

Bighorn Townhouses

Rezoning & Setback Variance



Location:

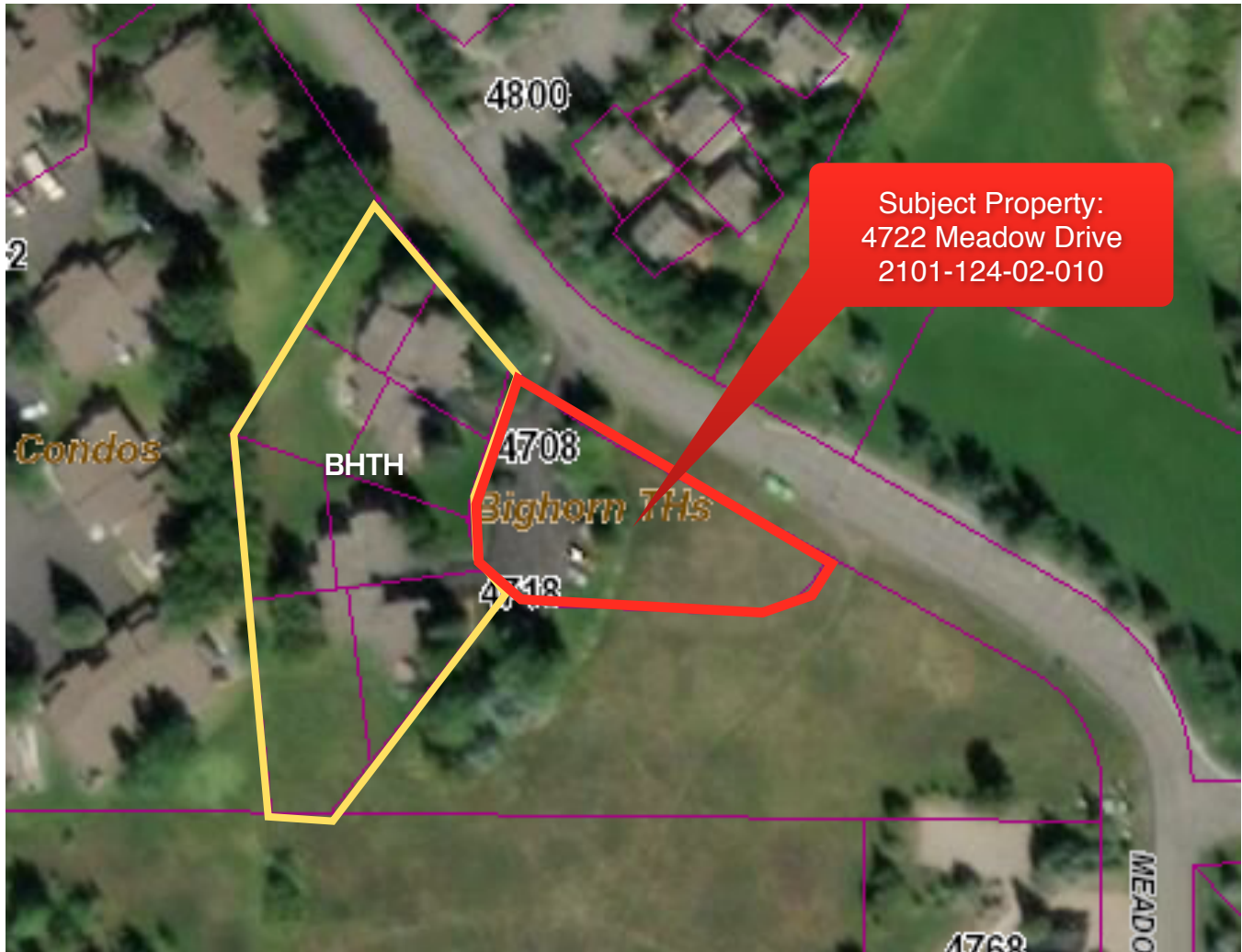
4708, 4718, and 4722 Meadow Drive
Bighorn Townhouses

