



2024 Union Pacific Railroad Property Conditional Use Permit Reviews: Cozzens Construction, Minturn Builders Alliance, Burke Harrington Construction, and Burke Harrington Construction and Darin Tucholke

Overview of Zoning, the CUP Process, and Enforcement Issues

Zoning: Game Creek Character Area PUD Holding Zone

Staff: Madison Harris, Planner I

Staff Report

I. Overview:

The following sections outline the Conditional Use Permit review process, the requirements and necessary findings of the Minturn Municipal Code, and a summary of enforcement chronology and issues associated with historic storage and parking uses on leased Union Pacific Railroad (UP) property located on the north side of the Town.

This overview is provided for the Council’s benefit and use in reviewing four separate CUPs for parking and contractor storage uses occurring on the UP property. Importantly, the standards and findings listed below are germane to each of the four CUP reviews before the Council at the October 16, 2024 regular meeting.

II. Background:

In 2017, the Minturn Town Council listed compliance and enforcement of the Minturn Municipal Code, as well as adherence to recommendations of the 2009 Community Plan, as a priority for the entire town. In doing so, the Council also focused on uses and, in certain instances, ongoing code enforcement and nuisance-related issues occurring at the UP properties located within the “Game Creek Character Area PUD Holding Zone District” which is generally situated north of the Eagle River Inn and Saloon buildings, west of Taylor Avenue, and east of the Eagle River.

In order to address such issues and concerns, the Town initiated outreach to existing leaseholders on UP property in 2017 with several existing lease holders operating contractor storage, as well as commercial uses (Turn Table Restaurant and lodging uses) on UP property with the goal to allow

those uses to continue, but only via the approval of Conditional Use Permits (CUPs) as a means to regulate those uses more closely through the imposition and enforcement of “conditions” or standards for storage (fencing, screening, parking, hours of operation, for instance).

According to the Minturn Municipal Code, any uses occurring on the UP properties – located within the “Game Creek Character Area PUD Holding Zone District” - require the approval of a Planned Unit Development (PUD), or, if master planning the UP property is not proposed, a Conditional Use Permit. Unfortunately, UP has been largely uninvolved in the CUP process; typically, UP executes leases for various lease areas within the railroad property without communication with the Town, leaving the Town to discover 1) new leases and uses occurring in the railyard through code enforcement activity, and 2) changes in lessors (subleasing) making it difficult for the Town to determine who to contact as a matter of code compliance.

After an extensive public process with hours of public comments submitted, Conditional Use Permits were ultimately issued in late 2018 for the following business entities operating with leases on the UP property:

- Burke Harrington Construction (BHC)
- Happy Hammer Carpentry (Cozzens Construction)
- The Turntable Restaurant / Minturn Mountain Motel
- Minturn Builders Alliance Cooperative (MBA)

Three CUPs (BHC, Cozzens Construction, and MBA) were approved with the following conditions or standards:

1. Request that only business- related items related to the expressed business be located on leased property. No vehicle shall exceed 40' 2" in length.
2. No recreational vehicles or ATV' s of any kind. Not limited to boats, snowmobiles, ATV' s. RV' s, campers, pop-ups, conversion vans, trailers, un-related work vehicles, etc.
3. No inoperable / unlicensed vehicles kept on property for longer than five (5) days. Sec. 7- 2-70.
4. Leased lots to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended. Sec. 7- 4- 50.
5. Lessees are to maintain business in contained areas only.
6. Annual report by the Code Compliance Officer to Council — re: Violations
 - a. 3 violations in 1 year
 - b. Recommendation to Council to revoke CUP
7. Lessees to meet with Town Council every 3 years for CUP review.
 - a. Report from Code Compliance Office
 - b. Report from Planning Director
8. Hours of operation: 7 days a week. 7:00 a.m. to 7:00 p.m.
9. Maintain noise and vibration standards. Sec. 16-18-30
10. All leased areas to be fenced and screened (Green covering) on all perimeter fencing of leased property
11. Supplies, parking, vehicles, and equipment within fenced area or designated leased area only

12. Proper fuel containment/inspected by Eagle River Fire Protection District for small volume (less than 100 gallons) in OSHA approved containers.
13. All parking must be done within the fenced yard and/or building
14. Any chemical storage will require material safety data sheets. No chemical storage within 30' river setback
15. Emergency access of 20' through the yard and at both access gates
16. Off-season use will require site storage of snow and keeping emergency access cleared.
 - a. Maintain proper snow storage or sufficient snow removal
17. Conditional use granted as long as the applicant complies with the conditions and has a valid lease agreement with the owner of the property.
18. Town staff inspects the site for compliance at any time.

