

**Town of Basalt, Colorado
Ordinance No. 10
Series of 2009**

ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING A SITE PLAN FOR A WAREHOUSE INDUSTRIAL FLEX BUILDING; SPECIAL REVIEW APPROVAL FOR TWO PRINCIPLE BUILDINGS ON THE LOT, TWO ACCESSORY DWELLING UNITS, AND DEVELOPMENT ON AREAS WITH 30% SLOPES; AND CONDOMINIUM SKETCH PLAN, SUBMITTED BY 237 PARK LLC, FOR PROPERTY LOCATED AT 237 PARK AVENUE

RECITALS

A. 237 Park LLC (“Applicant”) filed an Application (“Application”) for Site Plan Review for a warehouse industrial flex building, Special Review for two principle buildings on the lot, two accessory dwelling units, and development on areas with 30% slope, and for Condominium Sketch Plan on the property located at 237 Park Avenue within the municipal limits of the Town of Basalt and more particularly described as Lot 30, Basalt Industrial Park, Filing No. 2, According to the Plat thereof filed April 15, 1988, in Book 482 at Page 164, with the Eagle County Clerk and Records Office (“Property”), County of Eagle, State of Colorado.

B. The Planning and Zoning Commission considered the application at a public hearing on March 17, 2009 and continued to April 7, 2009, April 21, 2009 and May 5, 2009. The Planning and Zoning Commission voted to recommend approval of the applications, subject to conditions. Throughout the hearing, evidence and testimony was offered by the Applicant, staff and members of the public.

C. At a public hearing held on June 23, 2009 the Town Council considered the Application on first reading and continued and set a public hearing and second reading for this ordinance for July 14, 2009 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 July 14, 2009, the Town Council heard evidence and testimony by Town Staff and members of the public.

E. The Town Council finds that the Applicant’s requests are consistent with the applicable provisions of the Town Code and Town Master Plan, provided the Applicant adheres 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 Basalt Town Council incorporates the above recitals, the representations of the Applicant, and all exhibits as references and as findings and determinations, and conclusively makes all of the findings of fact, determinations and conclusions contained herein.

2. Based on the evidence, testimony, exhibits, and comments from the public, Applicants and Town staff, the Town Council finds and determines in accordance with Sections 16-44(e), 16-111(c)(1-4), 16-113, and 16-72, Town Code, as follows:

a. The Town Council finds that the Applicant's request is consistent with the applicable provisions of the Town Code, provided applicant adheres to the conditions identified in this Ordinance.

b. The Application satisfies the requirements of Section 16-44(e), Town Code, provided the Applicant adheres to the conditions herein, 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; where there is some encroachment of development on the property in areas with slopes in excess of 30% it shall be mitigated in accordance with Section 17-32; and the proposed use is compatible with the natural characteristics and constraints of the Property.

c. The Application complies with Section 16-111(c)(1-4), Town Code, provided the Applicant adheres to the conditions herein, 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 provided; and the proposed use and proposed buildings do not have the potential to cause adverse environmental impacts.

d. The Application is consistent with the standards of review found in Section 16-113, Town Code, provided the Applicant adheres to the conditions herein, 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 anticipated to

generate dust, odor, gas, fumes, smoke or ash, and shall conform with the lighting code to limit glare.

e. The Application is consistent with the standards of review found in Section 16-72, provided the Applicant adheres to the conditions herein, because the Application is consistent with the Town Master Plan; it will not have environmental impacts such as traffic hazards and will not overload utilities or otherwise be detrimental to the general welfare of the community; and the proposal will complement and be integrated with the existing development in the area.

3. Based on the evidence, testimony, exhibits, and comments from the public, Applicants and Town staff, the Town Council finds and determines that the Application is consistent with the standards of review for a Condominium Sketch Plan Application, contained in Chapter 17, Subdivision, including but not limited to Section 17-85, Condominium Review Procedures, subject to compliance with the conditions contained herein.

B. CONCLUSIONS

Based on the evidence, testimony, exhibits, and comments from the public, Applicants and Town Staff, the Basalt Town Council hereby grants approval for the Site Plan Review for a warehouse industrial flex building, Special Review for two principle buildings on the lot, two accessory dwelling units, and development on areas with 30% slope, and for Condominium Sketch Plan for the Property, subject to the conditions contained herein and within the attached Exhibits.

1. The Applicants shall comply with all material representations made by the Applicants in the Applications, including the supporting documents and in the meetings before the Planning and Zoning Commission and Basalt Town Council.

