

## **TOWN COUNCIL STAFF REPORT**

Subject: Appeal of the Planning and Economic Development Commission's approval of the Mountainside Project (Tentative Tract Map 15-001, Variance 15-001, Use Permit 15-001, Design Review 15-001, and Adjustment 15-001)

Meeting Date: June 3, 2015

Written by: Jen Daugherty, Senior Planner

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### **RECOMMENDATION:**

Staff recommends that Town Council choose Option 1:

- Determine that substantial evidences exists to support the Planning and Economic Development Commission's approval of the Mountainside project (Tentative Tract Map 15-001, Variance 15-001, Use Permit 15-001, Design Review 15-001, and Adjustment 15-001) and to deny the appeal; and
- Affirm the Planning and Economic Development Commission's approval of the Mountainside Project (Tentative Tract Map 15-001, Variance 15-001, Use Permit 15-001, Design Review 15-001, and Adjustment 15-001).

### **BACKGROUND:**

#### ***Commission Approval***

On April 29, 2015, the Planning and Economic Development Commission ("Commission") held a public hearing and approved the Mountainside project subject to additional conditions of approval. The vote was 4-0, with one Commissioner absent.

The factual and legal basis on which the Commission approved the Mountainside project is identified in the Commission's packet and resolution (Attachments 3 and 4). This basis includes, but is not limited to, the:

- California Environmental Quality Act (CEQA),
- State law variance provisions,
- Subdivision Map Act,
- Mammoth Lakes General Plan, Municipal Code, and Design Guidelines, and
- Mountainside project plans and information.

#### ***Appeal***

On May 14, 2015, an appeal of the Commission's decision was filed by Ronald and Joan Plander. The Planders own Unit 60 at the Courchevel Condominiums. The appellant has requested that mitigation measures be required to address the appellant's concerns or that the project be denied. The appellant's concerns are identified and responded to in the Analysis/Discussion section, below.

### ***Council's Role in the Appeal Process***

The Town Council is the appeal body for this appeal. The Council's role in this appeal process is described in Municipal Code 17.104.030.E and summarized below:

- The Council may consider any issue involving the matter being appealed, in addition to the specific grounds for the appeal.
- No new evidence shall be presented at the hearing unless that new information was not previously available or the party presenting the new information could not have known about the project review process.
- The Council may take the following actions:
  - Affirm or uphold the Commission's approval, if the Council finds that there is substantial evidence supporting the Commission's approval;
  - Affirm the Commission's approval in part, such as approving the project with revised or additional conditions of approval; or
  - Reverse or deny the Commission's approval, if the Council finds that there is not substantial evidence supporting the Commission's approval.
- Within 21 days of closing the public hearing, or as soon thereafter as is practical, the Council shall render its decision on the appeal.
- The Council may (but is not required to) authorize the return all or a portion of the appeal fee if the Council either upholds the appeal or finds that the appellant raised issues of substantial merit.

### ***Project Summary***

The Mountainside project includes 16 townhome units. Two of these units would be freestanding (i.e., single family structures), and 14 units would be located in seven duplex buildings. All units would be three stories and approximately 2,000 square feet of habitable area with three bedrooms and a two car garage. Building separation would be approximately 15 feet to accommodate snow storage. A driveway off of Rainbow Lane would serve the project. A pedestrian path is proposed to connect the west side of the project to Rainbow Lane, providing access to Canyon Lodge. The site plan and building floor plans and elevations are included in the Commission packet (Attachment 4).

Due to the slope of the site, the buildings are proposed to be located closer towards Rainbow Lane, leaving the steepest sloped area at the rear (south portion) of the site undisturbed. Retaining walls would be required to build into this slope, and the maximum retaining wall height proposed is approximately 10 feet. The tallest wall would not be visible to the public as it is proposed to be combined with the rear buildings on Lots 1-9. However, other retaining walls on the site would be visible off-site and are proposed to be a tan colored split-face concrete masonry unit (CMU) wall.

Front Yard Setback Variance

A 16-foot setback is proposed due to the steep slope at the rear (south) portion of the lot, which would result in a nine foot encroachment into the 25-foot front yard setback. This would provide an open space area, approximately 60 feet wide, at the rear portion of the lot, where a 20-foot setback is required.

