

**Town of Basalt, Colorado  
Ordinance No. 02  
Series of 2007**

**ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING A REZONING FROM R-3 TO R-3 TN, SPECIAL REVIEW TO DEVELOP ON SLOPES GREATER THAN 30% AND INCLUSION OF AREAS WITH 30% SLOPES IN THE DEVELOPABLE AREA OF THE LOT, SPECIAL REVIEW FOR REDUCTION IN FRONT YARD SETBACKS AND APPROVING A MINOR SUBDIVISION, SUBMITTED BY BEL AND EMILY CARPENTER FOR PROPERTY KNOWN AS 179 WEST HOMESTEAD DRIVE**

**RECITALS**

A. Bel and Emily Carpenter (“Applicants”) have filed an Application, with amendments (“Application”) for a Rezoning from R3 to R-3 TN, Special Review to develop on slopes greater than 30% and inclusion of areas with 30% slopes in the developable area of the lot, Special Review for reduction in front yard setbacks and approving a Minor Subdivision to subdivide the property into two lots, for the property located at 179 West Homestead Drive. The Application requested approvals for that property (“Property”) described as Lot 1, Lucksingers Minor Subdivision, according to the plat thereof recorded in Book 741 at Page 616, in the records of the Clerk and Recorder’s Office of Eagle County, Colorado.

B. At a public hearing held by the Planning and Zoning commission on August 1, 2006 and continued to August 15, 2006, August 29, 2006, September 19, 2006, October 3, 2006, October 17, 2006, November 9, 2006 and December 5, 2006, the Planning & Zoning Commission recommended approval of the application, subject to certain modifications and conditions. Throughout the hearing, evidence and testimony was offered by the Applicants, Staff and members of the public.

C. At a public hearing held on January 9, 2007, the Town Council considered the Application on first reading, continued and set a public hearing and second reading for this ordinance for January 23, 2007 at a meeting beginning no earlier than 6:00 p.m. at Basalt Town Hall, 101 Midland Ave., Basalt, Colorado.

D. At a public hearing and second reading on January 23, 2007, the Town Council heard evidence and testimony by Town Staff and members of the public.

E. The Town Council finds that the Applicants’ request is consistent with the applicable provisions of the Town Code and Town Master Plan, provided the Applicants adhere to the conditions identified in this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED by the Town Council of Basalt, Colorado, as follows:**

## A. FINDINGS

1. The Town Council incorporates the above recitals, the representations of the Applicants, and all exhibits as findings and determinations, and conclusively makes all of the findings of fact, determinations and conditions contained herein.
2. The Town Council finds that the Applicants' requests are consistent with the applicable provisions of the Town Code, provided Applicants adhere to the conditions identified in this Ordinance.
3. Based on the evidence, testimony, exhibits, and comments from the public, the Applicants, and Town Staff, Town Council finds and determines in accordance with the requirements of Section 16-267, Town Code, and as required by Colorado case law, the proposed rezoning from the R-3 zone district to the R-3 TN zone district is consistent with the Master Plan and is justified by the suitability of the Property to the proposed uses and changing conditions, provided the Applicants adhere to the conditions identified in this Ordinance.
4. Based on the evidence, testimony, exhibits, and comments from the public, the Applicants, and Town Staff, Town Council finds and determines in accordance with Sections 17-4, 17-83 and 17-64, Town Code, that the Application complies with the Town regulations regarding Minor Subdivisions including that the proposal is for a subdivision that will create less than 3 new lots, provided the Applicants adhere to the conditions contained in this Ordinance.
5. Section 16-187, Town Code, requires special review approval for development on slopes of 30% or greater and Section 16-4 ("Developable area"), Town Code, provides that slopes of 30% or greater shall not be included in the developable area for a lot unless the Applicants complies with the requirements of Section 17-32, Town Code. Based on the evidence, testimony, exhibits, and comments from the public, the Applicants and Town staff, the Town Council finds and determines that the Application complies with the provisions of Sections 16-44(e)(1), 16-111(c)(1-4), 16-113, 16-187, and Section 17-32, Town Code as follows:
  - a. The Application satisfies the requirements of Section 16-44(e), Town Code, because the Application is in general compliance with the Town Code; the proposed use is compatible with the character of the surrounding area; the proposed use is generally desirable and needed in this area; the proposed use does not create significant potential for adverse environmental influences; the proposed use is compatible with the Town Master Plan; development on the portion of the property with slopes in excess of 30% will be mitigated, provided

Applicants adhere to the conditions contained herein; and the proposed use is compatible with the natural characteristics and constraints of the Property.

