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## Memorandum

TO: Planning and Environmental Commission

FROM: Community Development Department

DATE: June 26, 2017

SUBJECT: A request for review of a Variance from Section 12-7B-16, Landscaping and Site Development, Vail Town Code, in accordance with Section 12-17, Variances, Vail Town Code, to allow for a reduction in landscape area, located at 231 Gore Creek Drive/Lot A, Block 5B, Vail Village Filing 1, and setting forth details in regard thereto. (PEC17-0009)

Applicant: Gasthof Gramshammer, Inc. / Pepi's Restaurant,  
represented by Russell Gies, Gies Architects, Inc.

Planner: Matt Panfil

### I. SUMMARY

The applicant, Gasthof Gramshammer, Inc. / Pepi's Restaurant, represented by Russell Gies, Gies Architects, Inc., is requesting the review of a variance from Section 12-7B-16, Landscaping and Site Development, Vail Town Code, and in accordance with Section 12-17, Variances, Vail Town Code, to allow for a reduction in the previously approved landscape area, located at 231 Gore Creek Drive.

This item was first heard by the Planning and Environmental Commission (PEC) on May 22, 2017. In order to allow the applicant time to respond to comments from the Commissioners, the item was continued to the June 12, 2017 meeting. The Commissioners' comments were generally related to the following:

- The possibility of providing temporary planters in a size that would compensate for the 70 square foot net loss in landscaping; and
- Potential for providing landscaping off-site and on Town of Vail property.

At the June 12, 2017 PEC meeting, the applicant requested, and the PEC granted by a vote of 5-2 (Perez and Rediker opposed) a tabling of this application until the June 26, 2017 PEC meeting. The applicant indicated that they had purchased additional planters to be placed on-site by Friday, June 16, 2017. As of June 22, 2017, the applicant had not provided any additional information or revised plans. However, staff did conduct a

site visit on June 22, 2017 and found that additional temporary planters have been placed on site. Staff's photographs of the new temporary landscape planters are included with this memorandum (Attachment F).

Based upon staff's review of the criteria outlined in Section VII of this memorandum and the evidence and testimony presented, the Community Development Department recommends **denial** of the proposed landscaping variance, subject to the findings noted in Section VIII of this memorandum.

## **II. DESCRIPTION OF REQUEST**

The applicant, Gasthof Gramshammer, Inc. / Pepi's Restaurant, represented by Russell Gies, Gies Architects, Inc. is requesting the review of a variance to allow for a reduction in the landscaping required by Vail Town Code and depicted in plans previously approved by the Planning and Environmental Commission (PEC) on April 11, 2016 (PEC16-0011). The applicant is requesting the right to not install two (2) new planter areas, one 115 square foot area in front of the northeast window of Pepi's Sports and one 25 square foot area directly in front of the sliding glass door system, that were part of the approved remodel and addition plans for PEC16-0011. Instead of the previously approved and required planter areas, the applicant is proposing to install two (2) 11 square foot planters and to add 14 square feet of landscaping to the retaining wall near the Bridge Street entrance and also 34 square feet of landscaping in front of the beer garden area along Gore Creek Drive. The resulting net reduction in landscaping versus the 2016 approved plans is 70 square feet.

A vicinity map (Attachment A), project narrative with applicant's response to variance criteria (Attachment B), photos (Attachment C), plan set dated March 27, 2017 (Attachment D), minutes from the April 11, 2016 PEC meeting (Attachment E), and staff photographs from June 22, 2017 (Attachment F) are attached for review.

## **III. BACKGROUND**

The Tyrolean style Hotel Gasthof Gramshammer was constructed in 1964. Town files indicate a variety of applications have been presented before the PEC and the Design Review Board (DRB) for improvements such as addition of accommodation units and residential dwelling units, basement renovations, landscape modifications, and patio remodels. Most recently, on April 11, 2016, the applicant received approval from the PEC for an addition and remodel to the Bridge Street entrance.

The property's current zoning designation of Commercial Core 1 District (CC1) was established as part of the original Town of Vail zoning regulations via Ordinance No. 8, Series of 1973, adopted on August 7, 1973.

#### IV. APPLICABLE PLANNING DOCUMENTS

Staff finds that the following provisions of the Vail Town Code are relevant to the review of this proposal:

##### **Title 12 – Zoning Regulations, Vail Town Code**

###### *Chapter 2, Definitions (in part)*

**LANDSCAPING:** *Natural or significant rock outcroppings, native vegetation, planted areas and plant materials, including trees, shrubs, lawns, flowerbeds and ground cover, shall be deemed landscaping together with the core development such as walks, decks, patios, terraces, water features, and like features not occupying more than twenty percent (20%) of the landscaped area.*

###### *Chapter 7, Article B. Commercial Core 1 (CC1) District (in part)*

###### **12-7B-16: LANDSCAPING AND SITE DEVELOPMENT:**

*No reduction in landscape area shall be permitted without sufficient cause shown by the applicant or as specified in the Vail Village design considerations as adopted in section 12-7B-20 of this article.*