2. The Applicants shall comply with the comments received by referral agencies which are not inconsistent with the conditions contained herein.

3. The approval granted hereby shall be valid for one year from the date of the vote hereon, provided that the Town Planner may approve two six month extensions subject to a finding that progress is being made toward the issuance of a building permit for the development approved herein. The approvals shall be void if a building permit is not issued within the time periods and extensions thereof contained herein.

4. In regard to future applications for preliminary and final condominium approvals, pursuant to § 17-84(a)(2), Town Code, this approval shall not create any obligation or bind the Town Council to accept future applications.

C. MISCELLANEOUS

1. The approvals contained herein and the conditions contained herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the Applicant.

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 July 14, 2009 by a vote of 6 to 0 on June 23, 2009.

READ ON SECOND READING AND ADOPTED by a vote of 7 to 0 on July 14, 2009

TOWN OF BASALT, COLORADO

By: _____
Leroy Duroux, Mayor

ATTEST:

By: _____
Pamela K. Schilling, Town Clerk

Ord 10-237Park.doc
Bill to: 10-24-205

First Publication: Thursday, July 2, 2009
Final Publication: Thursday, July 16, 2009
Effective Date: Thursday, July 30, 2009

Exhibit A
General Conditions, Mitigation, and Community Benefits

1. The Applicant shall comply with all representations set forth in the Application except as modified by conditions contained herein.
2. The Applicant shall comply with all material representations made in the hearings before the Planning and Zoning Commission and Town Council except as modified by conditions contained herein.
3. The Applicant shall pay all required improvement fees including water and sewer tap fees prior to issuance of a building permit. The Applicant shall also be required to pay the Parkland Dedication Fees at the established rate for the affordable housing units. Credit for public trail easements and construction noted in Conditions #4, #5 & #6 can be credited against required Parkland Dedication Fees, up to a maximum of \$40,000. The Applicant shall not be required to pay the School Land Dedication Fees for the affordable housing units as they will be limited to occupancy by adults.
4. The Applicant shall construct a trail linking the public right-of-way for Park Avenue to sidewalks located within the Valley Pines PUD. A public pedestrian/trail easement a minimum of 12.5 ft. in width shall be established along the southerly property line across the flat portion of the site and increased to 20 ft. in width on the slopes at the rear of the property and across the irrigation ditch. Final designs for the Trail shall include engineering to ensure the stability of the slopes below the Robinson Irrigation Ditch and a safe crossing of the irrigation ditch. The trail shall connect to the existing concrete sidewalks located on the Valley Pines PUD site in the general vicinity of the Tennis Court and Cabana Public Park. The trail alignment on the Valley Pines site shall conform with public easements to be granted by the Valley Pines Home Owners Association in accordance with the Mid Valley Center Annexation Agreement. The Applicant shall also provide additional trail easements for future extension of the trail system along the northerly property line (6.25 ft. in width) and shall execute an easement agreement prior to issuance of a building permit for the future dedication of an additional 20 ft. wide easement on an alignment to be determined by the Town at the rear of the site to allow connection to the trail stairway and ditch crossing. The plans, easement alignments, and engineering shall be approved by the Town Engineer and the Technical Review Committee prior to issuance of a building permit. The Applicant shall establish the trail easements by separate dedication documents with surveyed descriptions to be approved by the Town Attorney. The easement documents will be recorded prior to issuance of a building permit and will be further documented on future final condominium plats.
5. The trail construction shall be completed prior to issuance of a certificate of occupancy for the new building with security provided before building permit to ensure completion. At the Town's sole discretion should the Trail construction be delayed or deferred, financial security shall be required to be provided or fees in lieu of construction

paid to the Town for future construction. In such case a Trail Agreement executed with the Town, subject to approval by the Town Attorney shall be required.

6. The trail shall be a minimum of 6 ft. in width. The level portion of the trail shall be hard surfaced while the trail extending up the slopes shall be constructed with stairs and landings made of an expanded metal mesh. Slope disturbance shall be limited to minimal clearing of vegetation and foundations to support an above grade stairway design. At the top of the slope the trail shall cross the Robinson Irrigation Ditch where the ditch is culverted generally in the southeast corner of the property. The trail crossing the ditch shall have a soft surface such as crusher fines and shall be a minimum of 6 ft. in width. A guard rail shall be provided adjacent to the downstream opening of the culvert. Signage shall also be provided identifying the public trail and providing direction regarding private property and irrigation ditch safety. Final language for the signs shall be established by the Public Works Department.