Date Submitted: December 15, 2018

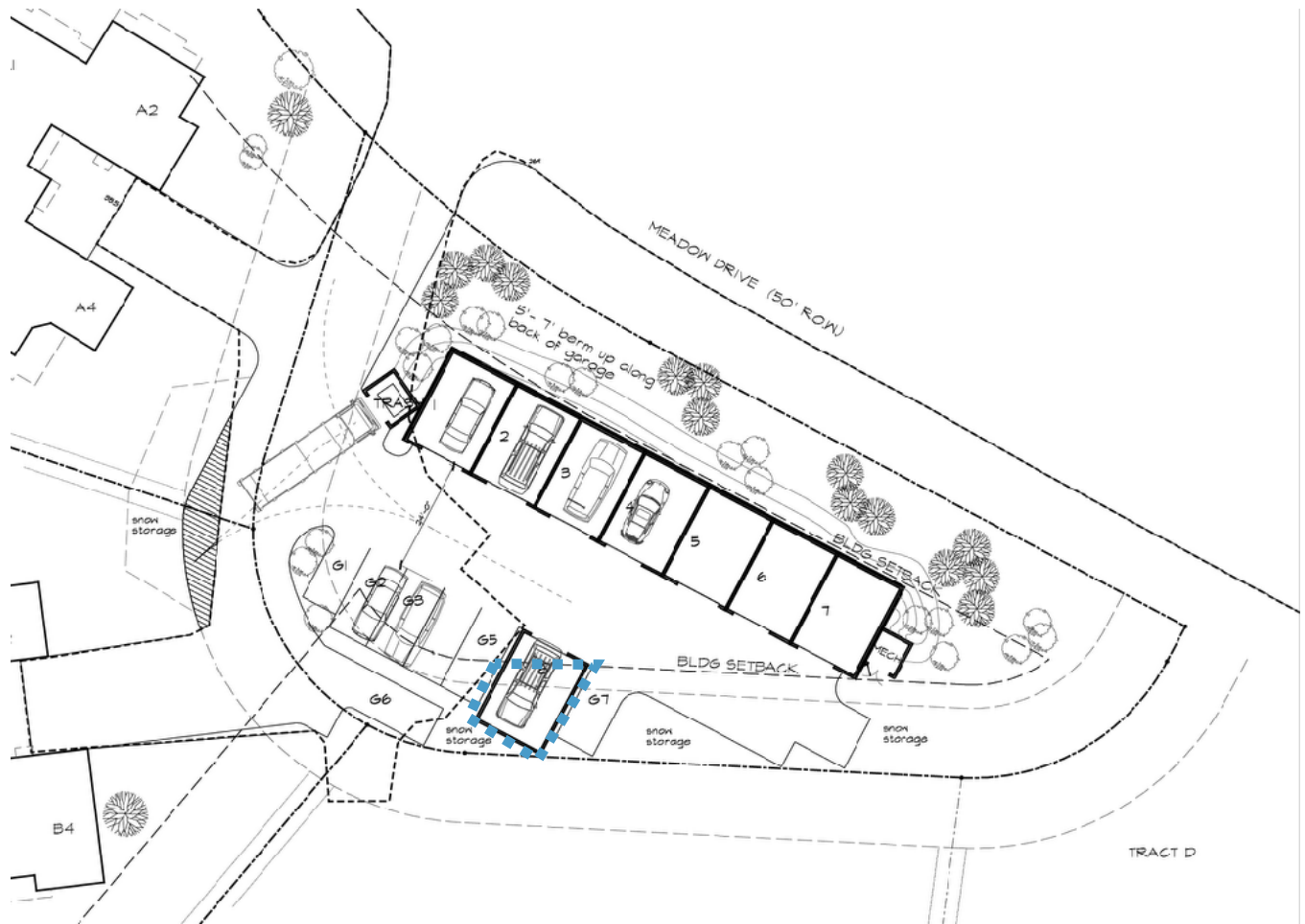


Introduction

The Bighorn Townhouse (BHTH) Association is requesting two applications related to their property located at 4708, 4718, and 4722 Meadow Drive / Bighorn Townhouses. The first request is a zoning of the property indicated in red on the map below. This area, which was erroneously believed to be owned by the Town of Vail until 2013, is currently not designated on the Town's zoning map (an error). The BHTH Association, who owns the property, is requesting the property be zoned Low Density Multiple Family (LDMF), which is consistent with the remainder of the BHTH property, which is indicated in yellow.



The second application is a request for a variance from Section 12-6F-6: Setbacks, to allow for the construction of enclosed parking within the 20 ft. rear setback. The BHTH Association is proposed 8 garages on the property shown in red on the map above. Only one of the garages requires a variance, as the others can be constructed under LDMF zoning, should the zoning request be approved. The property adjacent to the variance request is owned by the Town of Vail and zoned Outdoor Recreation (OR). The following indicated the proposed garage plan, and the area of the variance has been indicated in blue.



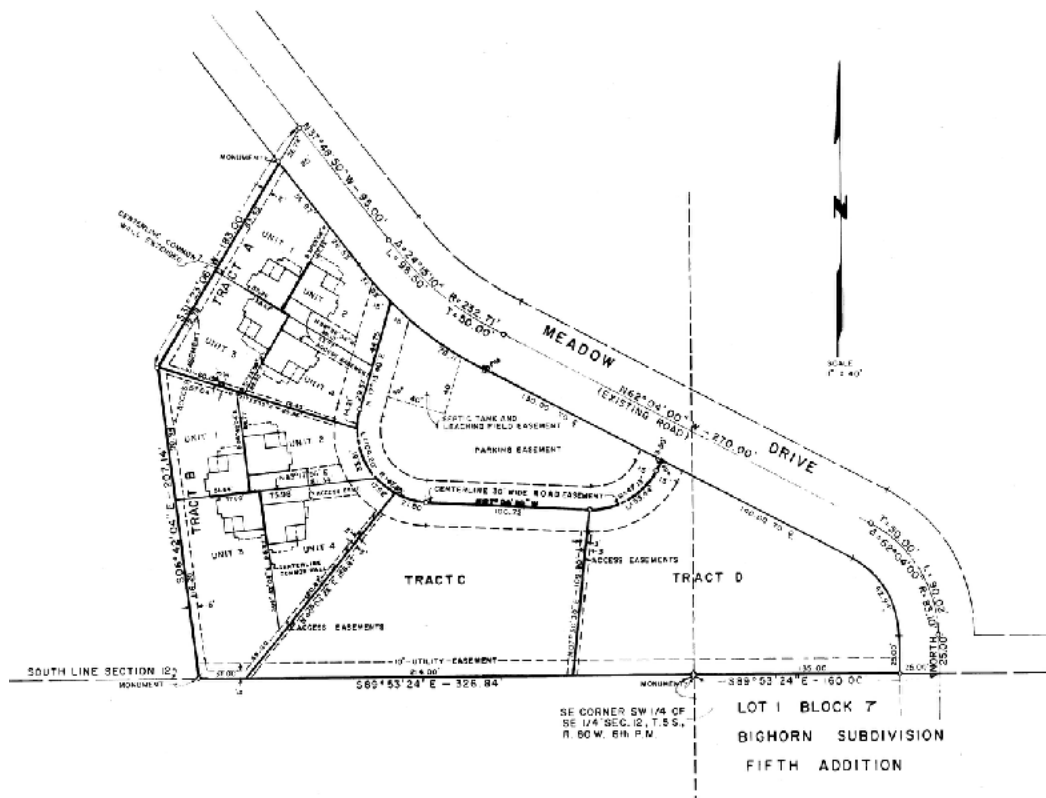
Historical Background

Bighorn Townhouses are located in East Vail at 4708, 4718, and 4722 Meadow Drive. Bighorn Townhouses were developed under Eagle County jurisdiction in 1968, then annexed into the Town of Vail in 1974. The property includes a four-plex on Tract A, a four-plex on Tract B, and a property identified on the original plat as Parking Easement. Currently, the Town identifies both Tracts A and B as zoned Low Density Multiple Family. However, the Town currently does not identify zoning on the Parking Easement Area.

Eagle County adopted Subdivision Regulations in 1964 and adopted their first Zoning Regulations in 1974. In 1968, the Bighorn Townhouses Subdivision Plat, along with the Declarations of Protective Covenants and Party Walls for Bighorn Townhouses, were recorded in the Office of Clerk and Recorder. At the time, the Plat provided for four Tracts (A, B, C, and D) and a "Parking Easement" as indicated on the portion of the plat below:

3. PARKING EASEMENTS SHOWN ARE FOR EXCLUSIVE USE OF OWNERS AND RESIDENTS OF THIS SUBDIVISION AND IS IN ADDITION TO THE ACCESS AND UTILITY EASEMENTS INDICATED.

