



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date:	April 15, 2024	Staff Member/Dept:	Abby Rivin, Senior Planner Planning and Building Department
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Agenda Item:	Recommendation to approve FAR Exceedance Agreement #24906 for the 200 North Main Mixed-Use Development.
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Recommended Motion:

"I move to approve and authorize the Mayor to sign FAR Exceedance Agreement #24906 with 200 North Main LLC."
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Reasons for Recommendation:

- | |
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| <ul style="list-style-type: none"> The applicant is proposing to develop a new 12,405-gross-square-foot mixed-use building, called 200 North Main, at the northeast corner of Main and 2nd Streets located within the Retail Core of the Community Core (CC-1 Zone). The 200 North Main Design Review Application File No. P23-049 and Conditional Use Permit Application File No. P23-049A were approved by the Planning and Zoning Commission on February 13, 2024. |
| <ul style="list-style-type: none"> The project is proposing to take advantage of the Floor Area Ratio (FAR) bonus in exchange for community housing. Pursuant to condition of approval no. 3 of Design Review Application File No. P23-049, a FAR Exceedance Agreement between the applicant and the city to memorialize the community housing contribution shall be signed and recorded prior to issuance of a building permit for the project. |
| <ul style="list-style-type: none"> Pursuant to Ketchum Municipal Code §17.124.040.B.2f1, community housing contributions may be fulfilled by constructing housing on site. The applicant has proposed mitigating the additional floor area by dedicating two on-site community housing units as deed-restricted rentals targeted for Blaine County Housing Authority Income Category 4. |

Policy Analysis and Background (non-consent items only):

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Sustainability Impact:

The project does not limit the ability of the city to reach the goals of the Ketchum Sustainability Action Plan.
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Financial Impact:

None	There is no financial request to the City of Ketchum for the application and therefore no budget implications.
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Attachments:

- | |
|---|
| 1. 200 North Main FAR Exceedance Agreement #24906 |
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**FAR EXCEEDANCE
AGREEMENT #24906**

Parties:

City of Ketchum	"City"	P.O. Box 2315, 191 W 5 th Street, Ketchum, Idaho 83340
200 North Main LLC	"Owner"	1454 S Heron Pointe Lane, Eagle, Idaho, 83616

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho, and 200 North Main LLC, a limited liability corporation, the owner of the development project.

RECITALS

- A. Pursuant to the City's authority under the Idaho Local Land Use Planning Act, the Ketchum Municipal Code ("K.M.C.") Chapter 17.124 provides for certain development standards, including maximum floor area ratio (FAR) standards under K.M.C. 17.124.040 - Floor Area Ratios and Community Housing. These standards are intended to protect the public interest, health, general welfare, and provision of public services. The City has provided options for development proposals to potentially exceed the allowable FAR in exchange for mitigation of the impacts of such larger development, particularly as focused on affordable community and workforce housing. K.M.C. 17.124.040(B).
- B. Litigation was brought challenging the constitutionality and legality of the City's FAR standards in relation to the inclusionary housing incentive under K.M.C. 17.124.040 that was voluntarily dismissed.
- C. The City has adopted Resolution 17-006 which provides for the Parties to proceed with the FAR standards and options under K.M.C. 17.124.040, so long as the Parties voluntarily opt into a FAR Exceedance Agreement, making clear they are voluntarily opting by contract into use of such FAR standards and mitigation measures and are waiving any claims or demands related to any legal challenge to K.M.C. 17.124.040.

THEREFORE, in consideration of the mutual agreement herein contained and subject to the terms and conditions stated, it is hereby understood and agreed by the Parties as follows:

- 1. **Attestation of Owner.** Owner, by this Agreement, attests that the City has disclosed potential litigation challenging K.M.C. 17.124. Owner desires to voluntarily proceed on the development proposal, including proposal of exceedance of FAR standards and accompanying mitigation measures, using the approach and standards as set forth in K.M.C. 17.124.

2. **Waiver and Release of Claims.** Owner, by this Agreement, waives and releases any claims, demands, challenges, claims for reimbursement or refund, and/or damages now or in the future deriving from or relying on the outcome of future litigation substantially challenging the validity of K.M.C. 17.124 and its standards. It is Owner's intent to accept and proceed with such standards as outlined in K.M.C. 17.124 for Owner's development plan for purposes of allowable FAR and Owner voluntarily and knowingly accepts the mitigation measures as proposed.
3. **FAR Exceedance Consideration.** In consideration for Owner's attestation and waiver, the City agrees to consider their exceedance proposal and will currently consider and evaluate Owner's proposed FAR exceedance and accompanying mitigation measures within the framework and standards of K.M.C. 17.124.040, attached hereto as Exhibit A and made a part of this Agreement.
4. **Maximum FAR and Mitigation.** The Parties hereby agree to an allowable maximum floor area ratio and accompanying mitigation measures as set forth in Exhibit B, attached hereto and made a part of this Agreement.
5. **Withdrawal.** Owner may withdraw from this Agreement upon thirty days notice to City provided that Owner has not commenced building and has received no benefit from a maximum FAR exceedance. Withdrawal shall cause an immediate reversion to the permitted gross FAR as set forth in Exhibit A: K.M.C. 17.124.040(A) at the time of this Agreement.
6. **Amendments.** This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by further agreement in writing duly executed by the parties.
7. **No Assignment.** Owner shall not sell, assign, or transfer all or any portion of its interest in this Agreement at any time without consent of the City.
8. **Binding Effect.** This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
9. **Attorney Fees and Costs.** In the event any action is brought to enforce this Agreement, the prevailing party is entitled to an award of reasonable attorney fees and costs.
10. **Notices.** Any notice under this Agreement shall be in writing and shall be treated as duly delivered if the same is personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, and properly addressed to the contacts as specified at the beginning of this Agreement.

11. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision of this Agreement is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
12. **Waiver:** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referenced in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
13. **Execution and Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument.

DATED THIS ____ DAY OF APRIL 2024.

Owner

City of Ketchum, Idaho

Kenneth Paul Dudunakis
Managing Member
200 North Main LLC

Neil Bradshaw, Mayor

Owner

Attest:

Kristina Ann Dudunakis
Managing Member
200 North Main LLC

Trent Donat, City Clerk

STATE OF IDAHO,)
) ss.
County of Blaine.)

