COUNTY BOARD OF ADJUSTMENT
MEETING AGENDA
JANUARY 21, 2021
Online Meeting

MEETING INFORMATION - This meeting will be held online due to the COVID-19 virus. To join the meeting: https://zoom.us/join, Meeting ID: 994 9929 4955, Password: 368003; Audio only: Dial 1-301-715-8592 or 1-253-215-8782 (long distance rates may apply)

1. 9:00 AM CALL TO ORDER.

2. CONSIDERATION OF VARIANCE APPLICATION received from Marla Fritzlen Architecture, Inc., on behalf of Joseph and Lynne Horning, owners of Tract VI, Muddy Creek Meadows, 1501 Muddy Creek Drive, a 132 acre parcel zoned Forestry, Agricultural and Open (F) to allow for a proposed second residence (main house) to be located approximately 500 feet from an existing residence (caretaker unit). MOTION

3. CONSIDERATION OF VARIANCE APPLICATION received from Mary Jo Schillaci on behalf of Kaye Simonson, owner of Lot 8, Shadohoochie Hill Subdivision, 16 Trunk Road, a .46 acre parcel zoned Forestry, Agricultural and Open (F) to allow for a reduction of the east side yard setback from 20 feet to 14.3’ as built for the house and deck, and to allow reconstruction of the deck in its current location. MOTION

4. APPROVAL OF MINUTES, BOARD OF ADJUSTMENT AND STAFF COMMENTS

5. Adjourn

NOTE: All times are approximate; items may begin earlier (except public hearings) or later than scheduled. For more information contact Planning Department at (970) 728-3083.

The official, designated posting place for all BOA notices, agendas is online at https://www.sanmiguelcountyco.gov/AgendaCenter. Use this link to view the agenda with any last-minute changes. To be automatically notified please sign up at www.sanmiguelcountyco.gov, signup for alerts, and follow the prompts.
MEMORANDUM

TO: San Miguel County Board of Adjustment
FROM: John Huebner, Senior Planner
RE: Horning Residence Location Variance: Tract VI, Muddy Creek Meadows
DATE: January 21, 2021

Proposal

Variance request: Marla Fritzlen, on behalf of Joseph and Lynne Horning (the “Applicant”), owners of Tract VI, Muddy Creek Meadows, a 132-acre parcel in the Forestry, Agricultural and Open (F) Zone District, seeks to allow for a proposed second residence (main house) to be located approximately 570 feet from existing residence (caretaker unit). The property is located about 10 miles south of SH145 on Wilson Mesa, at 1501 Elk Creek Road, Placerville, CO 81430.

The F Zone District, Land Use Code (LUC) Section 5-307 C. I. specifies that a caretaker unit, a second residential unit, may be allowed on all parcels, subject to Administrative Review, and such unit shall be attached to or located within 300 feet of the primary residence (as measured between the closest exterior walls). A Variance is a One-step Board of Adjustment Review in accordance to LUC Section 1-14.

Location Map
Background

The Tract VI Building Envelope was established in 1996 with the formation of the Muddy Creek Meadows subdivision. The Applicant states they have had to clean up title issues created by the hasty formation of the subdivision. The developer sought to maximize view corridors from each building envelope, but little consideration was given to site topography, drainage or mitigation of impacts to wildlife.

The Applicant purchased the property in 1996. They constructed a 1,819 sq. ft. residence with well, on-site wastewater system and pond in 2003. A detached accessory garage structure with 1,117 sq. ft. and driveway was constructed in 2020. The siting of the pond and the improvements to the site’s drainage were made to enhance the wildlife and wetland habitats on the parcel and to restore the meadow area. The driveway was constructed along the meadow’s edge and tree line to minimize visibility from the road.
Site Plan
The preceding site plan and enlarged section below include the proposed building envelope and building footprint. Story poles using the proposed building footprint were erected in the summer in 2019 to help determine ridge heights of the proposed main residence and to minimize visibility to neighbors and the main road. The closest neighbor to the north, Steve Szymanski, and the HOA reviewed and approved the proposed location.

Public Noticing
As required by C.R.S. § 30-28-106(1), a meeting notice was published in the Telluride Daily Planet and in the Norwood Post on Wednesday, January 20, 2021. Public Notice and the required posting was also completed by Marla Fritzlen on January 4, 2021.

Referral Agencies
The application was referred to the County Attorney and the Muddy Creek Meadows HOA for review and comment.

Tom Likovich, Design Review Board of Muddy Creek Homeowners Association, wrote in support of relocating the building envelope approximately 500’ east of original envelope to allow for the construction of a new main residence.

Public Comments
Steve Szymanski, 1003 Muddy Creek Dr., wrote in favor of proposed location of main house approximately 500 feet from existing caretaker unit since it would shield the sight line from Szymanski’s residence and from the main access road.
Pamela Kelly, 1022 Muddy Creek Dr., stated she had no objections to the proposed variance to allow for the location of the proposed main residence approximately 500 feet from existing caretaker unit.

**Review Standards**
An application for a Variance to locate a proposed primary residence greater than 300 feet from the existing caretaker unit (LUC Section 5-307 C.) is considered using the review standards pursuant to Land Use Section 1-14 Board of Adjustment, as follows:

**5-307 C. Uses Allowed Subject to Administrative Review**

I. Caretaker unit - a second residential unit may be allowed on all parcels, except no caretaker units shall be allowed in the San Miguel Canyon Area. Such unit shall be attached to or located within 300 feet of the primary residence (as measured between the closest exterior walls). Such unit shall contain no more than 2,000 sq. ft. of floor area, and shall contain full kitchen and bathroom facilities. The Floor Area of the caretaker unit shall be included in the calculation for Employee Housing Impact Fee mitigation as defined in Section 5-13 of this Code. No lease or rental of a caretaker unit shall be less than 30 days or more than five years. Caretaker units shall not be conveyed or sold separately from the remainder of the parcel and shall remain under the same ownership as the primary residence;

**1-1403 A. Variances**

Appeals to the Board of Adjustment may be taken by any person aggrieved by inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of zoning. Appeals shall be heard only where:

I. The Board of Adjustment is authorized by a Board of Commissioners resolution to hear and decide, in accordance with the provision of the resolution, requests for special exceptions, interpretations of a zoning map or decisions of specific questions authorized by the resolution; or

II. It is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of zoning where no other administrative remedy exists pursuant to Land Use Code Sections 1-19, 1-20 and/or the Board of Building Appeals rules of procedure; or

III. By reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of any regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, and where relief in the form of a variance from zoning may be granted without substantial detriment to the public
good and substantial impairment of the intent and purpose of zoning, and where the hardship was not created or caused by the owner.

In addition, demonstration by the applicant that access to sunlight for solar-driven devices would be unduly restricted without the variance requested may serve as cause for granting a variance.

The Applicant states a variance allowing the proposed homesite location on Tract VI, Muddy Creek Meadows, more than 300 feet away from the existing caretaker unit is necessary and appropriate based on the following:

1. Locating the residence and caretaker unit within 300 feet of each other creates exceptional practical difficulties:
   • The only current alternative to building in the open meadow, requires clearcutting a substantial amount of native forest.
   • Preserving the existing native forested areas to northwest, west and south would require construction of the residence (whether attached to or within 300 feet of the caretaker unit), to occur in the open meadow, rather than against the trees.
   • Dwelling structures in open areas negatively impact wildlife.
   • The mesas are exceptionally windy, and placing the residence in the meadow would subject it to strong southwest winds that funnel through the open meadow.
   • Existing pond to the east requires a sufficient buffer to protect wetlands and encourage wildlife.
   • Existing property line to north is less than 100 feet from current Building Envelope
   • Existing steep natural drainage (Fall Creek) to west also limits the buildable area.
   • Existing septic lines and tanks exist in the middle of the current Building Envelope
   • Appropriate siting of the existing driveway to northeast, in a manner that carefully contours the trees at the edge of the meadow in order to minimize visual and other impacts, together with the pond/drainage, informed the location of the caretaker unit/septic area and garage, which further limits the buildable area.
   • The proposed separation of the house from the caretaker unit would not pose any risk of the property being subdivided. Further subdivision is prohibited by the governing documents for Muddy Creek Meadows.

2. Reasons why the new Building Envelope and proposed location of the building footprint are a better placement for the future primary residence:
   • Proposed homesite/Building Envelope is next to existing forest but safely away from the existing tree line, so no trees would be removed.
   • Proposed homesite/Building Envelope area is significantly less visible from the main road (Muddy Creek Drive); the trees to the east help screen the proposed structure from the road.
   • Proposed homesite/Building Envelope area is significantly less visible from the public lands (Forest Service lands) to the south of Tract VI. The existing tree line to the south helps screen the proposed structure from public view.
   • Proposed homesite/Building Envelope area is significantly less visible from existing neighbors’ homes on adjacent properties to the north and east. Letters of support from
the immediately adjacent neighbors are submitted herewith. Existing topography and trees help screen the proposed structure from neighbors’ views.

- Proposed homesite/Building Envelope area is further away from north property line and therefore more separation is created from neighboring structures preserving rural character.
- Proposed homesite/Building Envelope significantly reduces the visibility of the proposed primary residence and thus helps preserve rural character, scenic views, agricultural lands, and biological diversity.
- Proposed homesite/Building Envelope accommodates use of the meadow and pond by wildlife.

The foregoing exceptional practical difficulties would be overcome by locating the home more than 300 feet from the caretaker unit. The variance would result in development that avoids clearcutting, reduces impacts on the meadow, hydrology and wildlife and better serves the intent of the LUC and Forestry Zone. Greater separation of the house and caretaker unit, in this case, greatly enhances Tract VI’s natural characteristics and benefits the neighbors’ and adjacent public land users.

