

Topic: Clarkson Special Use Permit Application

Background (bullet points):

- A High Alpine property owner is proposing a Bed and Breakfast operation in an existing residence located next to Hwy 550 in the Alpine Zone
- The structure is larger than the new High Alpine regulations permit
- The parcel is smaller than the regulations allow
- There is an adjacent avalanche path
- The owner has illegally operated short-term rentals at the property
- The Planning Commission continued the public hearing to May 18th for additional information and reports, and continued it again to June 29th
- ROCC submitted a comment letter addressing the issues raised by the application. Scott submitted a personal comment letter after the first meeting
- The BOCC hearing previously scheduled for May 25th will need to be rescheduled

Issues (bullet points):

- Must the structure and/or parcel be brought into conformity with the current High Alpine regulations as a condition of approval?
- Can conditions of approval adequately address the many issues raised in the application: avalanche danger; potable water; septic system capacity; assurance that the operation will be limited to 4 bedrooms?

Possible Action Options (bullet points):

- Submit additional comments on behalf of ROCC to Planning Commission and/or BOCC depending on Planning Commission decision
- Retain attorney Paul Kosnik to advise and represent ROCC regarding the legal issue of whether the structure and/or parcel must be brought into conformity with current High Alpine regulations
- Request attendance at BOCC hearing by ROCC members to provide comment

Recommended Action (in the form of a motion if necessary):

1. Authorize the Land Use Committee to submit comments to the BOCC opposing approval of the Special Use Permit unless conditions of approval are included that address all the identified issues.
2. Authorize the hiring of attorney Paul Kosnik for advice and representation subject to approval of the Board as to scope of work and estimated cost.
3. Forward ROCC alert regarding the BOCC hearing to membership and request attendance at the hearing.

From: Paul Kosnik <pkosnik@e-klaw.com>
To: Scott and Sheelagh Williams <s_swilliams2001@yahoo.com>
Sent: Wednesday, May 19, 2021, 08:42:53 AM MDT
Subject: Re: High Alpine Special Use Permit Update

Hi Scott,

Thanks for the information. I suggest that there are still two main problems with the proposal. First, nonconformities are not favored, but governments can protect nonconformities from having to come into compliance with subsequent regulations. Here, this is not a case where the County is requiring the applicant to come into compliance with subsequent regulations. Rather, the applicant is proposing a new use. In such case, the applicant must comply with the current regulations. While there is a decent argument that the applicant complies with the 35-acre requirement because a building permit is not required, my understanding is that the structure is more than 2,500 sq. ft. As a result, it would not be able to comply with the requirement "In no circumstance shall a non-mining residential or commercial structure have a Floor Area larger than 2,500 square feet." Thus, the commercial use application should be denied for this reason.

Second, even if the County considered this solely a non-conforming issue, the non-conforming use provisions prevent the change in use, unless it comes into compliance with the current regulations. The Code requires in Sec. 4.1.A(2) "Legal-non-conforming: created or constructed lawfully or the use begun lawfully, but due to changes in the LUC are now still legally continued, but no longer in conformance with the LUC so cannot be expanded or changed..." and Section 4.7, "No non-conforming use of a building or parcel may be changed to another non-conforming use. A non-conforming use of the building or parcel may be changed to a conforming use." Currently, there is a nonconforming use (residential in High Alpine that doesn't meet sq. footage minimums), and a proposal to change to another non-conforming use (commercial B&B). This is prohibited unless the B&B complies with the regulations and becomes conforming. That leads to the problem identified above.

I would be glad to put this information in a formal letter. I looked back and my billing rate was \$150/hour for ROCC. I would not exceed \$500 for this project. Let me know what the Board wants to do.

Thanks,
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