TOWN OF VAIL

Memorandum

TO: Vail Town Council

FROM: Community Development Department

DATE: November 7, 2017

SUBJECT: First reading of Ordinance No. 9, Series of 2017, an ordinance establishing Special Development District No. 42 (Vail Mountain View Residences), pursuant to Section 12-9(A), Special Development Districts, Vail Town Code, to allow for the development of a mixed use building consisting of 15 dwelling units with 20 attached accommodation units (lock-offs) and 15 employee housing units, located at 430 and 434 South Frontage Road/Lot 1, Vail Village Filing 5 and setting forth details in regard thereto. (PEC17-0006)

Applicant: Lunar Vail LLC, represented by Mauriello Planning Group
Planner: Jonathan Spence

FOREWORD

An error was made regarding the notification requirements of the Vail Town Code, specifically Section 12-3-6(C)(2), that requires notification of all individual owners for certain types of applications, including the establishment of Special Development Districts. The Vail Town Code does allow the notification of adjacent properties that are condominiums or are otherwise held under joint ownership to occur via notification of the managing agent, registered agent or any member of the board of directors but all onsite owners must be notified individually. Proper notice has now been mailed to all individual owners within the proposed Special Development District (Mountain View Residences Phase 1) in additional to the re-notification of all adjacent properties. Failure to meet the notification requirement effectively nullifies all previous meetings held in regard to this application. For this reason, staff encourages the Town Council to regard this application as a new application.

I. SUMMARY

The applicant, Lunar Vail LLC, represented by Mauriello Planning Group, is requesting a first reading of Ordinance No. 9, Series of 2017, an ordinance establishing Special Development District No. 42, pursuant to Section 12-9(A), Special Development Districts, Vail Town Code, to allow for the development of a mixed use building consisting of 15 dwelling units with 20 attached accommodation units (AAUs / lock-offs)

and 15 employee housing units, located at 430 and 434 South Frontage Road/Lot 1, Vail Village Filing 5.

On October 23, 2017 the Town of Vail Planning and Environmental Commission (PEC) held a public hearing on the request to establish SDD No. 42, pursuant to the requirement of Section 12-9(A), Vail Town Code. At the conclusion of the public hearing, the PEC voted 5-2 (Kurz and Stockmar opposed) to forward a recommendation of denial to the Vail Town Council.

Staff has received considerable correspondence from groups and individuals concerning this application. Some of this correspondence posed questions concerning process and other elements of the Vail Town Code. In these instances, responses were provided either by the Community Development Department or by the Town Attorney. All correspondence received to date, including responses from town staff, are included as Attachment G. The most recent correspondence received, a letter of support form the Vail Mountain View Residences on Gore Creek Owners' Association, Inc (Phase 1), is included at the beginning of the attachment and a summation of the correspondence received is included as a cover page.

II. DESCRIPTION OF REQUEST

The applicant, Lunar Vail LLC., represented by Mauriello Planning Group, is requesting a recommendation to the Vail Town Council to establish Special Development District No. 42, pursuant to Section 12-9(A), Special Development Districts, Vail Town Code, to allow for the development of a mixed use building consisting of 15 dwelling units with 20 attached accommodation units (lock-offs) and 15 employee housing units, located at 430 and 434 South Frontage Road/Lot 1, Vail Village Filing 5. The project is composed of the following components:

Employee Housing Units (EHUs)
The proposed fifteen (15) EHUs will be deed-restricted rental units, limited to residents working at least thirty (30) hours per week in Eagle County. The proposed EHUs range in size from approximately 439 square feet to 1,194 square feet and include eight (8) two-bedroom units, five (5) one-bedroom units and two (2) studios. The EHUs are located on the first and second floors above the parking garage in the proposed structure. The floor area of the fifteen (15) units totals 13,922 square feet. Type III EHUs, per the Vail Town Code, are excluded from the calculation of GRFA and are thus not deducted from a development's available GRFA. In addition, Type III EHUs excluded from the calculation of dwelling units for purposes of calculating allowable units per acre.

