



Memorandum

TO: Vail Town Council

FROM: Community Development Department

DATE: October 16, 2018

SUBJECT: A call up, pursuant to Section 12-3-3, Appeals, Vail Town Code, of the final decision of the Town of Vail Design Review Board on September 5, 2018 for the approval of a new two-family structure located at 1012 Eagle's Nest Circle, Lot 2, Block 6, Vail Village Filing No. 7, and setting forth details in regard thereto. (TC18-0004)

Call Up: Vail Town Council
Applicant: 1012 Eagles Nest LLC 2018
Planner: Jonathan Spence

I. SUBJECT PROPERTY

The subject property is located at 1012 Eagle's Nest Circle, Lot 2, Block 6, Vail Village Filing No. 7.

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 call up any decision, determination or interpretation by the Design Review Board (DRB) with respect to the provisions of Title 12, Zoning Regulations, and Title 14, Development Standards, Vail Town Code.

III. 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 for the approval of a new two-family structure

located at 1012 Eagle's Nest Circle, Lot 2, Block 6, Vail Village Filing No. 7 (DRB18-0271)?

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 September 5, 2018.

IV. BACKGROUND

The subject property was part of the original Town of Vail following an election held on August 23, 1966. The existing home was constructed in 1965. The application intends to replace the existing home with a new two-family residence.

- On June 25, 2018, the applicant submitted an application for the conceptual review of the redevelopment of the property. The application included the demolition of the existing structure and pool to be replaced with a new primary/secondary two-family dwelling.
- On July 18, 2018, the conceptual application was heard before the Design Review Board where comments were offered from the DRB members and members of the community. Prior to the public hearing, a site visit to the property and the neighborhood occurred. As a conceptual review, no vote is taken. (DRB18-0273)
- On August 13, 2018 the applicant provided the Town with revised plans for a requested review of new construction before the DRB. These plans underwent an internal review by all applicable Town departments including Community Development, Public Works and Fire. With minor conditions, the application was determined to be in compliance with applicable technical and dimensional standards.
- On September 5, 2018, the application was heard before the DRB in a public hearing format following a second site visit to the property and the surrounding areas. After deliberations, following a discussion between the applicant and the members of the DRB and after public comment was received, both in person and in writing, the DRB voted unanimously (5-0) to approve the project with one additional condition. (DRB18-0271)
- The September 5, 2018 approval of DRB18-0271 included the following set of conditions:
 1. Approval of this project shall lapse and become void one (1) year following the date of final approval, unless a building permit is issued and construction is commenced and is diligently pursued toward completion.

2. Design Review Board approval shall not become valid for 20 days following the date of approval, pursuant to the Vail Town Code, Chapter 12-3-3 Appeals.
 3. No changes to these plans may be made without the written consent of Town of Vail staff and/or the appropriate review committee(s).
 4. Prior to requesting any final inspection, the applicant shall demonstrate to the Public Works Department compliance with the Sight Distance Triangle.
 5. The applicant shall provide an amended site plan with the BP submittal showing the limits of disturbance fence encompassing all proposed grading work, including work on the adjoining property.
 6. Prior to submitting a building permit application, the applicant shall amend the plans to replace the lower stucco below the metal siding with the project stone.
- On September 18, 2018 the Vail Town Council called the item up for additional review. This item was scheduled for the October 16, 2018 Town Council meeting.

Staff has received letters of concern which have been included as attachments to this memorandum. The applicant has provided additional material related to this call-up which has been included as Attachment I.

V. 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 (Emphasis added)

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.

ARTICLE D. TWO-FAMILY PRIMARY/SECONDARY RESIDENTIAL (PS) DISTRICT

Chapte12-6D-1: PURPOSE:

The two-family primary/secondary residential district is intended to provide sites for single-family residential uses or two-family residential uses in which one unit is a larger primary residence and the second unit is a smaller caretaker apartment, together with such public facilities as may appropriately be located in the same zone district. The two-family primary/secondary residential district is intended to ensure adequate light, air, privacy and open space for each dwelling, commensurate with single-family and two-family occupancy, and to maintain the desirable residential qualities of such sites by establishing appropriate site development standards. (Ord. 29(2005) § 23: Ord. 30(1977) § 2)

12-6D-2: PERMITTED USES:

The following uses shall be permitted:

Employee housing units, as further regulated by chapter 13 of this title.

Single-family residential dwellings.

Two-family residential dwellings. (Ord. 1(2008) § 5)

12-6D-3: CONDITIONAL USES:

The following conditional uses shall be permitted, subject to issuance of a conditional use permit in accordance with the provisions of chapter 16 of this title:

Bed and breakfasts, as further regulated by section 12-14-18 of this title.

