

Alta Planning Commission

Staff Report



To: Town of Alta Land Use Appeal Authority

From: John Guldner

Re: Alta Ski Area Variance Request to Install One Additional Remote Avalanche Control System Device on Slope Over 30% on Mount Baldy

Date: July 11, 2023

Attachments: Application letter; exploder, footing, and shelter plans; staff report and approval letter re: Alta Ski Area's 2022 RACS projects; BW Exploder testing summary report

Alta Ski Area (ASL) is requesting a variance to install one BW Gas Exploder Remote Avalanche Control System (RACS) device on their private land on Mount Baldy. This is in addition to the eight Wyssen Tower RACS approved for installation on their private land on Mount Baldy last year. Details on this BW Exploder RACS and its proposed location are attached in Alta's application material. A variance is necessary because the land use ordinance prohibits construction on slopes over 30% unless a variance is granted. By the very nature of avalanches and avalanche control, RACS must be installed on the steep slopes where avalanches originate. As one of the Planning Commission members noted, "RACS don't do much good if installed in the flats."

You, the Alta Town Council function as the Appeal Authority hearing and deciding on variances like this current request.

At their July 8th meeting, the Planning Commission has approved a Conditional Use Permit for this BW Exploder RACS in the location submitted in the application on Mount Baldy and recommended that you view the ASL slope variance request positively.

In 2022 the Forest Service (Forest) approved RACS on the north face of Mount Baldy on the Forest Service property immediately next to the eight RAC's approved by the town in 2022. The proposed additional exploder is on East Baldy. The Department of Justice's Division of Alcohol, Tobacco, Firearms and Explosives (ATFE) regulates different components of each different type of RACS device, and ASL's variance application explains how ATFE regulations apply to this project. Those approvals as well as the Wyssen Tower installation instruction requirements are attached. If all the RACS were on National Forest System lands, the town's land use ordinance would not apply to these projects. Town land use ordinances apply only to private lands.

The State of Utah Code has 5 conditions that must be satisfied for you to grant a variance, shown below in Utah Code Annotated 10-9a-702. (2).

10-9a-702. Variances.

(2) (a) The appeal authority may grant a variance only if:

- (i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;*
- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;*
- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;*
- (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and*
- (v) the spirit of the land use ordinance is observed and substantial justice done.*

Most municipal land use ordinances and other land use regulation programs, including ours, are simply not designed to address installations like these modern RACS. The ordinances are aimed at more traditional structures such as houses or commercial properties. Salt Lake County has gone through this same process, requiring conditional use permits and variances for installation of RACS on private property at Brighton and Solitude.

ASL is seeking a variance which is really beyond the normal scope of a variance. ASL isn't seeking relief from the ordinances so they can build something with more coverage or less setback than the ordinances allow, they are seeking relief from the ordinance provision that prohibits construction on slope over 30%. The RACS provide avalanche mitigation. The RACS will replace current avalanche control methods including military weapons or deployment of explosive hand charges by Alta Ski Patrol personnel.

The Department of Defense has set 2025 as the year military weapons must be discontinued for avalanche control so some alternative must be set into place. Access to Mount Baldy by personnel using hand charges for avalanche control is difficult and hazardous. A tram to the top of Mount Baldy has been proposed as a means for ski patrol personnel to access the area to deploy hand charges. The RACS, if successful, would eliminate the requirement for that access tram.

The following briefly addresses the state code's 5 conditions necessary to approve a variance:

- (i)** Literal enforcement of the ordinance would cause an unreasonable hardship on the applicant, by interfering with actions necessary to provide public safety avalanche control operations necessary to run a ski area. This request really has no effect on the land use ordinances that were developed at a time years ago when such things as these RACS were not in existence.
- (ii)** There are vast areas of FR-50, Mount Baldy's zone, within the town. The special circumstances in this area are the steep, cliff-strewn avalanche producing areas. There are other relatively flatter, buildable areas within the FR-50 zone that do not exhibit the characteristics of Mount Baldy. Other FR-50 areas with the same characteristics as Mount Baldy would qualify for the same consideration for a variance for RACS as this current application.
- (iii)** There really are no other properties in this same zone with these same circumstances that wouldn't qualify for the same consideration. Granting this variance is not only essential to

the enjoyment of a substantial property right possessed by Alta, running a ski area, but it is necessary to provide avalanche control and mitigation for the safety of everyone in the area.

(iv) Granting this variance will have no impact on the general plan and will not be contrary to the public interest. Granting this variance will have a positive impact on the activities mentioned in the general plan will have a positive effect on the public interest by enhancing public safety. Granting this variance preserves the spirit of the land use ordinance and substantial justice will be done by granting this variance, in fact, it is too bad that such modern, state of the art RACS do not have a public safety exemption under the terms of the ordinance, but again, since they were never predicted 50 years ago, there is no such exemption.

(v) The spirit of the land use ordinances will be observed, and substantial justice done by the granting of this variance request since the RACS will protect and preserve the existing uses allowed by the land use ordinance.

Staff Recommendation:

This request satisfies the conditions of the Utah State Code required to approve a variance. Staff recommends the variance request for the single BW Exploder Remote Avalanche Control System on Mount Baldy in the location shown on the application be approved as submitted.