Dwelling Units
The applicant is proposing fifteen (15) for sale dwelling units to be located on the third, fourth and fifth (dormer) floors of the structure. The total proposed GRFA of the dwelling units inclusive of the Attached Accommodation Units is 32,687 square feet.

Attached Accommodation Units (Lock Offs)
The applicant is proposing twenty (20) Attached Accommodation Units or lock-offs attached to all fifteen (15) of the dwelling units. Attached Accommodation Units are a permitted use in the HDMF Zone District and defined by the Vail Town Code as:

ACCOMMODATION UNIT, ATTACHED: A room, without kitchen facilities, connected to a dwelling unit within a multiple-family building designed for or adapted to occupancy by guests which is accessible from a common corridor, walk, or balcony without passing through another accommodation unit, attached accommodation unit, or dwelling unit.

Five (5) of the dwelling units have two (2) Attached Accommodation Units. These units may be rented separately and have direct access from common areas without necessitating passing through a dwelling unit. These units range in size from 194 square feet to 461 square feet and are located on the third and fourth levels of the proposed structure. The total proposed GRFA for the Attached Accommodation Units is included in the GRFA calculations for the dwelling units. Attached accommodation units do not contribute to the calculation of density for the purposes of calculating allowable units per acre

Existing Parking
As part of Phase 1 of the Mountain View Residences, discussed in greater detail in the background section below, a 112 space parking structure was built in 2006 along the northern portion of the property. This three level structure, located predominately below grade, provides required parking for the 23 dwelling units located in the Mountain View Residences Phase 1 building and the required parking for the proposed Phase 2 building. No additional parking is proposed. The total number of parking spaces has been reduced from 112 to 111 due to an increase in mechanical equipment.

Proposed Deviations

Through the Special Development District process, the applicant is requesting deviations from the following required dimensional standards of the underlying High Density Multiple-Family (HDMF) District:

- Setbacks: The applicant proposes a fifteen foot (15’) side setback on the east side where twenty feet (20’) is required.

- Building Height: The applicant is proposing an overall maximum height of 70’ where the maximum for a structure with a sloped roof in the HDMF district is 48’.

- Density Control: The maximum density in DUs/Acre in the HDMF district is 25 units per acre which equates to an allowable density of 32 units on the subject parcel. The applicant is proposing 38 units or 29.3 DU/acre, 119% of the allowable.

- Density Control: Per the HDMF zone district, a maximum of one Attached Accommodation Unit is permitted per DU. As proposed, five (5) of the dwelling units include a second Attached Accommodation Unit.

- GRFA: The allowable GRFA in the HDMF district is 76/100 square feet of buildable site area or 42,871 square feet of GRFA for the 56,410 square foot parcel. Phase 1 of the development utilized 42,593 square feet of GRFA, leaving only 278 square feet remaining. The proposed Phase 2 includes an additional 32,687 square feet of GRFA for a total of 75,280 square feet of GRFA for the parcel or 176% of the allowable.

- Site Coverage: The applicant is proposing site coverage of 70.07% where the maximum allowable is 55%. Although the application makes a distinction between above and below grade site coverage, Ordinance No. 14, Series of 2004 amended the Vail Town Code's definition of site coverage to include both above and below ground improvements.

Attached for review are the following documents:

A. Vicinity Map
B. Draft Ordinance No. 9, Series of 2017 (SDD No. 42, Vail Mountain View Residences)
C. PEC Staff Memorandum, October 23, 2017, <u>without</u> attachments.
D. Project Narrative, September 14, 2017
E. Plan Set, September 14, 2017
F. Vail Village Master Plan (in part)
G. Correspondence received to date
H. Draft Minutes from the October 23, 2017 PEC public hearing

III. SPECIAL DEVELOPMENT DISTRICT PURPOSE AND PROCESS

<u>Purpose</u>

Per Section 12-9A-1, Vail Town Code, the purpose of a Special Development District (SDD) is (emphasis added):

