

ORDINANCE NO. 16

Series 2021

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
FATHER DYER UNITED METHODIST CHURCH, A COLORADO NONPROFIT
CORPORATION
(310 Wellington Road)

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
COLORADO:

Section 1. Findings. The Town Council of the Town of Breckenridge finds and determines as follows:

A. The Father Dyer United Methodist Church, a Colorado nonprofit corporation ("**Church**"), owns the following described real property in the Town of Breckenridge, Summit County, Colorado:

Lots 1, Block 1, Weisshorn Subdivision No. 1, also known as 310 Wellington Road,
Breckenridge, Colorado 80424

("Property").

B. The Church proposes an addition of approximately 2,497 square feet to the non-historic portion of the existing building on the Property for the purposes of expanding social services to meet the growing needs of the community and to bring the Property into better compliance with the policies set forth in the Town's Handbook of Design Standards for the Historic and Conservation Districts. Such work is referred to in this ordinance as the "**Project**."

C. A development agreement is necessary in order to authorize the Project.

D. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council has the authority to enter into a development agreement.

E. A proposed development agreement between the Town and the Church has been prepared, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference ("**Development Agreement**").

F. The Town Council has received a completed application and all required submittals for a development agreement; had a preliminary discussion of such application and submittals; and determined that it should commence proceedings for the approval of the Development Agreement.

G. The Town Council has reviewed the proposed Development Agreement.

H. The commitments proposed by the Church in connection with the Development Agreement are found and determined by the Town Council to be adequate.

I. The approval of the proposed Development Agreement is warranted in light of all relevant circumstances.

J. The procedures to be used to review and approve a development agreement are provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such Chapter have substantially been met or waived in connection with the approval of the proposed Development Agreement and the adoption of this ordinance.

Section 2. Approval of Development Agreement. The Development Agreement between the Town and Father Dyer United Methodist Church, a Colorado nonprofit corporation (Exhibit "A" hereto), is approved, and the Town Manager is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 3. Notice of Approval. The Development Agreement shall contain a notice in the form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code shall be published by the Town Clerk one time in a newspaper of general circulation in the Town within fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of Section 24-68-103, C.R.S.

Section 4. Police Power Finding. The Town Council finds, determines, and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 5. Authority. The Town Council finds, determines, and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 6. Effective Date. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 25th day of May, 2021.

This ordinance was published in full on the Town of Breckenridge website on May 27, May 28, May 29, May 30 and May 31, 2021.

A public hearing on this ordinance was held on June 8, 2021.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 8th day of June, 2021. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

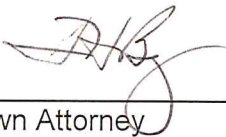


Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney

6/8/21

Date

This Ordinance was published on the Town of Breckenridge website on June 10, June 11, June 12, June 13 and June 14, 2021. This ordinance shall become effective on July 14, 2021.

1
2 APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED
3 PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED
4 STATUTES, AS AMENDED
5

6
7 DEVELOPMENT AGREEMENT
8

9 This Development Agreement (“**Agreement**”) is made as of the ^{6th} day of
10 August, 2021 (“**Effective Date**”) between the TOWN OF BRECKENRIDGE, a
11 Colorado municipal corporation (the “**Town**”) and FATHER DYER UNITED METHODIST
12 CHURCH, a Colorado nonprofit corporation (the “**Church**”). The Town and the Church are
13 sometimes collectively referred to in this Agreement as the “**Parties**,” and individually by name
14 or as a “**Party**.”
15

16 Recitals
17

18 A. The Church owns the following described real property in the Town of Breckenridge,
19 Summit County, Colorado:
20

21 Lots 1, Block 1, Weisshorn Subdivision No. 1, also known as 310 Wellington
22 Road, Breckenridge, Colorado 80424
23

24 (“**Property**”).
25

26 B. The Church proposes an addition of approximately 2,497 square feet to the non-
27 historic portion of the existing building on the Property for the purposes of expanding social
28 services to meet the growing needs of the community and to bring the Property into better
29 compliance with the policies set forth in the Town’s Handbook of Design Standards for the
30 Historic and Conservation Districts. Such work is referred to in this Agreement as the “**Project**.”
31