Recommendation

A number of practical difficulties were cited by the applicant, e.g. clearcutting, exceptional winds, impacts to wildlife, and wetland habitat, to siting the proposed main house less than 300 feet from existing caretaker unit. The proposed house placement utilizes natural site attributes like tree lines and topography to reduce visibility of a new residence to neighbors and from access road. Locating the house outside of the meadow offers shelter from the wind and mitigates impacts to wildlife.

Staff recommends approval of the proposed variance request, with the findings and conditions contained in the following sample motion:

**Sample Motion:**

I move to approve the variance for the purpose of constructing a second single-family residence (main) more than 300 feet from existing caretaker unit, and to adopt the resolution, based on the finding that the Applicant has demonstrated an extraordinary and exceptional situation or condition and that the application is consistent with and complies with the review standards in Land Use Code Section 1-1403 A. III., with the following conditions:

1. The variance is limited to the construction of a single-family residence, which includes any utility systems, appurtenances and related accessory structures, and no other construction shall be allowed within the proposed building envelope.

2. The construction of new single-family residence and related accessory structures shall be limited to the approximate building envelope as shown on the site plan submitted by the Applicant.

3. All required development, building and OWTS permits shall be obtained from San Miguel County by the owner prior to commencing construction on a proposed single-
family residence (main house) and related structures on this parcel.

4. This approval shall expire three (3) years from the recording date of this resolution. If a building permit is not obtained by that date and said permit does not remain active until issuance of a Certificate of Occupancy this variance shall be void.

5. Approval of the variance is subject to the corresponding approval of Insubstantial Plat Amendment and obtaining signature of Board of County Commission Chair on said amendment.

6. All written representations of the applicant, in the original submittal and all supplements, letters and emails, are deemed to be conditions of approval, except to the extent modified by this Motion.
RESOLUTION OF THE BOARD OF ADJUSTMENT
OF SAN MIGUEL COUNTY, COLORADO,
APPROVING A VARIANCE TO ALLOW CONSTRUCTION OF PRIMARY
SINGLE-FAMILY RESIDENCE MORE THAN 300 FEET FROM EXISTING
CARETAKER UNIT ON TRACT VI, MUDDY CREEK MEADOWS

Resolution 2021-1

WHEREAS, Joseph and Lynne Horning (the “Applicant”) are the owners of Tract VI, Muddy Creek Meadows, hereafter “Property,” in the Forestry, Agriculture and Open (F) Zone District, more particularly described as shown on Exhibit A, Legal Description; and

WHEREAS, Marla Fritzlen, on behalf of the Applicant, has submitted an Application for the Variance to allow the location of a proposed primary residence more than 300 feet from the existing caretaker unit in order to build a second Single-family Residence. Land Use Code Section 5-307 C. I. specifies that a caretaker unit shall be attached to or located within three hundred (300) feet of the primary residence (as measured between the closest exterior walls). A setback variance is a one-step Board of Adjustment review pursuant to Land Use Code Section 1-14; and

WHEREAS, the Application was referred to the County Attorney and Muddy Creek Meadows Home Owners Association for review and comment; and

WHEREAS, on or about January 4, 2021 the Applicant sent Notice of the application and the Board of Adjustment Public meeting to be held on Thursday, January 21, 2021 to all property owners within 500 feet of the subject parcel, and a sign was posted on the property noticing the propose variance and the BOA Public meeting to be held on January 21, 2021; and

WHEREAS, a Notice of Public Meeting was published in the Norwood Post and Telluride Daily Planet on Wednesday, January 20, 2021; and

WHEREAS, the Board of Adjustment of San Miguel County, Colorado, considered this application, along with relevant evidence and testimony, at a public meeting on Thursday, January 21, 2021.

NOW, THEREFORE, BE IT RESOLVED that the Board of Adjustment of San Miguel County, Colorado, hereby approves a variance for the purpose of constructing a second single-family residence (main house) more than three hundred (300) feet from the existing caretaker unit, as shown on Exhibit B, Site Plan, based on the finding the applicants have demonstrated an exceptional situation or condition and that the application meets the criteria of Land Use Code Section 1-1403 A. III. The Board finds that the strict application of the regulation would result in an exceptional and undue hardship upon the owner of such property, and that relief in the form of a variance from zoning may be granted without substantial detriment to the public good or substantial impairment of the intent and purpose of zoning, and that the hardship was not created or caused by the owner. This approval is conditioned upon the following:
1. The variance is limited to the construction of a single-family residence, which includes any utility systems, appurtenances and related accessory structures, and no other construction shall be allowed within the proposed building envelope.

2. The construction of new single-family residence and related accessory structures shall be limited to the approximate building envelope as shown on the site plan submitted by the Applicant.

3. All required development, building and OWTS permits shall be obtained from San Miguel County by the owner prior to commencing construction on a proposed single-family residence (main house) and related structures on this parcel.

4. This approval shall expire three (3) years from the recording date of this resolution. If a building permit is not obtained by that date and said permit does not remain active until issuance of a Certificate of Occupancy this variance shall be void.

5. Approval of the variance is subject to the corresponding approval of Insubstantial Plat Amendment and obtaining signature of Board of County Commission Chair on said amendment.

6. All written representations of the applicant, in the original submittal and all supplements, letters and emails, are deemed to be conditions of approval, except to the extent modified by this Motion.

DONE AND APPROVED by the Board of Adjustment of San Miguel County, Colorado, on January 21, 2021.

SAN MIGUEL COUNTY BOARD OF ADJUSTMENT

By: ______________________________________
       D. Oak Smith, Chair

D. Oak Smith Aye Nay Abstain Absent
Jim Botenhagen Aye Nay Abstain Absent
Marty Schmalz Aye Nay Abstain Absent
Sunny Lopez Aye Nay Abstain Absent

ATTEST:

By: ______________________________________
       John Huebner, Senior Planner

EXHIBIT A – Legal Description
EXHIBIT B – Site Plan
EXHIBIT A
LEGAL DESCRIPTION

THAT PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 42 NORTH, RANGE 11 WEST, AND THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 11 WEST, N.M.P.M. DESIGNATED AS TRACT VI, MUDDY CREEK MEADOWS ON THE MUDDY CREEK MEADOWS TRACT MAP RECORDED ON JULY 12, 1996 IN SURVEYORS PLAT BOOK S1 AT PAGE 216, COUNTY OF SAN MIGUEL, STATE OF COLORADO.
APPLICATION TABLE OF CONTENTS

01_SAN MIGUEL COUNTY PRE-APP LETTER 08-26-2020
02_TITLE COMMITMENT 08-04-2020
03_AGENCY LETTER SIGNED 11-05-2020
04_VICINITY MAP 11-06-2020
05_EXISTING PROJECT INFO 11-06-2020
06_WRITTEN SUMMARY - VARIANCE REQUEST 11-06-2020
07_SITE PLAN - VARIANCE REQUEST 11-06-2020
08_HOA APPROVAL 10-05-2020 - Plat Am+Variance Request to the DRB
09_NEIGHBOR LETTERS OF SUPPORT - 08-2020
August 26, 2020

Nicole Pieterse                   Via email: Nicole.rplaw@gmail.com
Russell & Pieterse LLC

Re:     Pre-application Conference Summary - Variance to allow for a proposed second residence (main house) to be located approximately 500 feet from an existing residence (caretaker unit) on Tract VI, Muddy Creek Meadows; and, Insubstantial Plat Amendment to modify the building homesite location

Dear Nicole,

I am responding to your email to the Planning Department dated August 14, 2020 regarding a process to memorialize a requested variance with a plat amendment. The purpose of this correspondence is to serve as a Pre-application Conference Summary, in accordance with San Miguel County Land Use Code Section 4-207, for a Variance to allow for siting a proposed second residence (main house) approximately 500 feet from the existing residence (caretaker unit) on Tract VI, Muddy Creek Meadows, and for an Insubstantial Final Plat Amendment to modify the building envelope on Tract VI, Muddy Creek Meadows. The Forestry, Agriculture and Open (F) Zone District, Land Use Code Section 5-307 C. I. specifies that a caretaker unit, a second residential unit, may be allowed on all parcels, subject to Administrative Review, and such unit shall be attached to or located within 300 feet of the primary residence (as measured between the closest exterior walls). A Variance requires One-step Board of Adjustment review in accordance with Land Use Code Section 1-14. The proposed Insubstantial Final Plat Amendment requires obtaining Planning Department administrative approval in accordance with Land Use Code Section 5-1502 and sign-off of a new final plat by the Board of County Commissioners.

Your application should contain a short narrative regarding why the property owner is requesting the variance and why the main residence cannot be built within 300 feet of the caretaker unit, in addition to the information, documents and site plan submitted to the Planning Department dated March 4, 2019 by Marla Fritzlen. You must also include the proposed survey plat.

Submission Requirements

See Attached Submission Requirements

Review Standards

See Attached Review Standards
Scheduling of Application Consideration

Please submit one paper copy and a complete set of electronic files (e.g. thumb drive or e-mail) of the complete application that conforms to all applicable Land Use Code requirements. Individual electronic files cannot exceed 25MB. The Planning Department can then schedule the Variance Request for consideration by the Board of Adjustment. A site visit to the subject property with the Board of Adjustment and planning staff will be scheduled in conjunction with the BOA meeting. The Board of Adjustment meets only occasionally. A complete application must be submitted at least one month prior to the requested meeting date.

The Planning Department will refer the application to the County Attorney, County Surveyor and the Muddy Creek Meadows Homeowners Association.

Payment of $400 ($250 for Variance and $150 for Insubstantial Plat Amendment) to San Miguel County must accompany the application for it to be considered complete (in accordance with Board of County Commissioners Resolution 2000-13). The applicant is responsible for reimbursement of any County Designated Engineer review fees, which includes the initial review and any revisions.