The Plat indicated the existing Townhouses on Tract A and B, while Tract C and D were vacant. The Parking Easement Area was loosely described on the Plat as follows:



The 1968 Covenants do not provide much additional information on the Parking Easement Area although they indicate that the parking easement was exclusively for vehicles belonging to "unit owners." The Covenants state the following:

5. EASEMENTS: Easements are hereby reserved as shown or described on the recorded plat of the subdivision. There are in addition easements reserved in the right of way of each road for water and all other utilities. All access easements reflected on the recorded plat of the subdivision shall be for the use and benefit of all owners of land within the subdivision except the access easements approaching the constructed units on Tract A and Tract B which easements shall also be used for underground utilities and shall be for the sole use and benefit of the owners of units within each respective tract. The areas within the subdivision designated for parking easement shall be exclusively for passenger automobiles belonging to the unit owners and their guests, shall be limited to two automobiles per unit, and at no time shall any automobile be parked thereon for more than seven days without being moved. Automobiles shall not be parked overnight in road easements.

Ordinance 13 of 1974 annexed significant portions of East Vail, including Bighorn Townhouses into the Town of Vail. (Ordinance 20 of 1974 amended the legal description).

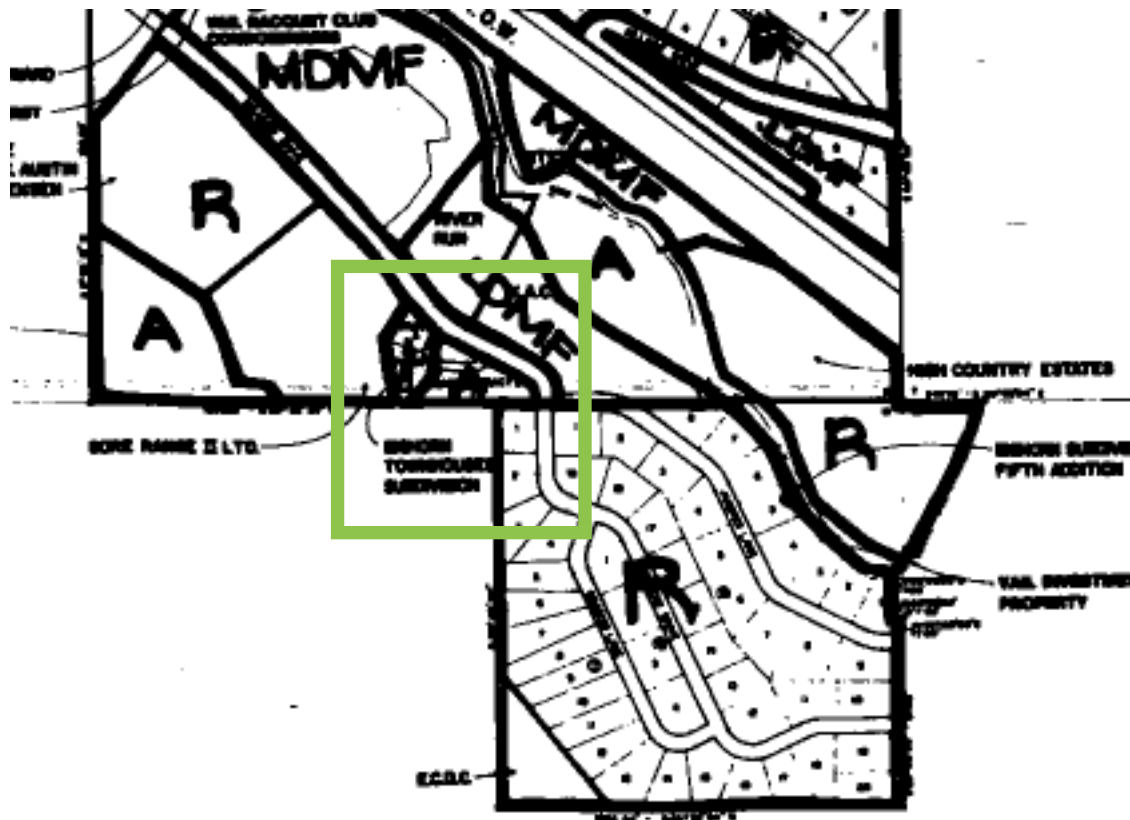
Letters from the Town to the then-owners of Tract C and D indicate that in February of 1977, the Town initiated a rezoning of Tracts C and D to Agricultural and Open Space. In response, the owners stated they would prefer to transfer ownership of Tracts C and D to the Town of Vail since the tracts were located in the avalanche hazard area. Tracts C and D were subsequently deeded to the Town of Vail for \$1.00. Bighorn Townhouses retained ownership of the Parking Easement Area though the Town believed it owned area until just recently in 2013.

The following section outlines a timeline to explain the errors in ownership information, including why and how the Town does not currently indicate any zoning for the property.

Timeline

This section is intended to provide a timeline to explain the original zoning of the entire Bighorn Townhouses property at the time of annexation, any subsequent rezoning of the property, and to show that the Town of Vail zoning map is currently in error.

- 1968 - Bighorn Townhouses is developed and platted under Eagle County Jurisdiction.
- 1974 - Bighorn Townhouses (as part of a larger annexation) is annexed into the Town of Vail by Ordinance 13 of 1974. Ordinance 20 of 1974 later corrected the legal description of this annexation.
- 1974 - The Town adopts Ordinance 15 of 1974, an emergency ordinance adopting interim zoning for the annexed area, including Bighorn Townhouses. The map was not attached to the zoning ordinance but was located in the Town files. The map is difficult to read for the Bighorn Townhouses property. It appears to indicate "A" or Agriculture zoning for the Parking Easement area.

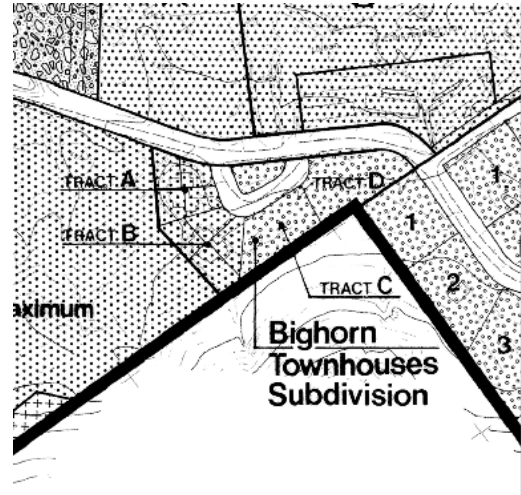


- 1974 - The Town adopts Ordinance 26 of 1974, adopting "permanent" zoning for the annexed area. This followed a series of Planning and Environmental Commission hearings where property owners were invited to comment on the proposed zoning of their property. The Ordinance references a map on file, but this map could not be located in Town files.

