

**BOARD OF ADJUSTMENT
STAFF REPORT**

Date Prepared: February 20, 2025
Meeting Date: February 26, 2025

RE: The Ascent Condominiums – Administrative Variance Appeal

To: Town of Fraser Board of Adjustment

From: Alan Sielaff, Assistant Town Planner

Project Number: TF24-12

Project Address: 601 S. Zerex Street (US Highway 40)

Applicant: Ski and Board Broker LLC

Property Owner: Ski and Board Broker LLC and Cornerstone Winter Park Holdings, LLC

Zoning: Business District (B)

CC: Michael Brack, Town Manager

Garrett Scott, Town Planner

REQUEST

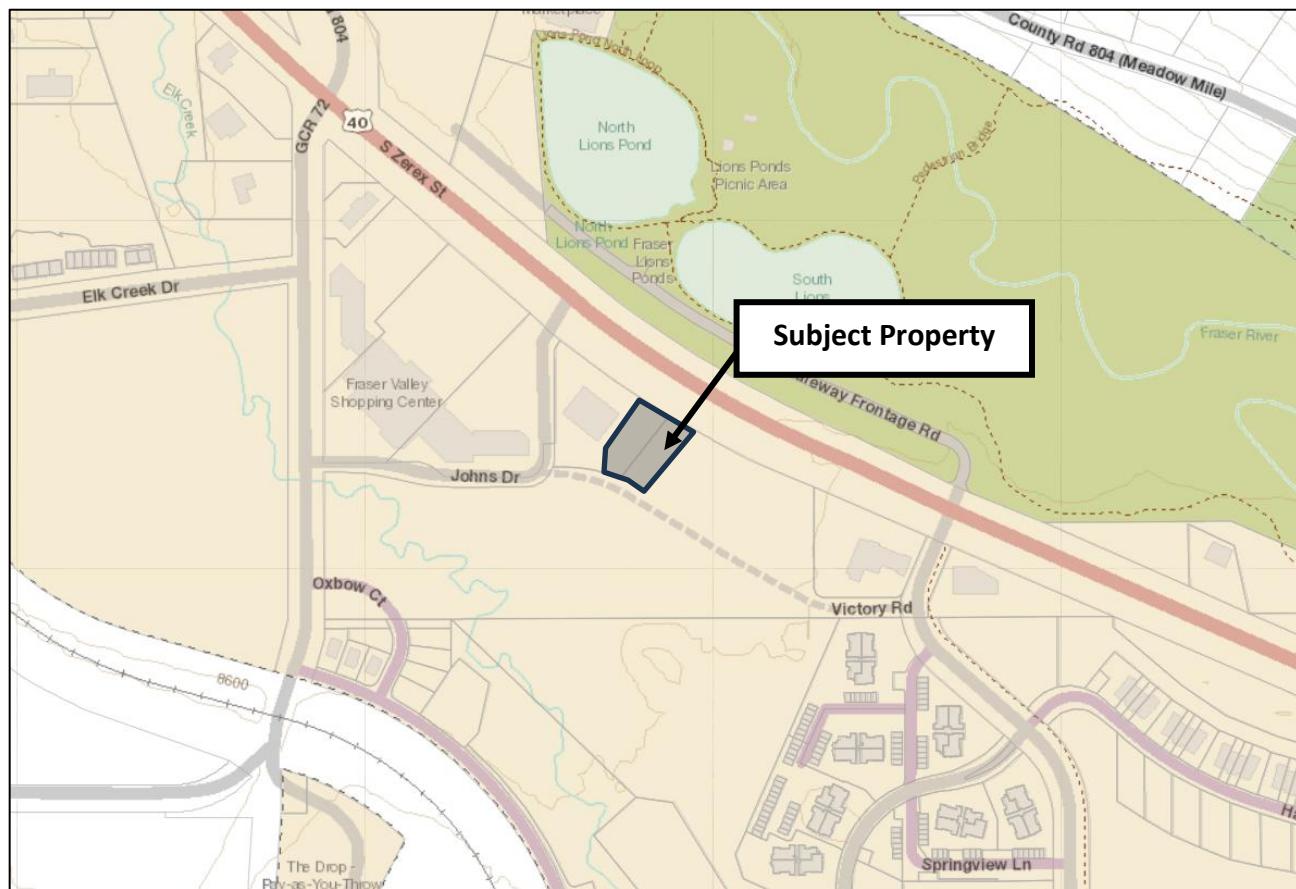
The applicant is appealing staff's denial of an administrative variance request to Section 19-2-250 Table 2.8 to increase the maximum height from forty-five (45) feet to forty-nine and one-half (49.5) feet for the proposed Ascent Condominiums development located at 601 S. Zerex Street.

