



City of Ketchum

November 21, 2022

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve FAR Exceedance Agreement 22811 for the development at 200 N Leadville Ave.

Recommendation and Summary

Staff recommends the Ketchum City Council approve FAR Exceedance Agreement 22811 (Attachment A) for the proposed development at 200 N Leadville Ave through the following motion:

Recommended Motion: "I move to authorize the Mayor to sign FAR Exceedance Agreement 22811 between the City and 755 S Broadway, LLC for the development at 200 N Leadville Ave."

The reasons for the recommendation are as follows:

- Per recent process improvements, the Ketchum City Council will review FAR Exceedance Agreements prior to development proposals going to Planning and Zoning Commission for review.
- The Planning and Zoning Commission will hear the design review and condominium preliminary plat applications at their November 29, 2022 meeting.
- Pursuant to Ketchum Municipal Code §17.124.040.B.f., community housing contributions may be paid via a fee in-lieu of housing. The applicant proposes to satisfy the community housing contribution by paying the in-lieu fee totaling \$421,650.
- Per the conditions of the FAR Exceedance Agreement outlined in Exhibit B, any changes in community housing mitigation type will be subject to an amendment of this agreement. Minor changes in square footage may be approved administratively at the discretion of the Administrator.

Introduction and History

As mentioned in the staff report for the 1st and Sun Valley Office Building at 131 E Sun Valley Rd, planning staff has modified the sequence of council review and approval of FAR exceedance agreements. Moving forward, council will review and approved exceedance agreements before the Planning and Zoning Commission reviews the design review permit. This will not delay the design review process and will allow council input early in the process before a project is approved by the Commission.

The applicant proposes to develop a new three-story mixed-use building at the north corner of 2nd Street and N Leadville Ave within the Mixed-Use Subdistrict of the Community Core (CC-2 Zone) at

200 N Leadville Ave. The proposed development would include ground floor commercial, four residential condominiums with associated parking and storage. The building is proposed to be condominiumized.

Analysis

Pursuant to Ketchum Municipal Code §17.124.040, development within the Community Core is permitted a floor area ratio (FAR) of 1.0 which may be increased up to a maximum of 2.25 FAR with an associated community housing contribution. The City of Ketchum has instituted the adoption of exceedance agreements to memorialize community housing contributions provided in exchange for increases above the permitted FAR. The Ketchum City Council has the authority to review and approve community housing contributions in exchange for increases above the 1.0 permitted FAR. At their discretion, the Ketchum City Council may amend the community housing contribution and the method for compliance required for the project. Pursuant to Ketchum Municipal Code §17.124.040.B2c, community housing contributions may be paid via a fee in-lieu of housing.

The proposed building is 11,663 gross square feet with an FAR of 2.0. The applicant has proposed paying the in-lieu fee to satisfy the community housing contribution in exchange for the FAR increase. As outlined in Exhibit B to the FAR Exceedance Agreement, the community housing in-lieu fee payment for the proposed FAR increase is \$421,650.

Sustainability

The project does not limit the ability of the city to reach the goals of the Ketchum Sustainability Action Plan – 2020.

Financial Impact

The in-lieu fee is deposited into the city's housing in-lieu fund which provides funding for the city's housing programs and initiatives to create workforce housing within the city of Ketchum. At present, the in-lieu fund has a small balance. Payment of this in-lieu fee will provide needed funding for current and future programs and initiatives.

Attachments

- A. FAR Exceedance Agreement 22811

**FAR EXCEEDANCE
AGREEMENT #22811**

Parties:

City of Ketchum	"City"	P.O. Box 2315, 191 5 th Street W, Ketchum, Idaho 83340
755 S Broadway LLC	"Developer"	Mailing: 2667 S Tacoma Way, Tacoma, WA 98409 Subject Property: 200 N Leadville (Ketchum Townsite: Block 23: Lot 1)

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho ("City"), and 755 S Broadway LLC, a limited liability corporation, owner of the subject property and developer of the project ("Developer").

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 Developer.** Developer, by this Agreement, attests that the City has disclosed potential litigation challenging K.M.C. 17.124. Developer 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.** Developer, 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 Developer's intent to accept and proceed with such standards as outlined in K.M.C. 17.124 for Developer's development plan for purposes of allowable FAR and Developer voluntarily and knowingly accepts the mitigation measures as proposed.
3. **FAR Exceedance Consideration.** In consideration for Developer's attestation and waiver, the City agrees to consider their exceedance proposal and will currently consider and evaluate Developer'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.** Developer may withdraw from this Agreement upon thirty days notice to City provided that Developer 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.** Developer 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 _____, 2022.