Building Height Variance and Adjustment

The maximum height limit for the project site is 35 feet. Due to the slope of the lot, building heights are calculated using an average height measurement from finished grade<sup>1</sup>. Table 1 identifies the proposed building heights.

Table 1: Mountainside Proposed Building Heights

<b>Complies with Code</b>	<b>Requires Adjustment</b>	<b>Requires Variance</b>
Lot 1 (Building B) – 29.3 feet	Lots 6-9 (Building A) – 37.8 feet	Lots 2-5 (Building A) – 38.8 feet
	Lot 10 (Building D) – 36.9 feet	Lots 11-16 (Building C) – 43.9 feet

The building heights proposed for Lots 6-10 can be approved through an adjustment, which allows a height increase of 10% (i.e., up to 38.5 feet). The building heights for Lots 2-5 and 11-16 can be approved through a variance. Sheet 2 of the Tentative Tract Map (Attachment 2 of the Planning and Economic Development Commission packet) identifies each lot and building type.

**ANALYSIS/DISCUSSION:**

This section identifies and responds to each of the items raised by the appellant in the appeal (Attachment 2):

***1. The development violates Town requirements regarding setbacks, traffic, building height, and trash storage.***

- a. Setbacks and Building Height – The project does not violate Town requirements regarding setbacks and building height because the Zoning Code allows for variances from development standards when, because of special circumstances applicable to the property, such as topography, the strict application of the Zoning Code deprives such property of privileges enjoyed by other property in the vicinity and same zone (Municipal Code 17.72.010).

Specific findings must be made to approve a variance. Those findings were made by the Commission and are included in Attachment 3, pages 6-8. The findings include, but are not limited to, the following:

<sup>1</sup> An average building height calculation is utilized for measuring building height because the site has an average slope of greater than 10 percent. Average building height is calculated as the building height at the four outermost corners of the structure from finished grade to a horizontal plane that intersects with the topmost point of the building and dividing that total by four.

- The lot is steeply sloped, ranging from 7% to up to 30% at the rear (southern portion) of the lot.
  - A reduced setback along Rainbow Lane allows preservation of the steeply sloped portion of the lot consistent with General Plan Policy S.3.H: Restrict development in areas with steep slopes.
  - The reduced setback along Rainbow Lane is proposed to be 16 feet. Nearby properties have buildings located approximately 10 to 16 feet from Rainbow Lane.
  - A 16-foot setback along Rainbow Lane would not be detrimental to public health, safety, or welfare because Rainbow Lane has adequate right-of-way and the Town's snow management policy provides for snow management and removal.
  - Preserving the steeply sloped portion of the site removes approximately 12,000 square feet of buildable area. The increase in building height would result in less than 7,500 square feet of buildings exceeding 35 feet<sup>2</sup>.
  - Heights of up to 43.9 feet are proposed for certain buildings. Nearby buildings include the Snowbird Condominium building, which is approximately 43 feet, and the 1849 Condominium building, which is approximately 60 feet in height.
  - The proposed 6:12 roof pitch results in taller buildings than would result from a lower pitched roof. A 6:12 roof pitch provides better functionality in snow conditions than a lower pitched roof because it allows for less accumulation and reduces potential for snow shed impacts. Furthermore, a 6:12 roof is considered to be more appropriate than a lower pitched roof because of improved design aesthetics.
- b. Traffic – The project does not violate Town requirements regarding traffic because the project is below the maximum density allowed. The project density is 9.6 units per acre, and a density of 12 units per acre is allowed. Therefore, the project would generate fewer vehicle trips than identified in the Town's traffic model.
- c. Trash Storage – The project does not violate Town requirements regarding trash storage because Zoning Code Section 17.36.130.C allows dumpsters/recycling areas to be located within a side yard setback subject to approval of the Community and Economic Director, subject to screening with fencing or landscaping. The dumpster/recycling area is proposed to be located in the east side yard setback. As noted in the Commission's staff report, the Director found this location to be appropriate because it would be readily

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<sup>2</sup> The 7,500 square feet represents a conservative estimate because it is calculated based on the building structures, not considering the surrounding slope. In other words, a smaller amount of the structures would actually be above 35 feet because of the rising slope along the buildings at the rear of the site.

accessible to refuse collection and recycling vehicles, would be contained within a trash/recycling enclosure, and would be located adjacent to a four foot retaining wall.