One CUP (BHC/Darin Tucholke – Issued 2020) was approved with the following conditions or standards:

1. All material representations made by the Applicant as part of the application and during public hearings on the matter shall become conditions of approval and enforceable by the Town.
2. Only business-related items related to the expressed business activities approved with this CUP shall be located on leased property. No vehicle shall exceed 40' 2" in length. This restriction does not apply to storage containers that may be used for storage of materials and equipment associated with or incidental to the business operations approved under this CUP. Such container(s) must be maintained in an orderly manner; must be contained and screened to the greatest extent possible with fencing and green mesh screening materials; and, shall not be stacked.
3. No recreational vehicles or ATVs of any kind are permitted within lease areas. Such restriction includes but is not limited to boats, snowmobiles, ATVs, RV's, campers, pop-ups campers, conversion vans, as well as trailers, and/or vehicles unrelated to the permitted business activities.
4. No inoperable or unlicensed vehicles are to be kept on the property for longer than five (5) days (pursuant to Section 7-2-70 Minturn Municipal Code).
5. Leased lots associated with the CUP are to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended (pursuant to Section 7- 4- 50 Minturn Municipal Code).
6. CUP holders are to maintain and conduct business within the lease areas associated with the approved and valid CUP only.
7. Each CUP will be subject to annual review by the Town staff with regard to compliance with the terms of use and conditions of approval associated with the CUP. The Town staff shall provide a report to the Town Council following such annual review. The report shall, in a general manner, provide updates on the following:
 - a. Any violations or other incidences requiring staff response and Town resources out of the ordinary course of Town business and services.
 - b. Compliance with the overall terms of use permitted by the CUP as well as observations regarding the condition of the lease/CUP area.
 - c. Any changes in i) Lessee/Sub-Lessee; and, ii) uses within CUP area.
 - d. Any recommendation to Council to amend, suspend or revoke the CUP.

8. Lessees are required to meet with the Town Council every three (3) years for CUP review. The review shall include but not be limited to inspections by Town staff and the following reporting:
 - a. Report from Code Compliance Office
 - b. Report from Planning Director
9. Hours of operation: 6 days per week (M-Sat); 7:00 a.m. to 7:00 p.m., unless otherwise approved by the Town Council as part of the CUP approval and terms of use on a case by case basis.
10. All uses and occupancy associated with activities approved for each individual CUP shall adhere at all times with the noise and vibration standards of the Town (pursuant to Section 16-18-30, Minturn Municipal Code).
11. All leased areas associated with the CUP must be fenced and screened (green mesh screening materials) along the perimeter of leased property.
12. Supplies, parking, vehicles, and equipment associated with the approved CUP and business activities therein shall be located only within fenced and screened areas.
13. Proper fuel containment (to be inspected by Eagle River Fire Protection District for small volumes less than 100 gallons) shall be required in OSHA approved containers.
14. All parking must be located within the fenced yard and/or building(s) associated with the approved CUP.
15. Any chemical storage will require material safety data sheets be maintained on the lease site at all times. No chemical storage is permitted within the 30' live stream setback areas along the Eagle River and/or Game Creek.
16. Emergency access of 20' through the Union Pacific railyard and at both access gates shall be maintained.
17. Off-season use will require site storage of snow and keeping emergency access cleared.
 - a. Maintain proper snow storage or sufficient snow removal.
18. Conditional Use Permit is granted conditional upon the applicant complying with these standards and so long as the grantee maintains a valid lease agreement with the owner of the property.
19. Town staff may inspect the site for compliance at any time.

In 2021 the four CUPs mentioned (BHC, BHC/Darin Tucholke, Cozzens Construction, and MBA) went through the renewal process, and updated all of their conditions to be as follows:

1. No vehicle shall exceed 40'2" in length. This restriction does not apply to storage containers that may be used for storage of materials and equipment associated with or incidental to the business operations approved under this CUP. Such container(s) must be maintained in an orderly manner; must be contained and screened to the greatest extent possible with fencing and green mesh screening materials; and, shall not be stacked.
2. No storage of RV's, campers, pop-ups, conversion vans, trailers, or similar camping related vehicles is permitted. Storage of snowmobiles, ATV's, dirt bikes, and other personal recreational vehicles is permitted.
3. No inoperable or unlicensed vehicles are to be kept on the property for longer than five (5) days. (Pursuant to Section 7-2-70 Minturn Municipal Code).
4. Leased lots associated with the CUP are to be maintained in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended. (Pursuant to Section 7-4-50 Minturn Municipal Code).

