



Memorandum

TO: Planning and Environmental Commission

FROM: Community Development Department

DATE: August 12, 2019

SUBJECT: A request for the review of a Conditional Use Permit, pursuant to Section 12-16, Conditional Use Permits, Vail Town Code, to allow for the construction of dwelling units within the Housing (H) zone district, located at 3700 North Frontage Road East/Lot 1, East Vail Workforce Housing Subdivision ("Booth Heights Neighborhood"), and setting forth details in regard thereto. (PEC19-0019)

Applicant: Triumph Development
Property Owner: Vail Corporation
Planner: Chris Neubecker

I. SUMMARY

Triumph Development has submitted an application for a Conditional Use Permit to allow for the construction of dwelling units within the Housing (H) zone district, located at 3700 North Frontage Road East/Lot 1, East Vail Workforce Housing Subdivision ("Booth Heights Neighborhood").

The Conditional Use Permit is required by the Vail Town Code, which allows up to 30% of the Gross Residential Floor Area (GRFA) of the proposed development to be constructed as dwelling units (not Employee Housing Units) in the Housing (H) zone district. The Development Plan proposes the construction of 73 residential units, including 42 units of rental deed-restricted employee housing (EHUs), 19 deed-restricted townhomes (EHUs), and 12 unrestricted townhomes. The 12 unrestricted townhomes require a Conditional Use Permit.

II. DESCRIPTION OF REQUEST

The applicant is requesting the review and approval of a Conditional Use Permit for the construction of 12 unrestricted townhomes as dwelling units, within the proposed Booth Heights Neighborhood, which is currently under review by the PEC. The Development Plan for the Booth Heights Neighborhood includes a combination of 42 units of deed-restricted employee housing units (EHUs), 19 deed-restricted townhomes (EHUs), and 12 unrestricted townhomes. The Housing (H) zone districts allows up to 30% of the GRFA of the development to be constructed as dwelling units (not employee housing units) to help finance the development of employee housing on the property.

III. BACKGROUND

Please see the staff memo for the Booth Heights Development Plan, PEC19-0018, for details on the proposed development plan, background/history and relevant comprehensive plan documents.

IV. APPLICABLE PLANNING DOCUMENTS

Title 12, Zoning Regulations, Vail Town Code (in part)

ARTICLE I – Housing District

12-6I-1: PURPOSE:

The housing district is intended to provide adequate sites for employee housing which, because of the nature and characteristics of employee housing, cannot be adequately regulated by the development standards prescribed for other residential zone districts. It is necessary in this zone district to provide development standards specifically prescribed for each development proposal or project to achieve the purposes prescribed in section 12-1-2 of this title and to provide for the public welfare. Certain nonresidential uses are allowed as conditional uses, which are intended to be incidental and secondary to the residential uses of the district. The housing district is intended to ensure that employee housing permitted in the zone district is appropriately located and designed to meet the needs of residents of Vail, to harmonize with surrounding uses, and to ensure adequate light, air, open spaces, and other amenities appropriate to the allowed types of uses. (Ord. 29(2005) § 23: Ord. 19(2001) § 2: Ord. 3(2001) § 2)

12-6I-2: PERMITTED USES: (in part)

The following uses shall be permitted in the H district:

Employee housing units, as further regulated by chapter 13 of this title.

12-6I-3: CONDITIONAL USES: (in part)

The following conditional uses shall be permitted in the H district, subject to issuance of a conditional use permit in accordance with the provisions of chapter 16 of this title:

Dwelling units (not employee housing units) subject to the following criteria to be evaluated by the planning and environmental commission:

A. Dwelling units are created solely for the purpose of subsidizing employee housing on the property, and

B. Dwelling units are not the primary use of the property. The GRFA for dwelling units shall not exceed thirty percent (30%) of the total GRFA constructed on the property, and

C. Dwelling units are only created in conjunction with employee housing, and

D. Dwelling units are compatible with the proposed uses and buildings on the site and are compatible with buildings and uses on adjacent properties.