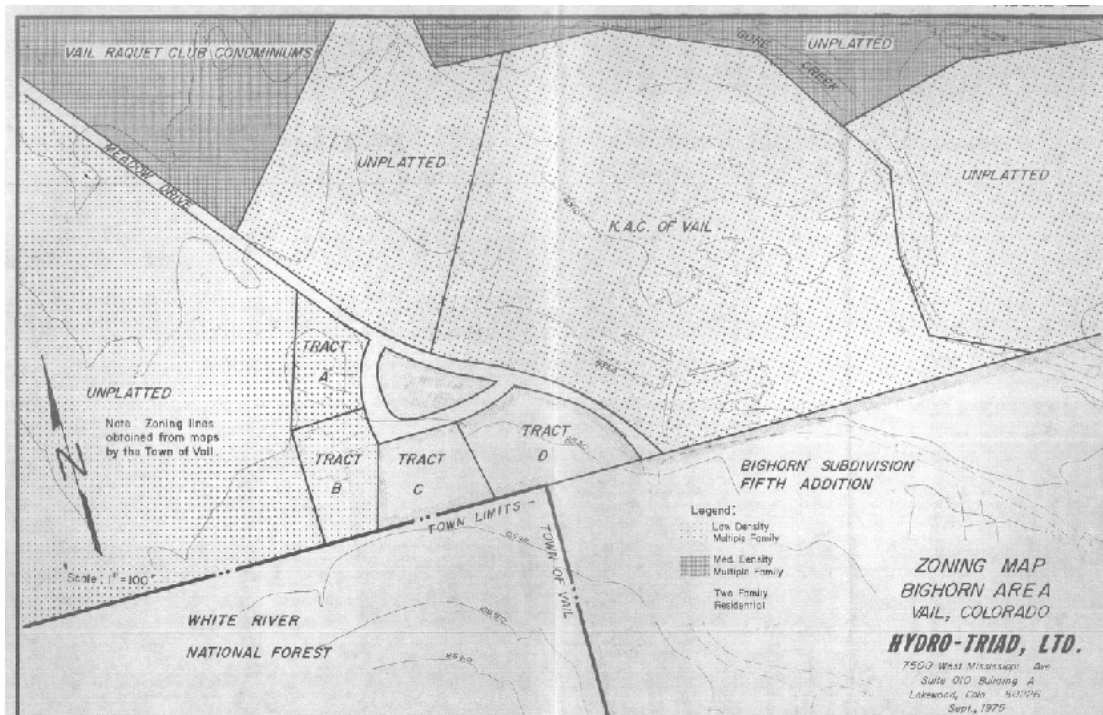
- Undated [1968-1976] - The Town of Vail has a map on file that was identified as "Historic Zoning - Current Conditions between 1968-1976." This map identifies Tracts A and B as zoned Low Density Multiple Family; Tracts C and D as Two-Family Residential, and the Parking Easement Area as Two-Family Residential. A portion of this map is provided below:

Legend

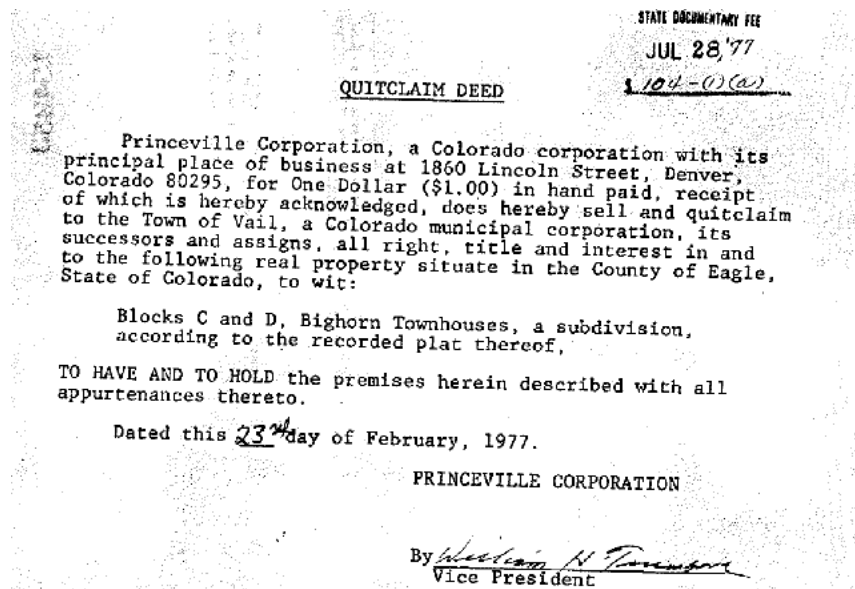
	Agricultural and Open Space District
	Single Family Residential District
	Two Family Residential Districts
	Residential Cluster District
	Low Density Multiple Family District
	Medium Density Multiple Family District
	High Density Multiple Family District



- 1975 - Avalanche study indicates that a substantial area within the recently annexed Bighorn neighborhood is in a potential avalanche path, including portions of Tracts A and B, all of Tracts C and D, and the majority of the Parking Area Easement. This study also appears to identify the zoning of Tracts A and B as Low Density Multiple Family, Tracts C and D as Two-Family Residential, and the Parking Easement as Two-Family Residential, though the map is difficult to read.



