

## RESOLUTION 2021-80

### **A resolution conditionally approving Boulder County Community Planning & Permitting Docket LU-21-0014/SPR-21-0090: Cherneski-Fronek Earthwork and Residence**

#### Recitals

A. Through their agent John Hoffman, Michael Cherneski and Stacey Fronek (the “Applicants”), applied to Boulder County for Limited Impact Special Use Review under Article 4-600 of the Boulder County Land Use Code (the “Code”) for 1,535 cubic yards of non-foundational earthwork to construct a driveway. The Applicants also applied for Site Plan Review under Article 4-800 of the Code to construct a new 3,232-square-foot residence and 525-square-foot detached studio on an approximately 5-acre vacant parcel.

B. The subject property is located at 1141 County Road (CR) 83, located on the west side of CR 83 approximately 1.1 miles north of its intersection with Sunshine Canyon Drive, in Section 8, Township 1 North, Range 71 West of the 6th Principal Meridian, in a Forestry zoning district in unincorporated Boulder County (the “Property”).

C. The Property is a legal building lot consisting of the John A. Dix Lode mining claim, except for a small portion in the southeastern corner of the Property that is bisected by the CR 83 right-of-way. The lot is long and narrow, measuring approximately 150 feet by 1,500 feet. The longer dimension travels almost directly up the northwesterly slope that characterizes most of the Property. The narrowness of the lot, steep slope, and the 25-foot side-yard setbacks required in the Forestry zoning district where the Property is located necessitate significant earthwork in order to provide access to the proposed residence location.

D. The Property is also encumbered by two large drainages that converge in the southwestern third of the Property, making it difficult to provide a driveway access that meets the County’s Multimodal Transportation Standards (“MMTS”) without encroaching into the drainages themselves.

E. Physical access to the Property will be provided via a shared driveway that will also be used by a proposed residence at 1121 CR 83, which is under Community Planning & Permitting review as LU-21-0012/SPR-21-0068: Jensen Residence and Earthwork. The shared driveway will run generally west-northwest through the Property where it will become a hammerhead that splits west to provide access to the Property and east for access to the neighboring parcel at 1121 CR 83.

F. The Applicants proposed to construct the 525-square-foot studio as part of a retaining wall that will form the northwestern limit of the hammerhead. As proposed, the studio building

will be dug into the slope such that only the southeast face of the building is exposed. All other building faces and the roof will be covered with earth to minimize visual impacts.

G. Out of the hammerhead, the driveway will briefly run southwest before hooking sharply north toward the proposed location of the residence. The proposed curve of the driveway does not meet the Fire Protection District's ("FPD") standards for emergency vehicle access, but a referral response received from the Sunshine FPD states that the FPD has a new engine that can make the turn, and therefore, they do not have any conflicts with the driveway as proposed.

H. The proposed residence location is an existing area of disturbance that was previously graded for a small cabin that was installed on the Property in 1963 and was destroyed by the Four Mile Canyon Fire in 2010. In addition to the disturbed area where the cabin was located, there are remnants of the driveway used for access to the cabin. However, the short length and steep slope of the previous driveway route do not meet current County standards and would also not allow the shared access proposed to be used by the Property and neighboring parcel.

I. The Boulder County Comprehensive Plan ("BCCP") indicates that CR 83 has a view protection score of 1.88 in the area near the Property. Portions of the Property are identified as having debris flow susceptibility. Both the shared portion of the driveway and the portion that accesses the proposed residence will pass through these areas, and it appears that the northeastern section of the proposed residence itself will be located in these areas. The Property is adjacent to County Open Space to the north, as well as property owned by the Bureau of Land Management on three sides of the northwestern section of the Property.

J. Given the topography and site constraints, substantial earthwork is required to access the proposed residence location. However, staff found that this proposed residence location is acceptable because the proposed earthwork will be shared with an adjacent property that is also proposed to be developed. Sharing a portion of the access will limit overall disturbance in the area, while also providing access to one of the more buildable sections of the Property.