CHAPTER 16 – CONDITIONAL USE PERMITS

12-16-1: PURPOSE; LIMITATIONS:

In order to provide the flexibility necessary to achieve the objectives of this title, specified uses are permitted in certain districts subject to the granting of a conditional use permit. Because of their unusual or special characteristics, conditional uses require review and evaluation so that they may be located properly with respect to the purposes of this title and with respect to their effects on surrounding properties. The review process prescribed in this chapter is intended to assure compatibility and harmonious development between conditional uses and surrounding properties and the town at large. Uses listed as conditional uses in the various districts may be permitted subject to such conditions and limitations as the town may prescribe to ensure that the location and operation of the conditional uses will be in accordance with development objectives of the town and will not be detrimental to other uses or properties. Where conditions cannot be devised to achieve these objectives, applications for conditional use permits shall be denied. (Ord. 8(1973) § 18.100)

12-16-5: PLANNING AND ENVIRONMENTAL COMMISSION ACTION:

A. Possible Range Of Action: Within thirty (30) days of the application for a public hearing on a conditional use permit, the planning and environmental commission shall act on the application. The commission may approve the application as submitted or may approve the application subject to such modifications or conditions as it deems necessary to accomplish the purposes of this title, or the commission may deny the application. A conditional use permit may be revocable, may be granted for a limited time period, or may be granted subject to such other conditions as the commission may prescribe. Conditions may include, but shall not be limited to, requiring special setbacks, open spaces, fences or walls, landscaping or screening, and street dedication and improvement; regulation of vehicular access and parking, signs, illumination, and hours and methods of operation; control of potential nuisances; prescription of standards for maintenance of buildings and grounds; and prescription of development schedules.

B. Variances: A conditional use permit shall not grant variances, but action on a variance may be considered concurrently with a conditional use permit application on the same site. Variances shall be granted in accordance with the procedure prescribed in chapter 17 of this title. (Ord. 29(2005) § 38: Ord. 16(1978) § 4(b): Ord. 8(1973) § 18.500)

12-16-6: CRITERIA; FINDINGS:

A. Factors Enumerated: Before acting on a conditional use permit application, the planning and environmental commission shall consider the following factors with respect to the proposed use:

- 1. Relationship and impact of the use on development objectives of the town.*

2. *Effect of the use on light and air, distribution of population, transportation facilities, utilities, schools, parks and recreation facilities, and other public facilities and public facilities needs.*
3. *Effect upon traffic, with particular reference to congestion, automotive and pedestrian safety and convenience, traffic flow and control, access, maneuverability, and removal of snow from the streets and parking areas.*
4. *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.*
5. *Such other factors and criteria as the commission deems applicable to the proposed use.*
6. *The environmental impact report concerning the proposed use, if an environmental impact report is required by chapter 12 of this title.*

B. Necessary Findings: The planning and environmental commission shall make the following findings before granting a conditional use permit:

1. *That the proposed location of the use is in accordance with the purposes of this title and the purposes of the zone district in which the site is located.*
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.*
3. *That the proposed use will comply with each of the applicable provisions of this title. (Ord. 29(2005) § 38: Ord. 10(1998) § 9: Ord. 22(1996) § 3: Ord. 36(1980) § 1: Ord. 8(1973) § 18.600)*

12-16-8: PERMIT APPROVAL AND EFFECT:

Approval of a conditional use permit, or an amendment to an existing conditional use permit, shall lapse and become void if a building permit is not obtained and construction not commenced and diligently pursued toward completion or the use for which the approval has been granted has not commenced within two (2) years from when the approval becomes final. Approval of a conditional use permit shall also lapse and become void if the use for which the approval has been granted is discontinued for a period of two (2) years, regardless of any intent to resume operation of the use. (Ord. 12(2008) § 26)

12-16-9: CONFLICTING PROVISIONS:

In addition to the conditions which may be prescribed pursuant to this chapter, a conditional use shall also be subject to all other procedures, permits, and requirements of this chapter and other applicable ordinances and regulations of the town. In the event of any conflict between the provisions of a conditional use permit and any other permit or requirement, the more restrictive provision shall prevail. (Ord. 10(1998) § 10: Ord. 8(1973) § 18.900)

V. ZONING ANALYSIS

Address:	3700 N. Frontage Road E.
Legal Description:	Lot 1, East Vail Workforce Housing Subdivision
Lot Area:	5.397 acres / (235,093 sq. ft.)
Zoning:	Housing (H) District
Land Use Designation:	Open Space

Development Standard	Required	Proposed
Total GRFA	Prescribed by PEC	Up to 76,200 sq. ft.
GRFA – Dwelling Units	Max. 22,800 sq. ft. or 30% of Total GRFA	22,599 sq. ft. or 29.8% of Total GRFA

Please see the staff memo for PEC19-0018 for full details on setbacks, height, site coverage, landscaping and parking.

VI. SURROUNDING LAND USES AND ZONING

	<u>Land Use</u>	<u>Zoning</u>
North:	USFS	None
South:	I-70	None
East:	Open Space	Natural Area Preservation
West:	Open Space	Natural Area Preservation

VII. REVIEW CRITERIA – CONDITIONAL USE

According to Section 12-6I-3, Conditional Uses, Vail Town Code, the following criteria shall be evaluated by the Planning and Environmental Commission for the construction of dwelling units within the Housing (H) zone district:

12-6I-3: CONDITIONAL USES:

The following conditional uses shall be permitted in the H district, subject to issuance of a conditional use permit in accordance with the provisions of chapter 16 of this title:

Dwelling units (not employee housing units) subject to the following criteria to be evaluated by the planning and environmental commission:

A. Dwelling units are created solely for the purpose of subsidizing employee housing on the property, and

The proposed dwelling units are proposed to subsidize the creation of employee housing units on the property. The applicant previously discussed with the Vail Town Council the creation of 100% employee housing units on the property through a subsidy from the Vail InDeed program. At the time, the Town Council was not willing to provide a subsidy to the project. As a result, the applicant has changed the development program and is now proposing 12 unrestricted dwelling units in the form of townhomes to help subsidize the creation of the employee housing units on the property.

The Community Development Department finds this criterion to be met.

B. Dwelling units are not the primary use of the property. The GRFA for dwelling units shall not exceed thirty percent (30%) of the total GRFA constructed on the property, and

The primary use of the property is for deed-restricted employee housing units (EHUs). The entire development contains 73 residential units, including 61 employee housing units. The GRFA of the entire development is 75,705 square feet, with a maximum of 76,200 square feet; the proposed GRFA for the unrestricted dwelling units is 22,599 square feet, equal to 29.8%.

C. Dwelling units are only created in conjunction with employee housing, and

The dwelling units are proposed to be created in conjunction with employee housing units. In addition to the dwelling units, there are 61 employee housing units (EHUs) proposed, including 42 two-bedroom apartments (for rent) and 19 townhomes.

D. Dwelling units are compatible with the proposed uses and buildings on the site and are compatible with buildings and uses on adjacent properties.

The design of the dwelling units is compatible with the deed-restricted townhomes (EHUs), with similar massing, similar materials and colors. The buildings are not identical, but use a similar palette of materials and colors. The use as residential dwelling units is compatible with the use of the remainder of the site, which are residential.

12-16-6: CRITERIA; FINDINGS

Before acting on a Conditional Use Permit application, the Planning and Environmental Commission shall consider the following factors with respect to the proposed use:

1. Relationship and impact of the use on the development objectives of the Town.

The proposed uses are consistent with the development objectives of the Town of Vail. Specifically, the proposed dwelling units will support the development of employee housing units (EHUs), which have been identified as a critical issue in the community. During the development of the Vail 20/20 Focus on the Future – Strategic Action Plan, participants placed workforce housing as a top priority for the community and government leaders to address.