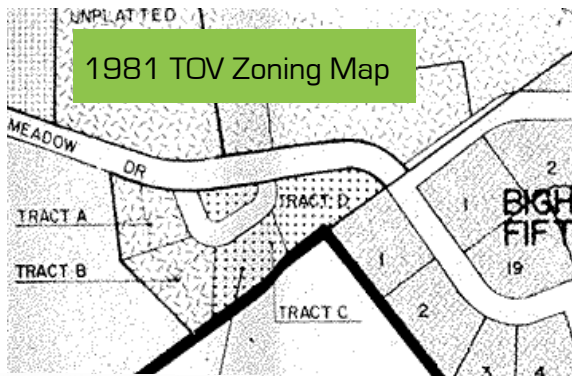
- 1977 - The Town notifies the then owner of Tracts C and D that they are proposing to rezone Tracts C and D to Agricultural and Open Space due to the avalanche hazard present on these properties. In response, the owners opt to deed the property to the Town for \$1.00. Though only Tracts C and D were deeded to the Town, it appears from Town records that the Town believed the Parking Easement Area was also included in this transfer. This error begins a series of actions leading to the confusion about the Parking Easement Area that still exists today. A portion of that deed is provided below:



- 1981 - The Town adopts Ordinance 41 of 1981 which rezones Tracts C and D from Two Family Residential (R) to Agricultural and Open Space. The Ordinance clearly identifies that only Tracts C and D were rezoned:

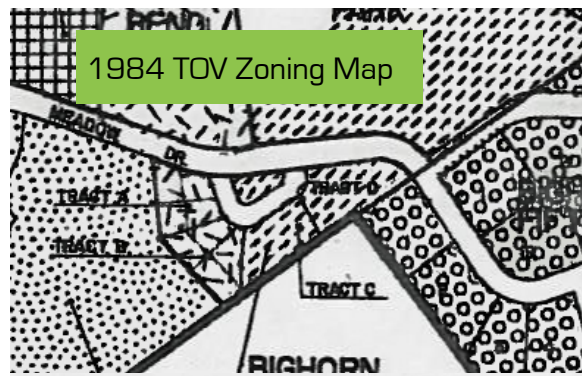
LEGAL DESCRIPTION	CURRENT ZONE	RECOMMENDED ZONE
Tract B, Vail Village 2nd Filing (Ski Museum)	PA	PUD
Tracts C and D, Bighorn Townhouse Subdivision	R	A

The following maps indicate the error the Town made in rezoning the Parking Easement Area. The first map, from 1981 prior to the adopted of Ordinance 41 of 1981 clearly indicates Tracts C and D, and the Parking Easement Area zoned Two-Family Residential. The second map, from 1984, shows the rezoning of Tracts C and D to Agricultural Open Space which was adopted by Ordinance 41 of 1981, but also shows the Town rezoned the Parking Easement Area in error. The Town's maps also shows the "access easement" as a public right-of-way, another error.



TOWN OF VAIL ZONING LEGEND

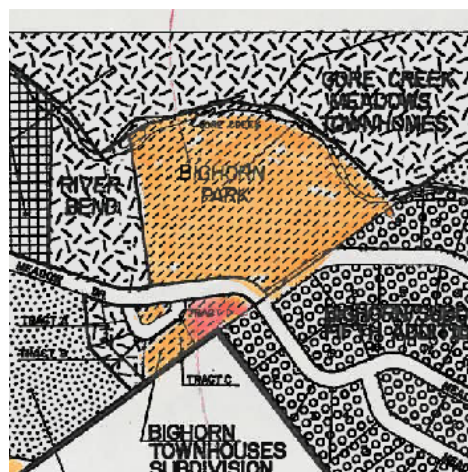
[Pattern]	SINGLE FAMILY RESIDENTIAL DISTRICT
[Pattern]	TWO FAMILY RESIDENTIAL DISTRICT
[Pattern]	TWO FAMILY PRIMARY/SECONDARY RESIDENTIAL DISTRICT
[Pattern]	RESIDENTIAL CLUSTER DISTRICT
[Pattern]	LOW DENSITY MULTIPLE FAMILY DISTRICT
[Pattern]	MEDIUM DENSITY MULTIPLE FAMILY DISTRICT
[Pattern]	HIGH DENSITY MULTIPLE FAMILY DISTRICT
[Pattern]	PUBLIC ACCOMMODATION DISTRICT
[Pattern]	SPECIAL DEVELOPMENT DISTRICT
[Pattern]	PUBLIC USE DISTRICT
[Pattern]	COMMERCIAL CORE 1 DISTRICT
[Pattern]	COMMERCIAL CORE 2 DISTRICT
[Pattern]	COMMERCIAL SERVICE CENTER DISTRICT
[Pattern]	AGRICULTURAL & OPEN SPACE DISTRICT
[Pattern]	GREENBELT & NATURAL OPEN SPACE DISTRICT
[Pattern]	HEAVY SERVICE DISTRICT
[Pattern]	PARKING
[Pattern]	COMMERCIAL CORE 3 DISTRICT



TOWN OF VAIL ZONING LEGEND

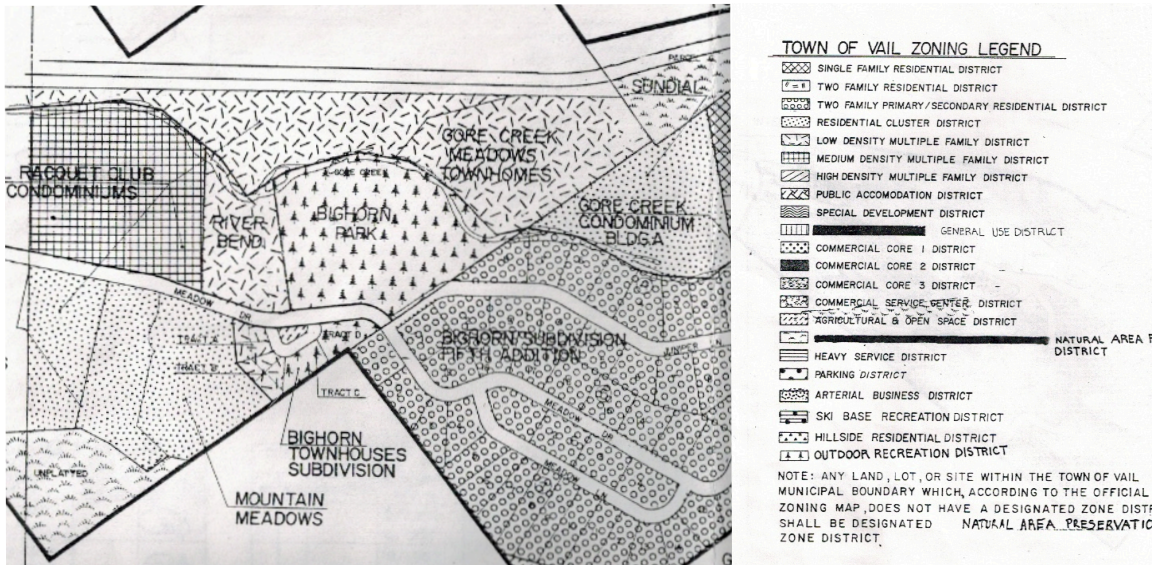
[Pattern]	SINGLE FAMILY RESIDENTIAL DISTRICT
[Pattern]	TWO FAMILY RESIDENTIAL DISTRICT
[Pattern]	TWO FAMILY PRIMARY/SECONDARY RESIDENTIAL DISTRICT
[Pattern]	RESIDENTIAL CLUSTER DISTRICT
[Pattern]	LOW DENSITY MULTIPLE FAMILY DISTRICT
[Pattern]	MEDIUM DENSITY MULTIPLE FAMILY DISTRICT
[Pattern]	HIGH DENSITY MULTIPLE FAMILY DISTRICT
[Pattern]	PUBLIC ACCOMMODATION DISTRICT
[Pattern]	SPECIAL DEVELOPMENT DISTRICT
[Pattern]	PUBLIC USE DISTRICT
[Pattern]	COMMERCIAL CORE 1 DISTRICT
[Pattern]	COMMERCIAL CORE 2 DISTRICT
[Pattern]	COMMERCIAL CORE 3 DISTRICT
[Pattern]	AGRICULTURAL & OPEN SPACE DISTRICT
[Pattern]	HEAVY SERVICE DISTRICT
[Pattern]	PARKING
[Pattern]	ARTERIAL BUSINESS DISTRICT
[Pattern]	SKI BASE RECREATION
[Pattern]	HILLSIDE RESIDENTIAL