b. The Application complies with Section 16-111(c)(1-4), Town Code, because the proposal is architecturally consistent with the architecture of the surrounding buildings; the proposed structure and proposed use will not substantially adversely affect traffic flows or traffic patterns; an adequate landscaping plan for the project is required as a condition of approval; and the proposed use and proposed buildings do not have the potential to cause adverse environmental impacts, provided Applicants adhere to the conditions hereof.

c. The Application is consistent with the standards of review found in Section 16-113, Town Code, because no lights or signs shall be located on the Property in a manner that will distract adjoining properties or passing motorists; landscaping will be provided in areas near the public right of way; storm drainage will not affect adjoining properties; the site, design and building plans include any provisions required by the Town Building Code for provision for the needs of handicapped individuals; and the project is not a commercial use.

d. The application complies with Section 17-32, Town Code, because an analysis was provided by an independent professional geologist and conditions are included herein to comply with the recommendations of such geologist.

6. Section 16-27(f) and 16-27(g) of the Town Code requires Special Review approval for reductions in the front yard setbacks for porches and structures. Based on the evidence, testimony, exhibits, and comments from the public, the Applicants and Town staff, the Town Council finds and determines that the reduced front yard setback for the porch and the proposed single family structure will encourage neighborhood interaction and not have a substantial negative impact on the Town's right-of-way and streetscape or on the adjacent properties, and that the reduced front yard setbacks are consistent with the intent of the R-3 TN Zone District, the Town of Basalt Master Plan and Complete Streets Manual and that the request is in compliance with the procedures and approval criteria for special review provided in Sections 16-27 (a)(1)(c), 16-27 (g)(1-3), and 16-44, et seq. provided the Applicants adhere to the conditions contained in this Ordinance.

## B. CONDITIONS

1. Based on the Application, testimony and comments from the public, the Applicants and Town Staff, the Town Council hereby grants approval for a Rezoning from R3 to R-3 TN, Special Review to develop on slopes greater than 30% and inclusion of areas with 30% slopes in the developable area of the lots, Special Review for reduction in front yard setbacks and approving a Minor Subdivision to subdivide the property into two lots, subject to the following conditions:

a. The Applicants shall comply with all material representations made by the Applicants in the Application and in hearings before the Town Council and the Planning and Zoning Commission.

b. Strict compliance with the Applicant's engineering reports shall be required for any future development on Lot B and any redevelopment on Lot A including: engineered foundations, additional soils evaluations, detailed site control plans including protection of down slope properties during excavation and construction, confirmation that the building footprint and foundation design will result in a footing setback at least 5 ft. from the escarpment face, and confirmation that the development is in compliance with the engineering assumptions and excavation requirements associated with maintaining slope stability. Final confirmation to the satisfaction of the Town Engineer that any building permit has met the engineering recommendations and requirements shall be required prior to issuance of a building permit for either lot.

c. The engineering reports recommend a minimum horizontal setback of 5 ft. from the top of slope or face of escarpment for the building foundation on Lot B. In order to properly evaluate compliance with this recommendation, the Applicant's site plan shall be updated to correct the delineation of the top of slope and face of the escarpment based on the proposed excavation and foundation details for the building. The revised site plan shall be submitted for review and approval prior by the Town Engineer prior to filing the Minor Subdivision Plat. The top of slope line should conform with the exhibit attached to the Hepworth Pawlak geotechnical engineering report.

d. The following modifications to the building footprint and site plans shall be required for compliance with the Special Review Criteria:

(i) The building footprint shown conceptually on the site plan dated January 3, 2007 shall be recessed at the southeast corner of the building to eliminate the area where the footprint encroaches into the 30% slope area. That area removed from the building footprint may be replaced by an equivalent area by extending the footprint to the east. A final revised

site plan shall be submitted for review and approval by the Town Engineer and Town Planner prior to filing the Minor Subdivision Plat.

(ii) Decks shall be permitted on the top two floors but shall not extend beyond the corrected delineation of the top of slope, with the exception that a cantilevered deck shall be permitted in that area recessed at the southeast corner of the building, as required in Condition 1(d)(i) and as conceptually shown on the revised site plan, dated January 3, 2007.

(iii) Plans for the window wells shall be subject to review and approval by the Town Planner and Town Engineer prior to issuance of a building permit.

(iv) A detailed landscaping plan shall be submitted showing trees proposed to be removed and a planting plan to further mitigate the visual impact of the proposed home on Lot B. Tree removal permits and mitigation shall be required and subject to approval by the Town Horticulturist prior to issuance of a building permit.

