



Memorandum

TO: Vail Town Council

FROM: Community Development Department

DATE: August 1, 2017

SUBJECT: An appeal, pursuant to Section 12-3-3, Appeals, Vail Town Code, of the final decision of the Town of Vail Planning and Environmental Commission on June 26, 2017, denying a request for a Variance from Section 12-7B-16, Landscaping and Site Development, 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. (TC17-0002)

Applicant: Gasthof Gramshammer, Inc. / Pepi's Restaurant
Planner: Matt Panfil

I. SUBJECT PROPERTY

The subject property is located at 231 Gore Creek Drive / Lot A, Block 5B, Vail Village Filing 1.

II. VAIL TOWN COUNCIL JURISDICTION

Pursuant to Section 12-3-3C-1, Appeal of Planning and Environmental Commission Decisions: Authority, Vail Town Code, the town council shall have the authority to hear and decide appeals from any decision, determination or interpretation by the Planning and Environmental Commission with respect to the provisions of Title 12, Zoning Regulations, Vail Town Code.

III. PROCEDURAL CRITERIA FOR APPEALS

Pursuant to Section 12-3-3C-2 and 12-3-3C-3, Appeal of Planning and Environmental Commission Decisions: Initiation and Procedures, Vail Town Code, there are three basic procedural criteria for an appeal:

A. Standing of the Appellants

Pursuant to Section 12-3-2, Appeals, Vail Town Code, the appellant, Gasthof Gramshammer, Inc. / Pepi's Restaurant, has standing as an aggrieved or adversely affected party to appeal the Planning and Environmental Commission's June 26, 2017 decision (PEC17-0009).

B. Adequacy of the Notice of the Appeal

A copy of the Public Notice of the Vail Town Council, August 1, 2017, Public Hearing was sent to the local newspaper on July 12, 2017 and published on July 14, 2017, pursuant to Section 12-3-3C-3, Procedures, Vail Town Code.

C. Timelines of the Notice of Appeal

Section 12-3-3C-3, Procedures, Vail Town Code, requires a written notice of appeals to be filed within twenty (20) calendar days of the Planning and Environmental Commission decision. On June 29, 2017, the appellant, Gasthof Gramshammer / Pepi's Restaurant, filed an appeal of the Planning and Environmental Commission's June 26, 2017 decision.

IV. SUMMARY

The question to be answered by the Vail Town Council regarding this appeal is:

Were the requirements of the Vail Town Code, specifically Title 12, Chapter 17, Variances, Section 6, Criteria and Findings, properly applied in the decision to deny the request for a variance from Section 12-7B-16, Landscaping and Site Development, Vail Town Code, to allow for a net reduction in landscape area at Gasthof Gramshammer / Pepi's Restaurant, located at 231 Gore Creek Drive?

Pursuant to Section 12-3-3, Appeals, Vail Town Code, the Vail Town Council shall uphold, uphold with modifications, or overturn the Planning and Environmental Commission's June 26, 2017 decision.

V. BACKGROUND

On April 11, 2016, the Planning and Environmental Commission approved PEC16-0011, minor exterior alterations or modifications to Gasthof Gramshammer / Pepi's Restaurant to allow for a revised entrance on Bridge Street. The alterations or modifications included the following:

1. An eighty-one (81) square foot addition to the bar area near the Bridge Street entrance;
2. ***Alterations and additions to landscape areas resulting in a net increase of twenty-four (24) square feet of landscaping;***

3. Revisions to the eastern building elevation to change the windows to a sliding glass door system and to change the gable roofline of the entrance to a shed roofline with a second floor deck;
4. Interior floor plan revisions to allow for an increase in the number of dining tables in the bar area; and
5. Relocation of the existing stained glass window from the first floor to the second floor on the east façade facing Bridge Street.