###### **12-7B-20: VAIL VILLAGE URBAN DESIGN GUIDE PLAN:**

- A. Adoption: The Vail Village urban design guide plan and design considerations are adopted for the purposes of maintaining and preserving the character and vitality of the Vail Village (CC1) and to guide the future alteration, change and improvement in the CC1 district. Copies of the Vail Village design guide plan and design considerations shall be on file in the department of community development.*

###### *Chapter 17, Variances (in part)*

###### **12-17-1: PURPOSE:**

- A. Reasons For Seeking Variance: In order to prevent or to lessen such practical difficulties and unnecessary physical hardships inconsistent with the objectives of this title as would result from strict or literal interpretation and enforcement, variances from certain regulations may be granted. A practical difficulty or unnecessary physical hardship may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from topographic or physical conditions on the site or in the immediate vicinity; or from other physical limitations, street locations or conditions in the immediate*

*vicinity. Cost or inconvenience to the applicant of strict or literal compliance with a regulation shall not be a reason for granting a variance.*

- B. Development Standards Excepted: Variances may be granted only with respect to the development standards prescribed for each zone district, including lot area and site dimensions, setbacks, distances between buildings, height, density control, building bulk control, site coverage, usable open space, landscaping and site development, and parking and loading requirements; or with respect to the provisions of chapter 11 of this title, governing physical development on a site.*

#### **12-17-5: PLANNING AND ENVIRONMENTAL COMMISSION ACTION:**

*Within twenty (20) days of the closing of a public hearing on a variance application, 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 variance 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.*

#### **12-17-6: CRITERIA AND FINDINGS:**

- A. Factors Enumerated: Before acting on a variance application, the planning and environmental commission shall consider the following factors with respect to the requested variance:*
- 1. The relationship of the requested variance to other existing or potential uses and structures in the vicinity.*
  - 2. The degree to which relief from the strict or literal interpretation and enforcement of a specified regulation is necessary to achieve compatibility and uniformity of treatment among sites in the vicinity, or to attain the objectives of this title without grant of special privilege.*
  - 3. The effect of the requested variance on light and air, distribution of population, transportation and traffic facilities, public facilities and utilities, and public safety.*
  - 4. Such other factors and criteria as the commission deems applicable to the proposed variance.*
- B. Necessary Findings: The planning and environmental commission shall make the following findings before granting a variance:*

1. *That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone district.*
2. *That the granting of the variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.*
3. *That the variance is warranted for one or more of the following reasons:*
  - a. *The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this title.*
  - b. *There are exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the same zone district.*
  - c. *The strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone district.*

## **Vail Village Urban Design Guide Plan – Design Considerations**

### *Urban Design Considerations (in part)*

#### **C. Streetscape Framework**

*To improve the quality of the walking experience and give continuity to the pedestrian ways, as a continuous system, two general types of improvements adjacent to the walkways are considered:*

1. *Open space and landscaping – berms, grass, flowers and tree planting as a soft, colorful framework linkage along pedestrian routes; and plazas and park green spaces as open nodes and focal points along those routes.*

## **Vail Village Master Plan**

### *Chapter V. Goals, Objectives, Policies and Action Steps (in part)*

- Goal #3:** *To recognize as a top priority the enhancement of the walking experience throughout the village.*

*Objective 3.1: Physically improve the existing pedestrian ways by landscaping and other improvements.*

## V. SURROUNDING LAND USES AND ZONING

<u>Existing Land Use</u>	<u>Zoning District</u>
North: Village Master Plan	Commercial Core 1
East: Village Master Plan	Commercial Core 1
South: Village Master Plan	Commercial Core 1
West: Village Master Plan	Commercial Core 1

## VI. ZONING / SITE ANALYSIS

Address: 231 East Gore Creek Drive  
 Legal Description: Lot A, Block 5B, Vail Village Filing 1  
 Existing Zoning: Commercial Core 1  
 Existing Land Use Designation: Vail Village Master Plan  
 Mapped Geological Hazards: None

Development Standard	Allowed / Required	Existing	Proposed	Change
Site Area	5,000 sq. ft.	15,856 sq. ft. buildable site area		No Change
Setbacks	No setbacks required by the Urban Design Guide Plan			No Change
Building Height	43' for up to 40% of building, 33' for remainder of building	53.3% between 33'43' and 46.7% under 33'*		No Change
Site Coverage	Max. 80%	12,563 sq. ft. (79.2%)		No Change
Landscaping	No reduction allowed	863 sq. ft.**	793 sq. ft.	- 70 sq. ft.

\* Approved via Variance, 1998

\*\* Required per Vail Town Code and depicted in plans previously approved by the PEC on April 11, 2016 (PEC16-0011)

## VII. VARIANCE REVIEW CRITERIA

The review criteria for a variance request are prescribed in Title 12, Chapter 17, Variances, Vail Town Code.

