



Planning and Zoning Commission Meeting - Regular AGENDA

Tuesday, January 12, 2021 at 4:30 PM
Ketchum City Hall
480 East Avenue North, Ketchum, ID 83340

In recognition of the Coronavirus (COVID-19), members of the public may observe the meeting live on the City's website at ketchumidaho.org/meetings.

If you would like to comment on a PUBLIC HEARING item, please submit your comment to participate@ketchumidaho.org by noon the day of the meeting. Comments will be provided to the Planning and Zoning Commission.

If you would like to phone in and provide comment on a PUBLIC HEARING item on the agenda, please dial the number below. You will be called upon for comment during that agenda item.

Dial-in: 253-215-8783

Meeting ID: 946 0344 8143

CALL TO ORDER

COMMISSION REPORTS AND EX PARTE DISCUSSION DISCLOSURE

CONSENT CALENDAR—ACTION ITEMS

1. ACTION ITEM - Minutes of December 15, 2020
2. ACTION ITEM - Findings of Fact and Conclusions of Law for the Decked Building Design Review

PUBLIC HEARINGS AND COMMUNICATIONS FROM STAFF – ACTION ITEMS

3. ACTION ITEM: Recommendation to consider and provide a recommendation to the City Council on and amendment to Development Agreement Amendment 20427 (P20-122) for the 1st Street and 4th Street mixed use project. The applicant is Jack Bariteau.

STAFF AND COMMISSION COMMUNICATIONS (Planning & Zoning Commission Deliberation, Public Comment may be taken)—ACTION ITEMS

ADJOURNMENT

Any person needing special accommodations to participate in the meeting should contact the City Clerk's Office as soon as reasonably possible at 726-3841. All times indicated are estimated times, and items may be heard earlier or later than indicated on the agenda.



Planning and Zoning Commission - Regular Meeting MINUTES

Tuesday, December 15, 2020 at 4:30 PM
Ketchum City Hall
480 East Avenue North, Ketchum, ID 83340

CALL TO ORDER

The meeting was called to order at 4:32 PM.

PRESENT (via teleconference)
Chairman Neil Chair Morrow
Vice-Chairman Mattie Vice-Chair Mead
Commissioner Tim Commissioner Carter
Commissioner Jennifer Commissioner Cosgrove
Commissioner Brenda Moczygemba

1. ACTION ITEM - Election of Officers for 2021:

Motion to re-elect Neil Chair Morrow as Chairperson and Mattie Mead as Vice-Chairperson for 2021.

Motion made by Commissioner Carter, Seconded by Commissioner Moczygemba.

Voting Yea: Chairman Morrow, Vice-Chairman Mead, Commissioner Carter, Commissioner Cosgrove, Commissioner Moczygemba

CONSENT CALENDAR—ACTION ITEMS

- 2. ACTION - Minutes of October 27, 2020**
- 3. ACTION - Minutes of November 10, 2020**

Commissioner Cosgrove commented on the Minutes of October 27, 2020, page 5. She requested a revision of the language concerning her comment on the hotel and short-term rentals.

Motion to approve the Consent Calendar with amendments as noted.

Motion made by Vice-Chairman Mead, Seconded by Commissioner Carter.

Voting Yea: Chairman Morrow, Vice-Chairman Mead, Commissioner Carter, Commissioner Cosgrove, Commissioner Moczygemba

4. ACTION - Findings of Fact and Conclusions of Law for the Waterman Residence Addition Mountain Overlay Design Review

Motion to approve the Findings of Fact and Conclusions of Law for the Waterman Residence Addition Mountain Overlay Design Review

Motion made by Commissioner Moczygemba, Seconded by Commissioner Carter.

Voting Yea: Chairman Morrow, Vice-Chairman Mead, Commissioner Carter, Commissioner Cosgrove, Commissioner Moczygemba

PUBLIC HEARINGS AND COMMUNICATIONS FROM STAFF – ACTION ITEMS

5. **ACTION ITEM - Decked Building Addition Design Review:** 345 Lewis Street (Northgate Subdivision: Block 1: Lot 15) The Commission will consider and take action on a Design Review application for a 1,825-square-foot, 25-foot tall addition to the Decked Building located at 345 Lewis Street within the City’s Light Industrial Number 2 (LI-2) Zoning District. *Continued from October 13, 2020 and November 10, 2020.*

Associate Planner Abby Rivin gave the background for the Decked Building Addition for the updated landscaping and drainage plans. Staff recommended approval of the project.