On this ____ day of _____, 2024, before me, the undersigned Notary Public in and for said State, personally appeared KENNETH PAUL DUDUNAKIS, known to me to be a managing member of 200 NORTH MAIN LLC, and the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for _____
Residing at _____
Commission expires _____

STATE OF IDAHO,)
) ss.
County of Blaine.)

On this ____ day of _____, 2024, before me, the undersigned Notary Public in and for said State, personally appeared KRISTINA ANN DUDUNAKIS, known to me to be a managing member of 200 NORTH MAIN LLC, and the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for _____
Residing at _____
Commission expires _____

17.124.040: FLOOR AREA RATIOS AND COMMUNITY HOUSING:

- A. General Requirements: All new buildings and alterations to existing buildings in the GR-H, T, T-3000, T-4000 and CC zoning districts, unless otherwise specified in this title, shall be subject to the maximum floor area ratio (FAR) described below. Hotels that meet the definition of "hotel" found in [chapter 17.08](#) of this title may exceed the floor area listed in the table below subject to section [17.124.050](#) of this chapter.

Districts	Permitted Gross FAR	Inclusionary Housing Incentive
GR-H	0.5	1.4
T	0.5	1.6
T-3000	0.5	1.6
T-4000	0.5	1.6
CC	1.0	2.25

B. Inclusionary Housing Incentive:

1. The purpose of this section is to encourage new development to include a reasonable supply of affordable and resident occupied workforce housing for sale or rent, to help meet the demand and needs for housing of the community's employees. Land within the zoning districts specified in the table above may be built to the listed permitted FAR. As an incentive to build community housing units, floor area may be increased up to the maximum FAR listed in said table with inclusionary housing incentive.
2. An increased FAR may be permitted subject to design review approval, and provided, that all of the following conditions are met:
 - a. A minimum of twenty percent (20%) of the total increase in gross floor area above the greater of the permitted FAR is deed restricted in perpetuity as community housing unit(s). Of this gross square footage, a fifteen percent (15%) reduction will be allowed as a standard discount from gross square footage to net livable square footage for community housing units.
 - b. After calculating net livable square footage, an allowance can be made for projects with demonstrated groundwater issues as documented by a registered engineer. Upon determination by the city that groundwater on the subject property precludes underground parking, a credit of three hundred fifty (350) square feet per required parking space shall be subtracted from the net livable square footage prior to the calculation for the twenty percent (20%) deed restricted community housing. Parking space credit shall be rounded to the nearest whole number, and shall not be calculated as fractions.
 - c. Community housing requirements may be paid via a fee in lieu of housing. The community housing units times the fee equals the amount due to the city. The fee in lieu shall be recommended by the governing housing authority on an annual basis and adopted by the city council. For fractions of units, the developer has the option of providing a full housing unit

rather than paying the fee in lieu or working with the city or other nonprofit entity to construct the balance of the community housing unit with additional funds.

- d. All community housing units, either for sale or rent, shall be administered by the governing housing authority, unless otherwise determined by the city council. The governing housing authority shall recommend the types and locations of all proposed community housing units for approval by the city.
 - e. The community housing units shall be targeted for Blaine County housing authority income category 4 (100 percent or less of area median income). The applicant may seek the recommendation of the governing housing authority in the determination of an alternative category with corresponding adjustment in the amount of community housing required. Said recommendation, if mutually agreed upon by the applicant and the commission, may be used in place of category 4. This allowance shall be based on need for the category type. The definition of who may qualify to purchase affordable housing shall be maintained in the guidelines of the governing housing authority as adopted by the city council.
 - f. The city's primary goal is to see the development of and encourage the construction of community housing units, but realizes that other options will also move the city closer to its goal of housing the workforce. With this in mind, the following options for fulfillment of the community housing incentive are available to the applicant outright. These include, but are not limited to:
 - (1) Housing constructed by the applicant on or off site, within the city of Ketchum;
 - (2) Payment of an in lieu fee; or
 - (3) Acquisition of existing housing stock that meets with the governing housing authority's requirements and approval.
 - g. In addition to those outright options noted in this section, the city council may consider alternative proposals by the applicant to fulfill the community housing incentive. The city council has full discretionary power to determine said request. Options for fulfillment of the community housing incentive include, but are not limited to:
 - (1) Land conveyance to the city;
 - (2) Existing housing unit buy down or mortgage buy down; or
 - (3) Other proposals and options as approved by the city council.
3. In the CC district, the maximum floor area incentive applies to buildings up to three (3) stories in height. Buildings above three (3) stories may exceed the 2.25 FAR maximum only in accordance with the pertinent code provisions allowing for a fourth floor (for example, hotels, PUDs and 100 percent community housing project, etc.). For hotel uses, community housing calculations apply to all those portions of the hotel development except the hotel units, which are addressed pursuant to employee housing of this chapter. (Ord. 1135, 2015)

**200 NORTH MAIN
FAR EXCEEDANCE AGREEMENT 24906
EXHIBIT B
EXCEEDANCE AGREEMENT COMPLIANCE**

PROJECT: 200 North Main

APPLICATIONS: Design Review Application File No. P23-049
Conditional Use Permit Application File No. P23-049A

PROPERTY OWNER: 200 North Main LLC, Kenneth Paul Dudunakis & Kristina Ann Dudunakis,
Managing Members

REPRESENTATIVE: Michael Doty Associates, Architects

REQUEST: Final Design Review for the development of a new 12,405 gross-square-foot mixed-use building and Conditional Use Permit for a residential unit greater than 3,000 square feet as required by Interim Ordinance 1234.

LOCATION: 200 North Main Street
(Ketchum Townsite: Block 3: Lots 1)

ZONING: Community Core – Subdistrict 1 – Retail Core (CC-1)

BACKGROUND:

1. The applicant is proposing to develop a new 12,398-gross-square-foot mixed-use building, called 200 North Main (the “project”), at the northeast corner of Main and 2nd Streets (the “subject property”) located within the Retail Core of the Community Core (“CC-1 Zone”). As proposed, the project includes 2,979 square feet of restaurant space on the ground-level with frontage along both Main and 2nd Streets, six one-bedroom apartments ranging in size from 505 to 642 square feet on the second floor, and a penthouse on the third floor. Two of the apartments on the second floor will be deed-restricted community housing units for rent.
2. The subject property is located at 200 North Main Street within the Retail Core Subdistrict of the Community Core (“CC-1 Zone”). Multi-family dwelling units and food service establishments are permitted uses in the CC-1 Zone.
3. The subject property has an area of 5,503 square feet.
4. The proposed floor area of the project is 12,398 gross square feet.

