

RESOLUTION 2025-015

A resolution conditionally approving Boulder County Community Planning & Permitting Docket LU-25-0001/SPR-25-0009: van der Mersch Earthwork and Residence

Recitals

A. Stephan van der Mersch (the “Applicant”), applied to Boulder County for Limited Impact Special Use Review under Article 4-600 of the Boulder County Land Use Code (the “Code”) for 1,735 cubic yards of non-foundational earthwork. The Applicants also applied for Site Plan Review under Article 4-800 of the Code to construct a new residence resulting in 4,271 square feet of residential floor area on an approximately 42.8-acre parcel where the presumed compatible size is 4,275 square feet.

B. The subject property is located at 5207 Sunshine Canyon Drive, approximately 0.8 miles southeast of its intersection with County Road 83, in Section 17, Township 1 North, Range 71 West, in a Forestry zoning district in unincorporated Boulder County (the “Property”).

C. The Property is located between Sunshine Canyon Drive to the north and Four Mile Canyon Drive to the south, west of the City of Boulder.

D. The Boulder County Comprehensive Plan indicates that there are a couple of small mapped riparian areas on the Property, as well as a small area identified as an Archaeologically Sensitive area at the far southern end of the Property. Additionally, there is a viewshed protection score of 0.97 out of 5 along Sunshine Canyon Drive to the north, and scores between 1.66 and 1.95 out of 5 along Four Mile Canyon Drive to the south. There are a couple of small Debris Flow Susceptibility areas on the Property.

E. The Property is currently generally undeveloped. There is an unpermitted structure described in the application materials as the “tea house”, but otherwise the Property is vacant.

F. Previously, a Certificate of Occupancy was issued in 1990 for an approximately 3,844-square-foot residence. The residence and two unpermitted structures were destroyed in the 2010 Four Mile Canyon Fire.

G. The Applicant purchased the Property in 2014. In 2016, the Applicant applied for a Limited Impact Special Review for 5,489 cubic yards of non-foundational earthwork and Site Plan Review for an 8,531-square-foot residence (LU-16-0004/SPR-16-0028). Through the review process, the non-foundational earthwork was reduced to 3,384 cubic yards and the residence was reduced to 6,533 square feet of residential floor area. The revised proposal was approved by the Board of County Commissioners (the “Board”) on March 23, 2017 through

Resolution 2017-54. However, this approval was never acted upon, and it expired in March 2020.

H. The Applicant, his representative, and staff conducted an on-site pre-application conference in November 2024. Subsequent to this on-site pre-application conference, staff provided the Applicant and his representative with comments to provide guidance on a potential new application for a residence on the Property. The Applicant then submitted the current application for non-foundational earthwork and construction of a new residence.

I. The proposed development includes the Property (where the residence will be located) and a second parcel at 5415 Sunshine Canyon Drive, which is located between the Property and Sunshine Canyon and through which the private access road to the Property crosses. The Applicant proposed to develop the Property as a single-unit residential dwelling, accessed via an existing gravel private access road.

J. The Applicant proposed 1,735 cubic yards of non-foundational earthwork, primarily related to making the private access road from Sunshine Canyon Drive to the residence meet the Boulder County Multimodal Transportation Standards (“MMTS”).

K. The Applicant proposed a residence with 4,352 square feet of residential floor area, with an additional 545 square feet of covered porch and a 506-square-foot attached carport. The proposed maximum height of the residence is 29 feet, 11 inches above existing grade. The Applicant also requested approval of the existing unpermitted 358-square-foot tea house structure, which has a height of 12 feet above existing grade. The total resulting residence floor area proposed is 4,271 square feet.

L. The above-described request was processed and reviewed as Boulder County Community Planning & Permitting Docket LU-25-0001/SPR-25-0009 (the “Docket”), as further described in the memorandum and written recommendation to the Board by Boulder County Community Planning & Permitting Department planning staff dated March 6, 2025, together with its attachments (the “Staff Recommendation”). The Staff Recommendation found that the Docket could meet the criteria for approval with recommended conditions, and therefore, recommended that the Board conditionally approve the Docket.

M. At a public hearing on the Docket held on March 6, 2025 (the “Public Hearing”), as further reflected in the official record of the Public Hearing, the Board considered the Staff Recommendation as well as the documents and testimony presented by Boulder County Community Planning & Permitting Department staff. The Board also heard testimony from the Applicant and his architect, Scott Rodwin. Two members of the public spoke at the Public Hearing.

N. Based on the Public Hearing, the Board finds that the Docket meets the criteria in Article 4-601 of the Code for Limited Impact Special Use approval for the proposed non-foundational earthwork, subject to the conditions stated below.

O. The Board further finds that the Docket meets the criteria in Article 4-806 of the Code for Site Plan Review approval for the proposed residence, subject to the conditions stated below.