Item 2 above was a required part of the alterations and modifications because Section 12-7B-16, Vail Town Code, states, **“no reduction in landscape area shall be permitted without sufficient cause shown by the applicant or as specified in the Vail Village design considerations.”** For reference, the approved plans, staff memo, and results from the April 11, 2016 Planning and Environmental Commission meeting are included as Attachment A. The following is a timeline of events subsequent to the April 11, 2016 Planning and Environmental Commission Meeting:

- November 2016 through February 2017:

The Community Development Department notified the applicant for PEC16-0011, Gies Associates, LLC, that the on-site landscaping was not per the approved plans and resulted in a net decrease of on-site landscaping. An e-mail from the applicant for PEC16-0011, dated November 17, 2016, stated that the contractor was unable to finish the approved landscape areas in the fall and that they would be completed in the spring off-season. On January 31, 2017, planning staff contacted the applicant in order to obtain a Developer Improvement Agreement (DIA) to ensure that the landscape areas would be installed per plan in the spring of 2017. Rather than entering into a DIA, the applicant for PEC16-0011 stated their intention to not construct the landscape areas and rather to request a variance from Section 12-7B-16, Vail Town Code, to allow for a net reduction in landscape area. Relevant e-mail correspondence with the applicant is included as Attachment B.

- April 11, 2017:

The Community Development Department received an application (PEC17-0009) from Gasthof Gramshammer / Pepi's Restaurant, represented again by Gies Architects, LLC, for a variance from Section 12,7B-16, Vail Town Code, to allow for a net reduction in landscape area. Instead of two (2) specific landscape planters, 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, which were part of the approved plans for PEC16-0011, the applicant proposed two (2) 11 square foot temporary planters, 14 square feet of landscaping on 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 associated with PEC16-0011 and PEC17-0009 is approximately 70 square feet.

- May 22, 2017:

PEC17-0009 appeared before the Planning and Environmental Commission. At the meeting, the Planning and Environmental Commission voted 6-0-0 to table the item until June 12, 2017 in order to allow the applicant time to respond to Commissioner comments and prepare an alternative plan for the Planning and Environmental Commission to consider. The plans, staff memo, and results from the May 22, 2017 Planning and Environmental Commission meeting are included as Attachment C.

- June 12, 2017:

At the Planning and Environmental Commission meeting, the applicant requested the item be tabled again to allow more time to respond to the Commissioners' questions and requests. The Planning and Environmental Commission voted 5-2-0 (Rediker and Perez opposed) to table the item to June 26, 2017. The staff memo and results from the June 12, 2017 Planning and Environmental Commission are included as Attachment D.

- May 22, 2017 through June 26, 2017:

Planning staff did not receive any updated plans from the applicant, as was requested by the Planning and Environmental Commission.

- June 26, 2017:

At the Planning and Environmental Commission meeting, a site visit was requested by the applicant for the Commissioner to see new landscaping that the property owner had provided, though without any landscape plan or additional information. The new landscaping was temporary in nature and clearly not sufficient in size to fulfill the requirement that there be no loss in landscaping as required by Section 12-7B-16, Vail Town Code. The Planning and Environmental Commission voted 4-1-0 (Hopkins opposed) to deny the requested variance. The staff memo and results from the June 26, 2017 Planning and Environmental Commission are included as Attachment E.

The following table demonstrates the changes in landscape area that have been proposed throughout the process.

Landscape Area Before PEC16-0011	April 11, 2016	May 22, 2016 and June 12, 2016	June 26, 2017
Total: 863 SF	+ 24 SF Total: 887 SF	- 70 SF Total: 817 SF	- 70 SF* Total: 817 SF (-46 SF from Pre PEC16-0011)

- * *While the applicant provided additional landscaping prior to the June 26, 2017 meeting, it is temporary in nature and the square footage is unknown.*

In their appeal (Attachment F), Gasthof Gramshammer / Pepi's Restaurant have argued that the Planning and Environmental Commission held the subject property to a higher standard than any other property located within the Commercial Core 1 (CC1) District. The appellant references the extensive amount of existing landscaping on the subject property. The appellant also stated that the proposed stone planters do not fit in Vail Village.