> *"encourage flexibility and creativity in the development of land in order to promote its most appropriate use; to improve the design character and quality of the new development with the town; to facilitate the adequate and economical provision of streets and utilities, to preserve the natural and scenic features of open space areas; and to further the overall goals of the community as stated in the Vail comprehensive plan. <u>An approved development plan for a special development district, in conjunction with the property's underlying zone district, shall establish the requirements for guiding development and uses of property included in the special development district.</u>*

Process

Section 12-9A-4, Development Review Procedures, Vail Town Code, outlines the various steps and procedures for establishing a Special Development District. According to Section 12-9A-4, there are three primary steps in the establishment procedures:

1) Pre-application meeting with the Town staff
2) Planning and Environmental Commission review and recommendation
3) Town Council review

Development applications for the establishment of a Special Development District are first reviewed by the Planning & Environmental Commission (PEC) for impacts associated with the proposed uses on the development objectives of the Town and compatibility of any requested deviations from the prescribed development standards (i.e. GRFA, site coverage, building height, etc.) with the Town's adopted design criteria. The review and recommendation of the application by the PEC is based upon a set of prescribed criteria. According to the Section 12-9A-8: in part,

> *"design criteria shall be used as the principal criteria in evaluating the merits of the proposed special development district. It shall be the burden of the applicant to demonstrate that submittal material and the proposed development plan comply with each of the following standards, or demonstrate that one or more of them is not applicable, or that a practical solution consistent with the public interest has been achieved"*

Please see Section VII of the staff memorandum to the PEC, included as Attachment C. for a review of each of the nine (9) design criteria.

IV. ACTION REQUESTED OF THE VAIL TOWN COUNCIL

The Vail Town Council shall approve, approve with modifications, or deny Ordinance No. 9, Series of 2017, upon first reading, to establish Special Development District No. 42 (Vail Mountain View Residences).

V. BACKGROUND

The subject parcel, together with the adjacent Apollo Park parcel to the east, comprised Tract D of Vail Village Fifth Filing, approved by the Eagle County Planning Commission in November of 1965, prior to the incorporation of the Town of Vail in 1966. In the mid 1970s the Apollo Park development was constructed with 89 dwelling units in four buildings. An aerial view of this development can be found on page 5 of the applicant's narrative, included as Attachment B. In 2006, the Town of Vail Design Review Board (DRB) approved the replacement of buildings C and D of the Apollo Park development with a new structure, Mountain View Residences Phase 1, and the associated parking structure. Subsequent to this approval, Tract D was split through the Minor Subdivision

process into two parcels. This subdivision was recorded in 2008 with the Eagle County Clerk and Recorder. The eastern parcel contains the remaining Buildings A and B of the original Apollo Park Development, containing 40 dwelling units functioning predominately as a timeshare development, while the western parcel contains the Mountain View Residences Phase 1 structure, and the associated parking structure.

The underground parking constructed as part of Phase 1 not needed to meet its parking requirement (excess parking) has been made available by lease to the general public on a seasonal basis. The owners of the parking applied for and received administrative approval in 2010 for the ongoing leasing of the excess parking.

VI. PLANNING AND ENVIRONMENTAL COMMISSION SUMMARY

The Planning and Environmental Commission (PEC) held a public hearing on this application on October 23, 2017. At the October 23, 2017 public hearing, the PEC voted 5-2 (Kurz and Stockmar opposed) to forward a recommendation of denial to the Vail Town Council for the proposed SDD.

The recommendation of denial was made on the following motion:

> *"The Planning and Environmental Commission forwards the Vail Town Council a recommendation of denial for an application to establish Special Development District No. 42 (Vail Mountain View Residences), pursuant to Section 12-9(A), Special Development Districts, Vail Town Code, to allow for the development of a mixed use building consisting of 15 dwelling units with 20 attached accommodation units (lock-offs) and 15 employee housing units, located at 430 and 434 South Frontage Road/Lot 1, Vail Village Filing 5 and setting forth details in regard thereto."*

The Commissioners voting in favor of the recommendation for denial cited the following criteria:

1. **Compatibility: Design compatibility and sensitivity to the immediate environment, neighborhood and adjacent properties relative to architectural design, scale, bulk, building height, buffer zones, identity, character, visual integrity and orientation.**

   Members of the Commission found that the proposed structure was incompatible with the immediate environment and adjacent properties due to its height, bulk and lack of building stepdowns or upper story building setbacks, specifically as the building relates to the Tyrolean Condominium to the west and the existing Phase I structure.