Communications antennas and appurtenant equipment.

Funiculars and other similar conveyances.

Home child daycare facilities, as further regulated by section 12-14-12 of this title.

Public and private schools.

Public buildings, grounds and facilities.

Public park and recreation facilities.

Public utility and public service uses.

Ski lifts and tows. (Ord. 12(2008) § 5)

12-6D-4: ACCESSORY USES:

The following accessory uses shall be permitted:

Home occupations, subject to issuance of a home occupation permit in accord with the provisions of section 12-14-12 of this title.

Private greenhouses, toolsheds, playhouses, garages or carports, swimming pools, patios, or recreation facilities customarily incidental to single-family and two-family residential uses.

Other uses customarily incidental and accessory to permitted or conditional uses, and necessary for the operation thereof.

12-6D-5: LOT AREA AND SITE DIMENSIONS:

The minimum lot or site area shall be fifteen thousand (15,000) square feet of buildable area, and each site shall have a minimum frontage of thirty feet (30'). Each site shall be of a size and shape capable of enclosing a square area, eighty feet (80') on each side, within its boundaries.

12-6D-6: SETBACKS:

In the primary/secondary residential district, the minimum front setback shall be twenty feet (20'), the minimum side setback shall be fifteen feet (15'), and the minimum rear setback shall be fifteen feet (15').

12-6D-7: HEIGHT:

For a flat roof or mansard roof, the height of buildings shall not exceed thirty feet (30'). For a sloping roof, the height of buildings shall not exceed thirty three feet (33'). (Ord. 37(1980) § 2)

12-6D-8: DENSITY CONTROL:

A. Dwelling Units: Not more than a total of two (2) dwelling units shall be permitted on each site with only one dwelling unit permitted on existing lots less than fourteen thousand (14,000) square feet.

1. Exception: Properties that meet all of the following three (3) conditions shall be permitted a total of two (2) dwelling units on existing lots less than fourteen thousand (14,000) square feet:

a. The property was annexed into the town of Vail with two (2) existing dwelling units on a lot less than fourteen thousand (14,000) square feet.

b. The property as of April 1, 2016, contained two (2) dwelling units on a lot less than fourteen thousand (14,000) square feet.

c. At no time between the property's annexation and April 1, 2016, did the property contain less than two (2) dwelling units.

2. Discontinuance Of Exception: If at any time any property as described above develops or redevelops with only one dwelling unit, this exception for the allowance of two (2) units shall no longer be valid for such property.

B. Gross Residential Floor Area:

1. The following gross residential floor area (GRFA) shall be permitted on each site:

a. Not more than forty six (46) square feet of gross residential floor area (GRFA) for each one hundred (100) square feet of the first ten thousand (10,000) square feet of site area; plus

b. Thirty eight (38) square feet of gross residential floor area (GRFA) for each one hundred (100) square feet of site area over ten thousand

(10,000) square feet, not exceeding fifteen thousand (15,000) square feet of site area; plus

c. Thirteen (13) square feet of gross residential floor area (GRFA) for each one hundred (100) square feet of site area over fifteen thousand (15,000) square feet, not exceeding thirty thousand (30,000) square feet of site area; plus

d. Six (6) square feet of gross residential floor area (GRFA) for each one hundred (100) square feet of site area in excess of thirty thousand (30,000) square feet.

2. The secondary unit shall not exceed forty percent (40%) of the allowable gross residential floor area (GRFA).

C. Employee Housing Units: Notwithstanding the provisions of subsections A and B of this section, a type I employee housing unit shall be permitted on lots of less than fourteen thousand (14,000) square feet in accordance with the provisions of chapter 13 of this title. Any type I employee housing unit existing on or before April 18, 2000, shall not be eliminated unless all dwelling units are demolished, in which case the zoning on the property shall apply. However, an existing type I employee housing unit may be replaced with a type II employee housing unit on lots of fourteen thousand (14,000) square feet or greater.

12-6D-9: SITE COVERAGE:

Site coverage shall not exceed twenty percent (20%) of the total site area. (Ord. 41(1990) § 5: Ord. 30(1977) § 2)

12-6D-10: LANDSCAPING AND SITE DEVELOPMENT:

At least sixty percent (60%) of each site shall be landscaped. The minimum of any area qualifying as landscaping shall be ten feet (10') (width and length) with a minimum area not less than three hundred (300) square feet. (Ord. 30(1978) § 2)

12-6D-11: PARKING:

Off street parking shall be provided in accordance with chapter 10 of this title. (Ord. 30(1977) § 2)r 6, Article I. Housing (H) District (in part)

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.

