



**PLANNING COMMISSION  
STAFF REPORT**

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November 2, 2017

AGENDA ITEM: Planning File No: 205-17-CU: A conditional use request for the renewal of the expired August 12, 2014, conditional use approval of the Building A, Watertower Place Condominiums mixed-use development project (Planning File #035-14 DA/CU/SD).

LOCATION: 25 Watertower Way / Tract A, Watertower Place Condominiums

ZONING: Mixed-Use (MU) District

OWNER/APPLICANT: Michael Bosma, Rubicon Development  
1035 Pearl Street, Suite 205  
Boulder, CO 80304

NOTICING: Mailed to adjacent property owners: October 19, 2017  
Posted at the Post Office: October 19, 2017  
Posted at the Site: October 19, 2017  
Published in the Summit County Journal: October 27, 2017

TOWN STAFF: Bill Gibson, Assistant Community Development Director  
[billg@townoffrisco.com](mailto:billg@townoffrisco.com) (970) 668-9121

**PROJECT DESCRIPTION**

The applicant, Michael Bosman, Rubicon Development, is requesting the renewal of an expired August 12, 2014 Conditional Use Application approval of the Building A, Watertower Place Condominiums mixed-use development project. Building A is the third phase of the overall Watertower Place Condominiums development (Buildings B and C were previously constructed and are currently occupied). Building A consists of 35 residential units (including 8 deed restricted affordable housing units) and one (1) commercial unit with approximately 1,249 square feet of floor area.

The subject property is located within the Mixed-Use (MU) Zoning District and permitted uses within the MU District must consist of a mixture of residential and commercial, with each such sort of use making up not less than twenty percent (20%) of the total floor area. The proposed commercial use in Building A occupies less than two percent (2%) of the Building A floor area and approximately one percent (1%) of the total floor area within the entire Watertower Place Condominiums development (Buildings A, B, and C combined). Since the proposed commercial use makes up less than twenty percent (20%) of the total floor area, the subject Building A

project is a conditional use. At this time, the applicant is not proposing any changes to the previously approved commercial use.

## **BACKGROUND**

On January 17, 2008, the Planning Commission approved a Development Application and preliminary plat for the Watertower Place Condominiums mixed-use project (formerly known as Frisco Depot). The project included the vacation of the Teller Street Alley right-of-way located in Block 16, Frisco Townsite (Ordinance 07-10) and the construction of a new public roadway within the South 7<sup>th</sup> Avenue and Teller Street right-of-ways. The project also consisted of three new buildings: Building A, a mixed-use building fronting along Granite Street with 3 commercial units and 29 total dwelling units (5 deed restricted affordable units); Building B, an all residential building fronting along South Summit Boulevard with 8 total dwelling units (1 deed restricted affordable unit); and, Building C, an all residential building fronting along 7<sup>th</sup> Avenue/Watertower Way with 6 total dwelling units (2 deed restricted affordable units). Buildings B and C were constructed along with the new street; however, Building A was not constructed.

On January 16, 2014, the Planning Commission reviewed a Sketch Plan Application for a new Building A, Watertower Place Condominiums mixed-use project. The Commissioners were generally supportive of the project and directed the applicant to proceed forward with a formal Development Application.

On July 10, 2014, the Planning Commission approved a Development Application and preliminary plat for the Building A, Watertower Place Condominiums mixed-use project. The project included 35 residential units (including 8 deed restricted affordable housing units) and one (1) commercial unit consisting of less than 20% of the project floor area. The Commission forwarded a recommendation of approval to the Town Council for the accompanying Conditional Use Application to allow the commercial use with less than 20% of the total floor area (Planning File #035-14-DA/SD/CU). This project also included a request for the vacation of an unimproved portion of the South 8<sup>th</sup> Avenue right-of-way located adjacent to the Watertower Place Condominiums project. The Planning Commission also forwarded a recommendation of approval to the Town Council for the proposed vacation.

On August 12, 2014, the Town Council approved the Conditional Use Application to allow the commercial use of the project to consist of less than 20% of the project floor area. Based upon the zoning regulations in place at the time, the conditional use approval was valid for a period of one (1) year, so this approval has expired.

