

HAAS LAND PLANNING, LLC

December 17, 2012

Mr. Lane A. Schiller
Lane Schiller Properties, Inc.
210 S. Galena Street, Suite 27
Aspen, CO 81611

RE: 308 N. First Street, Aspen, CO

Dear Lane:

Per your request, I have outlined the allowed uses, as defined by the current City of Aspen Land Use Code, and provided a synopsis of development potential with respect to the above referenced property.

PROPERTIES:

Lot 1, Nolan Lot Split - Parcel No. 2735-124-21-010 / Schedule No. R017214
Lot 2, Nolan Lot Split - Parcel No. 2735-124-21-011 / Schedule No. R017215

DESCRIPTION:

The “fathering parcel” was legally described as Lots K, L, M and N, Block 56, City & Townsite of Aspen, and had a total lot area of approximately 12,004+/- square feet. Pursuant to City Council Ordinance No. 9, Series of 1999, the property was legally split and platted (Plat Book 50 at Page 42) into two 6,002 square foot fee simple parcels with legal descriptions as set forth above. The properties are located in the R-6 Medium Density Residential Zone District. The Victorian house on Lot 2 is listed on the Aspen Inventory of Historic Landmark Sites and Structures though, over the years, there have been numerous remodels and additions that are not considered historic. Lot 1 is not historically designated.

MAXIMUM ALLOWABLE FLOOR AREA (FAR):

PRE LOT SPLIT - assuming the lot split had never been completed, the maximum allowable Floor Area for the 12,004 square foot fathering parcel would have been 3,840 square feet for a single-family residence, or 4,260 square feet for a duplex or two detached dwellings. In other words, if a duplex or two detached dwellings of equal size were developed, each unit could not exceed 2,130 square feet of Floor Area ($4,260 / 2 = 2,130$).

POST LOT SPLIT - as a result of the legally approved lot split, the maximum allowable Floor Area for *each* 6,002 square foot lot is 3,240 square feet for a single-family residence. The net result of the lot split, therefore, is the creation of an additional 2,220 square feet of floor area (a 52% increase) over that which was allowed “pre lot split.” In addition, with some historic restoration work and approval from the Aspen Historic Preservation Commission (HPC), Lot 2 maintains the potential for obtaining a Floor Area bonus of up to 500 square feet**, which would increase the allowable Floor Area on said Lot to 3,740 square feet; furthermore, the allowable Floor Area on Lot 2 can be used for a single-family residence, a duplex, or two detached residential dwellings provided, however, the combined buildout of the two lots cannot exceed a total of three residences.

EXISTING CONDITIONS:

The entry foyer of the existing home (a 1980’s addition to the original Victorian) currently encroaches into Lot 1 and must be approved by the HPC for removal before development of either lot may occur. Additionally, in its current configuration, the existing home on Lot 2 currently exceeds the allowable Floor Area for a 6,002 square foot lot and must be modified so as to reduce its Floor Area in conformance with R-6 Zone District limitations. Such modifications must be approved by the HPC but appear to be easily achievable.

DEVELOPMENT POTENTIAL:

As set forth as a condition in Ordinance No. 9, Series of 1999, before development on either lot may occur, the improvements on Lot 2 must be brought into conformity with respect to Floor Area and setbacks (note that the HPC can approve setback variances for the home on Lot 2).

Lot 1 - Development of a new single-family home not to exceed 3,240 square feet of Floor Area. Due largely to Floor Area calculation exemptions for below grade space, a local industry standard of approximately 175% of allowable FAR is commonly used for estimating the total/gross achievable floor area on a property in the West End. Lot 1 is not subject to any “historic” designation or HPC review requirements but its development will require the inclusion of an Accessory Dwelling Unit (ADU) or payment of cash-in-lieu thereof.

Lot 2 - Redevelopment of existing Victorian house not to exceed 3,240 square feet of Floor Area, plus the potential of receiving a Floor Area bonus of up to 500 square feet for a total allowable Floor Area of up to 3,740 square feet**. As noted above, due largely to Floor Area calculation exemptions for below grade space, a local industry standard of approximately 175% of allowable FAR is commonly used for estimating the total/gross achievable floor area on a property in the West End. Any development that would impact the exterior of the designated structure is subject to HPC review and approval, but this lot is exempt from the requirement to provide an ADU or cash-in-lieu thereof.