5. The mixed-use building has a proposed Floor Area Ratio (FAR) of 2.25 (12,398 gross sf/5,503 sf subject property area).
6. The City of Ketchum Planning and Zoning Commission (the “Commission”) reviewed the 200 North Main Design Review Application File No. P23-049 and Conditional Use Permit Application File No. P23-049A during their meetings on December 12, 2023 and February 13, 2024. The applications were considered concurrently, and the public hearings were combined in accordance with Idaho Code §67-6522. The Commission approved the 200 North Main Design Review and Conditional Use Permit applications on February 13, 2024 and adopted the Findings of Fact, Conclusions of Law, and Decision for the applications on March 12, 2024.
7. Pursuant to Condition of Approval No. 3 of Design Review Application File No. P23-049, a FAR Exceedance Agreement between the applicant and the City to memorialize the community housing contribution shall be signed and recorded prior to issuance of a building permit for the project.
8. Pursuant to Condition of Approval No. 2 of Design Review Application File No. P23-049, the approval is based on the project plans dated January 17, 2024 and the information presented by the applicant at the February 13, 2024 Commission Meeting. The building permit plans must conform to the approved Design Review plans unless otherwise approved in writing by the Planning and Zoning Commission or Administrator. Any building or site discrepancies which do not conform to the approved plans will be subject to removal.

EXCEEDANCE ANALYSIS

An increased FAR may be permitted subject to design review approval, and provided, that all conditions in Ketchum Municipal Code §17.124.040.B.2 are met.

Permitted FAR in Community Core Subdistrict 1 (CC-1)

Permitted FAR: 1.0

Permitted FAR with Community Housing: 2.25

200 North Main: Proposed FAR

Proposed Gross Floor Area: 12,398 square feet

Subject Property Area: 5,503 square feet

Proposed FAR: 2.25 (12,398 sf gross floor area/5,503 sf subject property area)

Increase Above Permitted FAR: 6,895 square feet

20% of Increase: 1,379 square feet

Net Livable (15% Reduction): 1,172 square feet

Community Housing Required in Exchange for FAR Increase: 1,172 square feet

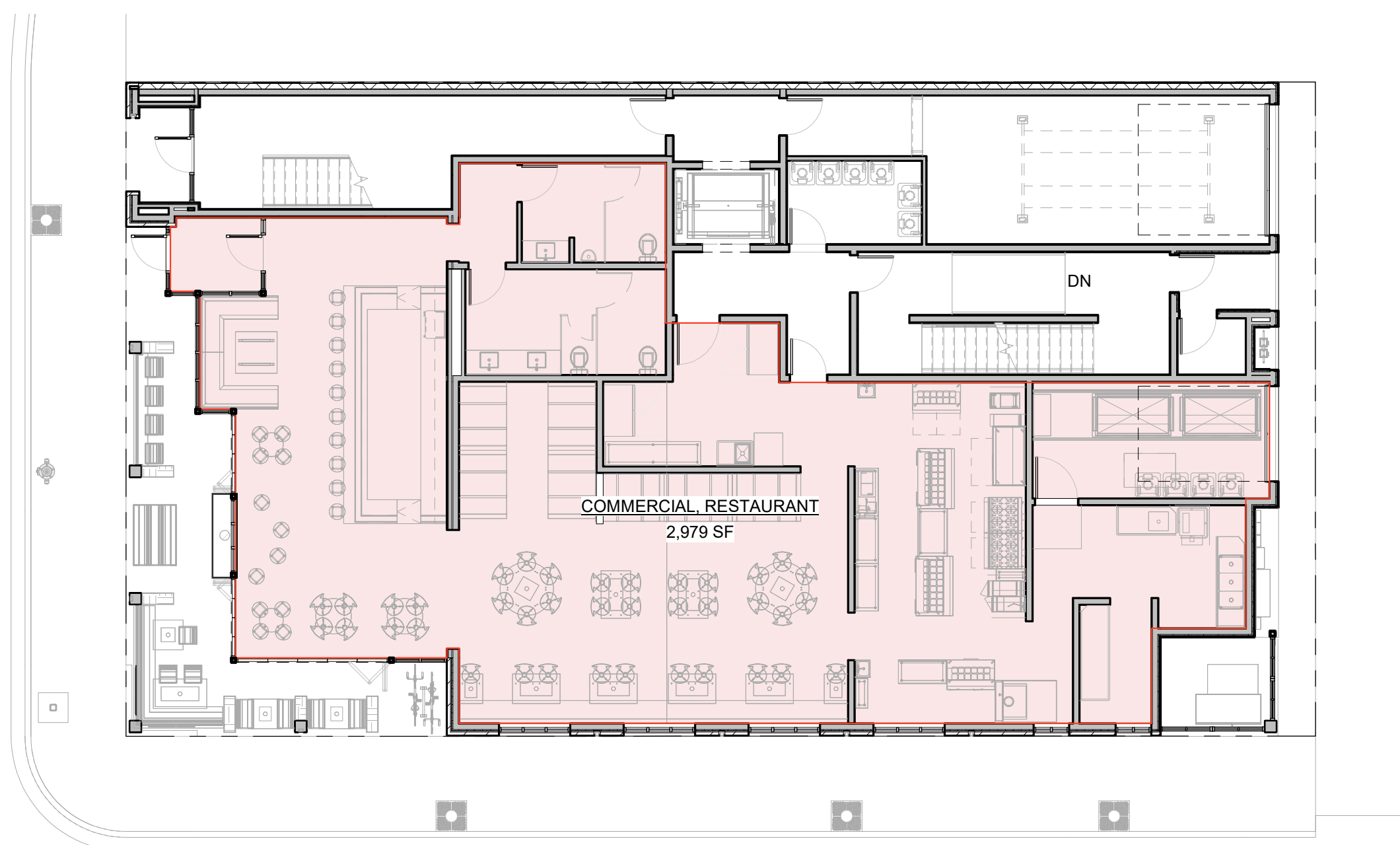
Proposed On-Site Community Housing: 1,292 square feet