Prior to 20 days before any meeting for which consideration of any land use application is scheduled, the applicant shall notify by First Class mail every property owner and condominium unit owner within 500 feet of the perimeter of the subject property as listed in the records of the San Miguel County Assessor. In addition, prior to 20 days before any meeting for which consideration of any land use application is scheduled, the applicant shall post notice (letter and sign to be obtained from the Planning Department) of the scheduled consideration of the application. Mailing and posting of notice by an applicant prior to a meeting that is not a public hearing shall be carried out pursuant to Section 3-903 A., B. and C. In addition to the general notice provisions of Section 3-9, the San Miguel County Land Use Code may require additional notice for certain property owners and parties outside the 500 foot perimeter of the subject property for certain specific development applications, as set forth in the Land Use Code. An applicant’s failure/refusal to submit the required certification of notice required by C.R.S. §§24-65.5-103(4) and 104(2), will result in the public meeting or hearing being rescheduled to a later date.

Please contact the Planning Department if you have any questions.

Sincerely,

John Huebner
Senior Planner
SUBMISSION REQUIREMENTS

Land Use Code Section 4-2 establishes the minimum submission requirements for all development applications:

4-201 General

All development applications shall include, at minimum, the information and materials specified in this section of the Code. During the pre-application conference the Planning Office staff may authorize modifications to the required submission contents.

4-202 Required Background Information

A letter signed by the property owner containing the property owner's name, the applicant's name, address and telephone number, and if applicable, the name, address and telephone number of the representative authorized to act on behalf of the property owner.

4-203 Parcel Description

The street address and current legal description of the parcel on which the development is proposed to occur and an 8-1/2" x 11" vicinity map locating the subject property within San Miguel County.

4-204 Disclosure and Proof of Ownership

A disclosure of ownership of the parcel on which the development is proposed to occur, consisting of a current certificate from a title insurance company or attorney licensed to practice law in the State of Colorado, listing the names of all owners of the property and all holders of subsurface mineral interests of record listed in the real estate records of the San Miguel County Clerk and Recorder, mortgages, judgments, liens, easements, contracts and agreements affecting use and development of the parcel and proof of the owner's right to use the land for the purposes identified in the development application. This shall normally require proof of complete ownership or written consent from all owners. The staff may also request the applicant to supply information regarding the subject property and contiguous property sufficient to indicate that the subject lot was legally created.

4-205 Legal Access

Sufficient information to demonstrate that the applicant has adequate legal access to the parcel for the development proposal.

4-206 Standards Report

A written report demonstrating that the proposed development complies with the applicable substantive review standards.

4-207 Pre-Application Conference Summary Sheet

A copy of the pre-application conference summary sheet provided to the applicant at the pre-application conference.
4-208 Site Plan

The number of copies of 24" x 36" and 8-1/2" x 11" site utilization maps as specified by the staff during the pre-application conference. During the pre-application conference, the Planning Office may authorize an applicant to consolidate or delete specific maps which may not be applicable to a particular development proposal. The 24" x 36" site utilization maps must be folded to fit within a legal-size folder with the name of the application visible. Site maps shall include identification of Areas of Local and State Interest as set forth in Section 5-4 and Wetland Areas as set forth in Section 5-22, for all areas where development activity is proposed.

4-209 Copies of Application

During the pre-application conference the staff shall specify the number of copies of the application to be submitted.
REVIEW STANDARDS FOR VARIANCE

1-1403 A. Appeals to the Board of Adjustment

Appeals to the Board of Adjustment may be taken by any person aggrieved by inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of zoning. Appeals shall be heard only where:

I. The Board of Adjustment is authorized by a Board of Commissioners resolution to hear and decide, in accordance with the provision of the resolution, requests for special exceptions, interpretations of a zoning map or decisions of specific questions authorized by the resolution; or

II. It is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of zoning where no other administrative remedy exists pursuant to Land Use Code Sections 1-19, 1-20 and/or the Board of Building Appeals rules of procedure; or

III. By reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of any regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, and where relief in the form of a variance from zoning may be granted without substantial detriment to the public good and substantial impairment of the intent and purpose of zoning, and where the hardship was not created or caused by the owner.

In addition, demonstration by the applicant that access to sunlight for solar-driven devices would be unduly restricted without the variance requested may serve as cause for granting a variance.

5-307 C. Uses Allowed Subject to Administrative Review

I. Caretaker unit - a second residential unit may be allowed on all parcels, except no caretaker units shall be allowed in the San Miguel Canyon Area. Such unit shall be attached to or located within 300 feet of the primary residence (as measured between the closest exterior walls). Such unit shall contain no more than 2,000 sq. ft. of floor area, and shall contain full kitchen and bathroom facilities. The Floor Area of the caretaker unit shall be included in the calculation for employee housing Impact Fee mitigation as defined in Section 5-13 of this Code. No lease or rental of a caretaker unit shall be less than 30 days or more than five years. Caretaker units shall not be conveyed or sold separately from the remainder of the parcel and shall remain under the same ownership as the primary residence.
REVIEW STANDARDS FOR IPA

Land Use Code Section 5-1502 establishes the standards for the Planning Director to employ in reviewing an application for insubstantial amendment to a final plat, and for you to address in the standards report required by Section 4-206 (see above):

5-1502 Insubstantial Amendment

Insubstantial amendments to a final plat or a PUD are permitted. Refer to Section 3-4 for procedures and 4-6 for submission contents. An insubstantial amendment shall be limited to technical or engineering considerations first discovered during actual development, which could not reasonably have been anticipated during the approval process. The Planning Director shall compare the proposed amendment to the original approval, and, if any other amendments have been approved since the original approval, shall consider the cumulative impact of all approvals granted. The following shall not be considered an insubstantial amendment:

A. A change in the use or character of the development.
B. An increase by greater than three percent in the overall coverage of structures on the land.
C. Any amendment that substantially increases trip generation rates of the proposed development, or the demand for public facilities.
D. A reduction by greater than three percent of the approved open space.
E. A reduction by greater than one percent of the off-street parking and loading space.
F. A reduction in required pavement widths or rights-of-way for streets and easements.
G. An increase of greater than two percent in the approved gross leasable floor area of commercial buildings.
H. An increase of greater than one percent in the approved residential density of the proposed development.
Land Title Guarantee Company
Customer Distribution

PREVENT FRAUD - Please remember to call a member of our closing team when initiating a wire transfer or providing wiring instructions.

Order Number: TLR86010269           Date: 08/04/2020
Property Address: 1501 MUDDY CREEK DRIVE, PLACERVILLE, CO 81430

PLEASE CONTACT YOUR CLOSER OR CLOSER’S ASSISTANT FOR WIRE TRANSFER INSTRUCTIONS

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<th>For Closing Assistance</th>
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<td>(877) 261-1730 (Work Fax)</td>
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<td><a href="mailto:tlresponse@ltgc.com">tlresponse@ltgc.com</a></td>
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Seller/Owner
JOSEPH F. HORNING AND LYNNE N. HORNING
Delivered via: No Commitment Delivery

LAND TITLE GUARANTEE COMPANY
Attention: ROBIN WATKINSON
191 S PINE ST #1C
PO BOX 277
TELLURIDE, CO 81435
(970) 728-1023 (Work)
(970) 728-5079 (Work Fax)
rwatkinson@ltgc.com
Delivered via: Electronic Mail

Agent for Seller
RUSSELL & PIETERSE LLC
Attention: NICOLE PIETERSE
126 W COLORADO AVE #204
PO BOX 2673
TELLURIDE, CO 81435
(970) 728-5006 (Work)
(970) 728-5976 (Work Fax)
nicole.rplaw@gmail.com
Delivered via: Electronic Mail
Estimate of Title Fees

Order Number: TLR86010269  Date: 08/04/2020
Property Address: 1501 MUDDY CREEK DRIVE, PLACERVILLE, CO 81430
Parties: A BUYER TO BE DETERMINED
JOSEPH F. HORNING AND LYNNE N. HORNING

Visit Land Title's Website at www.ltgc.com for directions to any of our offices.

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If Land Title Guarantee Company will be closing this transaction, the fees listed above will be collected at closing.

Thank you for your order!

Note: The documents linked in this commitment should be reviewed carefully. These documents, such as covenants conditions and restrictions, may affect the title, ownership and use of the property. You may wish to engage legal assistance in order to fully understand and be aware of the implications of the effect of these documents on your property.

Chain of Title Documents:

San Miguel county recorded 07/15/1996 under reception no. 306309 at book 564 page 772

Plat Map(s):

San Miguel county recorded 07/12/1996 at book S1 page 216
Property Address:
1501 MUDDY CREEK DRIVE, PLACERVILLE, CO 81430

1. Effective Date:
07/30/2020 at 5:00 P.M.

2. Policy to be Issued and Proposed Insured:
"TBD" Commitment
Proposed Insured:
A BUYER TO BE DETERMINED

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:
A FEE SIMPLE

4. Title to the estate or interest covered herein is at the effective date hereof vested in:
JOSEPH F. HORNING AND LYNNE N. HORNING

5. The Land referred to in this Commitment is described as follows:

THAT PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 42 NORTH, RANGE 11 WEST, AND THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 11 WEST, N.M.P.M. DESIGNATED AS TRACT VI, MUDDY CREEK MEADOWS ON THE MUDDY CREEK MEADOWS TRACT MAP RECORDED ON JULY 12, 1996 IN SURVEYORS PLAT BOOK S1 AT PAGE 216, COUNTY OF SAN MIGUEL, STATE OF COLORADO.

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule B, Part I
(Requirements)

Order Number: TLR86010269

All of the following Requirements must be met:

This proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

Pay the agreed amount for the estate or interest to be insured.

Pay the premiums, fees, and charges for the Policy to the Company.

Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

1. PROVIDE LAND TITLE GUARANTEE COMPANY WITH A CURRENT IMPROVEMENT SURVEY PLAT OF SUBJECT PROPERTY. THIS REQUIREMENT IS NECESSARY TO DELETE STANDARD EXCEPTIONS 1 THROUGH 3 AND MUST DISCLOSE THE LOCATION OF FENCE LINES ALONG THE SUBJECT PROPERTY BOUNDARIES, IF ANY (IF NO FENCE IMPROVEMENTS EXIST ALONG THE PROPERTY PERIMETERS, THE CERTIFICATE MUST AFFIRMATIVELY STATE SUCH). UPON REVIEW, ADDITIONAL REQUIREMENTS AND/OR EXCEPTIONS MAY BE NECESSARY.

NOTE: ANY MATTERS DISCLOSED BY SAID IMPROVEMENT SURVEY PLAT WILL BE REFLECTED ON SAID POLICY(S) TO BE ISSUED HEREUNDER.

NOTE: LAND TITLE IS NOT RESPONSIBLE FOR ORDERING SAID IMPROVEMENT SURVEY PLAT.

2. CORRECTION DEED FROM ELK CREEK LAND COMPANY, A LIMITED LIABILITY COMPANY TO JOSEPH F. HORNING AND LYNNE N. HORNING CONVEYING THE SUBJECT PROPERTY.

NOTE: THIS REQUIREMENT IS NECESSARY TO CORRECT THE LEGAL DESCRIPTION SHOWN ON THE WARRANTY DEED RECORDED JULY 14, 1996 IN BOOK 564 AT PAGE 772.

3. WARRANTY DEED FROM JOSEPH F. HORNING AND LYNNE N. HORNING TO A BUYER TO BE DETERMINED CONVEYING SUBJECT PROPERTY.

NOTE: THE COMMITMENT DOES NOT REFLECT THE STATUS OF TITLE TO WATER RIGHTS OR REPRESENTATION OF SAID RIGHTS.

NOTE: ADDITIONAL REQUIREMENTS OR EXCEPTIONS MAY BE NECESSARY WHEN THE BUYERS NAMES ARE ADDED TO THIS COMMITMENT. COVERAGES AND/OR CHARGES REFLECTED HEREIN, IF ANY, ARE SUBJECT TO CHANGE UPON RECEIPT OF THE CONTRACT TO BUY AND SELL REAL ESTATE AND ANY AMENDMENTS THERETO.
ALTA COMMITMENT

Old Republic National Title Insurance Company

Schedule B, Part II

(Exceptions)

Order Number: TLR86010269

This commitment does not republish any covenants, condition, restriction, or limitation contained in any document referred to in this commitment to the extent that the specific covenant, conditions, restriction, or limitation violates state or federal law based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin.

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.

4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.

8. RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED DECEMBER 24, 1913 IN BOOK 99 AT PAGE 82.

9. RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED MARCH 10, 1915 IN BOOK 99 AT PAGE 482.

10. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED APRIL 21, 1922, IN BOOK 99 AT PAGE 201.
11. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE FOLLOWING MAPS AND PLAT:
   #1 - MUDDY CREEK MEADOWS TRACT MAP RECORDED JULY 12, 1996 IN SURVEYORS PLAT BOOK S1 AT PAGE 216;
   #2 - IMPROVEMENT SURVEY PLAT OF TRACT VI, MUDDY CREEK MEADOWS RECORDED JULY 12, 1996 IN SURVEYORS PLAT BOOK S1 AT PAGE 218;
   #3 - REPLAT OF TRACTS I, II, III, IV & V, MUDDY CREEK MEADOWS TRACT MAP, RECORDED OCTOBER 21, 1996 IN BOOK S1 AT PAGE 224;
   #4 - REPLAT OF TRACT VII OF MUDDY CREEK MEADOWS RECORDED AUGUST 19, 1997 IN PLAT BOOK 1 AT PAGE 2277; AND
   #5 - AMENDED REPLAT OF TRACTS I, II, III, IV & V, MUDDY CREEK MEADOWS TRACT MAP, RECORDED AUGUST 19, 1997 IN PLAT BOOK 1 AT PAGE 2278.

12. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW AS CONTAINED IN INSTRUMENT RECORDED JULY 12, 1996, IN BOOK 564 AT PAGE 529 AND AS AMENDED IN INSTRUMENT RECORDED JULY 16, 1996, IN BOOK 564 AT PAGE 858 AND AS AMENDED IN INSTRUMENT RECORDED JULY 19, 1996, IN BOOK 565 AT PAGE 13 AND AS AMENDED IN INSTRUMENT RECORDED AUGUST 19, 1997 IN BOOK 585 AT PAGE 716 AND AS AMENDED IN INSTRUMENT RECORDED OCTOBER 13, 1999 UNDER RECEPTION NO. 329805.

13. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN QUIT CLAIM DEED RECORDED JULY 15, 1996 IN BOOK 564 AT PAGE 759 AND IN AGREEMENT CONCERNING USE OF WATER RECORDED JULY 15, 1996 IN BOOK 564 AT PAGE 760.

14. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN BOARD OF COUNTY COMMISSIONER'S RESOLUTION #1996-48 RECORDED OCTOBER 09, 1996 IN BOOK 568 AT PAGE 736.

15. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ROAD EASEMENT AND MAINTENANCE AGREEMENT RECORDED FEBRUARY 20, 1997 IN BOOK 576 AT PAGE 930.

16. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN PUBLIC ROAD EASEMENT RECORDED AUGUST 19, 1997 IN BOOK 585 AT PAGE 677.

17. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ROAD EASEMENT AND MAINTENANCE AGREEMENT RECORDED AUGUST 19, 1997 IN BOOK 585 AT PAGE 684.

18. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN 200' RADIUS ROAD, UTILITY AND SNOW REMOVAL EASEMENT RECORDED AUGUST 19, 1997 IN BOOK 585 AT PAGE 691.

19. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ROAD EASEMENT AND MAINTENANCE AGREEMENT RECORDED AUGUST 19, 1997 IN BOOK 585 AT PAGE 697.

20. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN 50' NON-MOTORIZED TRAVEL EASEMENT RECORDED AUGUST 19, 1997 IN BOOK 585 AT PAGE 706.

22. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN 60' DITCH EASEMENT RECORDED AUGUST 19, 1997 IN BOOK 585 AT PAGE 712.


25. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DECLARATION OF COVENANTS RECORDED JULY 28, 2006 UNDER RECEPTION NO. 385650.
Note: Pursuant to CRS 10-11-122, notice is hereby given that:

(A) The Subject real property may be located in a special taxing district.

(B) A certificate of taxes due listing each taxing jurisdiction will be obtained from the county treasurer of the county in which the real property is located or that county treasurer's authorized agent unless the proposed insured provides written instructions to the contrary. (for an Owner’s Policy of Title Insurance pertaining to a sale of residential real property).

(C) The information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

Note: Effective September 1, 1997, CRS 30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The clerk and recorder may refuse to record or file any document that does not conform, except that, the requirement for the top margin shall not apply to documents using forms on which space is provided for recording or filing information at the top margin of the document.

Note: Colorado Division of Insurance Regulations 8-1-2 requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed". Provided that Land Title Guarantee Company conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception number 5 will not appear on the Owner’s Title Policy and the Lenders Policy when issued.

Note: Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

(A) The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.

(B) No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.

(C) The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.

(D) The Company must receive payment of the appropriate premium.

(E) If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.
Note: Pursuant to CRS 10-11-123, notice is hereby given:

This notice applies to owner's policy commitments disclosing that a mineral estate has been severed from the surface estate, in Schedule B-2.

(A) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and

(B) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

Note: Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

Note: Pursuant to Colorado Division of Insurance Regulations 8-1-3, notice is hereby given of the availability of a closing protection letter for the lender, purchaser, lessee or seller in connection with this transaction.
This Statement is provided to you as a customer of Land Title Guarantee Company as agent for Land Title Insurance Corporation and Old Republic National Title Insurance Company.

We want you to know that we recognize and respect your privacy expectations and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to your non-public personal information (“Personal Information”).

In the course of our business, we may collect Personal Information about you from:

- applications or other forms we receive from you, including communications sent through TMX, our web-based transaction management system;
- your transactions with, or from the services being performed by us, our affiliates, or others;
- a consumer reporting agency, if such information is provided to us in connection with your transaction;
- and
- The public records maintained by governmental entities that we obtain either directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the protection of the confidentiality and security of your Personal Information are as follows:

- We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you.
- We may share your Personal Information with affiliated contractors or service providers who provide services in the course of our business, but only to the extent necessary for these providers to perform their services and to provide these services to you as may be required by your transaction.
- We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion.
- Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action.
- We regularly assess security standards and procedures to protect against unauthorized access to Personal Information.

WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT STATED ABOVE OR PERMITTED BY LAW.

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows: Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
Commitment For Title Insurance
Issued by Old Republic National Title Insurance Corporation

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY’S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Minnesota corporation (the “Company”), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured. If all of the Schedule B, Part I—Requirements have not been met within 6 months after the Commitment Date, this Commitment terminates and the Company’s liability and obligation end.

COMMITMENT CONDITIONS

1. DEFINITIONS

(a) “Knowledge” or “Known”: Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
(b) “Land”: The land described in Schedule A and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
(c) “Mortgage”: A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
(d) “Policy”: Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
(e) “Proposed Insured”: Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
(f) “Proposed Policy Amount”: Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
(g) “Public Records”: Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
(h) “Title”: The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, Commitment terminates and the Company’s liability and obligation end.