The development potential on Lot 2 can be maximized by removing all of the non-historic improvements in order to reduce the existing floor area below the threshold of 3,240 square feet. In addition, the HPC has no authority over interior spaces; therefore, second floor spaces could also be removed to reduce the existing floor area while providing vaulted interior living spaces. An architect, the City's Historic Preservation Planner, and/or the HPC should be consulted to determine which of the existing improvements are historically significant and which are not.

** According to Code Section 26.415.110, in selected circumstances, the HPC may grant up to five hundred (500) additional square feet of allowable floor area for projects involving designated historic properties. Granting of additional allowable floor area is not a matter of right but is at the sole discretion of the HPC.

It is noted that the subject properties were created through a regular Lot Split Subdivision Exemption as opposed to having been created through the Historic Landmark Lot Split process. The most significant difference between these two types of lot splits is their resulting development potential with respect to allowable Floor Area. In the case of a Historic Landmark Lot Split, the resulting lots cannot be developed with more than a cumulative total floor area of that allowed for a duplex on the original/fathering parcel (plus the potential for one Floor Area bonus from the HPC of up to 500sf); in the current case, this would have resulted in (and would today result in) a combined total of 4,260 square feet of Floor Area (plus the potential for up to 500sf of bonus FAR) available for development on the two lots. By comparison, the regular Lot Split has provided a development potential of 3,240sf per resulting lot, or 6,480 combined square feet of Floor Area (plus the potential for one Floor Area bonus from the HPC of up to 500sf on the historically designated Lot 2). The Nolan Lot Split approval remains vested in perpetuity by virtue of its plat having been executed and recorded; plats do not expire.

Finally, the minimum lot area required for a historically designated property in the R-6 Zone District is just 3,000sf but a lot of such size is allowed only 2,400sf of Floor Area (plus the potential for up to 500sf of bonus FAR). As noted above, the existing historically designated structure on Lot 2 already exceeds its allowable Floor Area (on a 6,002sf lot). If it is possible to get this structure down to 2,400sf of Floor Area (to 2,900sf with a bonus from the HPC) by removing all of the non-historic improvements and/or enough second floor space, then it would become possible to seek amendment of the Lot Split approval to place the historic house on a 3,000sf lot. The result of doing this would be increasing Lot 1's area to 9,000sf to enable development thereon of up to 4,080sf of Floor Area for a duplex or two detached single-family residences, or 3,660sf of Floor Area for one detached single-family residence. In effect, the combined total amount of Floor Area available for development would not change from that available today, but the ability to use it for the creation of a third dwelling unit would result. That said and subject to HPC review and approval, the existing Lot 2 permits development of a duplex or two detached residential

dwellings since it is historically designated, but in no case can the combined buildout of the two lots exceed a total of three dwelling units.

MISCELLANEOUS NOTES:

Nonconforming Structures. The existing residence is considered a legally established nonconforming structure due to its Floor Area and its location (side yard setback) relative to the lot line adjoining Lots 1 and 2. Similarly, the so-called carriage house and the garage/shed structures encroach into the adjoining rights-of-way, rendering these structures legally nonconforming as well. Nonconforming structures are regulated under Section 26.312.030 of the Aspen Land Use Code, which provides that such structures may be maintained and may be extended or altered in a manner that does not change or that decreases the nonconformity. Nonconforming structures cannot be extended by an enlargement or expansion that increases the nonconformity; however, structures listed on the Aspen Inventory of Historic Landmark Sites and Structures may be extended into front yard, side yard and rear yard setbacks, may be extended into the minimum distance between buildings on a lot, and may be enlarged in a manner that does not exceed the allowable Floor Area of the existing structure by more than 500 square feet, provided the appropriate approvals to allow these variances/variations are granted by the HPC.

Notwithstanding these Code provisions, the Nolan Lot Split approvals and associated Plat require that the principal structure on Lot 2 be brought into conformity with the R-6 zoning requirements (i.e., setback requirements and allowable Floor Area) upon development of either Lot; the accessory structures are permitted to remain in their current form/location. Thus, it is assumed that even with HPC approvals for yard setback variances and/or an FAR bonus, the Nolan Lot Split and associated Plat would need to be amended to accommodate such approvals.