K. The above described request was processed and reviewed as Boulder County Community Planning & Permitting Docket LU-21-0014/SPR-21-0090 (the "Docket"), as further described in the memorandum and written recommendation to the Board of County Commissioners (the "Board") by Boulder County Community Planning & Permitting Department planning staff dated November 16, 2021, 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.

L. At an online public hearing on the Docket held on November 16, 2021 (the "Public Hearing"), as further reflected on 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 and the Applicants. The Board also heard testimony from John Hoffman on behalf of the Applicants. No members of the public spoke at the Public Hearing.

M. 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.

N. 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.

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

Therefore, the Board resolves

Docket LU-21-0014/SPR-21-0090 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. The approved size for the development is approximately 3,757 square feet of residential floor area.

3. The locations of the residence and detached studio shown on the site plan dated September 20, 2021 and staked in the field are approved as proposed.

4. The elevations dated September 20, 2021 are approved as proposed.

5. The approved height for the residence is approximately 22 feet above existing grade.

6. The approved height for the detached studio is approximately 9 feet above existing grade.

7. At building or grading permit submittal, the plans must show the heights of all retaining walls for staff approval.

8. At building or grading permit submittal, the Applicants shall submit a Revegetation and Erosion Control Plan for approval. This plan should include native grass species to be used, an explanation of how topsoils will be stockpiled, mapped delineation of all disturbance areas (including construction staging areas, driveway, utility lines, and septic system), locations of silt fences around disturbed areas, and matting requirements, if necessary.

Silt fencing shall be installed downslope of all construction areas.

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

Prior to issuance of a Certificate of Occupancy, the Community Planning & Permitting Department must inspect and approve the full installation of the approved Revegetation and Erosion Control 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 success of revegetation. The Applicants shall 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.
- d. Incomplete revegetation is the leading cause for delays in obtaining a Certificate of Occupancy.

9. Prior to issuance of any building or grading permits, the Applicants shall submit an application for and obtain a Stormwater Quality Permit (“SWQP”). The SWQP is required as part of the larger common plan of development shared by the Property and the adjacent parcel at 1121 CR 83.

10. Prior to issuance of building and grading permits, the Applicants shall submit to the Community Planning & Permitting Department for review and approval a plan depicting the routing of all utility services. The utility routing plan shall be included as part of the building plan set required at the time of permit application. To minimize disturbances to the site, all utility service lines shall 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).

- a. At the time of building inspections, the Community Planning & Permitting Department must inspect and confirm the full installation of the utilities per the approved plan.

11. Prior to issuance of a Certificate of Occupancy, the Community Planning & Permitting Department must verify that the access and driveway has been constructed to comply with the Parcel Access Design Standards in the MMTS for driveways in the mountains, including without limitation:

- a. Table 5.5.1 – Parcel Access Design Standards (One-Lane Mountains Access)
- b. Standard Drawing 11 – Private Access
- c. Standard Drawing 14 – Access with Roadside Ditch Detail
- d. Standard Drawing 15 – Access Profile Detail
- e. Standard Drawing 16 – Access Grade and Clearance
- f. Standard Drawing 17 – Access Pull-outs
- g. Standard Drawing 18 – Access Turnaround
- h. Standard Drawing 19 – Typical Turnaround and Pull-out Locations

12. An Access Permit is required and will be issued at the time of permit review. No special application procedure is necessary. The permit will be issued concurrently with the Building Permit.

13. Prior to issuance of any building or grading permits, the Applicants shall submit to the Community Planning & Permitting Department for approval a Traffic Control Plan (“TCP”). The TCP must be completed by a certified Traffic Control Supervisor and must address flaggers, locations and types of warning signs to be used during hauling operations, maps of anticipated haul routes, and a narrative description of where the excess cut removed from the Property will be taken. It should also be coordinated with the development of 1121 CR 83 if possible.