3. The Company’s liability and obligation is limited by and this Commitment is not valid without:

(a) the Notice;
(b) the Commitment to Issue Policy;
(c) the Commitment Conditions;
(d) Schedule A;
(e) Schedule B, Part I—Requirements; and
(f) Schedule B, Part II—Exceptions; and
(g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY’S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

(a) The Company’s liability under Commitment Condition 4 is limited to the Proposed Insured’s actual expense incurred in the interval between the Company’s delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured’s good faith reliance to:
   i. comply with the Schedule B, Part I—Requirements;
   ii. eliminate, with the Company’s written consent, any Schedule B, Part II—Exceptions; or
   iii. acquire the Title or create the Mortgage covered by this Commitment.
(b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
(c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
(d) The Company’s liability shall not exceed the lesser of the Proposed Insured’s actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
(e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT
(a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
(b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
(c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
(d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
(e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
(f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company’s only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT
The issuing agent is the Company’s agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY
The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION
The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is $2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at http://www.alta.org/arbitration.

IN WITNESS WHEREOF, Land Title Insurance Corporation has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A to be valid when countersigned by a validating officer or other authorized signatory.

Issued by:
Land Title Guarantee Company
3033 East First Avenue Suite 600
Denver, Colorado 80206
303-321-1880

Senior Vice President

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SAN MIGUEL COUNTY PLANNING DEPARTMENT
113 W. Columbia Ave.
Telluride, CO 81435

Re: Owner Information and Authorized Representatives
Tract VI, Muddy Creek Meadow

The undersigned owners hereby authorize the individuals listed below to represent them in connection with a variance and insubstantial plat amendment application submitted to the San Miguel County Planning Department:

Nicole Y. Pieterse, Atty.
RUSSELL & PIETERSE, LLC
PO Box 2673, 126 W. Colorado Ave., Suite 204, Telluride, CO 81435
nicole.pieterse@lawtelluride.com
970-728-5006 ext. 1 (office)
970-708-0411 (mobile)

and

Marla Fritzlen, Architect
MARLA FRITZLEN ARCHITECTURE, INC
PO Box 82, Nucla CO, 81424
marla@mjfarch.com
970-729-1606

Joseph F. Horning and Lynne N. Horning
2101 Connecticut Ave. NW
Apt # 61
Washington DC 20008
maxtoadie@gmail.com
(540) 675-3675

Date: 11-05-2020
"20201029 FNL draft agency letter" History

Document created by Nicole Pieterse (nicole.rplaw@gmail.com)
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Document e-signed by Joseph F Horning and Lynne N Horning (maxtoadie@gmail.com)
Signature Date: 2020-11-02 - 8:51:25 PM GMT - Time Source: server - IP address: 69.138.219.85

Agreement completed.
2020-11-02 - 8:51:25 PM GMT
LUC 4-203 Parcel Description
Horning Residence – Variance Request & Insubstantial Plat Amendment
11-06-2020

PROPERTY DESCRIPTION: Property is located within the subdivision known as Muddy Creek Meadows, in San Miguel County at the west end of Wilson Mesa, and accessed from Muddy Creek Drive (also known as Elk Creek Ranch Road)

LEGAL DESCRIPTION: Tract VI, Muddy Creek Meadows (title commitment submitted herewith)

ADDRESS: 1501 Muddy Creek Drive
San Miguel County, Colorado

LOT SIZE: Approximately 132 ACRES

ZONE DISTRICT: F Zone District – Forestry, Agriculture, and Open

LUC USES ALLOWED BY RIGHT: Single-Family Dwellings less than 12,000 SF
Accessory Buildings less than 3000 SF

LUC USE ALLOWED BY REVIEW: Caretaker Units 50% of primary residence 2,000 SF/max and shall be less than 300 F from primary residence

HOA AUTHORIZATION: Muddy Creek Meadows Owner’s Association, Inc. DRB Approval submitted herewith

EXISTING STRUCTURES: Cabin (less than 2000 SF)
Garage (1872 SF)

LEGAL ACCESS: Existing Driveway accessed from Muddy Creek Drive

EXISTING WATER SUPPLY: State Approved Domestic Well on site

EXISTING SEPTIC (OWTS) SYSTEM: County Approved Septic (OWTS) System on site
STANDARDS REPORT NARRATIVE

OBJECTIVE:
The owners of Muddy Creek Meadows Tract VI, Lynne and Joseph Horning would like to create a functional, yet environmentally sensitive, homesite for their family. This requires a variance permitting location of their primary residence more than 300 feet away from their existing caretaker unit. This variance application is accompanied by an application for an insubstantial plat amendment to relocate Tract VI's currently platted building envelope.

HISTORY AND EXISTING CONDITIONS:
The Tract VI Building Envelope was established in 1996 with the formation of the Muddy Creek Meadows subdivision. The original subdivider’s apparent objective was to maximize views from each lot. Little to no consideration was given to the property’s topography, drainage or wildlife.

The Hornings were the first individuals to purchase at Muddy Creek. They have had to clean up title issues created in haste during the subdivision’s initial formation. They also retained a hydrologist and a wetland consultant from Aspen in order to cure the wetland impacts from prior grazing and compaction. This work included much needed drainage improvements as well as siting a pond in the most suitable location. Two pond locations were determined that would best enhance wildlife and wetland habitat, and the owners thoughtfully chose the current location over the other as it would not be subject to livestock impact. This existing unlined pond and drainage improvements have helped restore the springs to the south and support wildlife and the area’s ecology.

The Hornings also constructed the driveway that contours the property along the edge of the meadow, in order to protect it. This allowed them to retire the primitive two track ranching road through the existing aspen forest, and now it's no longer visible. A small cabin (“caretakers unit”) and garage are currently constructed along the edges of the meadow. The siting of these structures was informed by the property’s drainage, pond and driveway, but was not suitable for the primary residence.

Through the years and all their efforts to restore the meadow, the Hornings have studied the property in great depth, in an effort to establish a long-range development plan. After extensive analysis, they have determined that the existing Building Envelope, while appropriate for the small caretaker unit and pond, is not suitable for the primary residence’s location. Thoughtful consideration of the natural conditions of the site determined that the residence should be located in another area approximately 570 feet to the east of the caretaker unit. Problems associated with constructing the residence and the caretaker unit within the same Building Envelope and within 300 feet of each other are explained in the Variance Review Standards section below.

PROPOSED BUILDING ENVELOPE AND RESIDENCE:
The proposed Building Envelope is the same size as the existing Building Envelope, a 300-foot diameter circle, and is located approximately 500 feet to the east of the existing envelope location. Story poles using the proposed building footprint were erected in the summer of 2019 to help determine ridge line heights to minimize visibility. These story poles and ridge heights were reviewed and approved by the HOA President, Tom Likovich, and the closest neighbor to the north, Steve Szymanski. The site is sloped and the structure would work with the contours to subtly step up the slope and be tucked into the land.

1 Muddy Creek Meadows Tract Map recorded July 12, 1996 in Plat Book 1, Page 216 is submitted herewith.
next to the trees. The building footprint would be approximately 570 feet maximum distance away from the existing caretaker unit.

See attached Site Plan for location of the proposed Building Envelope land schematic residential building footprint.

VARIANCE REVIEW STANDARDS:
With respect to Tract VI, LUC Section 1-1403 A.III sets out the circumstances warranting a variance, as follows:

“By reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of any regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, and where relief in the form of a variance from zoning may be granted without substantial detriment to the public good and substantial impairment of the intent and purpose of zoning, and where the hardship was not created or caused by the owner.”

A variance allowing the Tract VI homesite location more than 300 feet away from the caretaker unit is necessary and appropriate based on the following:

1. Locating the residence and caretaker unit within 300 feet of each other creates exceptional practical difficulties:
   - The only current alternative to building in the open meadow, requires clearcutting a substantial amount of native forest.
   - Preserving the existing native forested areas to northwest, west and south would require construction of the residence (whether attached to or within 300 feet of the caretaker unit), to occur in the open meadow, rather than against the trees.
   - Dwelling structures in open areas negatively impact wildlife.
   - The mesas are exceptionally windy, and placing the residence in the meadow would subject it to strong southwest winds that funnel through the open meadow.
   - Existing pond to the east requires a sufficient buffer to protect wetlands and encourage wildlife.
   - Existing property line to north is less than 100 feet from current Building Envelope
   - Existing steep natural drainage (Fall Creek) to west also limits the buildable area.
   - Existing septic lines and tanks exist in the middle of the current Building Envelope
   - Appropriate siting of the existing driveway to northeast, in a manner that carefully contours the trees at the edge of the meadow in order to minimize visual and other impacts, together with the pond/drainage, informed the location of the caretaker unit/septic area and garage, which further limits the buildable area.
   - The proposed separation of the house from the caretaker unit would not pose any risk of the property being subdivided. Further subdivision is prohibited by the governing documents for Muddy Creek Meadows.
Horning’s Muddy Creek Meadows Tract VI – Variance Request
11-06-2020

2. Reasons why the new Building Envelope and proposed location of the building footprint are a better placement for the future primary residence:
   • Proposed homesite/Building Envelope is next to existing forest but safely away from the existing tree line, so no trees would be removed.
   • Proposed homesite/Building Envelope area is significantly less visible from the main road (Muddy Creek Drive); the trees to the east help screen the proposed structure from the road.
   • Proposed homesite/Building Envelope area is significantly less visible from the public lands (Forest Service lands) to the south of Tract VI. The existing tree line to the south helps screen the proposed structure from public view.
   • Proposed homesite/Building Envelope area is significantly less visible from existing neighbors’ homes on adjacent properties to the north and east. Letters of support from the immediately adjacent neighbors are submitted herewith. Existing topography and trees help screen the proposed structure from neighbors’ views.
   • Proposed homesite/Building Envelope area is further away from north property line and therefore more separation is created from neighboring structures preserving rural character.
   • Proposed homesite/Building Envelope significantly reduces the visibility of the proposed primary residence and thus helps preserve rural character, scenic views, agricultural lands, and biological diversity.
   • Proposed homesite/Building Envelope accommodates use of the meadow and pond by wildlife.