BACKGROUND

The Ascent Condominiums project is a proposed 25-unit for-sale multifamily residential development to be located adjacent to and including the current XSports building, formerly known as Ski Broker. This request is part of an overall land use application for a Major Subdivision Final Plat, Major Site Plan, and Administrative Variance. Because the variance request does not exceed ten percent (10%) of the maximum height standard, the variance could be reviewed administratively, per [Sec. 19-1-350](#). Review of the first submittal of the combined development application included staff's review of the administrative variance request against the criteria in [Sec. 19-1-330\(a\)](#). Town staff determined that not all applicable criteria were met. Within the applicant's response-to-comments letter provided with their second submittal, they have elected to appeal this denial to the Board of Adjustment. The appeal has been scheduled prior to the hearing with the Planning Commission for the Major Subdivision Final Plat and Major Site Plan portions of the development application.

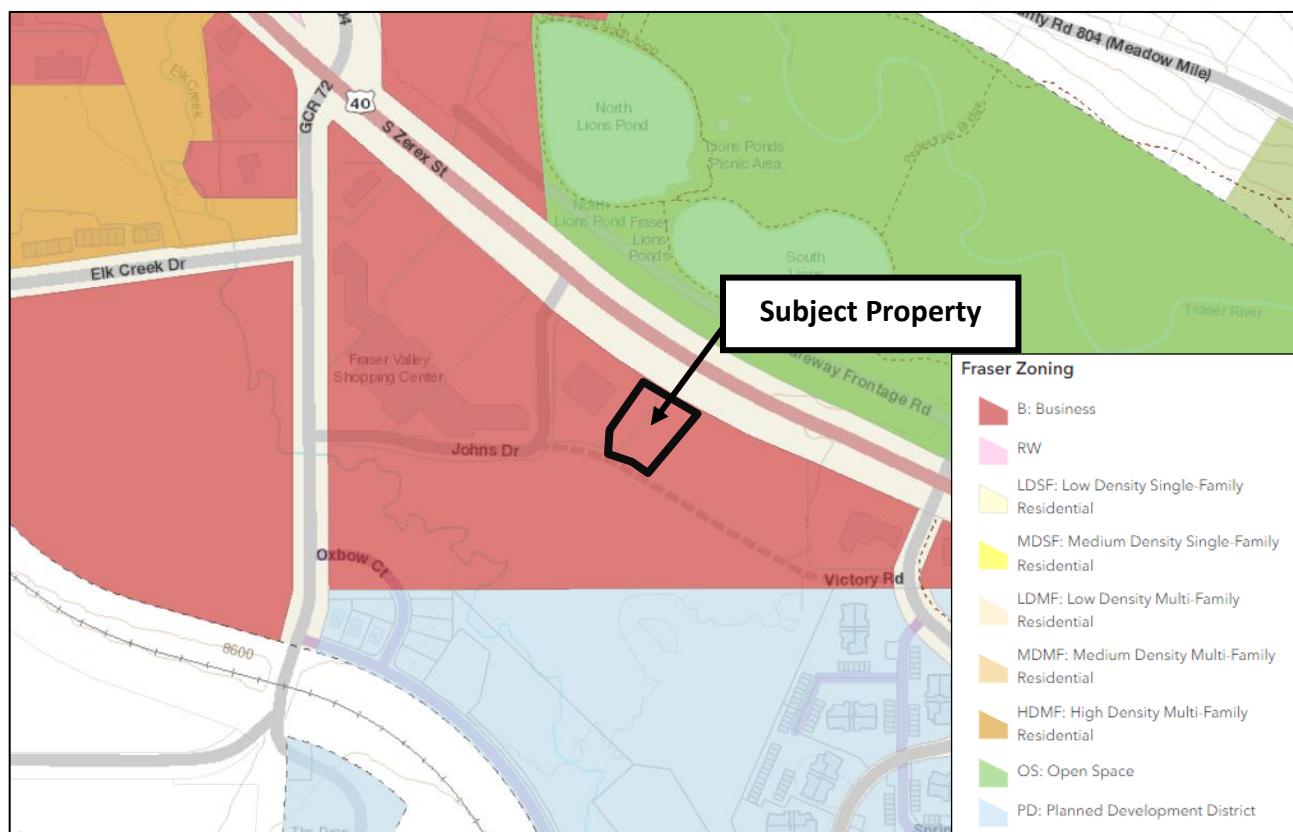
This site, along with several other properties under common ownership in the area, was also part of a previous request for a height variance in 2023. That request sought to increase the maximum height on four separate properties in the Business District zone from forty-five (45) feet to fifty-five (55) feet. These requests were not associated with a specific development proposal, and all four requests were ultimately denied by the Board of Adjustment on September 27, 2023 through Board of Adjustment Resolutions 2023-09-01 through 2023-09-04.

