the property, the applicant would like to redevelop the property.

- On November 13, 2017, the appellant received approval from the Planning and Environmental Commission (PEC) for a Development Plan for the construction of a new 65-unit deed restricted employee housing development on the site of the existing Solar Vail building. (PEC17-0046)
- On February 26, 2018, the appellant obtain approval from the PEC for an amendment to the Development Plan for the construction of employee housing units (PEC18-0002) and two variances to allow for a change in the design of the east parking garage in the building. (PEC18-0003)
- On March 7, 2018, the appellant obtained approval from the Design Review Board (DRB) for the previous design of the 65-unit Solar Vail development. (DRB17-0490)
- On June 6, 2018, the DRB initially reviewed the proposed changes to the building that are the subject of this appeal, but did not render a final decision since an application for a change to the Development Plan was pending before the PEC. At the meeting on June 6, 2018, the DRB requested some changes to the building design, including a suggestion to change the design of the roof and to incorporate dormer windows to break up the roof plane. (DRB18-0216)
- On June 11, 2018, the appellant obtained final approval from the PEC for a change to the Solar Vail Development Plan, which changed the design of the building, including removing a significant portion of the building on steep slopes to the north, altering the unit mix, changing the design of the parking areas, and changing the design of the building facade and roof. (PEC18-0021)
- On June 20, 2018, the DRB voted 2-2 on a motion for approval. As a result of the failure to obtain a majority vote, the motion was denied. DRB members voting against the motion cited a lack of compatibility, based largely on the roof design, Section 14-10-2, General Compatibility. (DRB18-0216)

In the appeal letter (Attachment A), the appellant and their representative argue that the project cannot accommodate design changes and additional costs that would make the new development financially infeasible. The appellants also argue the Design Review Board needs to have the tools to review affordable housing developments differently from multi-million dollar private residences that are common in Vail. They further claim that they believe that the design of the proposed Solar Vail development is not out of character with the immediate neighborhood.

VI. APPLICABLE DOCUMENTS

Staff finds that the following provisions of the Vail Town Code are relevant to the review of this proposal:

Title 12 – Zoning Regulations, Vail Town Code

12-3-3: Appeals

C. Appeal of Planning And Environmental Commission Decisions, Design Review Board Decisions And Art In Public Places Board Decisions:

1. Authority: The town council shall have the authority to hear and decide appeals from any decision, determination or interpretation by the planning and environmental commission or the design review board or the art in public places board with respect to the provisions of this title and the standards and procedures hereinafter set forth.

2. Initiation: An appeal may be initiated by an applicant, adjacent property owner, or any aggrieved or adversely affected person from any order, decision, determination or interpretation by the planning and environmental commission or the design review board or the art in public places board with respect to this title. "Aggrieved or adversely affected person" means any person who will suffer an adverse effect to an interest protected or furthered by this title. The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons. The administrator shall determine the standing of an appellant. If the appellant objects to the administrator's determination of standing, the town council shall, at a meeting prior to hearing evidence on the appeal, make a determination as to the standing of the appellant. If the town council determines that the appellant does not have standing to bring an appeal, the appeal shall not be heard and the original action or determination stands. The town council may also call up a decision of the planning and environmental commission or the design review board or the art in public places board by a majority vote of those town council members present.

Chapter 6, Article I. Housing (H) District (in part)

12-6I-1: PURPOSE:

The housing district is intended to provide adequate sites for employee housing which, because of the nature and characteristics of employee housing, cannot be adequately regulated by the development standards prescribed for other residential zone districts. It is necessary in this zone district to provide

development standards specifically prescribed for each development proposal or project to achieve the purposes prescribed in section 12-1-2 of this title and to provide for the public welfare. Certain nonresidential uses are allowed as conditional uses, which are intended to be incidental and secondary to the residential uses of the district. The housing district is intended to ensure that employee housing permitted in the zone district is appropriately located and designed to meet the needs of residents of Vail, to harmonize with surrounding uses, and to ensure adequate light, air, open spaces, and other amenities appropriate to the allowed types of uses.

12-6I-10 Other Development Standards

A. Prescribed By Planning And Environmental Commission: In the H district, development standards in each of the following categories shall be as proposed by the applicant, as prescribed by the planning and environmental commission, and as adopted on the approved development plan:

- 1. Lot area and site dimensions.*
- 2. Building height.*
- 3. Density control (including gross residential floor area)*

12-6I-11: DEVELOPMENT PLAN REQUIRED:

A. Compatibility With Intent: To ensure the unified development, the protection of the natural environment, the compatibility with the surrounding area and to assure that development in the housing district will meet the intent of the zone district, an approved development plan shall be required.

B. Plan Process And Procedures: The proposed development plan shall be in accordance with section [12-6I-12](#) of this article and shall be submitted by the developer to the administrator, who shall refer it to the planning and environmental commission, which shall consider the plan at a regularly scheduled meeting.