The foregoing exceptional practical difficulties would be overcome by locating the home more than 300 feet from the caretaker unit. The variance would result in development that avoids clearcutting, reduces impacts on the meadow, hydrology and wildlife and better serves the intent of the LUC and Forestry Zone. Greater separation of the house and caretaker unit, in this case, greatly enhances Tract VI’s natural characteristics and benefits the neighbors’ and adjacent public land users.
EXISTING 150' RADIUS BUILDING ENVELOPE PER PLAT OF RECORD

EXISTING (2) SEPTIC MANHOLES

EXISTING SPRUCE TREELINE
EXISTING ASPEN TREELINE
EXISTING TACK SHED
EXISTING DITCH
FLOWLINE
EXISTING TREE LINE
EXISTING TREE LINE

570'-0"

EXISTING NEIGHBOR’S HOUSE

(LETTER OF SUPPORT ATTACHED)

1501 Muddy Creek Drive
SAN MIGUEL COUNTY
COLORADO

VOCAL DESCRIPTION:

IMENTURY,MUDDY CREEK MEADOWS PARCELS
EXISTING ROAD / LEGAL ACCESS (MUDDY CREEK DRIVE)
EXISTING NEIGHBORS HOUSE (LETTER OF SUPPORT ATTACHED)
EXISTING NEIGHBORS HOUSE (LETTER OF SUPPORT ATTACHED)
PROPOSED BUILDING ENVELOPE & PROPOSED BUILDING FOOTPRINT
PROPOSED BUILDING ENVELOPE & PROPOSED BUILDING FOOTPRINT
EXISTING NATIVE FOREST TO REMAIN, TYPICAL
EXISTING BUILDING ENVELOPE (300 FOOT DIAMETER)
EXISTING BUILDING ENVELOPE (300 FOOT DIAMETER)
EXISTING PROPERTY LINE & FENCE LINE
EXISTING DRIVEWAY
EXISTING DRIVEWAY
EXISTING GARDENER UNIT
EXISTING LEACH FIELD & SEPTIC AREA
EXISTING NATIVE FOREST TO REMAIN, TYPICAL
EXISTING POND FOR WILDLIFE & WETLANDS HABITAT
EXISTING POND FOR WILDLIFE & WETLANDS HABITAT

DASHED CIRCLE SHOWS 300 FT MAXIMUM DISTANCE ALLOWED FROM EXISTING CARETAKER UNIT TO A FUTURE PRIMARY RESIDENCE PER SAN MIGUEL COUNTY LAND USE CODE SECTION 5-307C.I (VARIANCE IS REQUESTED FROM COUNTY FOR A PROPOSED DISTANCE OF 570 FT DISTANCE PER PROPOSED BUILDING FOOTPRINT LOCATION)

LEGAL DESCRIPTION:
TRACT VI, MUDDY CREEK MEADOWS
Dear Lynne and Joe,

The Design Review Board of the Muddy Creek Homeowners Association, in accordance with the Declarations, Bylaws and historical precedents of the Association, hereby grants the variance request submitted by your architect, Marla Fritzlen, on September 14, 2020 to move the building envelope to the east of the original envelope and as further described in detail in your proposal.

The DRB forwarded your request to all owners of the association on September 29, 2020 for questions and comments. All four members of the DRB met in person on September 29, 2020 to discuss your proposal and unanimously decided in favor of granting the requested variance subject to the comments of the other homeowners. All homeowners responded favorably to your request.

There is no longer a need for a hearing and therefore any previously scheduled hearing is canceled. We wish you good luck with your project.

Sincerely,

The Design Review Board
Tom Likovich
Lisa Payne
Bruce Butte
Steve Szymanski

Sent from my iPad
To: Kaye Simonson, San Miguel County Planning Director  
John Huebner, Assistant Planner  

Date: August 9, 2020  

Dear John and Kaye,  

I am writing on behalf of Joe and Lynne Horning and their architect, Marla Fritzlen as both a next door neighbor and a member of the Design Review Board of the Muddy Creek Homeowners Association.  

They are requesting a variance for their primary home. I am a proponent of the new location approximately 500 feet from their guesthouse as it is a location that shields the home from my line of sight and also our main access road, Muddy Creek Drive.  

Please let me know if I can answer any questions or be of further assistance in this matter.  

Sincerely,  

Steve Szymanski  
1003 Muddy Creek Dr  
Secretary, Muddy Creek Homeowners Association.  
Member, Design Review Board  
303-517-1117
August 12, 2020

Dear Kaye and John:

I am writing on behalf of Lynne and Joe Horning and their architect, Marla Fritzlen. Kevin and I are members of the Muddy Creek Homeowners Association, and we live just across Muddy Creek Drive and up the hill from the Hornings.

They are requesting a variance for their primary home. The new location would be approximately 500 feet from their guest house. We have no objections to this change.

Sincerely,

Pamela Kelly
1022 Muddy Creek Drive
APPLICANT’S CERTIFICATION OF COMPLIANCE WITH THE PUBLIC NOTICING REQUIREMENTS OF THE SAN MIGUEL COUNTY LAND USE CODE SECTION 3-9

MARLA FRITZLENN, Applicant, or the duly designated agent(s) of Applicant, has applied to San Miguel County for approval of a land use application. Applicant recognizes that the provisions of the San Miguel County Land Use Code (LUC) Section 3-9 require public notice by First Class mail and posting of the property not less than twenty (20) days before the date scheduled for a public meeting or hearing.

Applicant or Applicant’s agent(s) have examined the current tax records of San Miguel County as they appeared either in the records of the San Miguel County Assessor or under the San Miguel County Geographic Information Systems* (GIS) mapping program no more than sixty (60) days prior to the date of the public meeting or hearing. Applicant or Applicant’s agent(s) hereby certifies that: (Applicant must check all.)

Following an examination of the records in the San Miguel County Assessor or under the San Miguel County GIS* mapping program, the Applicant has provided public notice, in compliance with LUC § 3-903C not less than twenty (20) days before the date scheduled for a public meeting or hearing, by First Class mail to every property owner and condominium unit owner within 500 feet of the perimeter of the subject property. I hereby certify that I have attached a copy of this public notice letter and mailing list to this certification.

AND

Not less than twenty (20) days before the date scheduled for a public meeting or hearing, I hereby certify that, in compliance with LUC § 3-903B, public notice has also been provided by posting a sign in a conspicuous place on the property that is the subject of the land use application.

I understand that San Miguel County requires completion and delivery of this Certification of Compliance to the San Miguel County Planning Department at least ten (10) days prior to the initial public meeting or hearing on a land use application. I further understand that failure to submit the required Certification of Compliance to the County Planning Department at least ten (10) days prior to the initial public meeting on a land use application will result in the public meeting or hearing being rescheduled to a later date.

Name (Authorized Agent)  JOSEPH & LYNNE HORNING
(Inet Applicant’s name if executed by agent)

1501 Muddy Creek Dr., San Miguel County

Physical location of Property and/or legal description

8101 Connecticut Ave NW, Apt #61, Washington DC 20001

Mailing Address (if different from above)

Date: JAN 4TH, 2021

Signature:

* GIS data may not accurately or completely reflect owners in multi-unit, multi-floor buildings in San Miguel County. In such instance, the applicant must examine the Assessor’s information in addition to the GIS data in order to provide the required public notice.
Please publish the following Legal Ad in the:

NORWOOD POST AND TELLURIDE DAILY PLANET on WEDNESDAY, JANUARY 20, 2021

Please bill: San Miguel County Planning Department
P.O. Box 548
Telluride, CO  81435

SAN MIGUEL COUNTY
BOARD OF ADJUSTMENT
MEETING AGENDA
JANUARY 21, 2021
Online Meeting

MEETING INFORMATION - This meeting will be held online due to the COVID-19 virus. To join the meeting: https://zoom.us/join, Meeting ID: 994 9929 4955, Password: 368003; Audio only: Dial 1-301-715-8592 or 1-253-215-8782 (long distance rates may apply)

1. 9:00 AM CALL TO ORDER.

2. CONSIDERATION OF VARIANCE APPLICATION received from Marla Fritzlen Architecture, Inc., on behalf of Joseph and Lynne Horning, owners of Tract VI, Muddy Creek Meadows, 1501 Muddy Creek Drive, a 132 acre parcel zoned Forestry, Agricultural and Open (F) to allow for a proposed second residence (main house) to be located approximately 500 feet from an existing residence (caretaker unit). MOTION

3. CONSIDERATION OF VARIANCE APPLICATION received from Mary Jo Schillaci on behalf of Kaye Simonson, owner of Lot 8, Shadohoochie Hill Subdivision, 16 Trunk Road, a .46 acre parcel zoned Forestry, Agricultural and Open (F) to allow for a reduction of the east side yard setback from 20 feet to 14.3’ as built for the house and deck, and to allow reconstruction of the deck in its current location. MOTION

4. APPROVAL OF MINUTES, BOARD OF ADJUSTMENT AND STAFF COMMENTS

5. Adjourn

NOTE: All times are approximate; items may begin earlier (except public hearings) or later than scheduled. For more information contact Planning Department at (970) 728-3083.

The official, designated posting place for all BOA notices, agendas is online at https://www.sanmiguelcountyco.gov/AgendaCenter. Use this link to view the agenda with any last-minute changes. To be automatically notified please sign up at www.sanmiguelcountyco.gov, signup for alerts, and follow the prompts.
December 3, 2020

Kaye Simonson via email: simonsonkaye@gmail.com
Mary Jo Schillaci via email: maryjo.schillaci@gmail.com

Re: Certification of Application Completeness – Variance to modify the east side yard setback to be as built for the house and deck, and to allow reconstruction of the deck in its current location on Lot 8, Shadohoochie Hill Subdivision

Dear Kaye & Mary Jo:

The purpose of this correspondence is to serve as notification (in accordance with Section 3-202 C. of the San Miguel County Land Use Code) that your application for a Variance to allow for a side yard setback reduction for the existing residence and deck on Lot 8, Shadohoochie Hill Subdivision, meets the minimum submittal requirements of the Land Use Code Standards and is considered complete. It should be noted that a determination of application completeness shall not necessarily constitute a determination of compliance with the substantive requirements of the County Land Use Code. Additional information may be required after further review by the referral agencies and County staff. The Board of Adjustment may also require more materials or information to be supplied by you as the applicant during the public review process. A Variance requires One-step Board of Adjustment review in accordance with Land Use Section 1-1403 A.