On September 9, 2014, the Town Council approved the final reading of Ordinance 14-07 which vacated the adjacent portion of the unimproved South 8<sup>th</sup> Avenue right-of-way. The vacated right-of-way was considered part of the development site for zoning calculation purposes such as lot coverage; however, the vacated property was not allowed to be used for additional density. The applicant was required to improve the vacated property with landscaping, a public bike/pedestrian path, and two park benches. The applicant was required to provide utility easements across the vacated property. The vacated property is to remain for public use and enjoyment and the applicant is required to maintain the property in perpetuity at their expense. The applicant was also required to construct curb and gutter, a bus shelter, and on-street parking spaces along Granite Street.

On April 2, 2015, the Planning Commission approved modifications to the Development Application (Planning File #049-15-MDA) which including changes to the building elevations,

roof forms, stair towers, parking garage, unenclosed parking space layout, and bedroom counts. This Development Application approval has not yet expired.

A lawsuit was filed contesting the approved vacation of the South 8<sup>th</sup> Avenue right-of-way. The lawsuit was eventually dismissed by the Colorado Court of Appeals on January 19, 2017. This legal matter had the effect of delaying the applicant's pursuit of a building permit and the construction of the approved Building A, Watertower Place Condominiums project.

Below is a vicinity map of the subject property. The location of the property lines shown on this map vary in accuracy and should only be used for reference purposes:



Vicinity Map

### REQUIRED ACTION

Planning Commission:	A recommendation to Town Council of approval, approval with conditions, or denial of the conditional use request.
Town Council:	Approval, approval with conditions, or denial of the proposed conditional use request.

### ANALYSIS – CONDITIONAL USES [§180-30]

The Staff Report to the Town Council dated August 12, 2014 pertaining to the Building A, Watertower Place Condominiums project (Planning File #035-14-DA/SD/CU) states:

*It shall be the duty of the applicant to establish that each of the following conditional use criteria has been met.*

a. That the proposed use in its particular location is necessary or desirable to provide a service or facility that will contribute to the general welfare of the community.

*Applicant response: Yes, the primary use of residential is a necessary use for this project in that we are providing efficient dwelling units that are in demand within the Town of Frisco. We are providing additional affordable dwelling units, which also addresses a town need. It is desirable to eliminate the 20% commercial use in this location as the new town plan calls for a focus on commercial on Main Street and the Summit Boulevard business districts. A Large commercial component to this project would be in direct conflict with these goals.*

*Staff Analysis: The construction of new affordable housing units in the Building A, Watertower Place project that will be occupied by year-round residents will contribute to the general welfare of the community.*

*The subject property is located in an area generally described as the transition between the downtown commercial core of Main Street and the residential neighborhoods to the south of Granite Street. Generally, some amount of both residential and commercial uses in the Building A, Watertower Place project is desirable in this location and contributes to the general welfare of the community.*

*As discussed by the Planning Commission at their public hearing, market conditions limit the viability of commercial uses in buildings located along Granite Street because of the distance and physical separation from Main Street. With the exception of the nonconforming dance studio located at 400 Granite Street, there are no existing commercial uses located on the south side of Granite Street. Recent development projects on the north side of Granite Street, which are located closer to Main Street, (Mount Victoria Lodge, Bears Den, Condos Off Main, etc.) have been challenged in finding commercial tenants, despite each of those tenant spaces also having frontage and exposure along the numbered avenues. In some instances, portions of buildings originally intended for commercial use were later converted to residential use due to a lack of demand for those tenant spaces.*

*The Planning Commission expressed concern that the construction of Building A with 20% of its floor area as a commercial use would be excessive and a new building with a large amount of vacant, un-rentable, commercial floor area is undesirable. It appears that the proposed amount of commercial floor area in Building A is viable and appropriate in scale for the new building and the neighborhood.*

*The application appears to be in conformance with this criterion.*

b. That such use will not, under the circumstances of the particular case and the conditions imposed, be detrimental to the health, safety and general welfare of persons nor injurious to property or improvements in the community.