200 North Main: Community Housing Contribution

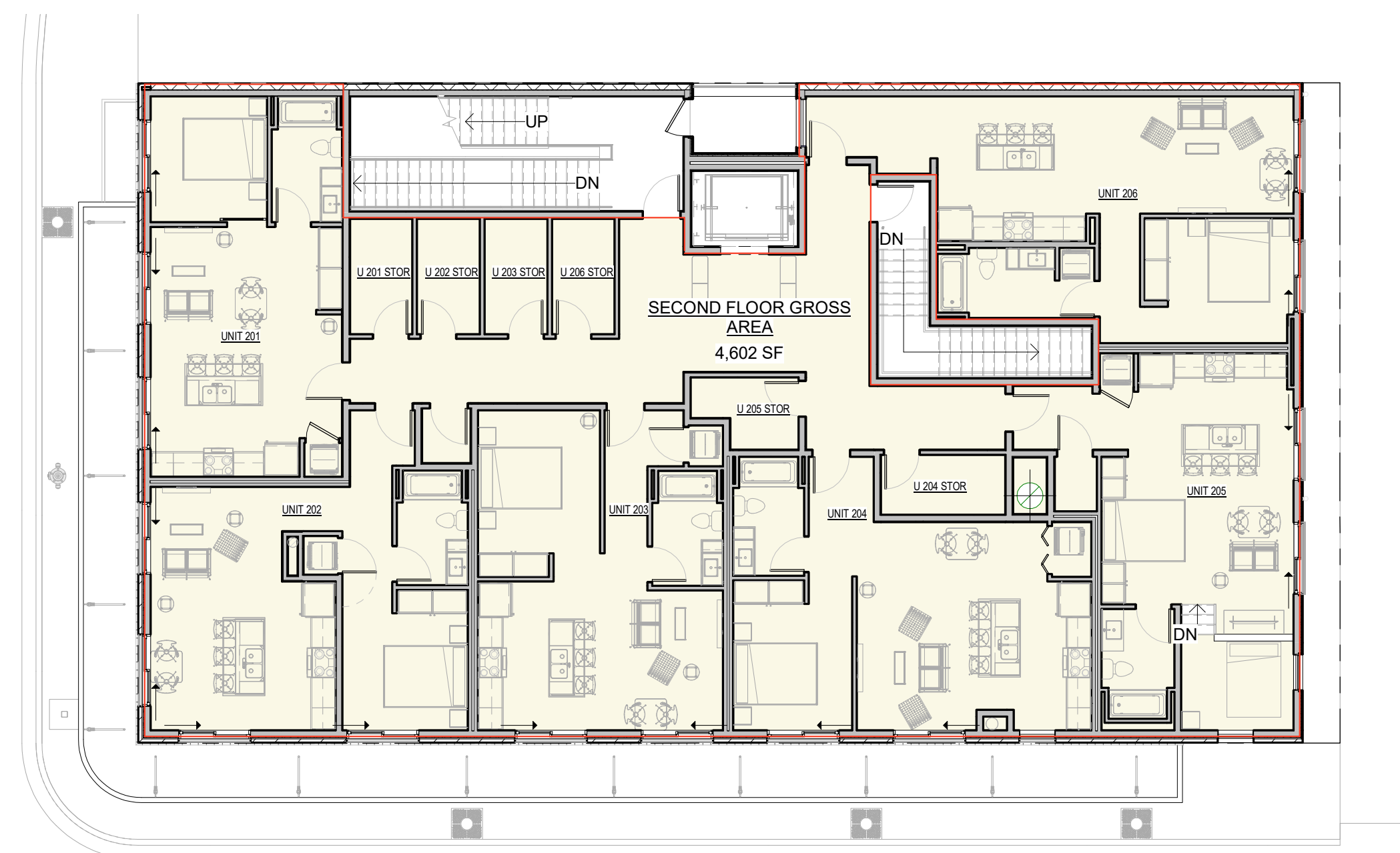
The applicant has proposed mitigating the additional floor area by providing two deed-restricted rentals on the second floor of the mixed-use building as shown on attached Sheet A-201 and Sheet A-202. Community Housing Unit 205 has a net-livable floor area of 555 square feet with an associated 45-square-foot detached storage area. Community Housing Unit 206 has a net-livable floor area of 642 square feet with an associated 50-square-foot detached storage area. The total floor area of the two community housing units and associated detached storage areas is 1,292 square feet.

The following conditions apply to the community housing contribution for the 200 North Main project:

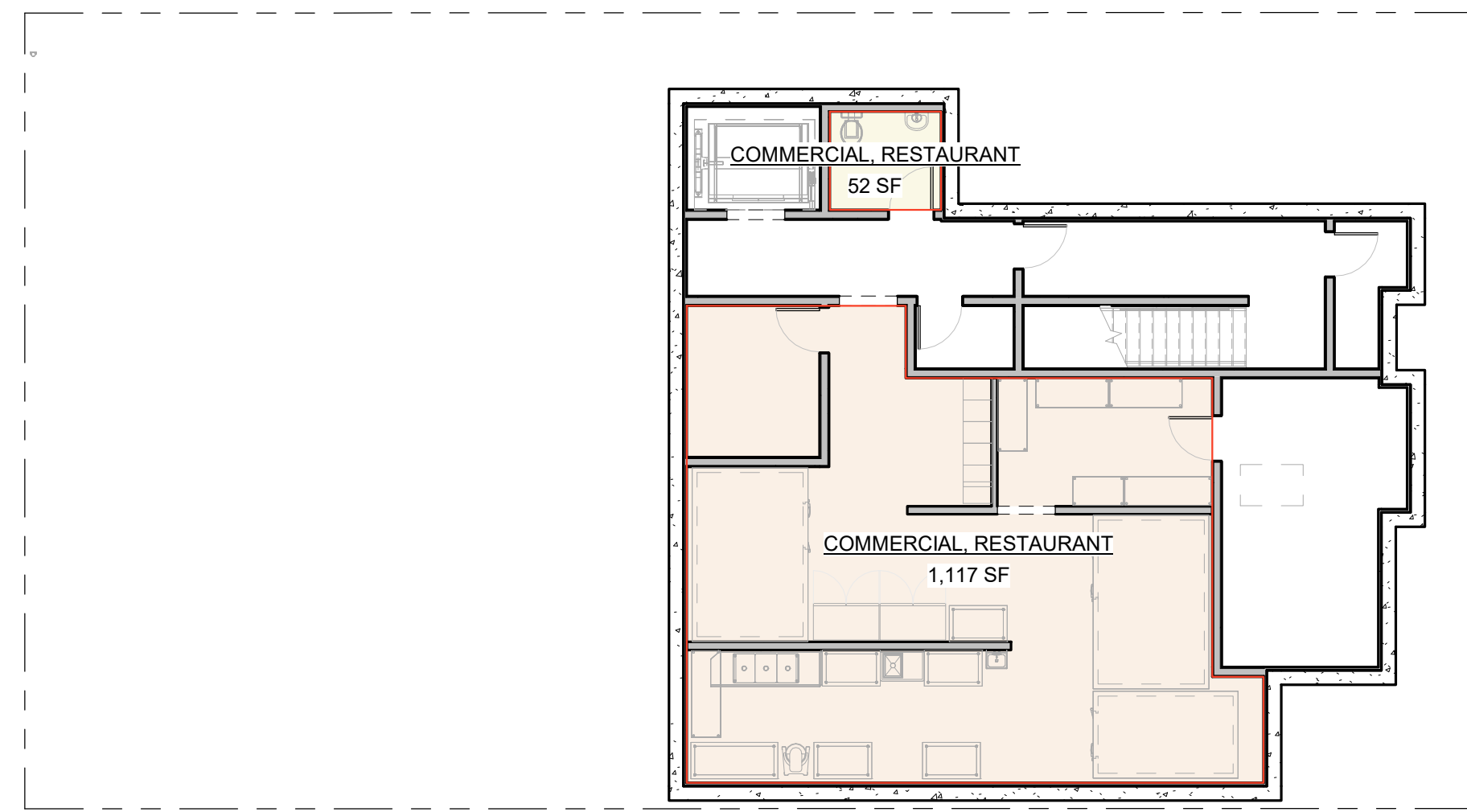
1. Provide two deed-restricted community housing rental units on the second floor of the mixed-use building as shown on attached Sheet A-201 and Sheet A-202. Community Housing Unit 205 has a net-livable floor area of 555 square feet with an associated 45-square-foot detached storage area dedicated to the unit. Community Housing Unit 206 has a net-livable floor area of 642 square feet with an associated 50-square-foot detached storage area dedicated to the unit. The total floor area of the two community housing units and associated detached storage areas is 1,292 square feet.
2. The community housing units shall be targeted for the Blaine County Housing Authority (BCHA) Income Category 4 or lower. The tenants chosen to occupy the community housing units shall be selected from the BCHA database of qualified households.
3. The community housing units shall be listed for rent through BCHA concurrent with the issuance of a Certificate of Occupancy by the city for the project.
4. The deed covenant for the community housing units shall be recorded prior to Certificate of Occupancy for the mixed-use building.
5. If the total gross square footage of the project changes through building permit application review, a revised community housing contribution may be calculated using the methodology outlined above and approved by the Administrator. Substantial increases or decreases in square footage may require an amendment to this agreement at the discretion of the Administrator.



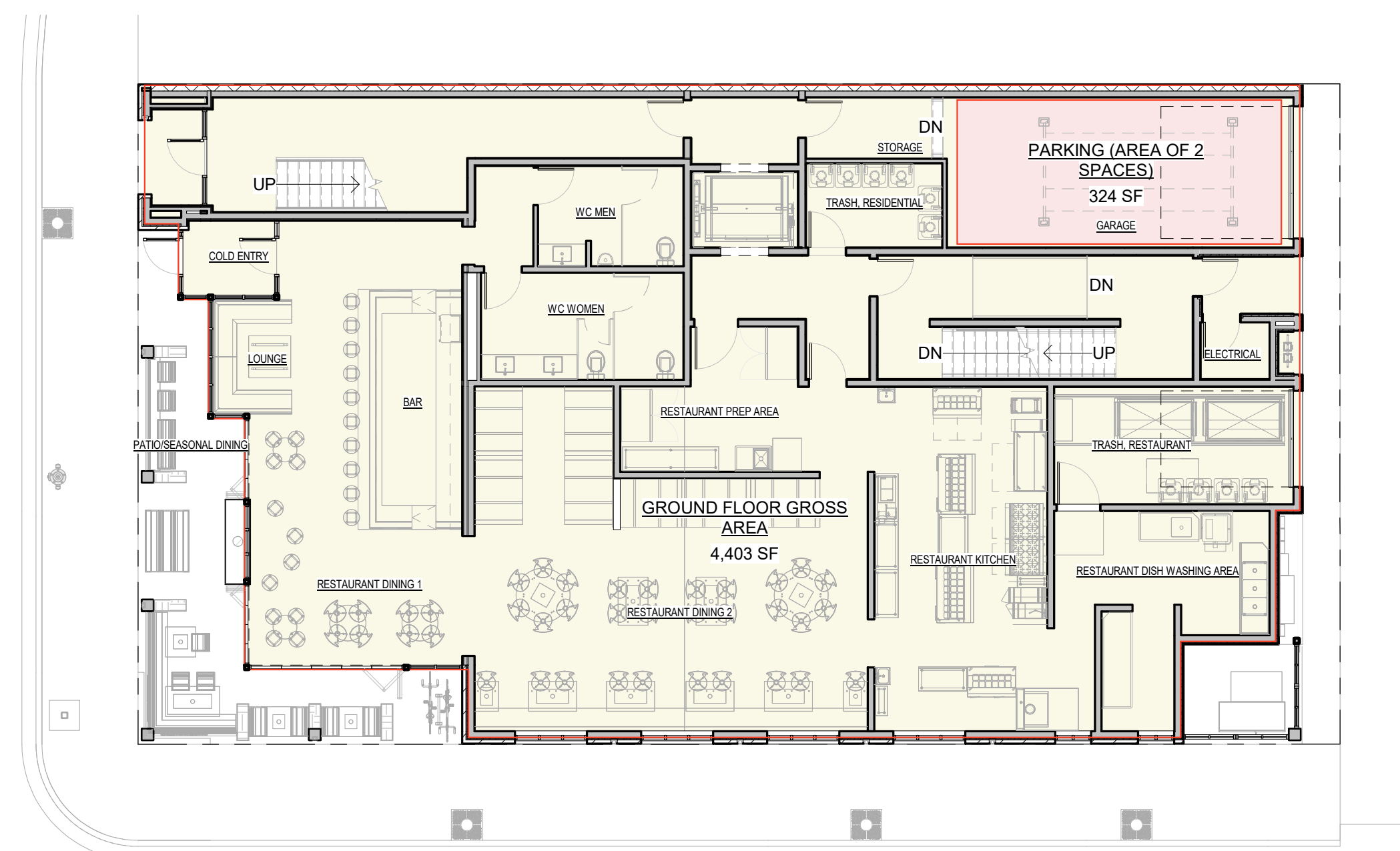
GROUND FLOOR PLAN - NET COMMERCIAL AREA
3/32" = 1'-0"