32 C. A development agreement is necessary in order to authorize the Project.
33

34 D. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council has
35 the authority to enter into a development agreement.
36

37 E. The commitments proposed by the Church in connection with this Agreement are set
38 forth hereafter, and are found and determined by the Town Council to be adequate.
39

40 F. The Town Council has received a completed application and all required submittals
41 for a development agreement; had a preliminary discussion of such application and submittals;
determined that it should commence proceedings for the approval of this Agreement; and, in

1 accordance with the procedures set forth in Section 9-9-10(C) of the Breckenridge Town Code,
2 has approved this Agreement by non-emergency ordinance.

3
4 Agreement

5
6 1. Subject to the provisions of this Agreement, the Town's Planning Commission¹ is
7 hereby authorized to review and approve the Church's Development Permit Application for the
8 Project ("**Development Permit Application**"), subject to compliance with all other applicable
9 development policies of the Town.

10
11 2. In accordance with Subsection (F) of Section 9-1-19-3A, "Policy 3 (Absolute)
12 Density/Intensity" of the Breckenridge Town Code no density shall be required to be transferred
13 to the Property in connection with the Project because a density transfer is not required for
14 density associated with a community facility or institutional use such as the Church. Further, it is
15 agreed that no mass shall be required to be transferred to the Property in connection with the
16 Project for the same reason. For avoidance of doubt, no negative points shall be assessed against
17 the Development Permit Application under either Section 9-1-19-3R, "Policy 3 (Relative)
18 Density/Intensity" or Section 9-1-19-4R, "Policy 4 (Relative) Mass," of the Breckenridge Town
19 Code. **Subsequent to this Agreement, the Property may not be converted to a use that is not**
20 **a community facility or institutional use unless 2.5 single family equivalents of density and**
21 **mass are transferred to the Property, such amount of density and mass being the amount of**
22 **density and mass that would have been required to construct the Project if the Property**
23 **was not a community facility or institutional use.**

24
25 3. So long as the Development Permit Application is not materially amended prior to the
26 Planning Commission's final decision, the following provisions of the Town's land use
27 regulations shall not be applied to the Development Permit Application:

28
29 Development Code²

- 30
31 A. Section 9-1-19-24A, "Policy 24 (Absolute) The Social Community"
32 B. Section 9-1-19-24R, "Policy 24 (Relative) The Social Community"

33
34 Handbook of Design Standards³

- 35
36 A. Priority Policy 37.5
37 B. Priority Policy 80
38 C. Priority Policy 88

¹ The term "Planning Commission" as used in this Agreement includes the Town Council of the Town of Breckenridge, if the decision of the Planning Commission on the Development Permit Application is "called up" by the Town Council pursuant to Section 9-1-18-5 of the Development Code. In the event of a call up, the Town Council shall make the final decision on the Development Permit Application.

² Chapter 1 of Title 9 of the Breckenridge Town Code

³ Chapter 5 of Title 9 of the Breckenridge Town Code

1 D. Priority Policy 144

2
3 Off-Street Parking Ordinance⁴

4
5 A. Section 9-3-9(D)(3) (Frequency of Driveways)

6 B. Section 9-3-9(D)(6) (Backing Onto Public Street)

7
8 4. Except as specifically provided in Section 3 all other requirements of the Town's Off
9 Street Parking Ordinance, Handbook of Design Standards, and the Development Code shall be
10 applied to the Development Permit Application in accordance with the Planning Commission's
11 normal process for evaluating an application for a development permit.