2. The effect of the use on light and air, distribution of population, transportation facilities, utilities, schools, parks and recreation facilities, and other public facilities needs.

The proposed conditional use will have minimal effects on light and air, distribution of population, utilities, schools, parks and recreation facilities, and other public facilities needs. There will likely be some minor impacts from the proposed development on transportation facilities, including impacts on local roads, the demand for parking, and transit. The additional residential development will create some impacts on local recreational facilities and trails. These impacts are similar to those that would be expected if the proposed dwelling units were constructed as deed restricted employee housing units.

3. Effect upon traffic with particular reference to congestion, automotive and pedestrian safety and convenience, traffic flow and control, access, maneuverability, and removal of snow from the street and parking areas.

There will be some minor impacts from the proposed dwelling units on traffic facilities, congestion, automotive and pedestrian safety and convenience, traffic flow and control, access, maneuverability, and removal of snow from the street and parking areas. These

impacts are similar to impacts expected if the proposed dwelling units were constructed as deed restricted employee housing units. Staff finds the proposed dwelling units to have little impact on transportation at the property, and the use itself is minor relative to the proposed EHUs on site.

4. 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 dwelling units will blend in with the proposed character of the rest of the neighborhood, including the adjacent employee housing units. The proposed buildings use a similar scale and bulk as surrounding and proposed uses, and similar architecture to the townhomes of the employee housing units within the Booth Heights Neighborhood.

5. Such other factors and criteria as the commission deems applicable to the proposed use.

6. The environmental impact report concerning the proposed use, if an environmental impact report is required by Chapter 12 of this title.

The proposed development itself will have impacts on wildlife and bighorn sheep winter range, as identified in the Environmental Impact Report and the Wildlife Mitigation Plan. These impacts are similar to the impacts that would be expected if the townhomes were deed restricted as employee housing units. The applicant has proposed a Wildlife Mitigation Plan, which includes the improvement to wildlife habitat on site and on the adjacent public properties in partnership with the Town of Vail, Colorado Parks and Wildlife, and US Forest Service, as well as and other best management practices to limit the impacts of the proposed development.

VIII. STAFF RECOMMENDATION

The Community Development Department finds that the application meets the required criteria in Section 12-16-6, Criteria; Findings, Vail Town Code, and the requirements of Section 12-6I-3, Conditional Uses, Vail Town Code for the construction of dwelling units in the Housing (H) zone district. We recommend the Town of Vail Planning and Environmental Commission **approve** this application.

Motion: Development Plan (PEC19-0019)

Should the Planning and Environmental Commission choose to **approve** this application the Community Development Department recommends the Commission pass the following **motion**:

“The Planning and Environmental Commission approves the applicants' request for a Conditional Use Permit, pursuant to Title 12, Chapter 16, Conditional Use Permits, Vail Town Code, to allow for the construction of dwelling units within the Housing (H) zone district, located at 3700 North Frontage Road East/Lot 1, East Vail Workforce Housing Subdivision (“Booth Heights Neighborhood”) (PEC19-0019) with the following findings:

Findings:

- 1. That the proposed location of the use is in accordance with the purposes of Title 12, Vail Town Code, and the purposes of the zone district in which the site is located.*
- 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.*
- 3. That the proposed use will comply with each of the applicable provisions of this title.”*

Should the Planning and Environmental Commission choose to **deny** this request the Community Development Department recommends the Commission pass the following **motion**:

“The Planning and Environmental Commission denies the applicants' request for a Conditional Use Permit, pursuant to Title 12, Chapter 16, Conditional Use Permits, Vail Town Code, to allow for the construction of dwelling units within the Housing (H) zone district, located at 3700 North Frontage Road East/Lot 1, East Vail Workforce Housing Subdivision (“Booth Heights Neighborhood”) (PEC19-0019) with the following findings:...”.

If there is a motion to deny the application, please include in the motion the development specific standards or criteria that the application does not meet.

IX. ATTACHMENTS

Please see the attachments in the Development Plan for this site, PEC19-0018.