LOCATION MAP



ZONING & LAND USE

The site is located within the Business District (B) zone and adjacent properties to the west and south are also zoned Business. These areas include the Fraser Valley Shopping Center (Murdoch's) to the west, Meyer Lot 2 to the south (vacant), and BMO Bank to the southeast. The maximum height for these properties is forty-five (45) feet. The area north and east of US Highway 40 is zoned Open Space and contains the Lions Ponds. The maximum height in the Open Space district is twenty (20) feet. Zone districts further away include High Density Multifamily (HDMF), which has a maximum height of forty (40) feet, the Riverwalk district, which has a maximum height of forty-five (45) feet, and Planned Development – Grand Park, which includes individual planning areas with maximum heights ranging from thirty-five (35) feet to seventy-five (75) feet, with the closest planning areas to this site having a maximum height of forty-five (45) feet.



REFERRAL REVIEW

Full application submittal documents were sent out on referral on December 10, 2024, and referral agency comments and planning review comments returned to the applicant on January 8, 2025. Due to the nature of the request, only the Town Attorney provided specific review comments on the height variance portion of the submittal. That review memo is provided as an attachment to this report. Staff will also note that the fire district included the following statement in their review letter on the overall development proposal: "East Grand Fire has no issues with the variance request for additional height. Please note that additional fire service features (including but not limited to standpipes) are required for structures 4 or more stories in height."

BUILDING HEIGHT REVIEW

Building height as applicable in the Business District zone is defined in [Sec. 19-2-610](#) as follows (italics added for emphasis):

