

**TOWN OF OPHIR
ORDINANCE 2007-2**

**AN ORDINANCE APPROVING THE BASHAM SPECIAL USE PERMIT FOR
CONSTRUCTION OF AN ADDITION TO AN EXISTING RESIDENCE AND
RELATED IMPROVEMENTS LOCATED IN THE AVALANCHE HAZARD
ZONE DISTRICT WITHIN PORTIONS OF
LOTS 1 THROUGH 6, BLOCK 24, TOWN OF OPHIR**

WHEREAS, Matthew and Wendy Basham (Applicant) submitted an application for approval of a special use permit (SUP) to authorize construction of an addition to their existing residence (the "Addition") located within Lots 1 through 6, Block 24 (the "Property"), together with a propane tank relocation, septic tank relocation, windmill relocation, garage and construction of two off-street parking spaces as outlined in the Basham Addition Site Plan Details as submitted by the Applicant; and

WHEREAS, the Basham residence was built in 1949 prior to annexation into the Town of Ophir. The residence is located within the Avalanche Hazard Zone District and in an area designated as High Avalanche Hazard, and is therefore a non-conforming building subject to Ophir Land Use Code (LUC) section 307.2, which provides that:

§307.2 Expansion. Nonconforming uses or buildings shall not be allowed to increase the nonconforming use or expand the nonconforming building without approval by the General Assembly through the Variance or SUP process; and

WHEREAS, Ophir LUC section 803 states:

§803. USES PERMITTED BY REVIEW. Any construction and development activity in the Avalanche Hazard Zone must be approved by the Special Use Permit process and must meet the following criteria in addition to the general criteria of Special Use Permit review:

§803.1 The Applicant and property owner must indemnify the Town of Ophir from any liability associated with granting a SUP for construction or development in the Avalanche Hazard Zone with a signed agreement approved by the Town Attorney;

§803.2 The Applicant and property owner must submit a written report analyzing the potential avalanche hazards and the potential physical forces created thereby upon the proposed improvements or structure. The report must be prepared and signed by an avalanche expert recognized by the Building Inspector of the Town of Ophir. The report shall be recorded on the plat map for the property;

§803.3 Certification from an engineer licensed in the State of Colorado stating that the proposed improvement or structure is designed to withstand the potential avalanche force as determined by the site specific avalanche hazard report in **§803.2**; and

§803.4 No dwelling structures shall be permitted in areas designated High Avalanche Hazard; and

WHEREAS, the General Assembly conducted a public hearing on first reading of this Ordinance on March 20th after publishing and mailing notice in accordance with the Ophir Land Use Code, and imposed the following initial condition for approval:

Applicant shall submit a written report by a mutually acceptably recognized avalanche expert and addressed to the Town pursuant to Ophir Land Use Code § 803.2 not less than fifteen (15) days prior to the 2nd reading of Ordinance 2007-2; and

WHEREAS, the Applicant has timely submitted an “Avalanche Study and Preliminary Impact Analysis for Basham Residence, Lots 5, 5A, 6 and 6B, Block 24, 310 Carbonate Street, Ophir, Colorado” by Wilbur Engineering, Inc. (the “Avalanche Report”) and addressed to the Town of Ophir, and the author stated he is an avalanche expert and his work has been recognized by clients such as the Town of Rico; and

WHEREAS, the Addition and garage are described in the Avalanche Report, and the Addition and garage, in combination with the existing residence, will not exceed the maximum floor area restriction established in the Restrictive Covenant on Tract A, Ophir Millsite and Lots 1 Through 6, Block 24, as recorded at Reception No. 360923 in the records of the San Miguel County Clerk and Recorder; and