14-10-3: SITE PLANNING:

A. The location and configuration of structures and accessways shall be responsive to the existing topography of the site upon which they are to be located. Grading requirements resulting from development shall be designed to blend into the existing or natural landscape. Any cuts or fills shall be sculptural in form and contoured to blend with the existing natural undisturbed terrain within the property boundary.

B. Building siting and access thereto shall be responsive to existing features of terrain rock outcroppings, drainage patterns, and vegetation.

C. Removal of trees, shrubs, and other native vegetation shall be limited to removal of those essential for development of the site, those identified as diseased, those essential for creating defensible space, and those found to impact view corridors as further regulated by title 12, chapter 22, "View Corridors", of this code. Mitigation may be required for tree removal.

D. All areas disturbed during construction shall be revegetated. If necessary, the design review board may designate allowable limits of construction activity and require physical barriers in order to preserve significant natural features and vegetation upon a site and adjacent sites during construction.

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.

A. 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.

B. Ignition Resistant Materials: The use of ignition resistant building materials and designs intended to prevent the spread of fire are highly encouraged. Vail fire and emergency services is available to provide more information on the use of ignition resistant materials and designs. Predominantly natural building materials shall be used within the town. The exterior use of wood, wood siding, native stone, brick, concrete, stucco, and EIFS may be permitted. Concrete surfaces, when permitted, shall be treated with texture and color; however, exposed aggregate is more acceptable than raw concrete. The exterior use of the following siding materials shall be prohibited: stucco or EIFS with gross textures or surface features that appear to imitate other materials, simulated stone, simulated brick, plastic and vinyl. The exterior use of any building material, including those not specifically identified by this section, shall only be permitted, unless otherwise prohibited by this code, where the design review board finds:

- 1. That the proposed material is satisfactory in general appearance, quality over time, architectural style, design, color, and texture; and*
- 2. That the use of the proposed material complies with the intent of the provisions of this code; and*
- 3. That the use of the proposed material is compatible with the structure, site, surrounding structures, and overall character of the town; and*

4. *That the material is noncombustible or aids in the prevention of fires.*

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.

VI. DISCUSSION ITEMS

Building Design Compatibility

On June 18, 2018 the Design Review Board reviewed the conceptual application to replace the existing single family residence with a new, primary/secondary two-family dwelling. DRB members and members of the public who spoke expressed concerns that the project, although not at final design, was in totality not sufficiently compatible with existing structures and their surroundings

On September 5, 2018, the Design Review Board reviewed a final application for new construction. It was the unanimous determination of the board that the changes and refinements illustrated with the revised application met, as conditioned, the standards and guidelines related to compatibility. Specifically:

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.

VII. 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 September 5, 2018 decision.

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

*“The Vail Town Council **upholds** the September 5, 2018 Design Review Board decision to **approve** a request for the construction of a new primary/secondary two-family structure, 1012 Eagle’s Nest Circle, Lot 2, Block 6, Vail Village Filing No. 7, and setting forth details in regard thereto. (TC18-0004).”*

With the following **findings**:

*“The Vail Town Code **was** properly applied in regard to the September 5, 2018 Design Review Board decision to approve a request for the construction of a new primary/secondary two-family structure, 1012 Eagle’s Nest Circle, Lot 2, Block 6, Vail Village Filing No. 7, and setting forth details in regard thereto. (TC18-0004).”*

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 **overturns** the September 5, 2018 Design Review Board decision to **approve** a request for the construction of a new primary/secondary two-family structure, 1012 Eagle’s Nest Circle, Lot 2, Block 6, Vail Village Filing No. 7, and setting forth details in regard thereto. (TC18-0004).”*

With the following **findings**:

*The Vail Town Code **was not** properly applied in regard to the September 5, 2018 Design Review Board decision to approve the application for new primary/secondary two-family structure, DRB18-0271. Furthermore, the Vail Town Council finds that the proposed building design is incompatible with existing structures, their surroundings, and with Vail's environment, and is not in compliance with Title 12, Zoning Regulations, and Title 14, Development Standards, of the Vail Town Code, located at 1012 Eagle’s Nest Circle, Lot 2, Block 6, Vail Village Filing No. 7, and setting forth details in regard thereto (TC18-0004).”*

VIII. ATTACHMENTS

- A. Vicinity Map
- B. DRB18-0271 Plan Set
- C. Letter of Concern, Michael and Betti Tiner, September 5, 2018
- D. Letter of Concern, Elaine and Art Kelton, September 4, 2018
- E. Letter of Concern, Michael Halpert, October 8, 2018
- F. Letter of Concern, Elaine and Art Kelton, October 10, 2018
- G. Letter of Concern, Tricia and Steven Vath, October 10, 2018
- H. Letter of Concern, Michael and Betti Tiner, October 10, 2018
- I. Supplemental Material from the applicant, October 10, 2018