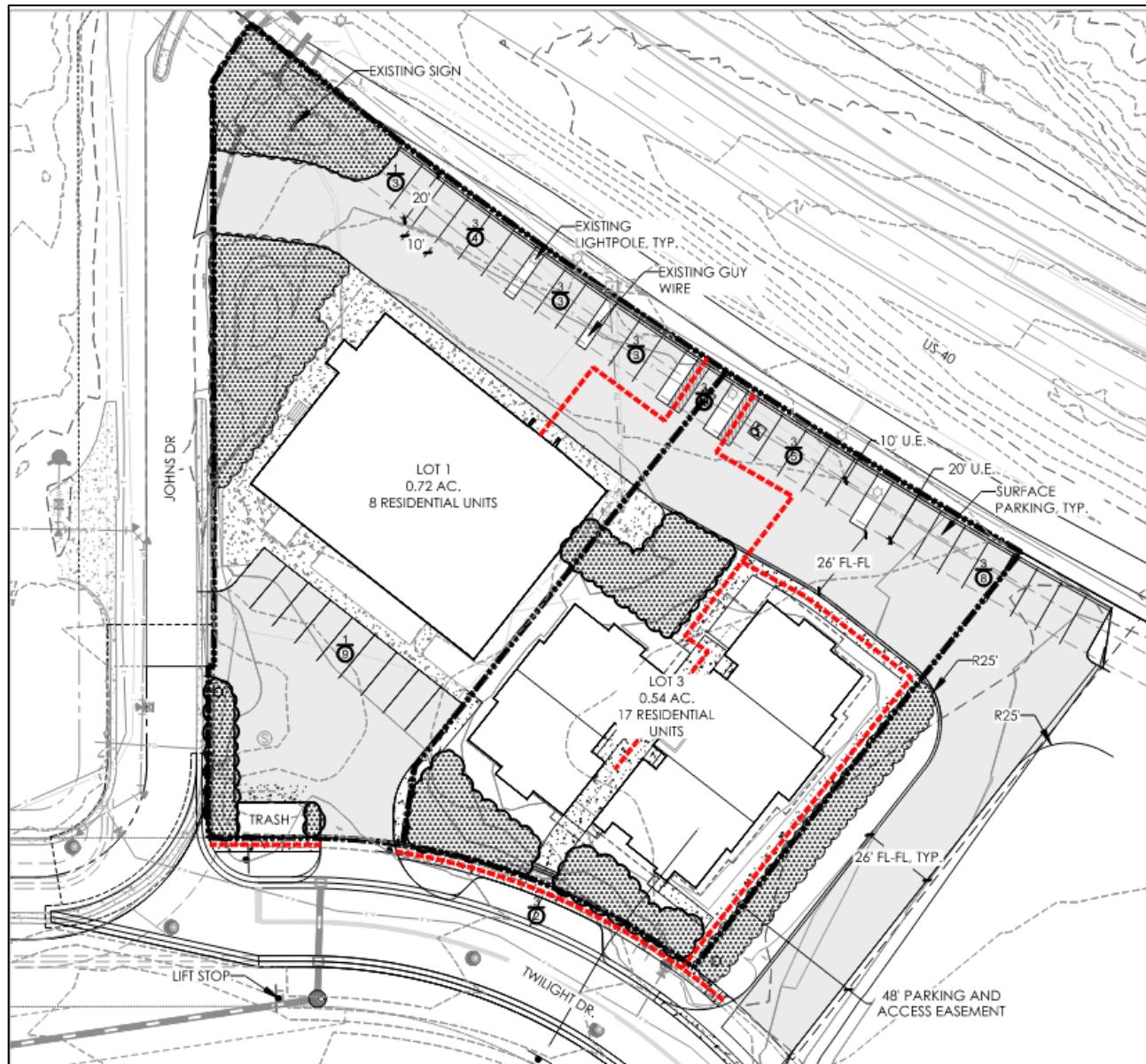
Height means the vertical distance above a reference datum measured to the highest point of a flat roof or deck line of a mansard roof or the midpoint of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building. The reference datum shall be selected by either of the following, *whichever yields a greater height of building:*

- a. The point of the lowest preconstruction elevation on any building face. The owner shall have the burden of proving pre-construction elevation.
- b. The point of the lowest elevation of any building face.
- c. The elevation of the lowest point of an exposed foundation or a wall.

As defined above and applied to this request, building height is measured from the mid-point of the pitched portions of the roof to the lowest existing elevation of any one side of a building. In practice, generally the preconstruction elevations are going to be the lowest, unless additional excavation and grading is proposed as part of a development. The applicant's proposed building elevations with height measurements are provided below and depict the lowest existing grade as 1.7 ft. below the finished floor elevations. Full plan documents are provided as an attachment to this report for closer examination.

The building is designed in such that it is essentially two separate building footprints connected by an open-air common hallway with stairs; see the site plan for the proposed Lot 3 on the following page for reference. The southeast portion of the building has a larger footprint, is three stories in height, and has three residential units per floor. The northwest portion of the building has a smaller footprint, is four stories in height, and has two units per floor. It is this northern portion of the building that exceeds the forty-five foot height maximum. The majority of this part of the structure, including floor plates of all four floors, are under the height maximum, but the slightly slanted roof is fully above the maximum, with the mid-point measured at 49.5 ft. from the lowest existing grade.

Site Plan:



Northwest Elevation:



Southeast Elevation:



Southwest Elevation:



Northeast Elevation:



An elevator shaft enclosure is also depicted to exceed the maximum 45 ft. height to just over 51 ft. However, this elevator shaft is specifically allowed per [Sec. 19-2-270](#) as a height exception for appurtenances, so long as the appurtenance does not interfere with FAA Regulations, does not extend more than ten (10) feet above the maximum permitted building height, and is not constructed for the purpose of providing additional floor area. Staff finds that the elevator shaft enclosure as proposed meets these requirements for an allowed appurtenance and can be approved without a variance.

