

Memo

To: BJ Adams, BHHS

From: Alan Richman 

Date: May 23, 2018

Re: Land Use Analysis for 25 & 45 Glen Eagles Drive, Aspen

You have asked me to prepare a land use analysis for two adjacent properties that your firm has listed for sale, located at 25 and 45 Glen Eagles Drive, in unincorporated Pitkin County. Both properties are owned by Deborah Bradford. The following table provides a brief summary of the legal description, Pitkin County Parcel ID number, lot size and development status of these two properties. A vicinity map showing the location of these two lots is attached to this report.

Lot #	Address	Parcel ID#	Lot Size of Record	Status
18, Aspen Highlands Subdivision	45 Glen Eagles Drive	273514201003	30,700 square feet	Developed: single family + CDU
19, Aspen Highlands Subdivision	25 Glen Eagles Drive	273514201002	41,280 square feet	Vacant

The table shows that Lot 18 is improved with a single family residence that was originally built in 1966 and has been remodeled and expanded several times since then. The garage was converted into a caretaker dwelling unit in the early 1980's, after the owner received Special Review Approval from the Board of County Commissioners to do so (approval granted via BOCC Resolution 80-95, recorded in Book 398 @ Page 385 as Reception No. 228430 of the Pitkin County Records). A deed restriction formalizing the terms by which the unit would be occupied and rented does not appear to have been signed and recorded.

Lot 19 is an undeveloped parcel of land, although there is a minor structure on the lot that appears to be accessory to the house on Lot 18.

In 1980 Ms. Bradford imposed a "setback easement" on Lot 19. The reason for this easement was that an addition that was being made at that time to the residence on Lot 18 was located less than 15' from the property line between Lot 18 and 19. The 7.5' setback easement was intended to "satisfy the 15' side yard setback requirement...in connection with the proposed addition on Lot 18". That easement is recorded in Book 391 @ Page 20 of the Pitkin County Records as Reception No. 225050.

Land Use Analysis

I have reviewed the following documents in completing this analysis:

- The Pitkin County Land Use Code;
- Pitkin County's land use and building permit files for Lot 18 (there are no such files for Lot 19 since that lot is unimproved and has not yet received any County permits);
- The documents of record listed in the Title Commitment issued for this property by Stewart Title, dated August 11, 2017 (File No. 01330-102712); and
- The Improvement and Topographic Survey for Lots 18 and 19 prepared by True North Colorado LLC, dated October 26, 2017.

I also conducted a site visit and held a conversation with a County staff member to discuss certain issues. Following are my findings with respect to this property.

1. **Location.** For land use purposes, Pitkin County is divided into two primary areas: the Aspen Urban Growth Boundary (UGB) and the Rural Area. The subject property is located within the UGB. As described in Paragraph 5, this affects how the County regulates these lots, particularly in terms of floor area calculations.
2. **Lot Size.** Both lots are in excess of 30,000 square feet in size. The Aspen Highlands Subdivision is zoned R-30 (Suburban Density Residential), a zone district with a minimum lot size of 30,000 square feet. Therefore, these are conforming-sized lots of record.

3. **Setbacks.** The minimum setbacks for a lot of more than 30,000 square feet but less than 43,560 square feet are as follows:

Front yard: 30'

Side yard: 15'

Rear yard: 30'

As explained above, the existing house encroaches into the side yard setback. The setback easement imposed by the owner in 1980 to address this situation is unusual and would likely not be viewed as an appropriate solution to this issue today by the County staff. There are two possible ways this situation could be addressed by the current owner or by a future owner of these lots:

- If, in the future, the house on Lot 18 were to be removed and replaced I would expect that the County would require the new house on Lot 18 to be set back by at least 15' from the side yard. Relocating the house in conformance with the setback would make the setback easement moot, allowing it to be lifted from Lot 19.
- If the house were to remain in place and the owner wanted to convey Lot 19 separately from Lot 18, the owner could apply to the County for a subdivision exemption to adjust the lot lines between the two lots to bring the house into conformity with the side yard setback. A lot line adjustment can be granted by the staff, administratively, and does not require a public hearing. Adjusting the lot lines would also make the setback easement moot, allowing it to be lifted from Lot 19.

I have reviewed the Land Use Code standards for lot line adjustments. This type of proposal should be able to comply with those standards. The Code requires that the resulting lots are not substantially different in size than the original lots. As a result, we typically recommend that the adjustment balance the areas being traded between the two lots, so neither lot increases or decreases significantly in size and so the allowable floor areas on each lot remain essentially unchanged. Doing so for these lots should allow this lot line adjustment to be granted administratively.