2. **Relationship: Uses, activity and density which provide a compatible, efficient and workable relationship with surrounding uses and activity.**

Members of the Commission found that the density of the project, in terms of allowable GRFA and the resulting building mass, was inconsistent with the surrounding uses, specifically the Tyrolean Condominium property to the west and the existing Phase I structure.

4. **Comprehensive Plan: Conformity with applicable elements of the Vail comprehensive plan, town policies and urban design plans.**

   The Vail Village Master Plan speaks to the height of buildings within this sub-area as being limited so as not to impede view corridors from the Frontage Road and Interstate 70 to Vail Village and Vail Mountain. In addition, the Master Plan speaks to the mass of buildings stepping back from the Frontage Road to prevent sun/shade impacts on the road. Members of the Commission did not find that the project, as proposed, met this criterion.

6. **Design Features: Site plan, building design and location and open space provisions designed to produce a functional development responsive and sensitive to natural features, vegetation and overall aesthetic quality of the community.**

   Members of the Commission found that the building location and open space provisions did not produce a functional development responsive and sensitive to the aesthetic quality of the community because of the building's mass and scale in close proximity to the Frontage Road, the Tyrolean Condominium and the existing Phase I building.

In addition to the criteria listed above, Commissioners voting in favor of the recommendation for denial also cited the following (emphasis added):

12-9A-9: DEVELOPMENT STANDARDS:

Development standards including lot area, site dimensions, setbacks, height, density control, site coverage, landscaping and parking shall be determined by the town council as part of the approved development plan with consideration of the recommendations of the planning and environmental commission. ***Before the town council approves development standards that deviate from the underlying zone district, it should be determined that such deviation provides benefits to the town that outweigh the adverse effects of such deviation.*** *This determination is to be made based on evaluation of the proposed special development district's compliance with the design criteria outlined in section 12-9A-8 of this article.*

Commissioners voting for denial of this application found that the proposed public benefit, namely the 15 EHUs, did not outweigh the adverse effects of the proposed deviations, namely the increase in height form 48' to 70' and mass and scale of the structure resulting from the deviation to the GRFA standard.

VII. RECOMMENDED MOTIONS

The following two draft motions have been prepared as options for the Vail Town Council.

Motion No. 1: Planning and Environmental Commission recommendation of denial.

If the Town Council chooses to follow the Planning and Environmental Commission recommendation of denial, the following motion is recommended:

The Vail Town Council, on first reading, denies Ordinance No. 9, Series of 2017 to establish Special Development District No*. 42 (Vail Mountain View Residences), pursuant to Section 12-9(A), Special Development Districts, Vail Town Code.*

This denial is based on a finding that the following required criteria have not been met:

(Please see Section VII of the staff memorandum to the PEC, included as Attachment C. for the required criteria.)

Motion No. 2: Approval with Conditions

If the Town Council chooses to approve Ordinance No. 9, Series of 2017, on first reading, the following motion is recommended:

The Vail Town Council, on first reading, approves Ordinance No. 9, Series of 2017, to establish Special Development District No. 42 (Vail Mountain View Residences), pursuant to Section 12-9(A), Special Development Districts, Vail Town Code.