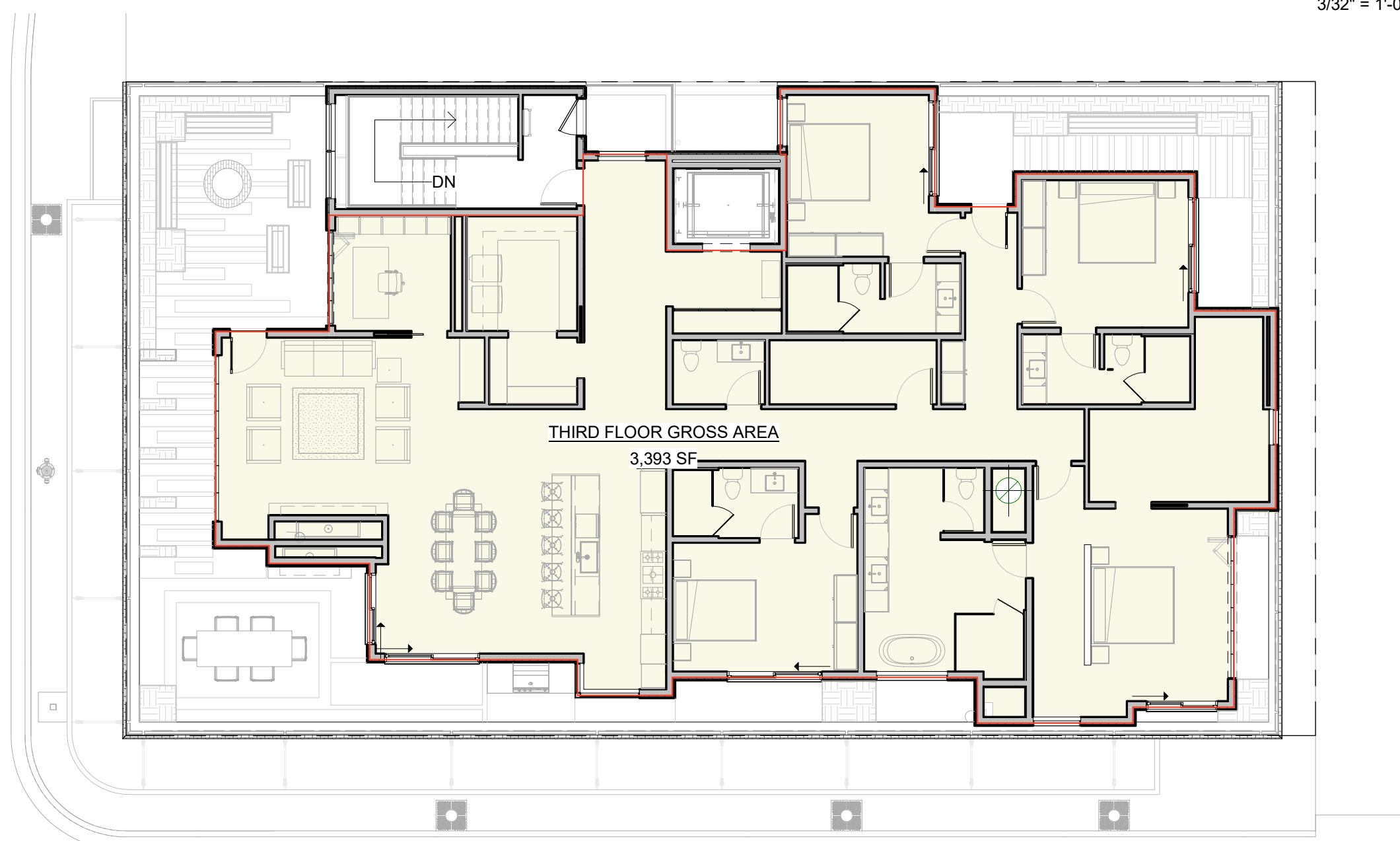
SECOND FLOOR PLAN - GROSS AREA
3/32" = 1'-0"