*Applicant's response: Yes, the conditional removal of the 20% commercial space will in no way impose or create a situation where public safety is at issue. In fact it will decrease as commercial traffic will be deterred away from streets and areas where it is expected.*

Staff Analysis: The proposed Building A, Watertower Place project will not be detrimental to the health, safety and general welfare of the community, because the proposal complies with the development standards of the Frisco Town Code and the applicant will be required to meet the standard and special conditions outlined in the staff report. It appears this criterion is satisfied.

c. That the proposed use will comply with the regulations and conditions specified in the Town Code for such use.

*Applicant response:* Yes, this residential use will comply with Town code in all building codes, planning regulations, and bulk and mass guidelines.

Staff Analysis: The proposed use will comply with the regulations and conditions in the Town Code for such use, because the proposal complies with the development standards of the Frisco Town Code and the applicant will be required to meet the standard and special conditions outlined in the staff report. It appears this criterion is satisfied.

d. That the proposed use conforms to the goals and objectives of the Community Plan for the Town of Frisco.

*Applicant's response:* The proposed plan conforms to the Town's Master in Plan in many ways. First, in statement BE1, "Encourage eclectic and sustainable designs for new construction." This is a design and product that meets this requirement and is providing a product that will create vibrancy with the town of Frisco.

Second, BE3 from the Town of Frisco Master Plan states, "Preserve and enhance the Main Street area as the heart of the community." This is in direct conflict with creating a large retail component to the south of Granite Street.

Third, from statement BE4 from the Town of Frisco Master Plan stating, "Enhance the Summit Boulevard area as a primary gateway and as a functional and efficient economic center of the town." Again, creating this large commercial space outside of these two economic areas would fall in direct conflict with this statement.

Staff Analysis: The proposed use conforms to the goals and objectives of the Frisco Community Plan because the proposal achieves the identified goals and objectives relative to art & culture, built environment, energy, economy, housing, and transportation & mobility. As discussed by the Planning Commission, Main Street is the focal point of the Frisco's downtown commercial area. The amount of commercial floor area proposed with this conditional use request will compliment, rather than detract from, business along Main Street. It appears this criterion is satisfied.

e. That the proposed use furthers the architectural qualities and character of the community.

*Applicant's response:* Yes, this project has been designed and thought out with architecture and design as the top priority. We have created a design that incorporates the historical mining and railroad past of the Town of Frisco, while designing a lasting modern project the town can be proud of. As previously stated we have decreased lot coverage from previous approved plans, and been cautious of bulk plane and building massing.

Staff Analysis: The proposed use furthers the architectural qualities and character of the community because the proposal complies with the prescribed development standards of the Zoning Ordinance, including the design goals and standards of the Summit Boulevard Overlay District. It appears this criterion is satisfied.

f. That the proposed use is compatible in function and design with surrounding land uses.

*Applicant's response:* Yes, the proposed buildings have been designed to be consistent with the previously built Phase I Watertower Place residential buildings. In addition the primary residential use and function is consistent with all lots and surrounding areas on the south of Granite Street.

Staff Analysis: The proposed use is compatible in function and design with the surrounding land uses. The proposed mixed-use project will function as a transition between the existing Main Street commercial uses to the north (retail, restaurant, services, etc.) and the existing residential uses to the south, because the proposal complies with the prescribed development standards of the Zoning Ordinance, including the design goals and standards of the Summit Boulevard Overlay District, and the applicant will be required to meet the standard and special conditions outlined in the staff report.

The application includes a proposed vacation of the unused South 8<sup>th</sup> Avenue right-of-way adjacent to this site. The applicant is proposing to install landscaping improvements in the former right-of-way to improve the aesthetics of this area, which in turn will create a more welcoming entrance to Frisco from Summit Boulevard at the Granite Street intersection. The applicant is also proposing to construct a path through the former right-of-way to improve the connectivity of Frisco's bike path system. It appears this criterion is satisfied.