ADMINISTRATIVE VARIANCES AND APPEAL PROCESS

The variance request was originally processed as an administrative variance per [Sec. 19-1-350](#), which states that Town staff shall have authority to act upon variance requests (but not appeals from administrative decisions) under the following circumstances:

- (1) The variance does not exceed ten percent (10%) of the minimum or maximum standard;
- (2) The Town Staff applies the same review criteria as does the Board of Adjustment under Section 19-1-330;
- (3) No additional dwelling units would result from approval of such administrative variance;
- (4) A decision by the Town Staff to deny, or condition, an administrative variance, may be appealed to the Board of Adjustment in the same manner as for appeals under Section 19-1-320.

Following staff's determination that the request did not meet all applicable review criteria, the applicant stated their desire to appeal to the Board of Adjustment. [Sec. 19-1-320](#) outlines the appeals process, of which subsection (a) states that the Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of any provision of this Chapter. Subsection (d) states that the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from. Additionally, subsection (e) allows that where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the regulations contained in this Chapter, the Board of Adjustment has the power, in passing upon an appeal, to vary or modify the application of such regulations relating to the construction or alteration of buildings or structures, so that the spirit of the ordinance is observed, public safety and welfare secured and substantial justice done. The applicant has appealed staff's determination to the Board of Adjustment on staff's determination that three of the six variance criteria in Sec. 19-1-330(a) were not met.

VARIANCE CRITERIA, APPLICANT RESPONSES, & STAFF REVIEW

Sec. 19-1-330(a) states that a variance may be granted only to the extent that the following conditions, where relevant to the subject property and adjacent neighborhood or district, are present. Provided below are the review criteria, the applicant's provided reasoning, staff's original review of these criteria as provided in the January 8, 2025 first referral summary letter, as well as the applicant's responses to staff's review received on January 30, 2025.

1. There are unique physical circumstances or other conditions peculiar to the affected property, such as exceptional topography or irregularity, narrowness or shallowness of a lot.
 - a. Applicant reasoning: The request for a variance is due to the high groundwater table of 6 feet below the surface on the site. The high groundwater makes garden level units infeasible therefore going up is the only solution to achieve the necessary number of units to make the project financially viable. In addition, the extremely flat site has caused the finish floor elevation to rise in order to maintain positive drainage throughout the site. This higher finished floor increases the height of the building as defined in the Land Use Code.
 - b. Staff review: Disagree – Staff does not consider high groundwater a unique physical

circumstance. It may be considered as an "other condition peculiar to the property"; however, it is a condition that generally exists across all properties in the Fraser River valley to a degree. Further, the variance request reasoning discusses the necessity of additional units to achieve financial viability for the project and infeasibility to construct garden level units on the ground floor which would result in a lower building height. Unfortunately, financial viability is not a consideration in granting a variance, and the ability or inability to pursue subsurface development is not something guaranteed by the Town's zoning regulations.

- c. Applicant response: High groundwater is a limiting factor and must be considered in all design associated with this property; moreover, the blanket statement made by staff "it is a condition that generally exists across all properties in the Fraser Valley..." is blatantly false. See prior geotechnical reports for various projects in and around the Grand Park and Rendezvous projects. Certainly, without this condition a garden level is possible, but not with the condition. Additionally, given the staffs' broad interpretation of the code for the hotel at the entry to Rendezvous approved last week that well exceeds 55' in a 45' height zone, where the staff used six corners to bring the height down, and referenced parapets as appurtenances, we find it laughable a real professionally documented physical impediment, high ground water, is deemed to not be an "other condition peculiar to the property". The design of the project is better with this slight roof height variance and the notion staff would suggest eliminating two units as a solution to reduce the building height in a market where housing inventory is short is hard to understand.
- 2. The unique physical circumstances or other conditions do not exist throughout the neighborhood or district in which the property is located.
 - a. Applicant reasoning: The high water table is not unique to the area however, in the instance of this site, building heights are limited to 45 feet whereas the other properties along Hwy 40 in Grand Park have 55 and 75 foot building heights.
 - b. Staff review: Disagree – The applicant also acknowledges that the high groundwater level is not unique to this site. The applicant's additional discussion of other locations in general vicinity of this site that have greater maximum allowed heights is not applicable to this criteria.
 - c. Applicant response: See response above.
- 3. The unique physical circumstances, other conditions or any other hardship complained of have not been created by the applicant.
 - a. Applicant reasoning: High groundwater has not been created by the applicant.
 - b. Staff review: Agree – The applicant's identification of high groundwater as the unique physical circumstance has not been created by the applicant.
 - c. Applicant response: Noted
- 4. Because of the unique physical circumstances or other conditions, the property cannot be reasonably developed in conformity with the provisions of this Chapter.
 - a. Applicant reasoning: As mentioned above, due to the high groundwater table, it is not possible to achieve the allowed density for the site.
 - b. Staff review: Disagree – Being unable to achieve the maximum allowed density of 20 units per acre on the site does not equate to the variance criteria of "cannot be