P. Therefore, the Docket can be approved, subject to the conditions stated below.

Therefore, the Board resolves

Docket LU-25-0001/SPR-25-0009 is approved on the basis and terms set forth in this Resolution, above, and subject to the following conditions:

1. The development is subject to the requirements of the Boulder County Building Safety & Inspection Services Team and adopted County Building Codes, as outlined in the referral comments, including, but not limited to, required sprinklering, ignition resistant materials and defensible space, and the BuildSmart energy efficiency and sustainability requirements.

2. A qualified Colorado-licensed design professional must observe the grading and submit an observation report to ensure that the work is completed in substantial conformance with the approved engineering plans.

3. Prior to issuance of building permits, the Applicant must apply for and be issued an Onsite Wastewater Treatment System permit from Boulder County Public Health.

4. An Access Improvement and Maintenance Agreement (“AIMA”), which is an agreement for future maintenance responsibility, will be issued for the shared driveway during building permit review. The AIMA will be prepared by the Access & Engineering staff, signed by the Applicant, notarized, and approved as part of the building permit process.

5. At building permit, the Applicant must submit revised plans that propose resurfacing the existing shared private drive with a material that complies with the MMTS, redefining the borrow ditch along the uphill side of the private drive, a typical cross section for the drive, and emergency pullouts that are no more than 400 feet apart from each other.

The driveway design must comply with the MMTS for residential development, including without limitation:

- Table 5.5.1 – Parcel Access Design Standards (One-Lane Mountains Access)
- Standard Drawing 11 – Private Access
- Standard Drawing 14 – Access with Roadside Ditch Detail

- Standard Drawing 15 – Access Profiles Detail
- Standard Drawing 16 – Access Grade & Clearance
- Standard Drawing 18 – Access Turnaround
- Standard Drawing 19 – Typical Turnaround & Pullout Locations

At building permit, the Applicant must submit revised plans that show the emergency turnaround in a location that complies with the MMTS.

At building permit, the Applicant must submit a revised driveway plan and profile sheet that includes a typical cross section of the driveway.

At final inspection, the Community Planning & Permitting Department must verify that the access and driveway has been constructed to comply with the MMTS.

6. At building permit, the Applicant must submit revised plans that account for the drainage flowing down the driveway and demonstrate positive drainage from all structures and driveways.

7. At building permit, the Applicant must provide a complete Stormwater Quality Permit (“SWQP”) submittal to stormwater@bouldercounty.gov. Submitted material for the SWQP must include drainage calculations for all culverts and borrow ditches.

Prior to any site disturbance, the Applicant must obtain the SWQP.

8. During construction, all vehicles, materials, machinery, dumpsters, and other items must be staged on the Property.

9. Any outdoor construction or grading activities must be limited to between 8:00 am and 5:00 pm, Monday through Friday. Indoor construction activities may occur outside of these hours provided the noise levels do not exceed those permitted under the Boulder County Noise Ordinance.

10. Prior to issuance of building or grading permits, the Applicant must submit to the Community Planning & Permitting Department for review and approval one copy of the proposed Revegetation Plan that conforms to the requirements as described in the materials located at <https://bouldercounty.gov/property-and-land/land-use/planning/revegetation>.

This plan must show the location of all erosion control devices such as silt fence, straw bales, riprap, and retaining walls. The plan must include the grade of all cut and fill slopes, which are not to exceed a slope of 2:1. The plan must include details regarding the reclamation of existing and proposed cut and fill slopes.

Prior to issuance of a Certificate of Occupancy, the Community Planning & Permitting Department must inspect and approve the full installation of the approved Revegetation Plan. If weather is not conducive to seeding, or if adequate revegetation efforts have not occurred, and vegetation is not adequately established at the time of final inspection request, an irrevocable letter of credit or monies deposited into a County Treasurer account will be required to assure the completion of revegetation. The Applicant should consider the following well in advance of the revegetation inspection:

- a. Whether applying for a Certificate of Occupancy, final inspection, or the return of funds held in escrow for completion of revegetation, some level of germination and growth of grass seed is required.
- b. Steeper slopes and dryer soil require greater attention to establish a level of germination adequate to obtain revegetation approval.
- c. Areas of disturbance found at inspection not included on the Revegetation Plan are still subject to reseeding and matting.

Incomplete revegetation is the leading cause for delays in obtaining a Certificate of Occupancy.

11. Prior to issuance of building permits, the Applicant must submit to the Community Planning & Permitting Department for review and approval details regarding the placement and construction of the silt fence. The placement and profile of the silt fence may be shown on the Revegetation Plan. The silt fence must be installed before construction commences and remain in place until vegetation is sufficiently established on the disturbed soil.

Prior to any grading or site disturbance, the silt barrier location and materials must be installed as required per the approved plans.

At the time of footing foundation inspection and all subsequent inspections, the Community Planning & Permitting Department must confirm the silt barrier location and materials have been installed as required per the approved plans. Any other areas on site are subject to installation of silt fences, if needed.