C. Hearing: The public hearing before the planning and environmental commission shall be held in accordance with section [12-3-6](#) of this title. The planning and environmental commission may approve the application as submitted, approve the application with conditions or modifications, or deny the application. The decision of the planning and environmental commission may be appealed to the town council in accordance with section [12-3-3](#) of this title.

D. Plan As Guide: The approved development plan shall be used as the principal guide for all development within the housing district.

E. Amendment Process: Amendments to the approved development plan will be considered in accordance with the provisions of section [12-9A-10](#) of this title.

F. Design Review Board Approval Required: The development plan and any subsequent amendments thereto shall require the approval of the design review board in accordance with the applicable provisions of [chapter 11](#) of this title prior to the commencement of site preparation.

12-6I-13: DEVELOPMENT STANDARDS/CRITERIA FOR EVALUATION:

The following criteria shall be used as the principal means for evaluating a proposed development plan. It shall be the burden of the applicant to demonstrate that the proposed development plan complies with all applicable design criteria.

A. Building design with respect to architecture, character, scale, massing and orientation is compatible with the site, adjacent properties and the surrounding neighborhood.

B. Buildings, improvements, uses and activities are designed and located to produce a functional development plan responsive to the site, the surrounding neighborhood and uses, and the community as a whole.

C. Open space and landscaping are both functional and aesthetic, are designed to preserve and enhance the natural features of the site, maximize opportunities for access and use by the public, provide adequate buffering between the proposed uses and surrounding properties, and, when possible, are integrated with existing open space and recreation areas.

D. A pedestrian and vehicular circulation system is designed to provide safe, efficient and aesthetically pleasing circulation to the site and throughout the development.

E. Environmental impacts resulting from the proposal have been identified in the project's environmental impact report, if not waived, and all necessary mitigating measures are implemented as a part of the proposed development plan.

F. Compliance with the Vail comprehensive plan and other applicable plans.

12-11-3: DESIGN APPROVAL:

A. Scope: No person shall commence removal of vegetation, site preparation, building construction or demolition, dumping of material upon a site, sign erection, exterior alteration or enlargement of an existing structure, paving, fencing or other improvements of open space within the corporate limits of the town unless design approval has been granted as prescribed in this chapter. The

addition of plant materials to existing landscaping, gardening and landscape maintenance shall be exempt from this provision.

B. Violation: It shall be a violation of this chapter and the building permit for any person to commence, continue or complete work that has not received design approval as prescribed in this chapter and/or is not in conformity with the plans approved and authorized by the administrator and/or the design review board and the building official.

Title 14 – Design Review Standards and Guidelines, Vail Town Code

14-1-1: PURPOSE AND INTENT:

It is the purpose of these rules, regulations, and standards to ensure the general health, safety, and welfare of the community. These rules, regulations, and standards are intended to ensure safe and efficient development within the town of Vail for pedestrians, vehicular traffic, emergency response traffic, and the community at large. The development standards will help protect property values, ensure the aesthetic quality of the community and ensure adequate development of property within the town of Vail.

14-1-2: APPLICABILITY:

Unless specifically exempted, the provisions of this title shall supplement any and all existing laws and shall apply to all persons, without restriction, and to conditions arising after the adoption thereof, to conditions not legally in existence at the time of adoption of this title, and to conditions which, in the opinion of the fire chief, the building official, or the town engineer, constitute a distinct hazard to life or property.

The development standards shall apply to new development, as well as to modifications and additions to existing developments, unless specifically exempted herein.

14-1-6: APPEALS:

Appeals from decisions made concerning the development standards shall be in accordance with [title 12, chapter 3](#) of this code.

14-10-1: PURPOSE:

This chapter provides the design review standards and guidelines for development in the town of Vail. Actions of the staff and the design review board shall be guided by the objectives prescribed herein, the Vail Village urban design considerations and guide plan and the Lionshead redevelopment master plan,

and by all of the applicable ordinances of the town and by the design guidelines in this chapter.

14-10-2: GENERAL COMPATIBILITY

A. Structures shall be compatible with existing structures, their surroundings, and with Vail's environment. It is not to be inferred that buildings must look alike to be compatible. Compatibility can be achieved through the proper consideration of scale, proportions, site planning, landscaping, materials and colors, and compliance with the guidelines herein contained.

B. Any building site in Vail is likely to have its own unique landforms and features. Whenever possible, these existing features should be preserved and reinforced by new construction. The objective is to fit the buildings to their sites in a way that leaves the natural landforms and features intact, treating the buildings as an integral part of the site, rather than as isolated objects at odds with their surroundings.

14-10-5: BUILDING MATERIALS AND DESIGN (in part)

A. Intent: The town is situated within the wildland urban interface where community values intersect with the potential consequences of wildland fires. Wildland fires both big and small have the potential to destroy homes and neighborhoods within the town. The architecture and chosen materials of a building greatly affect the survivability of that structure in the face of a wildfire. The use of class A roof coverings and ignition resistant building materials decrease the hazards to the individual structure as well as the surrounding homes.