On August 12, 2014, the Town Council made the following findings pertaining to the Building A, Watertower Place Condominiums project (Planning File #035-14-DA/SD/CU):

1. The proposed development application, preliminary plat and conditional use for Building A, Watertower Place Condominiums are in general conformance with the principals and policies of the Frisco Community Plan since all applicable quality of life direction statements and associated criteria have been met.
2. The proposed development application, preliminary plat and conditional use for Building A, Watertower Place Condominiums are in general conformance with the requirements of Chapter 157, Subdivision of Land, of the Frisco Town Code.
3. The proposed development application, preliminary plat and conditional use for Building A, Watertower Place Condominiums are in general conformance with the Town of Frisco Zoning Regulations, specifically Section 180-15, Mixed-Use District because all of the applicable requirements for setbacks, density, and building height have been met.
4. The proposed development application, preliminary plat and conditional use for Building A, Watertower Place Condominiums are in general conformance with the Town of Frisco Zoning Regulations, specifically Section 180-18.4, Summit Boulevard Corridor Overlay District because the applicable standards have been met. The deviations to the bulk plane are approved because the building forms projecting beyond the bulk plane meet the building height standards and provide substantial architectural relief.

5. *The proposed development application, preliminary plat and conditional use for Building A, Watertower Place Condominiums are in general conformance with the Town of Frisco Zoning Regulations, specifically Section 180-20, Development Standards since all applicable requirements have been satisfied with the submittal.*
6. *The proposed development application, preliminary plat and conditional use for Building A, Watertower Place Condominiums are in general conformance with the Town of Frisco Zoning Regulations, specifically Section 180-20.1 Landscaping and 180-20.2 Outdoor Lighting since all applicable requirements have been met.*
7. *The proposed development application, preliminary plat and conditional use for Building A, Watertower Place Condominiums are in general conformance with the Town of Frisco Zoning Code, specifically Section 180-23, Parking and Loading Regulations, because the applicable requirements have been met. Further, the proposed development application meets the prescribed criteria necessary to allow tandem parking.*
8. *The proposed development application, preliminary plat and conditional use for Building A, Watertower Place Condominiums are in general conformance with the Town of Frisco Zoning Code, specifically Section 180-30, Conditional Uses, because the following criteria established for allowing a conditional use have been met:*
  - a. *That the proposed use in its particular location is necessary or desirable to provide a service or facility that will contribute to the general welfare of the community, because the construction of new affordable housing units in the Building A, Watertower Place project that will be occupied by year-round residents will contribute to the general welfare of the community.*

*The subject property is located in an area generally described as the transition between the downtown commercial core of Main Street and the residential neighborhoods to the south of Granite Street. Generally, some amount of both residential and commercial uses in the Building A, Watertower Place project is desirable in this location and contributes to the general welfare of the community.*

*Market conditions limit the viability of commercial uses in buildings located along Granite Street because of the distance and physical separation from Main Street. With the exception of the nonconforming dance studio located at 400 Granite Street, there are no existing commercial uses located on the south side of Granite Street. Recent development projects on the north side of Granite Street, which are located closer to Main Street, (Mount Victoria Lodge, Bears Den, Condos Off Main, etc.) have been challenged in finding commercial tenants, despite each of those tenant spaces also having frontage and exposure along the numbered avenues. In some instances, portions of buildings originally intended for commercial use were later converted to residential use due to a lack of demand for those tenant spaces.*

- b. *That such use will not, under the circumstances of the particular case and the conditions imposed, be detrimental to the health, safety and general welfare of persons nor injurious to property or improvements in the community, because the proposed Building A, Watertower Place project will not be detrimental to the health, safety and general welfare of the community, because the proposal complies with the development standards of the Frisco Town Code and the applicant will be required to meet the standard and special conditions outlined in the staff report.*