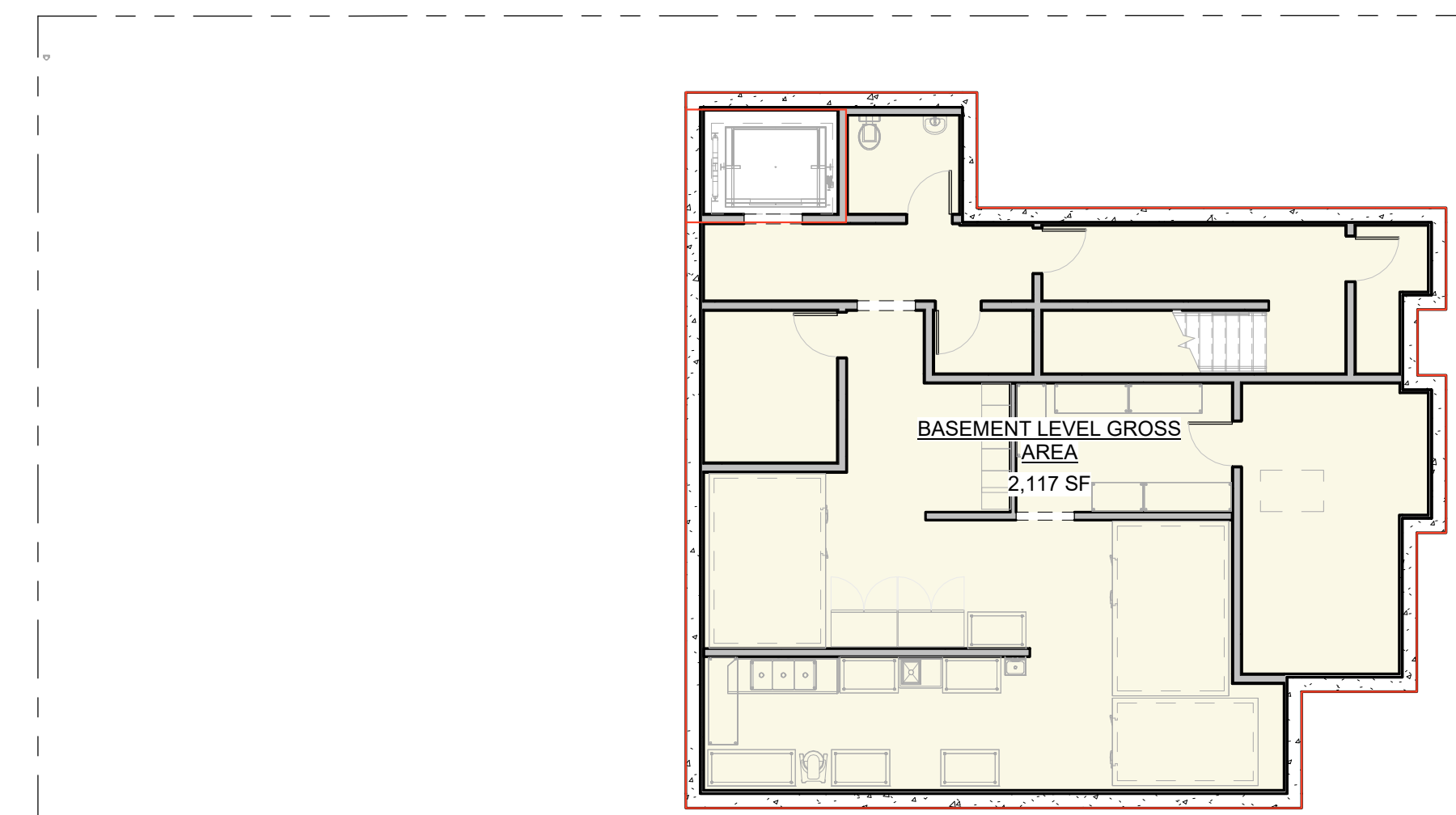
BASEMENT FLOOR PLAN - NET COMMERCIAL AREA
3/32" = 1'-0"



GROUND FLOOR PLAN - GROSS AREA
3/32" = 1'-0"



THIRD FLOOR PLAN - GROSS AREA
3/32" = 1'-0"



BASEMENT FLOOR PLAN - GROSS AREA
3/32" = 1'-0"

AREA SCHEDULE		
AREA NAME	AREA	NOTES
BASEMENT LEVEL GROSS AREA	2,117 SF	NOT INCLUDED IN TOTAL GROSS FLOOR AREA
	2,117 SF	
GROUND FLOOR GROSS AREA	4,403 SF	
PARKING (AREA OF 2 SPACES)	324 SF	SUBTRACTED FROM TOTAL GROSS FLOOR AREA
	4,727 SF	
SECOND FLOOR GROSS AREA	4,602 SF	
	4,602 SF	
THIRD FLOOR GROSS AREA	3,393 SF	
	3,393 SF	
TOTAL FLOOR AREA	14,839 SF	

AREA SCHEDULE - GROSS - FAR		
AREA NAME	AREA	LEVEL
GROUND FLOOR GROSS AREA	4,403 SF	GROUND LEVEL
	4,403 SF	
SECOND FLOOR GROSS AREA	4,602 SF	SECOND FLOOR
	4,602 SF	
THIRD FLOOR GROSS AREA	3,393 SF	THIRD FLOOR
	3,393 SF	
TOTAL GROSS FLOOR AREA*	12,398 SF	

*PER CITY OF KETCHUM DEFINITION: FLOOR AREA, GROSS

AREA SCHEDULE - NET - COMMERCIAL		
AREA NAME	AREA	LEVEL
COMMERCIAL, RESTAURANT	1,117 SF	BASEMENT LEVEL
COMMERCIAL, RESTAURANT	52 SF	BASEMENT LEVEL
	1,169 SF	
COMMERCIAL, RESTAURANT	2,979 SF	GROUND LEVEL
	2,979 SF	
TOTAL NET/COMMERCIAL FLOOR AREA	4,148 SF	

FLOOR AREA RATIO

BUILDING GROSS AREA
TOTAL FLOOR AREA LESS BASEMENT, LESS AREA OF 2 PARKING SPACES
12,398 SF

FAR
DIVIDE BUILDING GROSS AREA BY LOT AREA
 $12,398 \div 5,503 =$
2.25 FAR

ORDINANCE 1234, MINIMUM RESIDENTIAL DENSITY

MINIMUM HOUSING DENSITY
DIVIDE NET COMMERCIAL AREA BY BUILDING GROSS AREA =
 $4,148 \div 12,398 =$
33%
3 RESIDENTIAL UNITS REQUIRED
7 RESIDENTIAL UNITS PROVIDED
4 RESIDENTIAL UNITS OVER MINIMUM

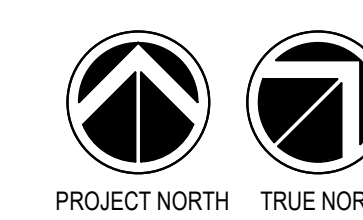
ORDINANCE 1234, GROUND FLOOR COMMERCIAL AREA RATIO

GROUND FLOOR NET COMMERCIAL AREA
2,979 SF
GROUND FLOOR GROSS AREA
4,403 SF
GROUND FLOOR COMMERCIAL AREA RATIO
DIVIDE GROUND FLOOR NET COMMERCIAL AREA BY GROUND FLOOR GROSS AREA
 $2,979 \div 4,403 =$
68% OF GROUND FLOOR AREA IS COMMERCIAL
13% OVER MINIMUM 55%