4. **Height.** The maximum height for a principal structure in the R-30 zone district is 28'. Accessory structures are limited to a height of 20'. No information was provided to me regarding the height of the existing residence.

5. **Maximum Floor Area.** Properties in the R-30 zone district are limited to a maximum floor area ratio of 0.13. This means the allowable floor area for the two lots is as follows:

Lot 18 = 31,108 square feet x 0.13 = 4,044 square feet.

Lot 19 = 41,543 square feet x 0.13 = 5,400 square feet.

Please note that in completing these floor area calculations I have used the calculated land area for each lot as shown on the improvement survey. These lot area calculations differ slightly from the lot area of record shown on the original plat (see table on page 1 of this report for those lot areas of record). However, in my experience the County will rely upon the calculations from the current survey when floor area calculations are performed, so the above floor area calculations are utilized throughout this report.

The Land Use Code also provides two significant floor area exemptions for properties located within the UGB. First, a garage of up to 750 square feet does not count towards the allowable floor area. Second, subgrade spaces of up to 4,000 square feet that are located below both natural and finished grade and have no exposed areas (no walk-out basements or patios allowed) do not count towards the maximum allowable floor area.

According to a building permit application prepared for an addition that was built in 2007, following is the existing floor area of the residence on Lot 18:

Upper Level:	1,250 square feet
Lower Level:	1,505 square feet
Entry & Studio	536 square feet
Accessory Unit:	<u>688 square feet</u>
Total Area:	3,979 square feet

Therefore, the existing house is essentially built out in terms of allowable floor area. However, the house does not have a garage and records indicate it has just 236 of sub-grade space. So if a new owner wanted to keep the existing house and remodel/expand it, the following two areas of the existing structure may be expanded:

- A 750 square foot garage may be developed on Lot 18.

- The subgrade space may be expanded from its present size of 236 square feet to 4,000 square feet, an increase of 3,764 square feet, without counting as floor area. An owner would need to obtain a growth management allotment to develop all of this sub-grade space, as is further described in Paragraph 6, below.
6. **TDR's.** Because Lots 18 and 19 were created prior to 1978 (when the County adopted its Growth Management Quota System) each lot has the right to develop up to 5,750 square feet of gross floor area. Gross floor area includes both space that counts as floor area (above grade space) and space that is exempt from floor area calculations (sub-grade space and garage space).

An owner who wishes to build more than 5,750 square feet of gross floor area must obtain a growth management allotment to do so. There are two ways to obtain an allotment, these being to purchase and extinguish a Pitkin County transferable development right (TDR) or to compete for the additional space in the County's Growth Management Quota System. Competing for additional space is a cumbersome and uncertain process and so most applicants prefer to utilize TDR's. A TDR may be landed by right (no County review required) on a lot within the UGB.

Each TDR that is purchased and extinguished allows an owner to add 2,500 square feet of space to the lot. Following are the calculations for how TDR's could be used on Lots 18 and 19.

Lot 18

Allowable floor area =	4,044 square feet
Garage exemption =	750 square feet
Sub-grade exemption =	<u>4,000 square feet</u>
Gross floor area =	8,794 square feet

Therefore, an owner could build the allowable floor area plus an exempt garage plus 956 square feet of exempt sub-grade space on this lot by right ($4,044 + 750 + 956 = 5,750$). An owner could also purchase and extinguish one (1) TDR to build 2,500 square feet of additional subgrade space ($4,044 + 750 + 3,456 = 8,250$ square feet). An owner who wanted to build the full 4,000 square feet of sub-grade space would need to purchase and extinguish a second TDR to do so.

Lot 19

Allowable floor area =	5,400 square feet
Garage exemption =	750 square feet
Sub-grade exemption =	<u>4,000 square feet</u>
Gross floor area =	10,150 square feet

Therefore, an owner could build the allowable floor area plus 350 square feet of an exempt garage on this lot by right (5,400 + 350 = 5,750). An owner could also purchase and extinguish one (1) TDR to build the remaining 400 square feet of garage plus up to 2,100 square feet of subgrade space (5,400 + 750 + 2,100 = 8,250 square feet). An owner who wanted to build the full 4,000 square feet of sub-grade space would need to purchase and extinguish a second TDR to do so.

- 6. Site Plan.** The Land Use Code requires applicants who propose to expand or demolish/replace an existing residence or to build a new residence to: (a) designate an activity envelope within which all development would occur; and (b) obtain site plan approval for the development. The subject properties do not have designated activity envelopes. Therefore, before any development can occur on either lot the new owner would need to designate an activity envelope and obtain site plan approval.