WHEREAS, the General Assembly finds that the application for Special Use Permit, subject to the conditions provided for herein, meets all the requirements as stated in §1206 and §803 of the Ophir Land Use Code, and particularly without limitation, finds that the SUP complies with the Town of Ophir Master Plan; the SUP is compatible with uses on adjacent properties; the SUP will not negatively affect the values of adjacent or nearby properties nor shall negatively affect the quality of life of adjacent or nearby properties; the SUP will not create additional impacts greater than uses allowed by right in the Residential zone district, including but not limited to the following impacts: parking, visual, odors, vibrations, noise, increased traffic, increased congestion, adverse impacts to wildlife, the natural environment and wetland areas, adverse impacts to existing and potential scenic view corridors of adjacent properties, and adverse impacts to the rural and alpine wilderness character of the Town of Ophir; the SUP application is complete and the information is legible and understandable; and the Applicant has agreed to pay for all costs associated with review of their SUP application; and

WHEREAS, the General Assembly furthermore finds and declares that the circumstances applicable to Applicant’s property and the Application are unique and site specific. These circumstances include the existence of a non-conforming residential structure within the High Avalanche Hazard Zone District, the present occupancy of that structure, the probability that construction of the Addition and garage in accordance with the requirements of the SUP will not substantially increase the existing risk to present and future owners and occupants of the existing residence. Accordingly, the SUP for the

Basham residence Addition and garage will not constitute a precedent for construction of new residential dwellings elsewhere in the Avalanche Hazard Zone District, as it presently exists or may hereafter be amended.

NOW, THEREFORE BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR, COLORADO:

SECTION 1. SPECIAL USE PERMIT APPROVED.

The Special Use Permit application submitted by Matthew and Wendy Basham is hereby approved such that the construction of an addition to the existing residential structure shall be permitted subject to the following conditions:

1. Prior to issuance of a building permit, applicant shall submit a certification from a licensed engineer pursuant to Ophir Land Use Code § 803.3 with respect to the entirety of the residential structure, and stating that the addition has been structurally designed in accordance with the preliminary design avalanche parameters set forth in the Avalanche Report, including design to withstand specified loads caused by avalanche impacts to the existing residential structure, and shall provide the Town of Ophir with a copy of the Avalanche Report as recorded in the records of the San Miguel County Clerk and Recorder's office.
2. The existing residential structure shall retain its status as a non-conforming building unless and until it has been redesigned and re-constructed pursuant to the SUP process in compliance with the provisions of LUC section 803.
3. The Applicant shall execute and deliver to the Town of Ophir an Indemnification Agreement in a form acceptable to the Town Attorney and Town Administrator, prior to issuance of a building permit.
4. The SUP shall be transferable to successors and assigns of the Applicant, provided, however, that the recorded Avalanche Report and the Indemnification Agreement, shall be expressly referenced on any deed conveying any portion of the Applicant's Property.

SECTION 2. EXPIRATION; VESTED RIGHTS. The Special Use Permit shall constitute a vested real property development right for three years from May 15th, 2007, to May 15th, 2010. The SUP and the right to commence construction of the residential Addition shall terminate after the expiration of the vested right period, unless construction of the Addition has already been commenced following issuance of a building permit.

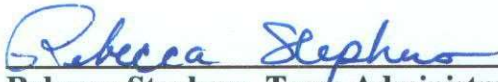
SECTION 3. PUBLICATION. This Ordinance shall be effective immediately upon final adoption. After final adoption, a public notice shall be published which notice shall contain the number and title of this ordinance, a brief description of the ordinance, its effective date and a notice that copies of the ordinance are available for inspection at the

Ordinance 2007-2


Town Clerk's office.

INTRODUCED, READ, APPROVED AND ADOPTED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR on the 20th day of March, 2007.

READ AND APPROVED AND ADOPTED AS AMENDED ON SECOND AND FINAL READING BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR on the 15th day of May, 2007.



Rebecca Stephens, Town Administrator

Attest: 

Randy Barnes, Town Clerk
[Town Seal]

Approved as to Form:

Stephen B. Johnson, Town Attorney