Developer

City of Ketchum, Idaho

Print Name
Managing Member
755 S Broadway, LLC

Neil Bradshaw, Mayor

Attest:

Trent Donat, City Clerk

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)

Exhibit B

EXCEEDANCE AGREEMENT COMPLIANCE

PROJECT:	The 208 Condominiums
APPLICATION FILE NUMBERS:	Design Review (P22-035) Condominium Subdivision Prelim Plat (P22-035A)
OWNER:	755 S Broadway LLC
REPRESENTATIVE:	Jonathan Sherman Nicole Ramey, Medici Architects
REQUEST:	Development of a new 11,663 square foot three story mixed-use development with ground floor commercial and four residential condominium units with associated parking.
LOCATION:	200 N Leadville Ave (Ketchum Townsite: Block 23: Lot 1)
ZONING:	Mixed-Use Subdistrict of the Community Core (CC-2)
BACKGROUND:	

1. The applicant is proposing to develop a new 11,663 square foot three story mixed-use development with ground floor commercial and four residential condominium units with associated parking.
2. The site is located at 200 N Leadville (Ketchum Townsite: Block 23: Lot 1) within the Mixed-Use Subdistrict of the Community Core (CC-2). Multi-family dwelling units and commercial spaces are permitted uses in the CC-2 Zone.
3. The subject property has an area of 5,504 sq ft.
4. The proposed development will have a total gross floor area of 11,663 square feet.
5. Pursuant to the definition of gross floor area (KMC §17.08.020), up to four parking stalls for developments on single Ketchum Townsite lots of 5,600 sq ft or less are not included in the gross floor area calculation. As the project has four garage spaces, the project receives a reduction of 648 sq ft.
6. With the parking stall discount, the development has a proposed Floor Area Ratio (FAR) of 2.0 (11,015 gross sq ft/5,504 sq ft lot area).
7. As a condition of Design Review approval, the project shall comply with the requirements of Ketchum City Code §17.124.040, *Floor Area Ratios and Community Housing*, as adopted on the date a Building Permit is submitted for the project.

8. The Planning and Zoning Commission is scheduled to hear the Design Review application (P22-035) for the development on November 29, 2022. Building Permit plans must conform to the approved Design Review plans unless otherwise approved in writing by the Planning and Zoning Commission or Administrator.

EXCEEDANCE ANALYSIS

The project shall comply with the requirements of Ketchum City Code § 17.124.040 as adopted on the date a building permit is submitted for the project.

Permitted in Community Core Subdistrict 2 (CC-2)

Permitted Gross FAR: 1.0

Permitted Gross FAR with Inclusionary Housing Incentive: 2.0

Proposed Gross Floor Area: 11,663 gross square feet

Gross Floor Area with Parking Discount: 11,015 sq ft (reduction of 648 square feet for four stalls that are 9 x 18 feet)

Ketchum Townsite Lot Area: 5,504 sq ft

FAR Proposed: 2.0 (11,015 gross sq ft/5,504 sq ft lot area)

Increase Above Permitted FAR: 5,511 sq ft

20% of Increase: 1,102 sq ft

Net Livable (15% Reduction): 937 sq ft of community housing required.

Total Proposed On-site Community Housing Contribution: 0 sq ft

Proposed Community Housing In-Lieu Fee: \$421,650 (937 sq ft x \$450/sq ft)

COMMUNITY HOUSING CONTRIBUTION CONDITIONS

The following conditions apply to the community housing contribution for the development at 200 N Leadville Ave:

1. The development shall provide a community housing in-lieu fee payment in the amount of \$421,650. Fee payment is due at the time of building permit application.
2. If the community housing contribution type (i.e. on-site, off-site, fee in-lieu) changes through the course of the design review approval process or at the request of the applicant/owner, an amendment to this agreement must be approved by the Ketchum City Council.
3. If the total gross square footage of the project changes through the course of the design review approval process or building permit application review, a revised fee in-lieu 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.
4. If a building permit is not issued following payment of the in-lieu fee at building permit application, a refund of the fee may be issued within a reasonable period of time.