7. A letter of agreement/authorization from the Robinson Ditch Company for the trail crossing the ditch easement has been provided and the Applicant shall comply with the terms of that letter. Said letter shall be subject to the satisfaction of the Town Attorney.

8. The Applicant shall provide two deed restricted affordable housing units as represented in the Application and pay fees in lieu of affordable housing for any remaining percentage of a unit required, all in accordance with the Town Code and Town's Community Housing Guidelines.

9. Nothing contained in the Special Review and Site Plan Review approvals will preclude the Applicant from proposing future additional accessory/affordable housing units on the site, subject to all applicable special review procedures and standards.

Exhibit B

Engineering and Technical Conditions

1. The Applicant shall comply with the revised access, vehicular circulation, and loading zone plans dated April 3, 2009 as revised on plans dated June 15, 2009. Final access plans shall be subject to approval by the Town Engineer including but not limited to curve radii and width of the access openings onto the public rights of way. The access permit for the modified access onto Valley Circle shall be finalized prior to issuance of a building permit through approval by the Town Engineer. The Basalt & Rural Fire Protection District has reviewed and approved the revised access plans for all three access points. Written confirmation of their approval shall be required prior to issuance of a building permit.
2. The Applicant shall comply with the Basalt and Rural Fire Protection District referral comments dated February 2, 2009, including the requirement to install fire suppression sprinkler systems in the proposed building and extending a water main to the existing building, designed and sized to allow the future installation of fire protection sprinklers within that building. At such time as the Applicant applies for building permits to remodel the existing building, and prior to consideration of any condominium subdivision of that building, the Town Chief Building Official shall review Town Code requirements for fire protection sprinkling and shall require conformance with the Building Code and Fire Code at that time including if required fire suppression sprinkling. The uses within the existing building shall be limited to the current warehouse and storage uses. Striping and/or thermo-plastic application shall be utilized in the parking area to designate fire lanes adjacent to the buildings.
3. After the P&Z review and prior to review by the Town Council, the Applicant has updated all engineering documents (including responses to other conditions of approval contained herein) in order to satisfy the conditions and the referral comments from the Town Engineer and Public Works Department. Approval by the Town Engineer shall be required prior to issuance of a building permit.
4. Snow storage areas are shown on the site plan and have been approved by the Town Public Works Director.
5. The Applicant has provided updated stormwater drainage plans. Said plans shall be subject to review and approval by the Town Engineer and the Public Works Director prior to issuance of a building permit, to ensure that their referral comments have been adequately addressed. The plans shall be consistent with existing drainage improvements and plans for the overall Basalt Industrial Park.
6. Hardwired fire and smoke alarm systems shall be required throughout the industrial portions of both buildings linking them with the alarm systems in the accessory dwelling units proposed in the new building.

7. Uses to be permitted within the proposed mixed use building shall be regulated in accordance with the International Building Code and Fire Code, with hazardous and objectionable types of uses and storage further limited in accordance with the following provisions:

a. The Town's Chief Building Official, Fire Marshall for the Basalt and Rural Fire Protection District, and TRC shall formalize a list of prohibited uses and materials prior to issuance of a building permit.

b. All building permits including remodels shall be reviewed by the Chief Building Official and Fire Marshall for compliance with this condition and all applicable codes.

c. At the time of building shell construction the plans shall include chases to accommodate the potential for venting above the roof, from the lower level.

d. The site development and uses within the building shall comply with the Industrial Zone District Supplemental Requirements contained in Section 16-24, with the provision that limits on dust, odor, glare, fumes, hazardous gases or waste, noise, and vibration shall be interpreted to prohibit any such objectionable elements from impacting the residential units, including their parking and access to their units.

e. Noise separation between industrial uses and residential uses shall meet or exceed the building code requirements for separation between residential uses. The International Building Code noise separation STC 50 standard shall be applied to uses within the building.

f. The above provisions shall be included in the Applicant's Condominium Documents and Covenants for the property.

8. The Applicant shall prepare a final utility plan that includes proposed utility service sizes for approval by the Town Engineer.

9. Electric and cable utility extensions to the new building shall be installed below grade. At the time of remodel of the existing building it's electric and cable utilities shall also be placed below grade.

10. Prior to issuance of a building permit, the Applicant shall be required to comply with referral comments from the Mid Valley Metro District as set forth in their letter dated February 3, 2009.