(v) An updated maximum area of disturbance line shall be shown on the revised site plan a maximum of 5 ft. beyond the modified building footprint approved herein. The revised site plan shall be submitted for review and approval by the Town Engineer prior to filing the Minor Subdivision Plat

e. Developable area credit for portions of the lot with slopes 30% or greater shall be permitted as follows:

(i) Maximum floor area limits shall be established for both lots to ensure consistency with the intent of the R-3 TN zoning and the Special Review Approval Criteria.

(ii) The square footage allowances shall be based on a maximum total floor area including all garage and storage areas.

(iii) The allowable maximum total floor area on Lots A and B shall be as follows:

Lot A: 2,179 sq.ft. + 180 sq.ft. utility/storage + 500 sq.ft. of garage  
Maximum Total Square Footage Allowed for Lot A: 2,859 sq.ft.

Lot B: 2,169 sq.ft. + 286 sq.ft. of garage (as proposed)

Maximum Total Square Footage Lot B: 2,455 sq.ft.

f. The following modifications to the proposed final plat and subdivision improvement information shall be required prior to final approval, execution and recording of said plat and related subdivision improvements agreements:

(i) The plat shall be modified to include all required certificates, legal requirements, and amendments to the building envelope pursuant to Condition 1(d)(i), subject to review and approval by the Town Planner and Town Attorney.

(ii) The Applicants shall provide utility plans with sufficient detail to confirm feasibility and costs including information on existing lines proposed for new service connections, subject to review and approval by the Town Engineer.

(iii) A detailed cost estimate shall be provided and shall be subject to review and approval by the Town Engineer.

(iv) The Applicants shall provide a subdivision improvements agreement and security for review and approval by the Town Attorney.

(v). The Applicants shall pay fees in lieu of installation of a sidewalk along the north property line adjacent to Homestead Drive. Fees shall be utilized for future sidewalk installation and/or other pedestrian improvements in the general vicinity of the site. Fees shall be based on a cost estimate for installation of the sidewalk, subject to review and approval by the Town Engineer.

g. Referral comments have been received from the Town Engineer, dated June 13, 2006, Consulting Engineer, dated June 22, 2006, and the Basalt Sanitation District, dated June 22, 2006. Comments from these entities need to be satisfied prior to filing the Minor Subdivision Plat either in conjunction with the conditions outlined above or by separate response from the Applicants. Satisfaction of this condition shall be subject to review and approval by the Town Engineer. The Town Engineer shall have the authority to defer satisfaction of referral comments from these entities to allow completion prior to issuance of a building permit.

h. The Applicants shall be required to pay fees in lieu of parkland dedication and fees in lieu of school land dedication for the creation of the one

new Lot B prior to recording of the Minor Subdivision Plat and in accordance with the Town Code.

i. The Minor Subdivision Plat shall be prepared for recording with all necessary title, dedication language and signature blocks. The Mayor and Town Clerk are authorized to sign the Plat once it has been reviewed and approved by the Town Attorney and Town Planner. The Applicants shall comply with Section 17-87 of the Basalt Town Code for recording the Plat. The Town Planner is permitted to grant an extension up to 6 months if sufficient progress has been made.

j. A reduced front yard setback is approved for Lot B. The front yard setback to the living area of the proposed single family structure shall be 10 ft. The front yard setback to the proposed porch shall be 5 ft. The reduced setbacks are approved subject to all representations contained in the Application submittals and representations made before the Town Council.

k. The Official Zoning Map for the Town is hereby amended to show the zoning designation of the Property within the R-3 TN zone district.

l. The Applicant shall improve the shoulder of Homestead Drive adjacent to Lot A, providing for at least two parallel parking spaces for guest or public parking. The spaces shall be graded and graveled or improved with grass "crete" subject to approval by the Town Engineer. The spaces shall be created and approved by the Town Engineer prior to issuance of a certificate of occupancy for a new unit on Lot A. However, nothing shall prevent the Town from removing the parking spaces or using the spaces for snow storage or other normal functions of Town right-of-way at the Town's discretion.

#### C. MISCELLANEOUS

1. The approvals contained herein and the conditions contained herein shall be binding on and insure to the benefit of the heirs, successors and assigns of the Applicants.
2. The Ordinance, after fully being executed and after appropriate publication, shall be recorded in the Office of the Clerk and Recorder of Eagle County.
3. If any part, section, subsection, sentence, clause or phrase of the Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence,

clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON January 23, 2007 by a vote of 7 to 0 on January 9, 2007.

READ ON SECOND READING AND ADOPTED by a vote of 6 to 1 on January 23, 2007.

TOWN OF BASALT, COLORADO

By: \_\_\_\_\_  
Leroy Duroux, Mayor

ATTEST:

By: \_\_\_\_\_  
Pamela K. Schilling, Town Clerk

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First Publication: Thursday, January 18, 2007  
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Effective Date: Thursday, February 15, 2007

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