- 1991 - A map dated 1991 entitled "Town of Vail Owned Properties" shows that as of this date, the Town believed it owned the Parking Easement Area along with Tracts C and D (hi-lighted area indicates areas owned by the Town):



ADDRESS	ACQUISITION	DESCRIPTION	A.C.A.	ACRES	DATE
2000-041-00-002	227/300/27/015	WILLY VALLEY TRACT	FIELD PARK PARK	3.766	1992
2000-041-00-001	231/703	BECKMAN TRACT, TRACT C & D	ACROSS STREET FROM BIGHORN PARK	1.02	1992

- 1995 - The Town adopts Ordinance 19 of 1995, which, as part of a larger rezoning associated with the adoption of the Town of Vail Open Lands Plan, rezoned Tract C and D from Agricultural and Open Space to Outdoor Recreation. This zoning designation remains today.
- 1995 - The last version of the Town of Vail Zoning Map to be done on paper (instead of created digitally in GIS) indicates Tract A and B are zoned Low Density Multiple Family, Tracts C and D are zoned Outdoor Recreation, and the Parking Easement Area is zoned Agriculture and Open Space.



- 2013 - The District Court decrees that Bighorn Townhouse Association is the owner in fee simple of the Parking Easement Area. The decree states:

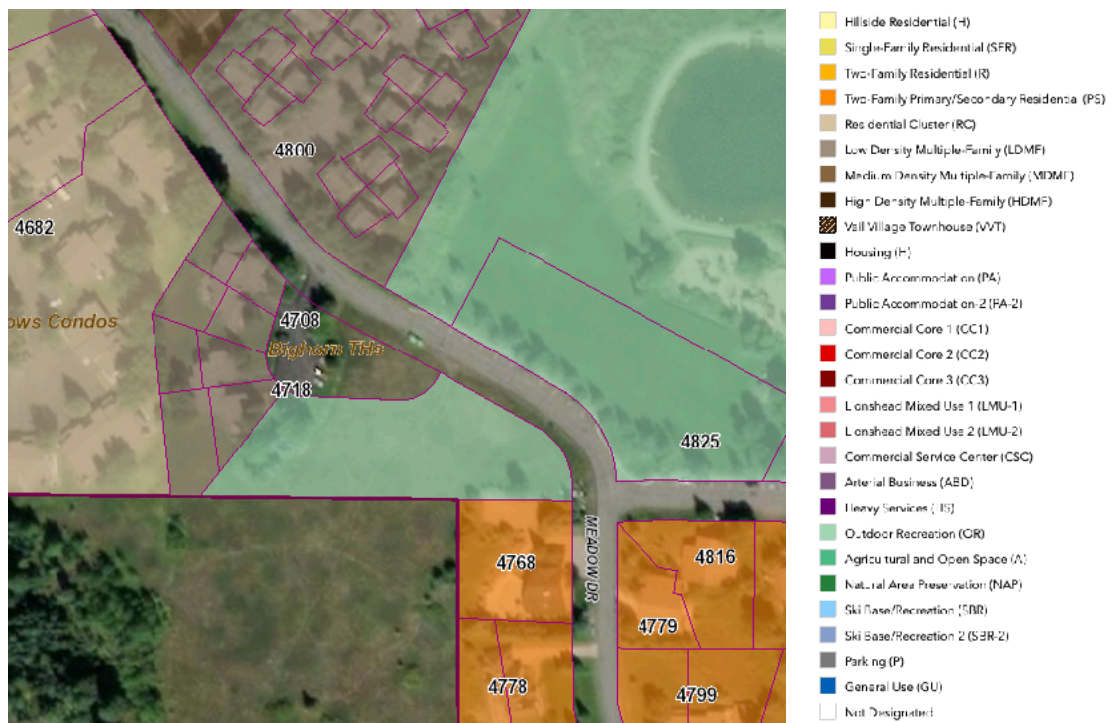
IT IS ADJUDGED AND DECREED that **BIGHORN TOWNHOUSE ASSOCIATION, INC.**, a Colorado corporation, Plaintiff, at the time of the commencement of this proceeding, was, and is now, the owner in fee simple absolute, with right to possession of the property described as:

THE PARCEL OF LAND DEPICTED AS "PARKING EASEMENT", AS SHOWN ON THE PLAT OF BIGHORN TOWNHOUSES RECORDED NOVEMBER 13, 1968 AS RECEPTION NO. 109572, COUNTY OF EAGLE, STATE OF COLORADO AND AS DEPICTED ON EXHIBIT A ATTACHED HERETO (the "Property");

THAT the Lis Pendens is no longer in effect with respect to the Property; and

THAT fee simple title in and to the Property be and the same hereby is vested in the Plaintiff, subject to the easements shown on the Plat of the Property and that each of the Defendants are forever enjoined from asserting any other claim, right, interest in or to the Property or any part thereof.