12
13 5. As the commitments encouraged to be made in connection with a Development
14 Permit Application for a development agreement pursuant to Section 9-9-4 of the Breckenridge
15 Town Code, the Church shall do the following: (i) agree to have the Town designate the Church
16 as a historic landmark under the Town's Historic Preservation Ordinance⁵; (ii) dedicate to the
17 Town, in a form and substance acceptable to the Town Attorney, a new drainage easement six
18 (6) feet in width running along the westerly property line of the Property; (iii) execute a
19 restrictive covenant, in a form acceptable to the Town Attorney, committing that for so long as
20 the Church owns the Property the Church will make available for social service use
21 approximately 2,500 feet of space in the Church; and (iv) grant to the Town a right of first offer
22 to purchase the Property in the event the use of the Property as a church is ever discontinued.
23 The Right of First Offer shall be set forth in a separate agreement that is in a form acceptable to
24 the Town Attorney and the Church, and shall be recorded prior to the issuance of a building
25 permit for the improvements to be constructed to the Property

26
27 6. The term of this Agreement shall commence on the Effective Date and shall end,
28 subject to earlier termination in the event of a breach of this Agreement, five (5) years from the
29 Effective Date unless prior to such date the Development Permit Application has finally been
30 approved by the Town, and the development permit for the work on the Property has been
31 executed and signed by the Church.

32
33 7. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided
34 for herein, the execution of this Agreement shall not preclude the current or future Development
35 Permit Application of municipal, state, or federal ordinances, laws, rules, or regulations to the
36 Property (collectively, "laws"), including, but not limited to, building, fire, plumbing,
37 engineering, electrical, and mechanical codes, and the Town's Development Code, Subdivision
38 Standards⁶, and other land use laws, as the same may be in effect from time to time throughout

⁴ Chapter 3 of Title 9 of the Breckenridge Town Code

⁵ Chapter 11 of Title 9 of the Breckenridge Town Code

⁶ Chapter 2 of Title 9 of the Breckenridge Town Code

1 the term of this Agreement. Except to the extent the Town otherwise specifically agrees, any
2 development of the Property shall be done in compliance with the then-current laws of the Town.
3

4 8. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of
5 the Town to adopt or amend any Town law, including, but not limited to the Town's: (i)
6 Development Code, (ii) Comprehensive Plan, (iii) Land Use Guidelines, and (iv) Subdivision
7 Standards.
8

9 9. This Agreement shall run with the title to the Property and be binding upon the
10 Church and its successors and assigns.
11

12 10. Prior to any action against The Town for breach of this Agreement, the Church shall
13 give the Town a sixty (60) day written notice of any claim of a breach or default by the Town,
14 and the Town shall have the opportunity to cure such alleged default within such time period.
15

16 11. The Town shall not be responsible for, and the Church shall have any remedy against
17 the Town, if the Project is prevented or delayed for reasons beyond the control of the Town.
18

19 12. The Church not shall commence work on its Project until it obtains such other and
20 further Town permits and approvals as may be required from time to time by applicable Town
21 ordinances.
22

23 13. No official or employee of the Town shall be personally responsible for any actual or
24 alleged breach of this Agreement by the Town.
25

26 14. The Church agrees to indemnify and hold the Town, its officers, employees, insurers,
27 and self-insurance pool, harmless from and against all liability, claims, and demands, on account
28 of injury, loss, or damage, including without limitation claims arising from bodily injury,
29 personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind
30 whatsoever, which arise out of or are in any manner connected with this Agreement, if such
31 injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in
32 part by, the negligence or intentional act or omission of the Church; any subcontractor of the
33 Church, or any officer, employee, representative, or agent of the Church or of any subcontractor
34 of the Church, or which arise out of any worker's compensation claim of any employee of the
35 Church, or of any employee of any subcontractor of the Church; except to the extent such
36 liability, claim or demand arises through the negligence or intentional act or omission of the
37 Town, its officers, employees, or agents. The Church agrees to investigate, handle, respond to,
38 and provide defense for and defend against, any such liability, claims, or demands at the sole
39 expense of the Church. The Church also agrees to bear all other costs and expenses related
40 thereto, including court costs and attorney's fees.
41