Prior to issuance of a Certificate of Occupancy, 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.

14. During construction, all materials, machinery, dumpsters, and other items must be staged on the Property. No items may be stored or staged on CR 83.

15. During construction (i.e. during the day while work is being performed), all vehicles must be parked on site or to one side of CR 83 so as to not impede the travel way.

16. Prior to issuance of building permits, the Applicants shall submit an application for and obtain an Onsite Wastewater Treatment System permit from Boulder County Public Health.

17. At building permit submittal, the Applicants shall submit to the Community Planning & Permitting Department for review and approval one copy of a proposed lighting plan. The lighting plan shall be included as part of the building plan set required at the time of permit application.

Down lighting is required, and all bulbs must be fully shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture. All exterior light fixtures must conform with Articles 7-1600 and 18-162.A of the Code.

Prior to issuance of a Certificate of Occupancy, the Community Planning & Permitting Department shall inspect and approve the full installation of the approved lighting plan.

18. At building permit submittal, the Applicants shall submit to the Community Planning & Permitting Department for approval proposed colors and materials for any retaining walls that will be constructed.

Colors shall be selected to minimize visual impacts of the development and help the development blend in with the natural environment and the neighborhood character of the surrounding area. These colors should be carefully selected from the dark to medium brown, gray, or green color range to ensure that they are compatible with the policies and goals established by the BCCP and provisions of the Code and will not result in an adverse impact on surrounding properties.

Prior to issuance of a Certificate of Occupancy, the Community Planning & Permitting Department must inspect and verify the full installation of the approved colors and materials.

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

20. Prior to issuance of building or grading permits, the Applicants shall submit to the Community Planning & Permitting Department for review and approval a Tree Preservation Plan that indicates which trees will be preserved, with provisions for the maximum preservation of the existing vegetation southeast of the residence location while allowing for adequate wildfire mitigation. The Tree Preservation Plan shall be included as part of the building plan set required at the time of permit application.

Prior to issuance of a Certificate of Occupancy, the Community Planning & Permitting Department must inspect and approve the full installation of the approved Tree Preservation Plan.

21. On the building permit application, the Applicants shall select either the Wildfire Partners or the Regulatory Wildfire Mitigation path.

Prior to issuance of any permits, a Wildfire Partners or Regulatory Wildfire Mitigation assessment and defensible space marking shall be completed. Based upon the path selected, either a Wildfire Partners Assessment Report or a Wildfire Mitigation Plan will be created and

will describe the wildfire mitigation requirements to be implemented.

Before scheduling rough inspections, vegetation marked for removal must be cut and all slash, cuttings, and debris must be removed or properly disposed of and inspected by the Community Planning & Permitting Department.

At the time of final inspections, all required items in the Wildfire Partners Assessment Report or Regulatory Wildfire Mitigation Plan must be implemented, inspected, and approved by a Wildfire Mitigation Specialist.

The Applicants shall refer to Section R327 of the Boulder County Building Code for Ignition-Resistant Construction requirements. The referral from the Wildfire Mitigation Team contains information on the County's wildfire mitigation requirements, including site location, emergency water supply, and emergency vehicle access. The referral from the Building Safety & Inspection Services Team contains information on the County's Automatic Fire Sprinkler System requirement.

22. The Applicants shall be subject to the terms, conditions, and commitments of record and in the file for Docket LU-21-0014/SPR-21-0090: Cherneski-Fronek Earthwork and Residence.

**[Signature Page to Follow]**

A motion to approve the Docket was made by Commissioner Marta Loachamin, seconded by Commissioner Matt Jones, and passed by a 2-0 vote. Commissioner Claire Levy was excused.

**ADOPTED** as a final decision of the Board on this \_\_\_\_\_ day of December 2021.

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

\_\_\_\_\_  
Matt Jones, Chair

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Marta Loachamin, Vice Chair

\_\_\_\_\_  
Claire Levy, Commissioner

ATTEST:

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Clerk to the Board