- 2018 (current) - The Town of Vail zoning map, now a digital map, indicates that Tracts A and B are zoned Low Density Multiple Family, Tracts C and D are zoned Outdoor Recreation, and the Parking Easement Area has no zoning. Shown below as the blank area on the map.



Zoning Analysis

Standard	Existing BHTH (Tracts A and B)	BHTH with Parking Easement Area Zoned LDMF	Proposed
Lot Size:	0.769 acres / 33,510 sq. ft.	1.116 acres / 48,639 sq. ft.	1.116 acres / 48,639 sq. ft.
Buildable Area:	0.769 acres / 33,510 sq. ft.	1.116 acres / 48,639 sq. ft.	1.116 acres / 48,639 sq. ft.
Setbacks:	20 ft.	20 ft.	20 ft. front 20 ft. side 0 ft. rear (proposed for garage 8)
Site Coverage:	35% = 11,728.5 sq. ft.	35% = 17,023.6 sq. ft.	9,108 sq. ft.
Density*:	9 du per buildable acre = 6.921 du	9 du per buildable acre = 10 du	8 du (no change)
GRFA:	44% = 14,744 sq. ft.	44% = 21,401 sq. ft.	9,644 sq. ft. (existing - no change)
Height:	35 ft. flat / 38 ft. sloping	35 ft. flat / 38 ft. sloping	35 ft. flat / 38 ft. sloping (no change)
Landscape Area:	Min of 40% = 13,404 sq. ft.	Min of 40% = 19,455 sq. ft.	Complies
Parking:	Per Chapter 10-12 = 16 spaces	Per Chapter 10-12 = 16 spaces	16 space (8 enclosed)

*Density variance granted in 1991 to allow for additions to GRFA

Criteria for Review: Rezoning

Section 12-3-7.C: CRITERIA AND FINDINGS, of the Vail Town Code provides the criteria for review for a Zone District Boundary Amendment. These criteria, along with an analysis, are provided below:

- 1. The extent to which the zone district amendment is consistent with all the applicable elements of the adopted goals, objectives and policies outlined in the Vail comprehensive plan and is compatible with the development objectives of the town**

Applicant Response:

The Vail Land Use Plan provides the following goals, objectives and policies that are applicable to the proposed rezoning:

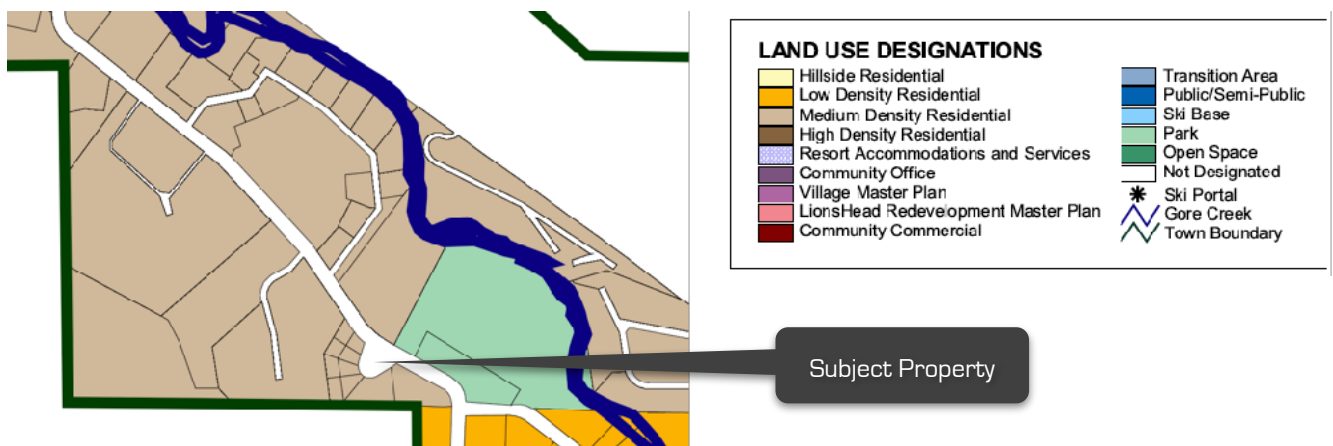
1. General Growth / Development

- 1.1. Vail should continue to grow in a controlled environment, maintaining a balance between residential, commercial and recreational uses to serve both the visitor and the permanent resident.
- 1.2. The quality of the environment including air, water and other natural resources should be protected as the Town grows.
- 1.3. The quality of development should be maintained and upgraded whenever possible.

5. Residential

- 5.1. Additional residential growth should continue to occur primarily in existing, platted areas and as appropriate in new areas where high hazards do not exist.

Due to the historical error regarding ownership of the property, which pre-dates the adopted Official Land Use Map of the Vail Land Use Plan, there is no land use recommended for the property, as shown on the following map:



However, the entire surround neighborhood is indicated as "Medium Density Residential" which is described by the Vail Land Use Plan as follows:

MDR Medium Density Residential

The medium density residential category includes housing which would typically be designed as attached units with common walls. Densities in this category would range from 3 to 14 dwelling units per buildable acre. Additional types of uses in this category would include private recreation facilities, private parking facilities and institutional / public uses such as parks and open space, churches and fire stations

The proposed rezoning is consistent with the Vail Land Use Plan. The historical error in ownership lead to the Town generally mapping the property as right-of-way, though it was not. Had it been correctly identified as private property, it is likely that the Land Use Plan would have included it in the "medium density residential" land use category. The BHTH Association plans to use the property to provide enclosed parking for the owners. This too, is consistent with the Vail Land Use Plan policies and objectives, which encourage the upgrading and maintenance of existing development within the Town. As a result, the proposed zoning of LDMF is consistent with this criterion.

2. **The extent to which the zone district amendment is suitable with the existing and potential land uses on the site and existing and potential surrounding land uses as set out in the town's adopted planning documents**

Applicant Response:

The BHTH consists of 8 townhouse units, zoned LDMF. The following map indicates the land uses and zoning surrounding the subject property:



The zoning designation of LDMF is consistent with the existing and potential uses in the surrounding area. Multiple family residential is common in the neighborhood, with these uses adjacent to BHTH to the west. Open space and park uses surround the remainder. The

proposed zoning of LDMF is consistent with the existing BHTH use, and those uses of the surrounding neighborhood. As a result, the proposed zoning is consistent with this criterion.