Exhibit C

Site Plan, Design, and Planning Issues

1. The proposed footprint for the new building shall be approved as shown on the revised site plan dated 4/3/09 and updated June 15, 2009 (which shows an insubstantial encroachment into the 30% slope area). The trash enclosure location has been modified to eliminate encroachment into the 30% slopes by shifting the trash enclosure west into the parking area and reconfiguring the east end of the parking area.
2. Sign permit requests may be submitted simultaneously with a building permit application and shall be fully code compliant. All existing signs shall be required to be upgraded if necessary to be code compliant including lighting.
3. All lighting for the site shall utilize full cut off down directed fixtures and shall be code compliant. Additional bollard lights (2) shall be added at the pedestrian trail along the southerly property line, or alternative options for building mounted lighting may be considered by the TRC at the time of building permit review.
4. The proposed uses on the site include warehouse/storage and light industrial uses permitted by the Town's IN Zone District as further limited by Exhibit B, Condition 7.a. The following conditions relative to uses and off-street parking requirements shall apply to the development
 - a. The following modification to the list of permitted uses in the IN Zone District shall apply to the development:
 - I. Offices shall be prohibited unless accessory and subordinate to a permitted industrial uses.
 - II. Gasoline stations and/or washing facilities shall be prohibited.
 - III. Gasoline stations with accessory sales of convenience items shall be prohibited.
 - IV. Any health club use regardless of size shall require special review approval.
 - V. Adult entertainment uses shall be prohibited.
 - b. In regard to off-street parking and affordable housing in order to ensure code compliance as uses change and the building is condominiumized, the Applicant shall be required to implement the following provisions.
 - I. All uses with off-street parking requirements higher than 1 space/1,000 sq.ft. shall require administrative review and approval by the Chief

Building Official or Town Planner prior to operating on the site and prior to issuance of any building permits associated with the use.

- II. At the earlier of tenant finish or condominiumization the Applicant shall establish the use for that particular space as "General Industrial" or "Warehouse Storage". The Applicant will be limited in the new building to a maximum of 7,943 square feet of "General Industrial" uses (40% of the building square footage). The balance of the building, approximately 11,914 sq.ft. shall be limited to "Warehouse Storage" uses. "General Industrial" space may also be used for storage. Record keeping associated with the above restriction shall be by action of the Technical Review Committee in conjunction with the Chief Building Official. The condominium declarations shall set forth the use designations for particular units and shall be subject to approval by the Technical Review Committee.

- c. Reserved parking spaces shall not be permitted on the site and signage within the parking area shall be limited to handicapped and compact space signs.

5. Replacement of parking lot landscaping buffer strips with increased landscaping areas adjacent to the parking lot shall be permitted as provided for in Section 16-95(i). The landscaping plan shall be updated to identify/label replacement landscaping areas in one of the following areas: (a) adjacent to the Town's right-of-way for Park Avenue and Valley Circle including the reclaimed access driveway area (outside of any sight triangles); or (b) at the east end of the central parking area adjacent to the relocated trash enclosure; or (c) east of the central parking area on the disturbed areas of the slope below the Robinson Irrigation Ditch. The replacement landscaping shall include plant types and species approved by the Town Horticulturist. Drought tolerate native species shall be preferred.

6. The landscaping plan shall be updated in accordance with the Town Horticulturist's referral comments. Trees to be preserved shall be indicated on the plans. Trees to be removed shall also be indicated with tree removal permits and mitigation plantings to be required. Adjustments to the site plan should be considered in an effort to save as many trees as possible immediately east of the building at the toe of the slope. Additional plan details shall be provided for revegetation and restoration landscaping on the slopes on the eastern portion of the site adjacent to the irrigation ditch. Final plans shall conform with all sight triangle requirements at the access driveways and shall setback from the pedestrian trail to ensure visibility along the trail alignment. Final approval of the plans by the Town Horticulturist shall be required prior to issuance of a building permit and may include minor modifications approved by the Town Horticulturist. Security for landscaping and a two year warranty period shall be required.

7. The Town approval shall include conditions that require general compliance with the submitted design sketches including fenestration, use of awnings, and exterior materials.

8. The Applicant's representation that the building shall be designed to achieve a LEEDS Certification is a condition of approval. The Applicant may request relief from the LEEDS Certification requirement due to technical issues beyond their control. Such a request shall be subject to review and approval by the Technical Review Committee and the Town Chief Building Official. Any relief granted shall maintain a minimum requirement of an 88 point score on the Aspen Pitkin County Efficient Building Point System or compliance with an equivalent standard in such energy efficient building program as may be adopted and in effect by the Town of Basalt. Additional energy efficiency and "green building" concepts may be included in the building and on the site at the time of building permit review subject to TRC approval. These additions shall be permitted provided they are consistent with the representation of the Applicant contained in the Special Review and Site Plan Review Application and the approvals granted by the Town.