However, in response to public comments regarding the dumpster/recycling area location, the Commission added Condition of Approval 42 to the project:

“The applicant shall work with the Community and Economic Development Department to analyze relocating the dumpster to the west portion of the site. This analysis shall include consideration of potential impacts of the dumpster being located adjacent to the Canyon Lodge parking lot (e.g., visibility, potential for non-residents to use the dumpster, etc.) and shall include coordination with Mammoth Disposal. The dumpster shall be located on the west portion of the site if the Community and Economic Development Director determines through this analysis that the potential impacts are not substantial and Mammoth Disposal finds the new location acceptable. This shall be completed prior to the issuance of a grading permit.”

**2. *Inadequate notice was given regarding design, grading and impact on adjacent properties.***

The required legal noticing pursuant to the Town’s Municipal Code and Government Code §65090 – 65096 was provided, which included notice publication in one newspaper of general circulation and mailing notices to properties within 300 feet of the project site. In addition to the legally required noticing, Town staff developed a public webpage where project information, including proposed design, preliminary grading, and other information was, and continues to be, available. Also, staff provided, and continues to provide, email updates to interested parties and to those who provided comments on the project.

Furthermore, a public workshop for the project, which included a site visit, was held by the Planning and Economic Development Commission on March 25, 2015. Town staff emailed the managers of the neighboring condominium complexes (1849, Snowbird, and Courchevel) to notify them of the workshop. The managers of 1849, Snowbird, and Courchevel attended the March 25, 2015 workshop. The workshop included discussions on design, grading and site work, the variance requests, and other topics.

The information published on the Town’s website for the March 25<sup>th</sup> workshop and the April 29<sup>th</sup> public hearing included project plans (e.g., site plan, preliminary grading plan, landscape plan, building elevations, building floor plans, etc.) and analysis regarding the project design, site disturbance/grading, and the variances being requested.

**3. *Granting of variances was improper.***

The Commission's approval of the variances complied with the required Municipal Code and State law provisions, including, but not limited to, the mandated process and findings. Please see items 1.a and 2, above for additional information.

**4. *There was inadequate consideration of cumulative impacts and inadequate consideration under CEQA.***

As discussed in Section 8, Environmental Analysis, of the April 29<sup>th</sup> staff report, the project was found to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to §15332, In-fill Development Projects. The project qualifies for this exemption because the following criteria are met:

- a. The project is consistent with the General Plan and Zoning Code. The project is consistent with the General Plan because it is below the maximum density, provides a high quality townhome product available for nightly rentals in an appropriate location, the design preserves the steeply sloped portion of the lot, the architecture and building exteriors are appropriate to the Eastern Sierra, and building heights would remain below tree heights on site. The project is consistent with the RMF-2 Zone because the project complies with all applicable regulations, including but not limited to density, lot coverage, snow storage, parking, solid waste/recycling, and specific multi-family development regulations. The variance and adjustment requests are allowed pursuant to Chapters 17.72 and 17.76 of the Zoning Code.
- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. The project site is within the Town's Urban Growth Boundary, and the site is approximately 1.67 acres. The site is surrounded by condominium developments and a parking lot.
- c. The project site has no value as habitat for endangered, rare, or threatened species as documented by a biological resources assessment prepared by Dr. Jim Paulus (Attachment 10 of the Commission packet).
- d. Approval of the project would not result in any significant effects related to traffic, noise, air quality, or water quality. Since the project is below the maximum density allowed for the site, the project conforms or is required to conform to Municipal Code standards for noise, air quality and lot coverage, the project conforms or is required to conform to Public Works standards for improvements, parking, driveways, and storm drain systems, and the project will be required to obtain necessary permits for construction, including a National Pollutant Discharge Elimination System (NPDES) permit, no significant effects on traffic, noise, air quality, or water quality would result.