### 1. The relationship of the requested variance to other existing or potential uses and structures in the vicinity.

The subject property is bordered on all sides by similar mixed-use structures and identical Commercial Core 1 District zoning. If approved, the removal of

landscaping is counter to established goals and recommendations identified in the Vail Village Master Plan and Vail Village Urban Design Guide Plan. Specifically, the Vail Village Urban Design Guide Plan encourages, “berms, grass, flowers and tree planting as a soft, colorful framework linkage along pedestrian routes. Also, the Vail Village Master Plan established a goal, “to recognize as a top priority the enhancement of the walking experience throughout the village.” The first objective to accomplish this goal is to, “physically improve the existing pedestrian ways by landscaping and other improvements.” (see pages 4 and 5).

Staff finds the proposed variance does not meet this criterion.

- 2. The degree to which relief from the strict and literal interpretation and enforcement of a specified regulations is necessary to achieve compatibility and uniformity of treatment among sites in the vicinity or to attain the objectives of this title without a grant of special privilege.**

The intent of landscape requirements within the Commercial Core 1 District and Vail Village Urban Design Guide Plan area is to provide a colorful framework linkage of natural vegetation along pedestrian routes. Staff finds that the strict and literal interpretation of the landscaping standards does not impose on the applicant any hardship different from any other similarly zoned site. In fact, in their application for the addition and remodel (PEC16-0011), the applicant already demonstrated the feasibility of meeting the minimum landscape requirements. The proposed removal of landscape area is not a physical necessity.

Staff finds that granting the requested variance would be a grant of special privilege in that there are no exceptional or extraordinary circumstances or conditions applicable to the subject property that do not apply generally to other properties located within the Commercial Core 1 District.

Staff finds that the proposed variance does not meet this criterion.

- 3. The effect of the requested variance on light and air, distribution of population, transportation and traffic facilities, public facilities and utilities, and public safety.**

A net 70 square foot reduction in landscaping would not have an effect on light and air, distribution of population, transportation and traffic facilities, public facilities and utilities, or public safety.

Staff finds the proposed variance meets this criterion.

- 4. Such other factors and criteria as the commission deems applicable to the proposed variance.**

## VIII. STAFF RECOMMENDATION

The Community Development Department recommends **denial** of the requested review of a variance from Section 12-7B-16, Landscaping and Site Development, Vail Town Code, in accordance with the provisions of Section 12-17, Variances, Vail Town Code, to allow for a reduction in landscape area, located at 231 Gore Creek Drive / Lot 1, Block 5B, Vail Village Filing 1, and setting forth details in regard thereto.

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

*“The Planning and Environmental Commission denies the applicant’s request for a variance from Section 12-7B-16, Landscaping and Site Development, Vail Town Code, in accordance with the provisions of Section 12-17, Variances, Vail Town Code, to allow for a reduction in landscape area, located at 231 Gore Creek Drive / Lot A, Block 5B, Vail Village Filing 1, and setting forth details in regards thereto.”*

Should the Planning and Environmental Commission choose to **deny** this variance request, the Community Development Department recommends the Commission make the following **findings**:

*“The Planning and Environmental Commission finds:*

- 1. The granting of this variance will constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone district; and*
- 2. The variance is not warranted for the following reasons:*
  - a. The strict or literal interpretation and enforcement of the specified regulation would not result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of Title 12, Zoning Regulations, Vail Town Code;*
  - b. There are no exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the same zone district; and*
  - c. The strict or literal interpretation and enforcement of the specified regulations will not deprive the applicant of privileges enjoyed by the owners of other properties in the Commercial Core 1 District.*



## Motion to Approve

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

*“The Planning and Environmental Commission approves the applicant’s request for a variance from Section 12-7B-16, Landscaping and Site Development, Vail Town Code, in accordance with the provisions of Section 12-17, Variances, Vail Town Code, to allow for a reduction in landscape area, located at 231 Gore Creek Drive / Lot A, Block 5B, Vail Village Filing 1, and setting forth details in regards thereto.”*

Should the Planning and Environmental Commission choose to approve this variance request, the Community Development Department recommends the Commission applies the following **condition**:

1. *Approval of this variance is contingent upon the applicant obtaining Town of Vail design review approval for this proposal; and*

Should the Planning and Environmental Commission choose to **approve** this variance request, the Community Development Department recommends the Commission make the following **findings**:

*“The Planning and Environmental Commission finds:*

1. *The granting of this variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone district;*
2. *The granting of the variance will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity; and*
3. *The variance is warranted for the following reasons:*
  - a. *The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of Title 12, Zoning Regulations, Vail Town Code;*
  - b. *There are exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the same zone district; and*

- c. *The strict or literal interpretation and enforcement of the specified regulations would deprive the applicant of privileges enjoyed by the owners of other properties in the Commercial Core 1 District.*

## **IX. ATTACHMENTS**

- A. Vicinity Map
- B. Project Narrative, with applicant's response to variance criteria, dated March 27, 2017
- C. Photographs from the applicant
- D. Plan Set, dated March 27, 2017
- E. Minutes from the PEC16-0011 hearing at the April 11, 2016 PEC meeting
- F. Staff photographs, dated June 22, 2017