Should the Town Council choose to approve Ordinance No. 9, Series of 2017, on first reading, to establish Special Development District No. 42, Vail Mountain View Residences, the Community Development Department recommends the Council make the following **findings**:

> *"Based upon the review of the criteria outlined in Section VIII of the Staff memorandum to the Planning and Environmental Commission dated October 23, 2017, and the evidence and testimony presented, the Town Council finds:*
>
> 1. *The SDD complies with the standards listed in Section VIII of this memorandum, or the applicant has demonstrated that one or more of the standards is not applicable;*
>
> 2. *The SDD is consistent with the adopted goals, objectives and policies outlined in the Vail comprehensive plan and compatible with the development objectives of the town;*

3. *The SDD is compatible with and suitable to adjacent uses and appropriate for the surrounding areas; and*

4. *The SDD promotes the health, safety, morals, and general welfare of the town and promotes the coordinated and harmonious development of the town in a manner that conserves and enhances its natural environment and its established character as a resort and residential community of the highest quality.*

VIII. RECOMMENDED CONDITIONS:

Ordinance No. 9, Series of 2017 includes the following conditions of approval that have been crafted jointly by town staff and the applicant.

1. *Approval of an associated Design Review Board ("DRB") application.*

2. *Prior to submittal of the DRB application, the Applicant shall work with Town staff to increase the number and size of the new landscape plantings to meet the recommendations of the Vail Village Master Plan concerning planted buffers.*

3. *Prior to the issuance of the first certificate of occupancy for the project, the Applicant shall execute and record, in a form approved by the Town Attorney, a pedestrian easement on the east side of the applicant's property for the existing paved path and stairs from the South Frontage Road right-of-way to the Town's recreational path.*

4. *Prior to issuance of the first certificate of occupancy for the project, the Applicant shall design and construct a continuous 10'-wide separated concrete sidewalk along the South Frontage Road from Vail Valley Drive to the easternmost boundary of the Property. All necessary easements for the sidewalk west of the Property shall be acquired by the Town within 11 months of issuance of the first building permit for the project. The sidewalk shall be designed in general accordance plan sheet C1.01 dated September 14, 2017, and shall be submitted to the Town and approved by the Town prior to construction. The Applicant shall grant a pedestrian/roadway easement on the Property to the Town as shown on plan sheet C1.01 dated September 14, 2017. In such sidewalk, the Applicant shall install a snowmelt system, including the heat source and all necessary components, in compliance with Town standards,. The Applicant shall be responsible for the cost of maintenance and operation of the sidewalk and snowmelt system on or adjacent to the Property, and prior to issuance of the first certificate of occupancy for the project, the Applicant shall execute the Town's standard snowmelt maintenance agreement. The Town will be responsible for the maintenance and operation of the sidewalk and snowmelt system that is west of the Property, and prior to issuance of the first certificate of occupancy for the project, the Applicant shall*

execute the Town's standard snowmelt operations reimbursement agreement for that portion of the sidewalk and snowmelt system.

5. *Prior to issuance of the first building permit for the project, the Applicant shall pay the Traffic Mitigation Fees for the net new increase in development traffic, which has been calculated at 14 PM Peak Hour trips, after taking a multi-modal reduction and excluding the EHUs. The Traffic Mitigation Fees shall be $11,200 per net new PM Peak Hour trip, which results in a total fee of $156,800.*

6. *Prior to issuance of the first building permit for the project, the Applicant shall provide a construction staging plan and parking plan to demonstrate that the construction will not impact public parking or adjacent properties.*

7. *Within 90 days after the issuance of the first building permit for the project, the Applicant shall engage the Town's Art in Public Places Board on the determination of an acceptable public art installation. The minimum value of the public art installation shall be $50,000.*

8. *Prior to the issuance of the first building permit for the project, the Applicant shall pay the recreational amenities tax as required by Section 12-9A-11 of the Vail Town Code.*

9. *Prior to the issuance of the first certificate of occupancy for the project, the Applicant shall execute and record deed restrictions, in a form approved by the Town Attorney, for the EHUs.*

10. *Prior to obtaining any building permit application for the project, the Applicant shall obtain approval from the Colorado Department of Transportation ("CDOT") for all proposed work within the CDOT right-of way, and shall submit evidence of such approval to the Town.*

IX. ATTACHMENTS

A. Vicinity Map
B. Ordinance No. 9, Series of 2017 (SDD No. 42, Vail Mountain View Residences)
C. PEC Staff Memorandum, October 23, 2017, without attachments.
D. Project Narrative, September 14, 2017
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