INCLUSIONARY HOUSING INCENTIVE CALCULATION

BUILDING GROSS AREA OVER 1.0 FAR
 $12,398 \text{ SF} - 5,503 \text{ SF} (1.0 \text{ FAR}) = 6,895 \text{ SF}$
REQUIRED AREA OF DEED RESTRICTED HOUSING
 $6,895 \text{ SF} \times 20\% = 1,379 \text{ SF}$
 $1,379 \text{ SF} - 15\% (\text{NET LIVABLE}) = 1,172 \text{ SF}$ REQUIRED AS DEED RESTRICTED
COMMUNITY HOUSING DESIGNATION FOR INCOME CATEGORY 4
UNIT 205 (600 SF) + UNIT 206 (692) = 1,292 SF DEED RESTRICTED PROVIDED

PROPOSED FLOOR PLANS - AREAS AND AREA COMPLIANCE CALCULATIONS



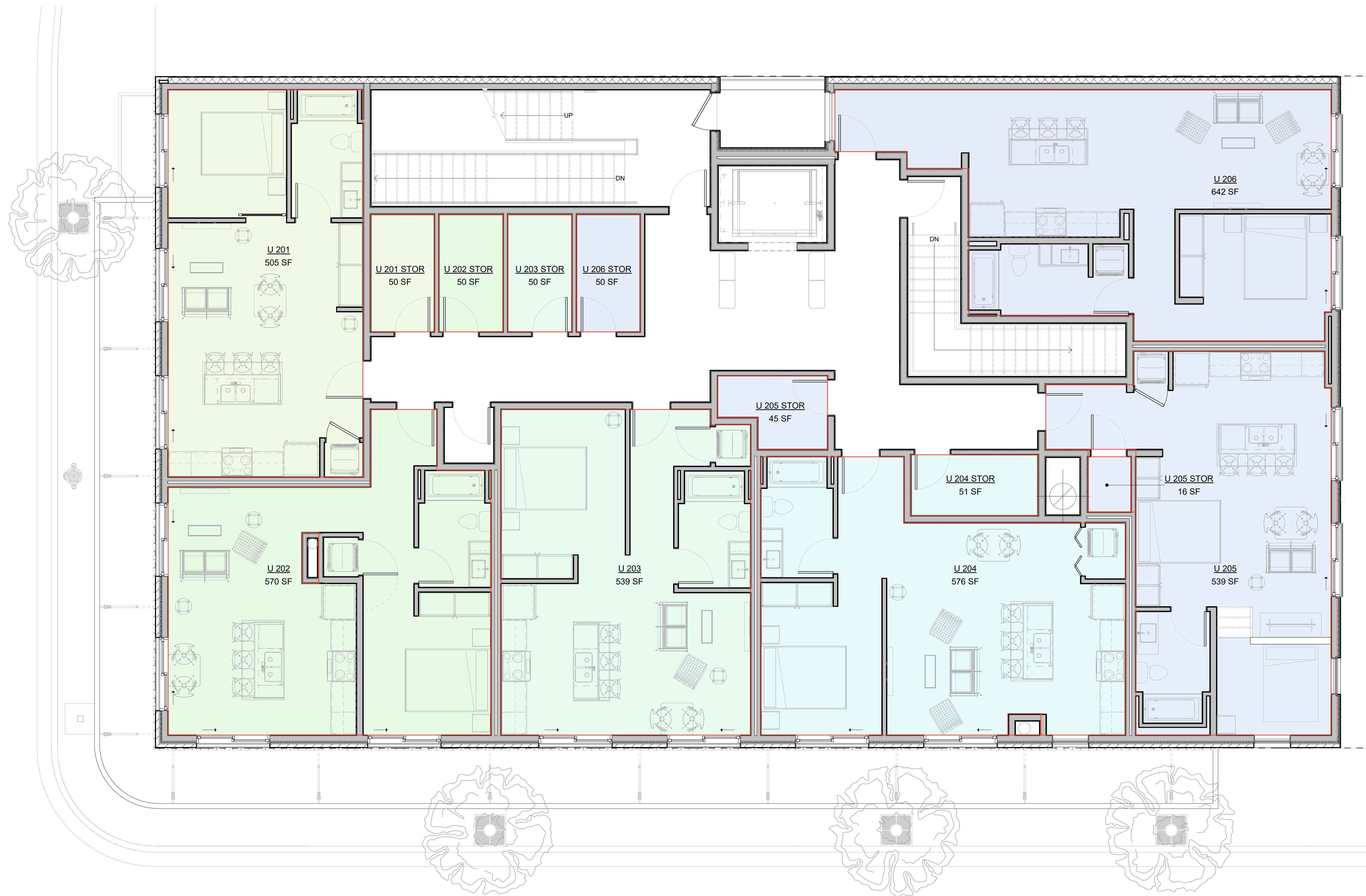
SCALE: 3/32" = 1'-0"

200 NORTH MAIN

200 N. MAIN ST.
KETCHUM, ID 83340

DESIGN REVIEW 2
1/17/2024

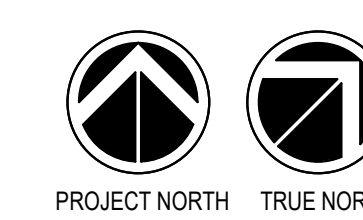




AREA SCHEDULE 2ND FLOOR RESIDENTIAL UNITS	
NAME	NET AREA
U 201	505 SF
U 201 STOR	50 SF
	555 SF
U 202	570 SF
U 202 STOR	50 SF
	620 SF
U 203	539 SF
U 203 STOR	50 SF
	589 SF
U 204	576 SF
U 204 STOR	51 SF
	627 SF
U 205	539 SF
U 205 STOR	45 SF
U 205 STOR	16 SF
	600 SF
U 206	642 SF
U 206 STOR	50 SF
	692 SF
2ND FLOOR TOTAL	3,683 SF

PROPOSED SECOND FLOOR PLAN - NET UNIT AREAS

SCALE: 1/4" = 1'-0"



200 NORTH MAIN

200 N. MAIN ST.
KETCHUM, ID 83340

DESIGN REVIEW 2
1/17/2024