- c. *That the proposed use will comply with the regulations and conditions specified in the Town Code for such use, because the proposed use will comply with the regulations and conditions in the Town Code for such use, because the proposal complies with the development standards of the Frisco Town Code and the applicant will be required to meet the standard and special conditions outlined in the staff report.*
- d. *That the proposed use conforms to the goals and objectives of the Community Plan for the Town of Frisco, because the proposed use conforms to the goals and objectives of the Frisco Community Plan because the proposal achieves the identified goals and objectives relative to art & culture, built environment, energy, economy, housing, and transportation & mobility. As discussed by the Planning Commission, Main Street is the focal point of the Frisco's downtown commercial area. The amount of commercial floor area proposed with this conditional use request will compliment, rather than detract from, business along Main Street.*
- e. *That the proposed use furthers the architectural qualities and character of the community, because the proposed use furthers the architectural qualities and character of the community because the proposal complies with the prescribed development standards of the Zoning Ordinance, including the design goals and standards of the Summit Boulevard Overlay District.*
- f. *That the proposed use is compatible in function and design with surrounding land uses, because The proposed use is compatible in function and design with the surrounding land uses. The proposed mixed-use project will function as a transition between the existing Main Street commercial uses to the north (retail, restaurant, services, etc.) and the existing residential uses to the south, because the proposal complies with the prescribed development standards of the Zoning Ordinance, including the design goals and standards of the Summit Boulevard Overlay District, and the applicant will be required to meet the standard and special conditions outlined in the staff report.*

*The application includes a proposed vacation of the unused South 8<sup>th</sup> Avenue right-of-way adjacent to this site. The applicant is proposing to install landscaping improvements in the former right-of-way to improve the aesthetics of this area, which in turn will create a more welcoming entrance to Frisco from Summit Boulevard at the Granite Street intersection. The applicant is also proposing to construct a path through the former right-of-way to improve the connectivity of Frisco's bike path system.*

**PUBLIC COMMENT**

The Community Development Department has not received any public comments concerning the proposed conditional use renewal as of October 26, 2017.

**STAFF RECOMMENDATIONS**

The Community Development Department recommends the following findings pertaining to the proposed Conditional Use Application approval renewal:

*Based upon the review of the Staff Report dated November 2, 2017, and the evidence and testimony presented, the Planning Commission finds:*



1. *A Development Application for the construction of the Building A, Watertower Place Condominiums mixed-use project was approved by the Planning Commission on July 10, 2014. The Commission also forwarded a recommendation of approval to the Town Council for the accompanying Conditional Use Application to allow the commercial use with less than 20% of the total floor area and the accompanying request for the vacation of an unimproved portion of the South 8<sup>th</sup> Avenue right-of-way located adjacent to the Watertower Place Condominiums project (Planning File #035-14 DA/CU/SD). The Planning Commission subsequently approved modifications to the Development Application on April 2, 2015 (Planning File #049-15-MDA). The Development Application approval for Building A has not yet expired.*
2. *A Conditional Use for the Building A, Watertower Place Condominiums project to allow for a commercial use of less than 20% of the total floor area was approved by the Town Council on August 12, 2014. The applicant has not yet obtained a building permit or begun construction of this project, so pursuant to §180-30-D-3, Frisco Town Code, which was in effect at the time of that decision, the conditional use approval has expired. The applicant desires to renew the expired conditional use approval for the Building A, Watertower Place Condominiums project. At this time, the applicant is not proposing any changes to the previously approved commercial use.*
3. *On September 9, 2014, the Town Council approved the final reading of Ordinance 14-07 which vacated a portion of the unimproved South 8<sup>th</sup> Avenue right-of-way located adjacent to the Building A, Watertower Place Condominiums. A lawsuit was filed contesting the approved vacation of the South 8<sup>th</sup> Avenue right-of-way. The lawsuit was eventually dismissed by the Colorado Court of Appeals on January 19, 2017. This legal matter had the effect of delaying the applicant's pursuit of a building permit and the construction of the approved Building A, Watertower Place Condominiums project.*
4. *The Planning Commission affirms the August 12, 2014, Town Council findings pertaining to the Building A, Watertower Place Condominiums conditional use (Planning File #035-14-DA/SD/CU) that:*
  - a. *That the proposed use in its particular location is necessary or desirable to provide a service or facility that will contribute to the general welfare of the community, because the construction of new affordable housing units in the Building A, Watertower Place project that will be occupied by year-round residents will contribute to the general welfare of the community.*