The Variance, contingent upon the receipt of the necessary responses from referral agencies, has been scheduled for consideration by the County Board of Adjustment on January 21, 2021. A site visit with staff should be arranged prior to the onset of inclement weather.

Your application, which has been certified complete, will now be sent to the County Attorney for review. The applicant will be responsible for reimbursing the Planning Department for payment of any professional surveying fees, both the initial submittal and any subsequent review. In addition, the applicant will be responsible for payment of all copy charges.
Prior to 20 days before any meeting for which consideration of any land use application is scheduled, the applicant shall **notify by First Class mail** every property owner and condominium unit owner within 500 feet of the perimeter of the subject property as listed in the records of the San Miguel County Assessor. In addition, prior to 20 days before any meeting for which consideration of any land use application is scheduled, the applicant shall **post notice** (letter and sign to be obtained from the Planning Department) of the scheduled consideration of the application. In addition to the general notice provisions of Section 3-9, the San Miguel County Land Use Code may require additional notice for certain property owners and parties outside the 500 foot perimeter of the subject property for certain specific development applications, as set forth in the Land Use Code. In addition to the applicant’s noticing the Planning office will provide notice to interested parties and persons that have asked to be informed of land use applications via e-mail. We will provide you a list of any parties notified.

The enclosed letters certifying that all surrounding property owners have been mailed notice must be submitted to the Planning Department prior to the scheduled meeting date.

If you have any questions regarding this matter, my comments and suggestions or the scheduling of this application please do not hesitate to contact me.

Sincerely,

Troy Hangen, Senior Planner

"Z:\Applications letters\Appcompl\Kaye.Simonson.sideyard.variance.boa"
NOTICE TO PROPERTY OWNERS:

The San Miguel County Board of Adjustment has been asked to consider an application submitted by Mary Jo Schillaci on behalf of Kaye Simonson, owner of Lot 8, Shadohoochie Subdivision (16 Trunk Road), an approximately 0.46 acre parcel zoned Forestry, Agricultural and Open (F) to modify the east side yard setback for the existing house and deck, and to allow reconstruction of the deck in its current location. The house and deck were built in the side yard setback due to inaccurate survey practices years ago.

A public meeting on the above application will be held by the San Miguel County Board of Adjustment on Thursday, January 21, 2021 at 10:15AM. This meeting will be held online due to the COVID-19 virus. To provide comment or ask questions regarding the proposal, please join the meeting at https://zoom.us/join, Meeting Id # 373 757 8496, Password 534277, audio only 1-301-715-8592 or 1-253-215-8782 (long distance rates may apply).

Written comments of more than one page may not receive complete consideration if not received by January 14, 2021. Send written comments to: San Miguel County Planning Department, P.O. Box 548, Telluride, CO 81435, or email to planning@sanmiguelcountyco.gov

The meeting on this proposal is not limited to those receiving copies of this notice. If you know of any neighbor or potentially affected property owner who, for any reason, has not received a copy of this notice, it would be appreciated if you would inform them of this public meeting.

Respectfully,

___________________________________

Mary Jo Schillaci, on behalf of Kaye Simonson
MEMORANDUM

TO: San Miguel County Board of Adjustment
FROM: Troy Hangen, Senior Planner
RE: Setback Variance Request: Lot 8, Shadohoochie Hill Subdivision
DATE: January 21, 2021

Background

The plat for Shadohoochie Hill Subdivision was recorded in the San Miguel County Clerk and Recorders Office in 1966. All lots in the subdivision are substandard-size parcels in the Forestry, Agriculture and Open (F) Zone District. The original house on Lot 8 was constructed in 1980. The building permit indicated a 20-foot east side yard setback, but the house was built 14.3 feet away from the east property. In addition, the deck on the rear of the house was built in the setback at a distance of 13.5 feet to the east property.

When the house was expanded in 2000, all additions were set back from the property line to meet or exceed the 20-foot setback. The original deck was left in place. Presently, and after 40 years of wear and tear, the deck is in need of replacement.

Summary

Mary Jo Schillaci (Applicant), on behalf of Kaye Simonson, owner of Lot 8, Shadohoochie Hill Subdivision, a 0.46-acre parcel zoned Forestry, Agriculture and Open (F), submitted an application for a setback variance to allow for a reduction of the east side yard setback from 20 feet to 14.3 feet for the house and 13.5 feet for the deck in order to eliminate the nonconforming status. The main reason is for the applicant’s request is to replace the existing dilapidated deck in the same footprint as it is presently.

The F Zone District standards call for a 35-acre minimum lot size. Lot 8 of Shadohoochie Hill Subdivision is a legal pre-existing non-conforming lot. Land Use Code Section 5-307 G. II. specifies a minimum side yard setback of 20 feet. A Setback variance is a One-step Board of Adjustment review pursuant to Land Use Code Section 1-14.

The Applicant states that in the 1970’s and 80’s, there were numerous survey errors in the surrounding area and with this particular property. After further research from the Planning Department, this statement is correct. This clearly explains why the house and deck were placed in their present day location. The house as presently sited cannot be considered legally nonconforming pursuant to LUC Section 5-19 because it was not built in conformance with the requirements of the Code in 1980.

While reviewing this application, Planning has concluded that the hardship for the applicant was not self-imposed. It is a pre-existing condition that the applicant is looking to resolve. Hardships are the main criteria considered in order to approve a variance which is called out in LUC Section 1-1403 A.III (stated below).
**Noticing and Referral Agents**

The Applicant provided notice of the Board of Adjustment meeting date and time to all property owners within 500 feet of the subject property December 22, 2020 and posted a notice sign on the property December 28, 2020. The County Attorney was provided a copy of the application to review. The Planning Department has not received any objections or comments regarding the application.

**Recommendation**

Planning Staff supports the proposed setback variance request (reducing the east side yard setback from 20 feet to 13.5 feet for the rear deck and 14.3 feet for the residence) due to the fact of the present hardship was created prior to the applicant purchasing the property, and that the reconstruction of the new deck will not cause harm to the neighbors.

**Sample Motion:**

I move to approve a setback variance for the purpose of proposed construction of the deck in place on Lot 8, Shadóhochee Hill Subdivision and to bring the residence into conformance, and to adopt the resolution, based on the finding that the Applicant has demonstrated an exceptional situation or condition and that the application is consistent with and complies with the review standards in Land Use Code Section 1-1403 A. III., with the following conditions:

1. The setback variance is limited to the reconstruction of the proposed deck in place, and no other construction shall be allowed within the 20-foot side yard setback. Any future addition or expansion shall meet the setback requirements of the F Zone District.

2. All required development and building and permits shall be obtained from San Miguel County by the owner prior to commencing construction on a proposed deck construction in place on this lot.

3. This approval shall expire three (3) years from the recording date of this resolution.

4. All written representations of the applicant, in the original submittal and all supplements, letters and emails, are deemed to be conditions of approval, except to the extent modified by this motion.

**Review Standards**

Land Use Code Section 1-14 establishes the standards for the Board of Adjustment to use in reviewing setback variance applications:

**Section 1-14: Board of Adjustment**

**1-1401 Establishment and Membership**

The Board of Adjustment of San Miguel County is hereby established. Board establishment and membership is subject to applicable State law and Board of County Commissioner resolution. The Board of Adjustment consists of five members. The term of each member shall be set by the Board of County Commissioners, with the term of at least one member expiring each year. The Board of County Commissioners may appoint alternate Board members. Any member of the
Board may be removed for cause by the Board of County Commissioners.

1-1402 Organization

The Board of Adjustment shall adopt by-laws establishing its organization and procedures. A copy of such by-laws shall be available in the San Miguel County Planning Office. The Board shall elect a chairperson from its members to serve a one-year term.

1-1403 Powers

The Board of Adjustment shall have authority provided by the Board of County Commissioners, the Code, and State law. Authority under State law includes, but is not limited to C.R.S. Section 30-28-117 et seq., as it may be amended from time to time.

1-1403 A. Variances

Appeals to the Board of Adjustment may be taken by any person aggrieved by inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of zoning. Appeals shall be heard only where:

I. The Board of Adjustment is authorized by a Board of Commissioners resolution to hear and decide, in accordance with the provision of the resolution, requests for special exceptions, interpretations of a zoning map or decisions of specific questions authorized by the resolution; or

II. It is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of zoning where no other administrative remedy exists pursuant to Land Use Code Sections 1-19, 1-20 and/or the Board of Building Appeals rules of procedure; or

III. By reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of any regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, and where relief in the form of a variance from zoning may be granted without substantial detriment to the public good and substantial impairment of the intent and purpose of zoning, and where the hardship was not created or caused by the owner.

In addition, demonstration by the applicant that access to sunlight for solar-driven devices would be unduly restricted without the variance requested may serve as cause for granting a variance.
5-307 Forestry, Agriculture and Open (F)

5-307 G. Area and Bulk Requirements

I.  a. The minimum lot size for each principal use is 35 acres except for Single-family residential dwellings approved pursuant to the subdivision exemption standards for Open Land Protection (see Section 5-1207).
   b. Any legally created parcel less than 35 acres in the F Zone District may qualify for a building permit for one single-family dwelling unit, provided the parcel meets the criteria set forth in Section 5-1908.