9. The revised site plan shall be reviewed at the time of building permit application to ensure that it is code compliant for handicapped access.

10. The Applicant or future property owners can petition the Town to allow for public on-street parking adjacent to the site (within the Town right-of-way) subject to approval by the Technical Review Committee. The parking shall be generally consistent with the plans included on the Applicant's site plan. Off street parking credit can be allowed by the TRC for the spaces subject to findings that: the parking is warranted to meet parking demand on the site, the parking will not generate new construction of any additional floor area, that the on-street parking will not have a negative impact on the operation of the street, or adjacent uses, and will not negatively affect the desired character of the industrial park. The Applicant may appeal the TRC ruling to the Town Council.

Exhibit D
Legal – Procedural Conditions

1. The Applicant shall submit a letter confirming support for the Special Review request from the Owners Association for the Basalt Industrial Park. The Town Planner may waive the requirement if it appears that the Owners Association has been given adequate time to provide approval.
2. The Applicant's proposal for Condominium Sketch plan shall be subject to approval by the Town Attorney. The procedures for filing future amendments shall be formalized as part of the Preliminary/Final Condominium review unless another approach is agreed to by the Town. The process shall contain straightforward procedures with clear delineation of responsibilities and fees. The final condominium approvals shall address building code compliance including construction of delineation walls and access. The Condominium documents shall limit the existing storage building to one single condominium unit and further condominium approvals by the Town Council would be required for any additional subdivision of the existing building. Prior to filing a final condominium plat, the Subdivision and Development Improvements Agreement required herein shall be amended to require security for all public and private improvements that remain to be completed. (Note: Condition #5, in Exhibit D outlines the requirement for the agreement prior to issuance of a building permit)
3. In accordance with Town Code a formal site plan document shall be prepared in a reproducible format with required signature blocks for the Town and for the Owner/Applicant. The signature block shall conform with Section 16-43 (c)(13) and state that property shall be developed only in accordance with the approved special review site plan.
4. The Affordable Housing units shall be fully deed restricted and comply with the Town's Community Housing Regulations and Guidelines. The Condominium Declarations shall be subject to review and approval by the Town Attorney including but not limited to the following provisions.
 - a. Provisions to safeguard the affordable units from being subject to unreasonable association dues and/or capital expenses associated with the industrial uses on the site (such as repair of loading docks or replacement of paving damaged by truck traffic).
 - b. Provisions to protect the units from unreasonable impacts from industrial activities on the site including but not limited to hours of operation, noise, fumes, and glare/lights.
 - c. Provisions to allow owners of affordable units, including industrial occupants of the site, to rent to employees within the development.

- d. Provisions for maintaining a percentage of ownership for the Town in accordance with Town Policies.
- e. Provisions to limit units to occupancy by adults.
- f. Provisions to allow the Town of Basalt and other essential public agencies (such as the Basalt and Rural Fire Protection District & the Mid Valley Metro District) a first offering to acquire the units.
- g. General review of the Condominium Declarations

5. Prior to issuance of a building permit, the Applicant shall provide security for all public and essential improvements in a form acceptable to the Town Attorney and shall execute a Subdivision and Development Improvements Agreement in a form substantially consistent with the draft agreement dated July 9, 2009 subject to final edits and approval by the Town Attorney. Cost estimates for the improvements shall be provided and shall be subject to approval by the Town Engineer. The secured improvements shall include at a minimum the trail construction, landscaping, utility extensions, and storm water drainage improvements. Subject to approval by the Town Engineer and Chief Building Official, the Applicant may install at their risk required improvements prior to issuance of a building permit provided that security for site restoration is provided. This option would allow only site grading, utility installation, foundation permits, and construction of public improvements such as the stairway trail. The Subdivision and Development Improvements Agreement may include this option which will also require updating cost estimates and security subject to approval by the Town Engineer.

6. No certificate of occupancy shall be issued for the building until all improvements have been installed and accepted as complete with the exception of landscaping which, subject to maintaining acceptable security, may be granted a 9 month extension by the Town Planner due to seasonal limitations on planting. Landscaping shall be warranted for a two year period with security acceptable to the Town Horticulturist maintained during that time.