*The subject property is located in an area generally described as the transition between the downtown commercial core of Main Street and the residential neighborhoods to the south of Granite Street. Generally, some amount of both residential and commercial uses in the Building A, Watertower Place project is desirable in this location and contributes to the general welfare of the community.*

*Market conditions limit the viability of commercial uses in buildings located along Granite Street because of the distance and physical separation from Main Street. With the exception of the nonconforming dance studio located at 400 Granite Street, there are no existing commercial uses located on the south side of Granite Street. Recent development projects on the north side of Granite Street,*

*which are located closer to Main Street, (Mount Victoria Lodge, Bears Den, Condos Off Main, etc.) have been challenged in finding commercial tenants, despite each of those tenant spaces also having frontage and exposure along the numbered avenues. In some instances, portions of buildings originally intended for commercial use were later converted to residential use due to a lack of demand for those tenant spaces.*

- b. That such use will not, under the circumstances of the particular case and the conditions imposed, be detrimental to the health, safety and general welfare of persons nor injurious to property or improvements in the community, because the proposed Building A, Watertower Place project will not be detrimental to the health, safety and general welfare of the community, because the proposal complies with the development standards of the Frisco Town Code and the applicant will be required to meet the standard and special conditions outlined in the staff report.*
- c. That the proposed use will comply with the regulations and conditions specified in the Town Code for such use, because the proposed use will comply with the regulations and conditions in the Town Code for such use, because the proposal complies with the development standards of the Frisco Town Code and the applicant will be required to meet the standard and special conditions outlined in the staff report.*
- d. That the proposed use conforms to the goals and objectives of the Community Plan for the Town of Frisco, because the proposed use conforms to the goals and objectives of the Frisco Community Plan because the proposal achieves the identified goals and objectives relative to art & culture, built environment, energy, economy, housing, and transportation & mobility. As discussed by the Planning Commission, Main Street is the focal point of the Frisco's downtown commercial area. The amount of commercial floor area proposed with this conditional use request will compliment, rather than detract from, business along Main Street.*
- e. That the proposed use furthers the architectural qualities and character of the community, because the proposed use furthers the architectural qualities and character of the community because the proposal complies with the prescribed development standards of the Zoning Ordinance, including the design goals and standards of the Summit Boulevard Overlay District.*
- f. That the proposed use is compatible in function and design with surrounding land uses, because the proposed use is compatible in function and design with the surrounding land uses. The proposed mixed-use project will function as a transition between the existing Main Street commercial uses to the north (retail, restaurant, services, etc.) and the existing residential uses to the south, because the proposal complies with the prescribed development standards of the Zoning Ordinance, including the design goals and standards of the Summit Boulevard Overlay District, and the applicant will be required to meet the standard and special conditions outlined in the staff report.*

### **Recommended Action**

Based upon the findings above, the Community Development Department recommends the Planning Commission **RECOMMENDS APPROVAL** to Town Council of the proposed conditional use, subject to the following condition(s):

1. *All elements and conditions of the August 12, 2014, conditional use approval of the Building A, Watertower Place Condominiums mixed-use project (Planning File #035-14 DA/CU/SD) shall remain in full effect, except as explicitly modified herein.*

### **Recommended Motion**

Should the Planning Commission choose to recommend the Town Council approve the proposed conditional use request, the Community Development Department recommends the following motion:

***With respect to File No. 205-17-CU, I move that the recommended findings set forth in the November 2, 2017, staff report be made and that the recommended action set forth therein be taken and that the Planning Commission RECOMMENDS APPROVAL to Town Council for the the renewal of the expired August 12, 2014, conditional use approval of the Building A, Watertower Place Condominiums mixed-use development project (Planning File #035-14 DA/CU/SD), located at 25 Watertower Way / Tract A, Watertower Place Condominiums.***

### **ATTACHMENTS**

- Application materials
- Previously approved architectural plans from Planning File #049-15-MDA (Modifications to Planning File #035-14 DA/CU/SD)

cc: Michael Bosma