1 15. If any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall
2 not affect or impair the validity, legality or enforceability of the remaining provisions of the
3 Agreement.
4

5 16. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24,
6 Colorado Revised Statutes, as amended.
7

8 17. No waiver of any provision of this Agreement shall be deemed or constitute a waiver
9 of any other provision, nor shall it be deemed to constitute a continuing waiver, unless expressly
10 provided for by a written amendment to this Agreement signed by the Parties; nor shall the
11 waiver of any default under this Agreement be deemed a waiver of any subsequent default or
12 defaults of the same type.
13

14 18. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit
15 County, Colorado.
16

17 19. Nothing contained in this Agreement shall constitute a waiver of the Town's
18 sovereign immunity under any applicable state or federal law.
19

20 20. Personal jurisdiction and venue for any civil action commenced by any Party to this
21 Agreement shall be deemed to be proper only if such action is commenced in District Court of
22 Summit County, Colorado. The Church expressly waives any right to bring such action in or to
23 remove such action to any other court, whether state or federal. **BOTH PARTIES WAIVE ANY
24 RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION TO ENFORCE, INTERPRET OR
25 CONSTRUE THIS AGREEMENT.**
26

27 21. Any notice required or permitted hereunder shall be in writing and shall be sufficient
28 if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:
29

30 If to the Town: Rick G. Holman, Town Manager
31 Town of Breckenridge
32 P.O. Box 168
33 Breckenridge, CO 80424
34

35 With a copy (which
36 shall not constitute
37 notice to the Town) to: Timothy H. Berry, Esq.
38 Town Attorney
39 P.O. Box 2
40 Leadville, CO 80461
41

42 If to the Church: Father Dyer United Methodist Church
43 Board of Trustees
44 P.O. Box 383

Notices mailed in accordance with the provisions of this Section 21 shall be deemed to have been given upon delivery. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process.

22. This Agreement shall be interpreted in accordance with the laws of the State of Colorado without regard to principles of conflicts of laws.

23. This Agreement constitutes the entire agreement and understanding between the Parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding relating to such subject matter.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation



By: *Rick G. Holman*
Rick G. Holman, Town Manager

ATTEST:

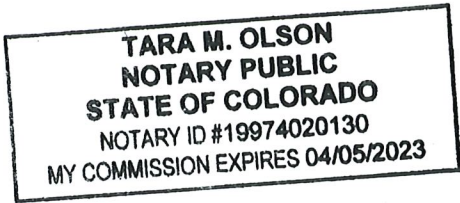
Helen Cospolich
Helen Cospolich, CMC, Town Clerk

1 STATE OF COLORADO)
2) ss.
3 COUNTY OF SUMMIT)
4

5 The foregoing was acknowledged before me this 6th day of August,
6 2021 by Rick G. Holman, as the Town Manager, and Helen Cospolich, CMC, as the Town Clerk,
7 of the Town of Breckenridge, a Colorado municipal corporation.
8

9 Witness my hand and official seal.

10 My commission expires: 4/5/2023



[Signature]
Notary Public

FATHER DYER UNITED METHODIST CHURCH, a Colorado nonprofit corporation

By: [Signature]

Name: MICHAEL W TABB

Title: FATHER DYER TRUSTEES CHAIR

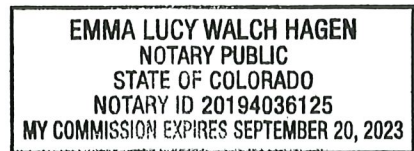
27 STATE OF COLORADO)
28) ss.
29 COUNTY OF SUMMIT)
30

31 The foregoing was acknowledged before me this 27th day of JULY,
32 2021, by MICHAEL W TABB, as TRUSTEES CHAIR of
33 Father Dyer United Methodist Church, a Colorado nonprofit corporation.
34

35 Witness my hand and official seal.

36 My commission expires: 9/20/2023

[Signature]



Notary Public