VI. APPLICABLE 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.

VII. DISCUSSION ITEMS

1. An assertion that the denial is inconsistent with Section 12-17-6, Criteria and Findings, Vail Town Code.

Per their appeal application, the appellant believes that Gasthof Gramshammer / Pepi's Restaurant is being held to a higher standard than is required of any other business within the same Commercial Core 1 (CC1) District and that no other business in the same zone district has more landscaped area maintained by owners than the subject property. The appellant therefore believes that the proposed variance from Section 12-7B-16, Landscaping and Site Development, Vail Town, is consistent with the following factors to be considered with respect to a 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.

VIII. REQUIRED ACTION

Pursuant to Section 12-3-3, Appeals, Vail Town Code, the Vail Town Council shall uphold, uphold with modifications, or overturn the Planning and Environmental Commission's June 26, 2017 decision.

Should the Vail Town Council choose to **uphold** the determination of the Town of Vail Planning and Environmental Commission, the following statement is recommended:

"The Vail Town Council upholds the June 26, 2017 Planning and Environmental Commission decision to deny the application for a variance request for a net reduction in landscape area within the Commercial Core 1 (CC1) District at Gasthof Gramshammer / Pepi's Restaurant located at 231 Gore Creek Drive / Lot A, Block 5B, Vail Village Filing 1."

With the following **findings**:

"The Vail Town Code was properly applied in regard to the June 26, 2017 Planning and Environmental Commission decision to deny the requested variance associated with application PEC17-0009 at Gasthof Gramshammer / Pepi's Restaurant located at 231 Gore Creek Drive / Lot A, Block 5B, Vail Village Filing 1."

Should the Vail Town Council choose to **overturn** the determination of the Town of Vail Planning and Environmental Commission, the following statement is recommended:

"The Vail Town Council finds as follows:

The Vail Town Code was not properly applied in regard to the June 26, 2017 Planning and Environmental Commission denial of the requested variance associated with PEC17-0009. Furthermore, the Vail Town Council finds that the project consisting of a net reduction in landscape area within the Commercial Core 1 (CC1) District at Gasthof Gramshammer / Pepi's Restaurant at 231 Gore Creek Drive / Lot A, Block 5B, Vail Village Filing 1, is consistent with Title 12, Zoning Regulations, of the Vail Town Code.

The Town Council hereby overturns the decision of the Planning and Environmental Commission concerning the application for a variance associated with application PEC17-0009, and located at 231 Gore Creek Drive / Lot A, Block 5B, Vail Village Filing 1, and that the Vail Town Council hereby grants the requested variance, as originally submitted by the applicant to the Town of Vail."

IX. ATTACHMENTS

- A. Staff Memo to the Planning and Environmental Commission for PEC16-0011 dated April 11, 2016, approved plans for PEC16-0011 dated March 14, 2016, and minutes from the April 11, 2016 Planning and Environmental Commission meeting;
- B. E-mail correspondence with the applicant for PEC16-0011 and PEC17-0009;
- C. Staff Memo to the Planning and Environmental Commission for PEC17-0009 dated May 22, 2017, submitted plans for PEC17-0009 dated April 24, 2017, and minutes from the May 22, 2017 Planning and Environmental Commission meeting;
- D. Staff Memo to the Planning and Environmental Commission for PEC17-0009 dated June 12, 2017 and minutes from the June 12, 2017 Planning and Environmental Commission meeting;
- E. Staff Memo to the Planning and Environmental Commission for PEC17-0009 dated June 26, 2017 and minutes from the June 26, 2017 Planning and Environmental Commission meeting; and
- F. Appeals Form from Gasthof Gramshammer / Pepi's Restaurant dated June 29, 2017 and received June 29, 2017.