Floor Area Exemptions. Several Floor Area exemptions are provided in the Land Use Code and these should be specifically referenced. A few of the more commonly used exemptions are discussed below. While not mentioned above, it is noted that each lot is permitted deck space equal to as much as 15% of its allowable Floor Area before such spaces are counted. For example, on a lot permitting a Floor Area of 3,240 square feet, up to 486 square feet of deck space is exempted. Similarly, porches do not count toward allowable FAR floor area at all. The Code defines a porch as, “*an un-insulated, unheated area under a roof, enclosed on at least one side by an exterior wall of a living space, and open on at least two sides to the outdoors, with or without screens.*” Likewise, uncovered porches, slabs, patios, walks, retaining walls, steps and similar structures, which do not exceed thirty (30) inches above or below natural grade, are allowed to project into the yard setback areas without restriction; projections may exceed 30 inches below grade if determined to be required by Building Code for window egress. In lay terms, flagstone, concrete or similar patios built within 30 inches of natural grade can be placed anywhere on a property and do not count toward the allowable Floor Area.

For subgrade spaces (i.e., basements), the amount of floor area that counts toward the allowable FAR is proportional to the amount of wall space that is exposed on that level. That is, if 10% of the walls of the total subgrade area are exposed (i.e., visible from outside), then 10% of the subgrade floor area counts toward the allowable FAR. In development of basement space, it should be understood that the Building Codes may require egress windows which will result in exposed wall surfaces and, thus, floor area that counts toward the allowable FAR for the site. It is typical for approximately 8-20% of basement space to count as FAR floor area. Consequently, gross floor area often exceeds allowable FAR by some 70%-80%. Given the City's formula for counting subgrade Floor Area, a few "tricks" are often employed to reduce the amount of subgrade space that counts as Floor Area; for example: if the foundation walls are dug deeper to result in higher basement level ceilings, then the exposed walls will be a lower percentage of the entire level's walls. Also, designers will often include extra jogs in the subgrade walls to increase the total area of walls on the level and, in turn, decrease the percentage that is exposed.

Anticipated Change Requirements. It is expected that the City and the HPC will require certain changes in association with any approvals or permits for significant work on the subject property. For example, upon any significant development on Lot 2, it will likely be required that the vehicular access be revised to come from the alley and that the driveway and curb cut off West Hallam Street be abandoned (curb and gutter would need to be installed). As a consequence of doing this, the alley-accessed garage would gain a Floor Area exemption such that the first 250sf of garage would be fully exempt from Floor Area calculation, the next up to 250sf would count at only 50%, and any garage square footage in excess of 500sf would count at 100% (i.e., the existing 490sf or so of garage/shed would, if accessed from the alley, count as only 120sf of Floor Area). In addition, it is expected that the City and the HPC would require removal of the nonconforming and non-historic fencing around the property while allowing, subject to HPC approval, replacement with appropriate and code-compliant fencing.

Transferable Development Rights (TDR). To encourage the preservation of historically designated properties, the City of Aspen has enacted a TDR program permitting such properties to sever and convey, as a separate development right, undeveloped Floor Area for development on a different, non-historic property within the City of Aspen. One TDR for conveyance can be established for each 250 square foot increment of unused Floor Area on a historically designated property. Once established and conveyed, the property from which the TDR is conveyed is thereafter permitted 250 square feet less Floor Area per TDR conveyed. Thus, if the structures on Lot 2 can be remodeled to reduce their total Floor Area to 2,990 square feet or less (in 250sf increment reductions from the 3,240sf allowed), a TDR could be severed from the property for sale elsewhere or for use on Lot 1, thereby increasing the allowable Floor Area on Lot 1 to 3,490 square feet. In theory, it would remain possible that the same HPC application proposing the remodel to reduce existing Floor Area could be part of a significant restoration effort deemed worthy of a 500sf Floor Area bonus; in essence, this could reduce Lot 2's allowable Floor Area from 3,240sf to

2,990sf but simultaneously give Lot 2 another 500sf back in bonus Floor Area to effectively increase the allowable Floor Area by 250sf (to 3,490sf) while also resulting in a 250sf TDR that could be sold or used on Lot 1.

The foregoing is based on a review of the available facts and existing regulations pertinent to the property in question. The City of Aspen's land use regulations are highly subjective, and interpretations of relevant provisions of the *City of Aspen Land Use Code* may vary with changes in staff or elected and appointed officials. The fact that the Code may allow for or may not otherwise prohibit certain types development does not in any way guarantee that the City will grant such enabling approvals. Consequently, no warranty of facts, opinions, or interpretations contained herein is either expressed or implied by Haas Land Planning, LLC.

I trust you will find this synopsis satisfactory, but if you should have any questions, or if I can be of further assistance, please do not hesitate to contact me.

Truly yours,

Haas Land Planning, LLC



Mitch Haas
Owner/Manager