5. CUP holders are to maintain and conduct business within the lease areas associated with the approved and valid CUP only.
6. Violations. The following schedule of fines for violations not remedied within 30 days:
 - a. The first violation will be fined \$100.
 - b. The second violation will be fined \$250.
 - c. The third and subsequent violations will be fined \$500.
7. Each CUP will be subject to annual review by the Town staff with regard to compliance with the terms of use and conditions of approval associated with the CUP. The Town staff shall provide a report to the Town Council following such annual review. The report shall, in a general manner, provide updates on the following:
 - a. Any violations or other incidences requiring staff response and Town resources out of the ordinary course of Town business and services. A violation will only be counted if the infraction has not been corrected within 30 days of notice being sent to the CUP holder.
 - b. Compliance with the overall terms of use permitted by the CUP as well as observations regarding the condition of the lease/CUP area.
 - c. Any changes in i) Lessee/Sub-Lessee; and, ii) uses within CUP area.
 - d. At staff's discretion, a recommendation may be made to Council to revoke the CUP having accumulated three violations in a calendar year (Jan 1 to Dec 31).
8. Lessees are required to meet with the Town Council every three (3) years for CUP review. The review shall include but not be limited to inspections by Town staff and the following reporting:
 - a. Report from Code Compliance Office
 - b. Report from Planning Department
9. Hours of operation: 7 days a week. 7:00 a.m. to 7:00 p.m.
10. Uses must be in compliance with the applicable laws, including Minturn Municipal Code, state and federal law. A violation of any law within the permitted premises shall be considered a violation of the CUP.
11. All uses and occupancy associated with activities approved for each individual CUP shall adhere at all times with the noise and vibration standards of the Town (pursuant to Section 16-18-30, Minturn Municipal Code).
12. All leased areas associated with the CUP must be fenced and screened (green mesh screening materials) along the perimeter of leased property.
13. Supplies, parking, vehicles, truck containers, and equipment within fenced area or designated leased area only.
14. Proper fuel containment / inspected by Eagle River Fire Protection District for small volume (less than 100 gallons) in OSHA approved containers.
15. All overnight parking must be done within the fenced yard and/or building(s) associated with the approved CUP.
16. Any chemical storage will require material safety data sheets. No chemical storage within 30' live stream setback areas along the Eagle River and/or Game Creek.
17. Emergency access of 20' through the Union Pacific railyard and at both access gates shall be maintained.
18. Off-season use will require site storage of snow and keeping emergency access cleared.
 - a. Maintain proper snow storage or sufficient snow removal
19. Conditional use granted as long as the applicant complies with the conditions and has a valid lease agreement with the owner of the property.

20. Town staff inspects the site for compliance at any time.

III. Staff Findings and Analysis:

The following section provides staff responses to each of the applicable Conditional Use criteria.

a. *The relationship and impact of the use on the community development objectives of the Town.*

Staff Response:

Under Chapter 1: Smart Land Use & Practical Zoning of the 2023 Imagine Minturn Community Plan (the Town's comprehensive plan), the Recommended Town Zoning Detail Map on pg. 24 calls out this area as Mixed-Use 1 which is recommended as – *"The intent for this area is to contain a mix of residential and commercial uses, in a pedestrian-oriented environment in keeping with Minturn's historic character"*

Under Chapter 3: An Economically Vibrant Community of the 2023 Plan, it states, in part, that *"In Minturn, construction and related trades make up almost 40% of jobs in the town compared to 10% in Eagle County...Construction and trades again represent a large proportion of businesses, ranging from general contracting and construction businesses to heavy construction, as well as high-end custom woodworking, cabinetry, and flooring"*

In 2018, the intent of the Town – working *with* existing lease holders to identify and propose solutions to existing conditions and issues – was to conduct the CUP process so that existing uses could continue as a means to protect existing business operations in the Town while also allowing the Town to regulate such uses and enforce Town Code provisions for safety, nuisances, and general aesthetics. Ultimately, the goals of this process were to:

- Maintain the diversity and mix of businesses
- Contribute to the year-round economy
- Protect the health, safety, welfare, and the aesthetics of the town.

Testimony and participation at public hearings before approval of the CUPs led to the development of the contractor storage standards and terms of use that were attached to the CUPs as conditions of approval.

In accordance with the terms of CUP approvals for the contractor storage uses on UP property, the Town is conducting reviews of each existing CUP.

b. *The effect of the use on distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and public facility needs.*

Staff Response:

The current operations on UP property, inclusive of parking and requested storage uses within the lease boundaries, have minimal material impact or effect on the distribution of population, transportation, utilities, schools, parks and recreational facilities and other public facilities and/or needs.