reasonably developed". The site could be developed with 15 units within three floors rather than an additional two units on a proposed fourth floor. Further, other building floorplate designs, reduced floor to ceiling heights, or smaller unit sizes could be considered to achieve additional units within the site's constraints.

- c. Applicant response: We had understood housing and density was a priority for the Town of Fraser given the lack of housing inventory. Suggesting reducing the allowed density is not a good solution nor does it help Fraser's housing inventory problem. Further, good architecture is paramount to product sales, livability and quality of life for the residents. Eight foot ceilings are no longer accepted by the market place.
- 5. The variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use of adjacent conforming property.
 - a. Applicant reasoning: The increased building height is compatible with adjacent uses and will serve as a bookend for Fraser's commercial core. In addition, the request for an increase in building height is consistent with the permitted building heights in Grand Park and Rendezvous along the Hwy 40 frontage. In the Village at Grand Park, PA 1Wa, building heights vary from 55 to 75 feet with 75 feet being permitted in 2W along Old Victory Road. In Rendezvous, the permitted heights along Hwy 40 are 45 feet, with the recently approved Springhill Suites exceeding that height.
 - b. Staff review: Agree – The building design is generally compatible with the surrounding context, and the design elements the additional height would facilitate (a slightly sloped 4th floor roof rather than a flat roof) is generally preferable. The relatively minor height increase will not alter the essential character of the area or impair the use of adjacent property. While the applicant states this proposal is consistent with higher allowed heights within the Grand Park and Rendezvous Planned Developments, staff notes that the specific areas within these PD's that allow such heights are not adjacent to this site and this would therefore represent a slight departure from a 45 ft. maximum height in the immediate vicinity of the site. However, staff does recognize that building heights over 45 ft. are allowed elsewhere along the US 40 corridor in Fraser.
 - c. Applicant response: Noted
- 6. The variance, if granted, is the minimum variance that will afford relief and is not detrimental to the public good or to the purpose, intent and spirit of this Chapter or the Town Comprehensive Plan.
 - a. Applicant reasoning: This height variance is in the public good. Fraser needs more housing at a lower price point and this building height variance will help towards that goal by allowing for greater flexibility in design, reducing the building cost per square foot, and providing additional area for parking, snow storage and landscape, all of which contribute to the overall success of the development. In addition, new residents provide additional customers for the nearby local businesses.
 - b. Staff review: Agree – The requested 4.5 ft. increase in height appears to be the minimal ask in order to accommodate a reasonable fourth floor design and incorporate high quality design elements. There are no immediate neighbors that might be impacted by the height increase except the two residential units and existing business in the existing X-Sports building which is under common ownership. As a building fronting US 40, there

may be concerns regarding impacts to views towards the west from users of the Lions Ponds area or users of the US 40 shared use path; however, the request for a 49.5 ft. building height is not likely to have a major impact to existing viewsheds compared to a 45 ft. building height.

- c. Applicant response: Noted
- 7. The variance is needed to provide a reasonable accommodation to a person or persons with a disability.
 - a. Applicant reasoning: Not applicable.
 - b. Staff review: Not applicable.
 - c. Applicant response: Noted.

An important distinction needs to be made regarding the building height determination as applied to this proposal and, as the applicant referred to in their response, to the recent application for the Rendezvous East Mountain Filing 8 Hotel Amended FPPD. As explained in the staff report and presentations as part of that land use case, development within a Planned Development district has additional flexibility with regards to building height, which is explicitly stated in the code. Per [Sec. 19-4-190\(b\)](#), the final height of buildings in Planned Developments may be negotiated at the FPPD stage, subject to ten characteristics that are identified in the Town code. These ten characteristics are wholly different than the seven variance criteria and afford greater latitude to grant additional height mainly based on mitigation or avoidance of potential impacts rather than proving a hardship specific to the site on the basis of topography, lot dimensions, or other physical circumstances. Additionally, per the 2003 Rendezvous Annexation Agreement, height is defined slightly differently within the PD district and utilizes the average finished grade of the primary four corners of a building rather than the more restrictive definition in the Town Code. These code allowances facilitated greater flexibility for building height and was approved by the Planning Commission and Board of Trustees through the public hearing process, not as an administrative determination.