The CEQA Guidelines state that CEQA exemptions, such as the In-Fill Development Projects exemption utilized for the Mountainside project, are inapplicable when the

cumulative impact of successive projects of the same type in the same place, over time is significant (CEQA Guidelines §15300.2(b)). Projects in the vicinity of the Mountainside site contain developments that are similar to the proposed project in terms of use, building location, and height (please see item 1.a, above, regarding setbacks and heights of nearby buildings). The proposed project is below the maximum density and lot coverage allowed, and the required Public Works, Building Code, and Fire Code standards would be complied with. Successive projects of the same type in the same place over time, such as the Mountainside project, would not be considered significant because the Mountainside project is required to comply with the following:

- The Town's Design Review process and Design Guidelines;
- The Town's Municipal Code requirements, including but not limited to, solid waste management, noise regulation, nuisances, particulate emissions regulations, zoning, land clearing, earthwork, and drainage facilities, and building and construction (including the payment of development impact fees);
- The Town's Public Works Standards, including but not limited to, standards for earthwork and grading, drainage, stormwater infrastructure and facilities, and parking and driveways;
- Annexations into relevant districts, such as the transit district or maintenance districts;
- The Town's General Plan;
- The California Environmental Quality Act (CEQA);
- Federal regulations, such as the Clean Water Act, Endangered Species Act, and Clean Air Act, and must obtain any required permits under these Federal regulations;
- California Building Code, and must obtain the required building permits;
- Fire Code, and must obtain the required permits from the Mammoth Lakes Fire Protection District; and
- Mammoth Community Water District (MCWD) requirements, and projects must obtain the required permit(s) from the MCWD.

Cumulatively significant impacts to air quality, aesthetics, geology/soils, hydrology/water quality, land use/planning, noise, public services, recreation, transportation/traffic, and utilities/service systems would be avoided by compliance with the foregoing requirements. Furthermore, all such impacts have been anticipated, analyzed, and mitigated to the extent feasible under the provisions of the environmental impact report adopted for the Town's General Plan.

In addition, the project site is not identified as habitat for any special status species, so there are no cumulatively significant impacts on biological resources. There are no known cultural resources on the project site, so there are no cumulatively significant

impacts on cultural resources. The project site does not contain farmland, any agricultural uses, or land designated as timberland or forest land, so there are no cumulatively significant impacts to agricultural and forestry resources. The project is below the maximum density allowed, would comply with the California Building Code, and is located adjacent to a major resort destination that is along a year round transit line and seasonal gondola route. Therefore, the project would not result in cumulatively significant impacts on greenhouse gas emissions. The project is anticipated to use limited hazardous materials typical of any residential project (e.g., cleaning solvents, fertilizers, and pesticides), but would be subject to compliance with applicable Federal, State, and local laws regulating generation, handling, transportation, and disposal of these materials. Therefore, the project would not result in cumulatively significant impacts on hazards and hazardous materials. There are no known mineral resources on the project site, so there would be no cumulatively significant impacts on mineral resources.

Therefore, the project would not result in any significant cumulative impacts, and the CEQA exemption is appropriate.

**5. Referred to Joan and Ronald Planders' April 19, 2015 letter to the Planning and Economic Development Commission.**

The analysis below discusses items that were identified in the Planders' letter provided for the Commission public hearing and that have not already been addressed in this report.

- a. "A bunch of tall boxes facing each other that will tower over the neighboring complexes" – While the April 29<sup>th</sup> staff report includes a discussion regarding Mountainside building height relative to neighboring complexes, an expanded discussion is included here.
  - The adjacent Courchevel condominium buildings are three stories, including a garage and loft, and while building permit files were unavailable, the height of these buildings appears to be less than 35 feet. The Mountainside buildings are also three stories, but are proposed to be between 29.3 feet to 43.9 feet in height.
  - The Courchevel building immediately adjacent to the Mountainside project along Rainbow Lane is the building with Units 55 to 60. Since the appellant owns Unit 60, and this Courchevel building is closest to the tallest Mountainside buildings (Building C) (43.9 feet tall), this building is used for the following comparisons.



Table 2: Building Heights and Separation from Mountainside Project

<b>Project</b>	<b>Height closest to Mountainside project*</b>	<b>Height of closest Mountainside building face*</b>	<b>Separation from Mountainside building*</b>
Courchevel (Building with Units 55-60)	<35 feet	32 feet**	27 feet
Snowbird	~43 feet	43.9 feet	83 feet
1849	~60 feet	38.8 feet	72 feet

\*Approximate heights and distances provided.