12. The total residential floor area is approved at approximately 4,271 square feet as proposed, with a maximum residential floor area of 4,275 square feet.

13. After applying for, but prior to issuance of any permits, a Boulder County Wildfire Mitigation Specialist will contact the Applicant to schedule a Wildfire Partners or Regulatory Wildfire Mitigation assessment and defensible space marking. Based upon the compliance path selected, either a Wildfire Partners Assessment report or a Wildfire Mitigation Plan will be created to describe the wildfire mitigation requirements.

Before scheduling rough framing inspections, the plan's defensible space and water supply portion must be implemented and inspected by the Community Planning & Permitting Department. All trees marked for removal must be cut, and all slash, cuttings, and debris must be removed and/or properly disposed of. The Fire Sprinkler or Fire Cistern Approval Form must be submitted to the Boulder County Building Safety & Inspection Services at ezbp@bouldercounty.gov (or P.O. Box 471, Boulder, CO, 80306) after the fire protection district completes the applicable portion of the form. If an individual cistern was required, it must be located on site in an appropriate location (subject to approval by the fire protection district), fitted with an appropriate dry hydrant connection, and be filled and tested by the local fire protection district.

At the time of final inspection, all remaining required items in the Wildfire Partners Assessment report or the Wildfire Mitigation Plan must be fully implemented and inspected. Ground surfaces within three feet of both existing and new structures, and at least 2 feet beyond the driplines of decks, bay windows, and other eaves and overhangs, must be covered with an allowable non-combustible ground cover over a weed barrier material. The driveway vertical and horizontal vegetation clearance must be in place and conform to the Parcel Access Design Standards in the MMTS.

14. The location of the residence and tea house are approved as shown on the site plan dated January 13, 2025.

15. The elevations of the residence dated January 13, 2025 are approved as proposed.

16. The height of the proposed residence is approved at 29' 11" above existing grade. In no case may the residence exceed 30' above existing grade.

17. Prior to issuance of building or grading permits, the first part of the Height Survey Verification form must be completed and submitted to the Community Planning & Permitting Department.

Prior to rough frame inspection, the second part of the form will be provided upon building permit application and must be submitted to the Community Planning & Permitting Department.

18. The colors and materials of the residence are approved as proposed. The colors and materials of the tea house are approved as constructed.

19. Prior to issuance of a Certificate of Occupancy, the Community Planning & Permitting Department must inspect and verify that the approved color samples are used on the new structure.

20. The style of wall sconce fixtures is approved as proposed. Manufacture cut sheets must be included in any building permit application.

21. Exterior lighting is limited to the eight wall sconces as shown in Figure 16 of the Staff Recommendation. The wall sconce light at the bottom of the exterior stairs leading to crawl space (circled in red in Figure 16) must be equipped with a motion sensor.

22. The recessed can lights in the carport and all of the in-wall lights are denied.

23. Prior to issuance of building or grading permits, the Applicant must submit to the Community Planning & Permitting Department a narrative describing where excess foundation cut (other than that used for backfill within the foundation) will be transported. If the cut will be located on site as fill, the Applicant must delineate the fill location on the Revegetation Plan as well as indicate the method of revegetation for any disturbed areas. The location of any excess fill on site must be approved by the Community Planning & Permitting Department.

At the time of final inspection, the location and receipt for transport and dumping must be submitted to the Community Planning & Permitting Department so that receipt of fill materials may be verified.

24. To minimize disturbances to the site, all utility service lines should be routed underground (*see* Article 7-1200 of the Code) and should be located in areas already disturbed or proposed to be disturbed (e.g., along driveway).

25. Prior to issuance of building or grading permits, the Applicant must submit to the Community Planning & Permitting Department for review and approval information on the proposed construction materials and color for all required retaining walls. Any retaining walls must blend with the natural environment as much as possible.

At the time of final inspection, the installation of the approved retaining walls must be completed and approved by the Community Planning & Permitting Department.

26. Greenhouse lighting is limited to one light per access door and in step lighting in the stairs. All lighting must comply with Article 7-1600 of the Code. All stair lights must include a motion sensor to ensure that they are only active when in use.

27. The Applicant shall be subject to the terms, conditions, and commitments of record and in the file for Docket LU-25-0001/SPR-25-0009: van der Mersch Earthwork and Residence.

A motion to approve the Docket was made by Commissioner Ashley Stolzmann, seconded by Commissioner Marta Loachamin, and passed by a 2-0 vote. Commissioner Claire Levy was excused from the Public Hearing.

ADOPTED as a final decision of the Board on this _____ day of April 2025.

The signatures below indicate approval of the text of the Resolution but are not necessarily reflective of the votes taken at the Public Hearing.

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:**

Marta Loachamin, Chair

Claire Levy, Vice Chair

Ashley Stolzmann, Commissioner

ATTEST:

Clerk to the Board