As staff expressed to the applicant in the first submittal review letter, Town staff wishes to note that while we conceptually support the proposal on the merits of building design and recognize the site as an appropriate location for additional residential density, the variance criteria as currently adopted in the code unfortunately do not offer the type of wider policy discretion to approve this request. Ultimately, staff would need other tools in the code such as an “administrative adjustment” process that is separate from variances, allowances for greater discretion/flexibility in granting administrative variances, and/or some type of zoning overlay that connects inclusionary or affordable housing requirements or other community needs to an increase in building height. Staff has previously discussed potential code amendments with the Planning Commission and Board of Trustees and may broach the topic again in the future as part of the process to update the Town’s Comprehensive Plan in 2025, but at this time staff does not have the administrative authority to grant this request.

Should the Board of Adjustment choose to overturn the staff determination and approve the variance, the following items listed in [Sec. 19-1-330](#) copied below should be addressed:

- (b) In granting any variance, the Board of Adjustment has the authority to attach such reasonable conditions as it deems necessary to protect the general welfare and implement the purposes of this Chapter.
- (d) No grant of a variance shall be complete or effective unless and until the Board of Adjustment

has adopted a written resolution approving the variance, which resolution shall identify the property for which the variance is granted, and state specifically the exceptional conditions, practical difficulties or unnecessary hardships involved, or other grounds for granting the variance. The resolution shall also specify any terms and conditions applicable to the variance, including, without limitation:

- (1) Limitations on its duration;
- (2) Whether the variance runs with the land or is personal to the applicant;
- (3) Required materials or construction methods;
- (4) Rights of adjacent property owners, and
- (5) Circumstances (in addition to violation of the terms of the variance) which would give rise to a revocation of the variance.

PUBLIC NOTICE

Sec. 19-1-215 establishes the requirements for public notice when public hearings are required with land use review, including an appeal or variance request. Newspaper publication and mailed letters are required for the appeal, and were published/distributed as follows:

- Newspaper: Published in the Sky-Hi News and Middle Park Times on February 12, 2025 (Town responsibility)
- Mailed letters: Sent by mail on February 10, 2025 (applicant responsibility)
- Affidavits of publication are included with the Board of Adjustment packet

SUMMARY

The applicant has submitted a complete application for the review of an Administrative Variance to Section 19-2-250 Table 2.8 to increase the maximum height from forty-five (45) feet to forty-nine and one-half (49.5) feet for the proposed Ascent Condominiums development located at 601 S. Zerex Street. Following review and a staff determination of denial, the applicant has appealed the denial to the Board of Adjustment as allowed by Sec. 19-1-320. The Board shall hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of any provision of this Chapter and may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from.

REQUEST: Appeal of staff's denial of an administrative variance request to Section 19-2-250 Table 2.8 to increase the maximum height from forty-five (45) feet to forty-nine and one-half (49.5) feet for the proposed Ascent Condominiums development located at 601 S. Zerex Street.

CONDITIONS OF APPROVAL:

Should the Board of Adjustment vote to APPROVE the appeal of staff's denial of the administrative variance request, staff recommends the decision be subject to the condition of approval listed below:

- 1) Approval of the Variance is valid for one (1) year from the date the Board of Trustees provide final approval for case number TF24-12 The Ascent Condominiums Major Subdivision-Final Plat and the Major Site Plan per Sec. 19-1-245.

Town of Fraser
PO Box 370, Fraser, CO 80442 office: 970-726-5491 fax: 970-726-5518
www.frasercolorado.com



Attachments:

- 01 Variance Application
- 02 Variance Narrative Request
- 03 Site Plan
- 04 Geotechnical Report
- 05 Neighbor List and Mailer Receipts
- 06 Public Notice Affidavit
- 07 The Ascent 1st Referral Summary Letter (dated January 8, 2025)
- 08 Response to 1st Referral Comments (dated January 29, 2025)

Board of Adjustment Resolution 2025-02-01