3. The extent to which the zone district amendment presents a harmonious, convenient, workable relationship among land uses consistent with municipal development objectives

Applicant Response:

Because of the error in ownership information, the property is currently indicated as unzoned by the Town of Vail Zoning Map. The proposed LDMF zoning is consistent with the existing zoning for the remainder of the BHTH property, and is the appropriate zoning for the subject property. The site is then treated as one for development standards and development potential. Any other zoning would create inconsistencies and confusion. As a result, the proposed zoning is consistent with minimal development objectives.

4. The extent to which the zone district amendment provides for the growth of an orderly viable community and does not constitute spot zoning as the amendment serves the best interests of the community as a whole

Applicant Response:

Because the Town believed this property was town-owned right-of-way, all current zoning and planning documents do not indicate any zoning or land use for the property. Because the property is owned by the BHTH Association and is part of their overall development site, zoning it anything other than LDMF would be inconsistent with the neighborhood. The zoning designation of LDMF is consistent with the zoning of the BHTH, provides for the growth of an orderly viable community, and would not constitute a spot zoning.



5. The extent to which the zone district amendment results in adverse or beneficial impacts on the natural environment, including, but not limited to, water quality, air quality, noise, vegetation, riparian corridors, hillsides and other desirable natural features

Applicant Response:

The eastern portion of the subject property is currently used for driveway and parking, along with a trash dumpster for the BHTH. The western portion of the property is vacant. The trail shown in the google earth image is just off the property on Town of Vail-owned land. The vacant area is generally flat and has little vegetation, consisting mostly just of native grass.



Zoning this property LDMF will have no adverse impacts on the natural environment. As a result, the proposed zoning amendment is consistent with this criterion.

6. The extent to which the zone district amendment is consistent with the purpose statement of the proposed zone district

Applicant Response:

The proposed zoning of LDMF is consistent with the zoning on the remainder of the Bighorn Townhouses. The purpose of LDMF is as follows:

12-6F-1: PURPOSE:

The low density multiple-family district is intended to provide sites for single-family, two-family and multiple-family dwellings at a density not exceeding nine (9) dwelling units per acre, together with such public facilities as may appropriately be located in the same zone district. The low density multiple-family district is intended to ensure adequate light, air, privacy and open space for each dwelling, commensurate with low density occupancy, and to maintain the desirable residential qualities of the zone district by establishing appropriate site development standards

The BHTH Association is proposing to use the property to provide enclosed parking for the existing 8 townhouses. Because the property is not currently zoned, LDMF provides appropriate development standards and uses commensurate with the remainder of the BHTH property. The proposed zoning makes the BHTH conforming with respect to density. As they exist today, they are nonconforming with respect to density. As a result, the proposed zoning is consistent with this criterion.

7. The extent to which the zone district amendment demonstrates how conditions have changed since the zoning designation of the subject property was adopted and is no longer appropriate

Applicant Response:

The historical background provided in this submittal outlines the unique conditions that have afflicted this property. All Town maps currently indicate this property as “unzoned” or “undesigned” due to the historical error in ownership, which was resolved by court decree in 2013. The property belongs to the BHTH Association and is part of their development site. The property should therefore be zoned LDMF, the same as the remainder of their property.

8. Such other factors and criteria as the commission and/or council deem applicable to the proposed rezoning.

Applicant Response:

Any additional information requested by the Planning and Environmental Commission and/or Town Council can be provided by the applicant.

Criteria for Review: Setback Variance

Section 12-17-6: CRITERIA AND FINDINGS, of the Vail Town Code provides the criteria for review for a variance. These criteria, along with an analysis, are provided below:

1. The relationship of the requested variance to other existing or potential uses and structures in the vicinity.

Applicant Response:

The proposed variance is to allow for the construction of enclosed parking for each of the units. The BHTH currently only have surface parking. The garages, each 300 sq. ft., allow each unit to have one enclosed parking space. This is a benefit to other uses and structures in the vicinity as it eliminates surface parking while also providing opportunities for storage of outdoor equipment such as bicycles, skis, kayaks, etc.

The area of the encroachment into the rear setback is adjacent only to the Town's property, currently zoned OR. This land is open space, and based on the recently adopted 2018 Open Lands Plan, there are no plans for this property to be developed or improved. There are no impacts to any uses or structures in the vicinity and therefore the requested variances is consistent with this criterion.



2. The degree to which relief from the strict or literal interpretation and enforcement of a specified regulation is necessary to achieve compatibility and uniformity of treatment among sites in the vicinity, or to attain the objectives of this title without grant of special privilege.

Applicant Response:

There have been various variances granted to properties in the vicinity. Specifically, Mountain Meadows was granted a setback variance in 1979. The circumstances of that variance were not similar to this request by the BHTH, but does indicate that sites in the vicinity have received variances. A height variance was granted in 1983 to the house at 4768 Meadow Drive, which is the closest single-family residence to this property, located adjacent to the Town-owned property. In addition, the near-by Vail Racquet Club was granted a density variance. The BHTH also



received density variances in the past.

Variances to facilitate the construction of enclosed parking are common throughout the Town of Vail. A front setback variance was granted at 5042 Snowshoe Lane to construct enclosed parking. This property was allowed to construct a garage with a 0 ft. front setback. A side setback variance was granted to 5109 Black Bear Drive to construct a garage within the side setback.

The Town has consistently found that the lack of enclosed parking is a valid hardship for a variance for the construction of garages and that it is not a grant of special privilege to approve similar variances. As a result, the proposed variance is consistent with this criterion.

3. The effect of the requested variance on light and air, distribution of population, transportation and traffic facilities, public facilities and utilities, and public safety.

Applicant Response:

Due to the nature of this variance request, there are no negative effects on light and air, distribution of population, transportation and traffic facilities, public facilities and utilities, and public safety.

Adjacent Properties

MPG
PO Box 4777
Eagle, CO 81631

BIGHORN TOWNHOUSE ASSOCIATION INC
BILL BERNARDO
221 OAK KNOLL RD
BARRINGTON, IL 60010-2615

TOWN OF VAIL
FINANCE DEPT
75 S FRONTAGE RD W
VAIL, CO 81657-5043

MOUNTAIN MEADOW CONDOMINIUMS
McNeill Property Management
PO Box 4694
Vail, CO 81658

RIVERBEND AT VAIL HOMEOWNERS ASSOC
PO BOX 1157
VAIL, CO 81658-1157