II. Minimum Setbacks
    a. Front Yard - 30 feet
    b. Side Yard - 20 feet
    c. Rear Yard - 20 feet

III. Maximum Height of Buildings - 35 feet
RESOLUTION OF THE BOARD OF ADJUSTMENT
OF SAN MIGUEL COUNTY, COLORADO,
APPROVING A SETBACK VARIANCE FOR THE REDUCTION OF THE EASTERN
SIDEYARD SETBACK ON LOT 8, SHADOHOOCHE HILL SUBDIVISION

Resolution 2021-02

WHEREAS, Kaye Simonson is the owner of Lot 8, Shadohoochie Hill Subdivision, hereafter “Property,” in the Forestry, Agriculture and Open (F) Zone District, more particularly described as shown on Exhibit A, Legal Description; and

WHEREAS, Mary Jo Schillaci, on behalf of Kaye Simonson, has submitted an Application for a Setback Variance to reduce the side yard setback from 20 feet to 14.3 and 13.5 feet in order to build a deck and bring the existing residence into compliance. Land Use Code Section 5-307 G. II. establishes a side yard setback of 20 feet. A setback variance is a one-step Board of Adjustment review pursuant to Land Use Code Section 1-14; and

WHEREAS, the Application was referred to the County Attorney for review and comment; and

WHEREAS, on or about December 22, 2020 Mary Jo Schillaci sent Notice of the application and the Board of Adjustment Public meeting to be held on Thursday, January 21, 2021 to all property owners within 500 feet of the subject parcel, and posted a sign on the property noticing the proposed use and the BOA meeting to be held on January 21, 2021; and

WHEREAS, a Public meeting notice for the proposed Setback Variance and the Board of Adjustment meeting to be held on January 21, 2021 was published in the Norwood Post and the Telluride Daily Planet on January 20, 2021; and

WHEREAS, the Board of Adjustment of San Miguel County, Colorado, considered this application, along with relevant evidence and testimony, at a public meeting in Telluride on Thursday, January 21, 2021.

NOW, THEREFORE, BE IT RESOLVED that the Board of Adjustment of San Miguel County, Colorado, hereby approves a variance reducing the east side yard setback from 20 feet to 13.5 feet for the rear deck and 14.3 feet for the residence on Lot 8, Shadohoochie Hill Subdivision for the purpose of constructing a deck to replace the existing dilapidated deck and bring the existing residence into conformity, based on the finding the applicant has demonstrated an exceptional situation or condition and that the application meets the criteria of Land Use Code Section 1-1403 A. III., in particular, recognizing the hardship created was a result of surveyor error over 30 years. The Board finds that the strict application of the regulation would result in an exceptional and undue hardship upon the owner of such property, and that relief in the form of a variance from zoning may be granted without substantial detriment to the public good and substantial impairment of the intent and purpose of zoning, and that the hardship was not created or caused by the owner. This approval is conditioned upon the following:
1. The setback variance is limited to the reconstruction of the proposed deck, and no other construction shall be allowed within the 20-foot side yard setback. Any future addition or expansion shall meet the setback requirements of the F Zone District.

2. All required development and building and permits shall be obtained from San Miguel County by the owner prior to commencing construction on a proposed deck construction in place on this lot.

3. This approval shall expire three (3) years from the recording date of this resolution.

4. All written representations of the applicant, in the original submittal and all supplements, letters and emails, are deemed to be conditions of approval, except to the extent modified by this motion.

DONE AND APPROVED by the Board of Adjustment of San Miguel County, Colorado, on January 21, 2021.

SAN MIGUEL COUNTY BOARD OF ADJUSTMENT

By: ________________________________
    D. Oak Smith, Chair

D. Oak Smith  Aye    Nay    Abstain    Absent
Jim Botenhagen  Aye    Nay    Abstain    Absent
Marty Schmalz  Aye    Nay    Abstain    Absent
Sonny Lopez  Aye    Nay    Abstain    Absent

ATTEST:

By: ________________________________
    Troy Hangen, Senior Planner

EXHIBIT A – Legal Description
EXHIBIT B – Site Plan

[Z:\Applications\2020_Simonson_Variance_BOA\1 Staff Memo(s) and Resolution(s)\Simonson.setback.reso2.docx]
EXHIBIT A
LEGAL DESCRIPTION

LOT 8 SHADOHOOCHI HILL, recorded October 10, 1966 as Reception No. 161455, County of San Miguel, State of Colorado.
IMPROVEMENT LOCATION CERTIFICATE:

I hereby certify that this Improvement Location Certificate was prepared for Fidelity National Title Insurance Company, that it is a true and correct description of the improvements on the described parcel and is not an index map or improvement survey, that it is not to be relied upon for the establishment of fences, roads, or property lines, and that it is prepared for the purpose of showing the location of the improvements described.

I further certify that the improvements on the described parcel are shown on the plat referred to in this certificate, that they are substantially as shown, and that there are no encroachments upon the described premises by improvements on any adjoining premises, except as indicated, and that there is no apparent evidence or sign of any encroachment by any improvement in or upon any part of said parcel, except as noted.

David R. Baldwin
P.L.S. 37682

LEGAL DESCRIPTION:

Lot 8, Shadahoochi Hill Subdivision, according to the plat recorded in File No. 20 under Recreation No. 79527,
County of San Miguel, State of Colorado.

NOTES:

1. Information and data for the improvements, derived from the plat and other sources, was obtained from the sources noted above. It is intended to be correct, but the data was not verified by the Surveyor.

2. There are no known restrictions on the use of the parcel.

3. The property is located within the Shadahoochi Hill Subdivision.

NOTICE:

According to Colorado law, you must commence any legal action based upon any defect in this certificate within ten years of the date of this certificate. The certificate for the property referred to in this certificate is provided for your information and should not be relied upon as a source of information. In no event may any action based upon any defect in this certificate be commenced more than ten years from the date of the certification shown herein.

Foley

Improvement Location Certificate
Lot 8, Shadahoochi Hill Subdivision, San Miguel County, Colorado

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Sheet: 1 of 1  Project #: 21719
16 Trunk Road Side Yard Variance Request

Owner: Kaye Simonson, simonsonkaye@gmail.com

Representative: Mary Jo Schillaci, maryjo.schillaci@gmail.com

Address: 16 Trunk Road, Placerville vicinity

PIN: 456113101032

Legal: Lot 8, Shadohoochie Hill Subdivision

Zoning: F – Forestry, Agriculture, and Open

Required Side Yard Setback: 20’

Actual Side Yard Setback: 14.3’ to house, excluding the eave overhang; about 13.5’ to deck (southeast corner)

**Requested Variance:** Modify the east side yard setback to be as built for the house and deck, and to allow reconstruction of the deck in its current location.

**Background:**

The original house was built in 1980. The building permit indicated a 20-foot east side yard setback, which would comply with Land Use Code Section 5-307 G.II.b. The house as built is in fact set back only 14.3 feet from the east property line at the southeast corner. The eaves extend about 15 inches further into the side yard (13 feet from the property line). The house is not parallel to the property line, so the setback increases to the north; the northeast corner has a setback of about 16.5 feet (about 15.25 feet to the eaves). The southeast corner of the deck is about 13.5 feet from the property line. The fence is about a foot inside the property line.

When the house was expanded in 2000, all additions were set back from the property line to meet or exceed the required 20-foot setback. The original 8-foot by 12-foot deck was left as is, with no alterations or repairs. The deck is the only exit from the house to the back yard. There is a boulder retaining wall on the east side of the deck and a sunroom on part of the west side. The sunroom does not have a connection to the interior of the house because there is a Trombe wall between the sunroom and interior, part of the passive solar design of the house. There is no other place to exit to the yard.

After 40 years, the deck is deteriorated and in need of replacement. Its safety is questionable and repair is not an option. It is noticeably not level. It is supported by 4x4 posts with no visible footers and minimal connection to the deck structure. Additionally, the steps are falling apart; these are within the buildable area of the lot and do not require a variance to be rebuilt, but it makes no sense to attach new steps to a failing deck.
LUC Section 1-1403 A.III

By reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of any regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, and where relief in the form of a variance from zoning may be granted without substantial detriment to the public good and substantial impairment of the intent and purpose of zoning, and where the hardship was not created or caused by the owner.

The strict application of the side yard setback requirement would present a myriad of practical difficulties. The deck is beyond maintenance and repair; it requires reconstruction. It is impossible to replace the deck without a variance, due to the design of the house. The door to the yard cannot be relocated because of the layout of the house and the sunroom. Moving the door and deck to the west side would not provide Building Code-required separation from the front door. Replacing the deck with stairs and a landing would still require encroachment into the side yard setback and would be significantly less functional than the deck.

The deck is small, measuring about 8 feet wide by 12 feet deep. The request is to build a replacement deck that is the same size, within the same footprint. Therefore, the requested relief is the minimum necessary to resolve the issue.

The hardship was not caused by the current owner. In the late 1970s and early 1980s, the era when the house was built, survey errors were very common throughout the County. It is assumed that is why the house was not built in the location described on the permit. A number of houses in the surrounding area that were built about the same time appear to have side yards that are less than 20 feet wide, demonstrating that the problem is common. In 2000, the owner at that time undertook a significant renovation and expansion of the house but chose to avoid rather than correct the side yard setback issue.

The applicant is asking that the side yard variance apply to the entire east side of the house, as it was built, in order to eliminate the nonconforming status. The house at present cannot be considered legally nonconforming pursuant to LUC Section 5-19 because it was not built in conformance with the requirements of the Code in 1980.

Granting the variance will have no effect on other properties within the neighborhood. The variance would recognize the house setback as it now exists. The deck sits below the neighboring yard and is barely visible from that property because of topography and vegetation.
Approximate 20-foot setback
East side of deck and boulder retaining wall

~13.5’ to property line

14.3’ to property line
Deck looking to east

View to neighbor’s on east (fence is about 1’ inside property line)