Based on my visit to the site and my knowledge of the County Code, I do not believe there are any over-riding constraints that would limit development of either lot. The Topographic Survey demonstrates that slopes on both of the two lots are less than 30% and the wildfire hazard appears to be low to moderate. There are no significant water resources or wildlife habitat areas that need to be avoided. Therefore, it should be possible for development to occur anywhere within the underlying zone district setbacks. It also appears that it would be feasible to locate a driveway along Glen Eagles Drive to provide access to Lot 19.

Activity envelope/site plan review is an administrative process that is handled at the staff level unless an objection to the application is raised by a neighboring property owner in which case it is heard by the County's Hearing Officer. Site plan review addresses issues such as building mass and scale, access driveway, landscaping, drainage, and environmental constraints (steep slopes, wildfire hazards, wildlife habitat, etc.).

The County Land Use Code allows an applicant to either submit an activity envelope plan to determine where on the site development will be allowed, or to submit an activity envelope plan combined with a site plan to obtain approval for the actual development plans for the property. Because both lots are effectively unconstrained, I do not see any value in having the current owner submit an activity envelope plan in advance of the sale of the either lot. Instead, it makes more sense for the purchaser of the property to submit a combined activity envelope/site plan application once his or her development plans have been formulated. A potential purchaser should feel confident that development will be permitted to occur anywhere within the underlying setbacks because these lots are not constrained and are located within a platted subdivision in the urban area.

Once a site plan application has been prepared, the County requires approximately 90 days for the review and approval of the site plan, including providing notice to neighbors. Once site plan approval is obtained the applicant is able to submit a building permit application and initiate the planned development.

7. **Lot Merger.** An option that would be available to a new owner would be to purchase both lots and then merge them to combine their development rights. I spoke with the County staff and they informed me that removal of a lot line from a Board-approved plat is processed as a major plat amendment, meaning it requires a recommendation by the Planning and Zoning Commission, followed by a decision by the Board of County Commissioners. The Land Use Code requires the Board to consider whether the resulting house would be consistent and compatible with the surrounding neighborhood and whether the development would cause any significant community impacts. Given the location of these lots near the Aspen Highlands Ski Area and the fact that many other large houses are being developed in this area, I would anticipate that merging of the lots would receive County approval.

Please note that the combined lot would allow a house with a floor area of 9,444 square feet to be built. However, because just a single house would be built on the combined lot, the owner would only be entitled to one garage and sub-grade space exemption, effectively foregoing 4,750 square feet of exempt space that would be allowed with the two lot development scenario.

8. **Boundary Overlap.** The survey indicates that the boundaries of Iselin Park, a City-owned property located across Maroon Creek Road, overlap with the boundaries of Lot 19. Detailed investigation of this overlap is beyond the scope of this report. However, the surveyor has issued a revised improvement survey showing the setback that would result if the area of overlap were removed from the property. The resulting envelope remains quite buildable. He has also calculated the area of the overlap to be 5,342 square feet. This would reduce his calculated lot area from 41,543 to 36,201 square feet, meaning if the area of the overlap is not legally part of Lot 19, the lot would still be a conforming sized lot of record. The allowable floor area of the Lot would, however, be reduced to 4,706 square feet.

9. **Adjacent Lot.** You have asked me to comment on the potential for development of the adjacent lot (Lot #17 of the Aspen Highlands Subdivision @ 75 Glen Eagles Drive) to impact this lot. I looked at the County Assessor's website and found that the lot is 37,850 square feet in size, which would allow for a home with 4,920 square feet of floor area to be built. According to the Assessor's data, the existing house appears to be approximately this size so it cannot be expanded by any significant amount. If the house were to be re-developed it is possible it could be moved further into the lot and therefore impact the views from Lot 18. However, this seems like an unlikely outcome to me, because the lands towards the middle of the lot are lower in elevation than where the existing house is located, meaning that if a new house were placed there, its views would be inferior to those from a house placed where the existing house is located. So I conclude the potential is relatively low for a future re-development of this lot to significantly impact Lot 18.

Conclusion

The above represents my analysis of land use issues pertinent to Lot 18 and 19, Aspen Highlands Subdivision. This analysis has been based on a review of the facts and regulations pertinent to the subject property. Please be aware that the County's development review process can be discretionary, and interpretations of relevant provisions can vary among staff and other County officials. Consequently, no warranty of the facts, opinions, or interpretations contained herein is either expressed or implied by me. Please let me know if there is anything else you require as you proceed with the marketing of this property.