\*\* The roof peak of Mountainside Building C is 43.9 feet but is located approximately 55 feet from the Courchevel building.

- Although the east wall of Building C (Lots 15 and 16) is only 32 feet in height, it is estimated to exceed the height of the adjacent Courchevel building (Units 55 to 60) by five or six feet. This is partly due to the difference in natural grade between these two structures (also between five and six feet) and due to compliance with Public Works driveway and parking standards that necessitate approximately two feet of fill on the north side of Building C (Lots 15 and 16).
- Building C (Lots 15 and 16) and the adjacent Courchevel building (Units 55 to 60) would be separated by approximately 27 feet. A minimum separation of 20 feet would typically be required.
- As previously noted in item 1.a, above, nearby buildings have heights of approximately 43 feet (Snowbird) and 60 feet (1849). The Building C models are the tallest proposed buildings, which are proposed to be 43.9 feet tall.
- The overall height difference between Building C (Lots 15 and 16) and the adjacent Courchevel building (Units 55 to 60) is at least nine feet. However, the highest point of Building C (Lots 15 and 16) is estimated to be approximately 16 to 17 feet above the adjacent Courchevel building (Units 55 to 60). As previously mentioned, this is due in part to higher natural grades on the Mountainside project site, fill necessary to comply with Public Works driveway and parking standards, and a 6:12 roof pitch that decreases snow shed impacts and enhances building design. The Building C roof peak would be approximately 55 feet from the Courchevel building.

The Town has no standard for allowable height differences between two properties. For example, the 1849 building would exceed the Mountainside buildings by more than 40 feet. However, General Plan Policy C.2.V states, “Building height, massing and scale shall complement neighboring land uses and preserve views to the

surrounding mountains.” As shown in Table 2, above, the proposed building heights would be within the context of the neighboring buildings. Also, views of Lincoln Mountain would be preserved along Rainbow Lane since the proposed buildings would maintain a 16-foot setback from the street right-of-way.

- b. “A bunch of tall boxes...literally showing their massive backside to the street” – Section 7, Agency/Public Comments, of the April 29<sup>th</sup> staff report, includes a discussion regarding building façade design. In response to public comments that raised concern about the building facades facing Rainbow Lane, the applicant proposed additional architectural details on those facades, which the Commission approved (Conditions of Approval 40 and 41). These enhanced elevations are included in Attachment 3 (see handouts at the end of the packet).
- c. “Will east end of site be raised to level the building site?” – As stated in the April 29<sup>th</sup> staff report, *“There would be approximately two feet of fill along the north portions of the building for Lots 15 and 16 (Building C) (northeast building adjacent to Courchevel units along Rainbow Lane).”*
- d. “How anyone could argue that the lot is not a corner lot is beyond comprehension” – Staff reviewed the lot type determination with the Town Attorney. As stated in the April 29<sup>th</sup> staff report, *“The property is not considered to be a corner lot because corner lots must be located at the intersection of two streets. The adjacent property to the west is not considered to be a street because it is not part of the Town’s right-of-way or street system, is outside of the Town’s Urban Growth Boundary, and is leased from the United States Forest Service (USFS) for a parking lot for Canyon Lodge. Furthermore, this adjacent property does not guarantee legal vehicle access since use and operation of the site is at the discretion of the USFS. If access from the USFS site were precluded, Rainbow Lane would be converted back to a two-way street to provide access. Therefore, the frontage along Rainbow Lane is considered the front lot line.”*
- e. “The Mountainside project, as designed, will definitely make this hazard [ice buildup on the Courchevel driveway and Rainbow Lane] worse” – Although both the Courchevel driveway and Rainbow Lane are currently shaded by the existing tree cover on the project site, the project may increase the amount or modify the extent of such shading. Due to implementation of the Town’s snow management policy, the potential change in shading on Rainbow Lane would not be significant, and Town staff determined that the project would not have an associated detrimental impact. The Courchevel driveway is not part of a public street, and therefore is maintained by the Courchevel Homeowners Association. The shading that would result from the Mountainside project would not be inconsistent with shade conditions throughout town. Furthermore, the offset in buildings between Mountainside and Courchevel would result in increased solar access to Courchevel units than if a 25-foot front yard setback was maintained.