- c. *The effect upon traffic, with particular reference to congestion, automotive and pedestrian safety, traffic flow and control, access, maneuverability and snow removal.*

Staff Response:

Use of the leased areas for contractor storage associated with an existing business in close proximity to an existing storage site does not result in a material increase in local traffic, congestion, pedestrian safety, traffic flow and control, access, maneuverability and snow removal in the immediate vicinity of the subject property.

- d. *The effect upon the character of the area in which the proposed use is to be located, including the scale and bulk of the proposed use in relation to surrounding uses, the amount of noise, lighting and glare, dust and compatibility of the use with the Character Area it is in and surrounding areas.*

Staff Response:

Until the late 1990's the character of the area in question had been a working railyard. This railyard was established prior to the town becoming incorporated in 1904 and prior to a majority of the homes being built along Taylor Avenue.

Staff believes that the main factor impacting the character of the surrounding area or, importantly, the compatibility of the use within the Game Creek Character Area is the visual or aesthetic quality of the lease area. Fencing/screening has been erected around the leased areas boundaries.

- e. *Necessary findings. The Planning Commission and Town Council shall make the following findings before making a recommendation or decision that a conditional use permit be granted:*

1. *That the proposed location of the use is in accordance with the purposes of this Chapter, the Community Plan and the purposes of the zone in which the site is located.*

Staff Response:

Generally, the subject site is located within a historically industrial and commercial area. Yet, Chapter 16 - Zoning of the Minturn Municipal Code describes the character area characteristics for the Game Creek Character PUD Holding Zone as anticipating the discontinuance of industrial uses in favor of commercial and residential re-development:

“The Game Creek Character Area is visually prominent from the north entryway into the Town. The area is predominantly devoted to railroad use and will require a comprehensive planning effort prior to redevelopment. In addition to the rail yard, the area contains the Taylor Avenue neighborhood, some commercial uses and a community parking lot. The area is bisected by the railroad right-of-way, which is intended to remain as a continuous transportation corridor. Most of the area lacks adequate street rights-of-way and utilities. The Community Plan has identified this area as an appropriate area for extension of the Old Town commercial core, mixed-use and residential development; however, high impact

industrial uses are discouraged. Enhancement of the Eagle River corridor is a community priority.”

- Town of Minturn Municipal Code Section 16-12-10

It should be noted that the Community Plan does provide goals geared toward supporting existing businesses, and the uses proposed for these CUPs primarily include storage within leased areas. As such, staff suggests that the use does not constitute “high impact industrial uses.”

2. *That the proposed location of the use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

Staff Response:

Generally, the location and uses, if properly conditioned, should not be detrimental to the public health, safety or welfare, nor should they be materially injurious to the properties or improvements in the vicinity if the site is maintained in accordance with the standards of the Minturn Municipal Code and any conditions of approval.

3. *That the proposed use will comply with each of the applicable provisions of this Chapter.*

Staff Response:

If appropriate conditions of approval are attached with any granting of a CUP in this instance, and if such conditions are enforceable (jointly) by the Town and the Applicant, staff believes that this finding can be met.

IV. Items of Note:

Enforcement

During 2023, staff conducted inspections and discovered that all four referenced CUPs in this staff report had unlicensed vehicles on the property and one had a camper. Per their approved CUPs, each CUP holder was given 30 days to correct the issue, otherwise a formal violation notice would be sent. All corrected the issue and so no violations were issued.

Green screening continues to be a struggle, most likely due to the harsh weather conditions i.e. snow, rain, and the occasional gale force winds. Staff notifies the CUP holders when it is noticed that the screening is pulled down or torn up, and they have been responsive to correct the issue within the 30 days given before a formal violation is issued.

CUP Condition 1

This item is specific to the Burke Harrington Construction and Darin Tucholke CUP.

Condition 1 states “No vehicle shall exceed 40’2” in length. This restriction does not apply to storage containers that may be used for storage of materials and equipment associated with or incidental to the business operations approved under this CUP. Such container(s) must be

maintained in an orderly manner; must be contained and screened to the greatest extent possible with fencing and green mesh screening materials; and, shall not be stacked.”

Pictured below is a structure of sorts that has been constructed by using the storage containers on either side as support. The structure is about 18” taller than the containers, and so staff does not believe this violates the intent of Condition 1 which limits height within the storage yards by not allowing containers to be stacked and this does not come close to that height, however, staff would like Council’s input on whether this should continued to be allowed, or if Condition 1 should be modified to be specific on the height limitations within the storage areas.



V. Staff Recommendation:

Approval with conditions.