D. Colors: Exterior wall colors should be compatible with the site and surrounding buildings. Natural colors (earth tones found within the Vail area) should be utilized. Primary colors or other bright colors should be used only as accents and then sparingly such as upon trim or railings. All exterior wall materials must be continued down to finished grade thereby eliminating unfinished foundation walls. All exposed metal flashing, trim, flues, and rooftop mechanical equipment shall be anodized, painted or capable of weathering so as to be nonreflective.

E. Roof Forms: The majority of roof forms within Vail are gable roofs with a pitch of at least four feet (4') in twelve feet (12'). However, other roof forms are allowed. Consideration of environmental and climatic determinants such as snow shedding, drainage, fire safety and solar exposure should be integral to the roof design.

F. Rooflines: Rooflines should be designed so as not to deposit snow on parking areas, trash storage areas, stairways, decks and balconies, or entryways. Secondary roofs, snow clips, and snow guards should be utilized to protect these areas from roof snow shedding if necessary.

H. Rooftops: Rooftop heating and air conditioning equipment, large vent stacks, elevator penthouses and similar features should be avoided; however, if necessary, shall be designed to be compatible with the overall design of the structure or screened from view of all adjacent properties. Rooftop antennas shall not be permitted unless as allowed under a conditional use review as specified within the zoning code.

VII. DISCUSSION ITEMS

1. Building Design Compatibility

On June 20, 2018 the Design Review Board reviewed the application to change the building design. The Board voted 2-2 on a motion (by Doug Cahill, second by David Campbell) to approve the requested design change; the motion failed for lack of a majority vote (voting against approval were Bill Pierce and Pete Cope). The motion was not to deny the application, but the effect of a failure to obtain a majority vote is that the application was not approved.

Those DRB members voting against the motion found that the proposed change to the building design, in particular the roof, resulted in a building that was not compatible with Vail's environment. Some Board members indicated that there is not a separate design review code for deed-restricted employee housing developments, and that a similar market rate development would not be approved.

During their review, the DRB suggested the addition of faux dormers on the roof to help break up the simple roof design and provide some additional visual interest, thus making the building design compatible. The Board further indicated that the building design had been originally approved (March 7, 2018), but since its initial approval several revisions had been made to scale back on the design, including changes to the roof and the balconies. (Balconies were changed from walk out balconies, to Juliette balconies.) The Board indicated that there is more interest on the back (north) side of the building due to changes in wall planes, than on the front façade.

The appellant indicated at the meeting an understanding of the Board's design suggestions, but indicated that the addition of dormers would increase the cost of the building to a point where its construction would be financially infeasible. The appellant indicated that this is the best design they can produce on this site to be used for employee housing.

VIII. REQUIRED ACTION

Pursuant to Section 12-3-3, Appeals, Vail Town Code, the Vail Town Council shall uphold, uphold with modifications, or overturn the Design Review Board's June 20, 2018 decision.

Should the Vail Town Council choose to **uphold** the determination of the Town of Vail Design Review Board (Denial), the following statement is recommended:

*"The Vail Town Council upholds the June 20, 2018 Design Review Board decision to **deny** a request to amend the design of the proposed Solar Vail Employee Housing development, located at 501 N. Frontage Road West / Lot 8, Block 2, Vail Potato Patch Filing 1, and setting forth details in regard thereto. (TC18-0002)."*

With the following **findings**:

*"The Vail Town Code was properly applied in regard to the June 20, 2018 Design Review Board decision to **deny** the request to amend the design of the proposed Solar Vail Employee Housing development, located at 501 N. Frontage Road West / Lot 8, Block 2, Vail Potato Patch Filing 1, and setting forth details in regard thereto. (TC18-0002)."*

Should the Vail Town Council choose to **overturn** the determination of the Town of Vail Design Review Board (**Approval**), the following statement is recommended:

"The Vail Town Council finds as follows:

The Vail Town Code was not properly applied in regard to the June 20, 2018 Design Review Board decision to deny the application for a design change, DRB18-0216. Furthermore, the Vail Town Council finds that the proposed building design is compatible with existing structures, their surroundings, and with Vail's environment, and is in compliance with Title 12, Zoning Regulations, and Title 14, Development Standards, of the Vail Town Code, located at 501 N. Frontage Road West / Lot 8, Block 2, Vail Potato Patch Filing 1, and setting forth details in regard thereto.

The Town Council hereby overturns the decision of the Design Review Board concerning the Solar Vail application for a design change, DRB18-0216, located at 501 N. Frontage Road West / Lot 8, Block 2, Vail Potato Patch Filing 1, and setting forth details in regard thereto, and that the Vail Town Council hereby grants the requested Design Review Board application, as originally submitted by the applicant to the Town of Vail." (TC18-0002).

IX. ATTACHMENTS

- A. Appeals Form
- B. Public Notice & Proof of Publication
- C. Letter to Town Council from Henry Pratt and Johannes Faessler, June 21, 2018.
- D. Vicinity Map
- E. Site Plan and Elevations