- f. “In addition to ruining our view, we are concerned about the smell and noise that comes with trash storage and disposal” - As stated in the April 29<sup>th</sup> staff report *“Town regulations, such as the General Plan and Town Code, only include policies and regulations that protect public views (i.e., views from streets, sidewalks, and public places). Private views (e.g., views from private units, such as Courchevel) are not considered during project analysis.”* Additionally, the project would be required to comply with the Town’s Noise Regulations (Municipal Code Chapter 8.16) and Nuisances (Chapter 8.20) pursuant to Condition of Approval 3. Please also see item 1.c, above, regarding trash storage.
- g. “I don’t feel developer profit is a valid reason to grant a variance especially when it will harm others” – As described in item 1.a., above, a variance may be approved when required findings are met. None of these findings include financial considerations. The Commission approved the variance requests because the required findings were made.

Additional comments received have been included as Attachment 6. Most of the comments do not raise new issues not already addressed in the April 29<sup>th</sup> staff report or in this report. A discussion of a new comment follows:

Tree Protection/Removal – The preservation of the steeply sloped portion at the rear of the site is accomplished by reducing the front setback. Only four additional trees would be removed as a result of the reduced front yard setback. If the 25-foot front yard setback was adhered to, at least six trees would need to be removed at the rear of the site, and likely more trees due to the extent of grading that would be required.

Any additional comments that raise new issues and are provided after the staff report is published will be addressed by staff orally at the Council public hearing.

## **OPTIONS ANALYSIS**

Option 1:

- Determine that substantial evidences exists to support the Planning and Economic Development Commission’s approval of the Mountainside project (Tentative Tract Map 15-001, Variance 15-001, Use Permit 15-001, Design Review 15-001, and Adjustment 15-001) and to deny the appeal; and
- Affirm the Planning and Economic Development Commission’s approval of the Mountainside Project (Tentative Tract Map 15-001, Variance 15-001, Use Permit 15-001, Design Review 15-001, and Adjustment 15-001)

Option 2: Affirm in part the Planning and Economic Development Commission’s approval of the Mountainside Project (Tentative Tract Map 15-001, Variance 15-001, Use Permit 15-001, Design Review 15-001, and Adjustment 15-001)

Option 3: Continue the public hearing to the June 17, 2015 meeting.

Option 4: Reverse the Planning and Economic Development Commission's approval and deny the Mountainside Project (Tentative Tract Map 15-001, Variance 15-001, Use Permit 15-001, Design Review 15-001, and Adjustment 15-001)

Option 1 would affirm the Planning and Economic Development Commission's decision to approve the Mountainside project.

Option 2 would affirm the Planning and Economic Development Commission's decision to approve the Mountainside project with revised or additional conditions of approval.

Option 3 would continue the Council's consideration of the appeal to the next regular Council meeting on June 17, 2015. This option may be selected if the Council requests additional information or analysis.

Option 4 would deny the Mountainside Project. The Town Council would need to make findings for denial. The property owner would have to submit a substantially different project for consideration, or the property owner would have to wait one year to submit a project that is substantially similar to the Mountainside Project.

#### **FINANCIAL CONSIDERATIONS:**

The required appeal fee has been paid to cover staff time associated with processing the appeal.

#### **ENVIRONMENTAL CONSIDERATIONS:**

Staff determined that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to §15332, In-fill Development Projects. A description of how the project qualifies for this exemption is included in item 4 of Analysis/Discussion, above.

#### **LEGAL CONSIDERATIONS:**

The Town Attorney has reviewed the appeal, and his comments have been incorporated into this staff report.

#### **Attachments**

1. Resolution affirming the Planning and Economic Development Commission's approval of the Mountainside Project
2. Appeal
3. Planning and Economic Development Commission Resolution 2015-05 approving the Mountainside Project
4. Planning and Economic Development Commission April 29, 2015 public hearing packet for the Mountainside project
5. Planning and Economic Development Commission April 29, 2015 minutes
6. Appeal comment letters