Michael Barker, architect, present by video call, presented the site plan changes including the addition of on-grade planters and a new dry well.

Vice-Chair Mead asked about how the new addition would interface with the neighboring building and are future conflicts anticipated.

Barker indicated the height of the new wall was minimized and is lower than code would allow. The new wall will be 3’ 3” above the handrail and the height of the parapet was limited so as to not obstruct neighbors' windows.

Vice-Chair Mead asked about the distance from the wall to the existing building and if there will be a flashing cap to seal off the gap. Barker replied a flashing cap would be used to seal it off.

Chair Morrow opened the floor to public comment.

Planner Rivin noted the written comments that were received.

Being no additional comment, the floor was closed.

Commissioner Carter wanted to advise the neighbors to make any alterations to the side of the building before it is closed off. He stated Decked could build to 35' but they are only building to 25' so the impact to the neighboring deck is minimized.

Chair Morrow appreciated the consideration of the neighboring building.

Vice-Chair Mead supported the expansion of a Ketchum business and the jobs it brought to the Community.

Motion to approve the Decked Building Addition Design Review with Conditions 1-13.

Motion made by Vice-Chairman Mead, Seconded by Commissioner Carter.

Voting Yea: Chairman Morrow, Vice-Chairman Mead, Commissioner Carter, Commissioner Cosgrove, Commissioner Moczygemba

6. **ACTION ITEM - Leadville Residences Pre-Application Design Review:** (Project Location: Northwest Corner of Leadville Avenue and E Second Street, Ketchum Townsite: Block 3, Lot 5.) The Planning and Zoning Commission will consider the Leadville Residences Pre-Application Design Review for the proposed development of a new three-story, 50.5-foot tall, 7,815-square-foot duplex and associated site improvements on a vacant lot at the corner of Leadville Avenue and 2nd Street within the Mixed-Use Subdistrict of the Community Core (CC-2). *Continued from September 15, 2020.*

Associate Planner Abby Rivin introduced the current project and reviewed the first Pre-Application review before the Commission. She noted the changes from the first version. Staff recommended either a continuance of this pre-application or accept this version and proceed to full design review.

Layne Thompson, Applicant Team, asked for Commission feedback. He discussed how the project related to the neighborhood and conformed to the code standards. He asked if the Commission agreed with the Staff Report conclusion, that the project did not meet Design Review objectives or the Community's vision for downtown.

Commissioner Cosgrove agreed with the Staff Report. She thought although it may be allowable, it may not be compatible with the current fabric of the city.

Commissioner Moczygemba agreed with Commissioner Cosgrove but thought although a two-family building was allowed, the code was at odds with the intent of the Community guidelines. She thought the bench and plantings were an improvement, but the low number of units and no commercial use on the first level were problematic. Although CC-2 permits ground floor residential, it should be of higher density.

Commissioner Cosgrove thought the code was more permissive than the Commission was willing to approve.

Commissioner Carter generally agreed with the Staff Report.

Vice-chair Mead liked the facade details but agreed with the Staff Report that although allowable, it conflicts with the Comprehensive Plan and adds nothing to a lively Downtown core. He felt it was a use problem more than a design problem.

Chair Morrow felt that without a retail component the potential for any vibrancy was gone. He liked the improvements but wanted to explore the use of the building.

Layne Thompson related the investor wanted the best and highest use of the property. He wanted to know if this was a use challenge. Would similar massing be acceptable if there was a different use?

Commissioner Cosgrove questioned a high-end duplex located adjacent to the Casino and associated late-night noises and activities.

Mike Brunelle, Architect, indicated they had taken that into consideration and added a tall planter as an audio break to mitigate noise at night.

Travis Jones, Development Team, noted they are aware it would take a certain buyer due to the location of this property.

Chair Morrow pointed out the condos at Leadville and Sun Valley seem to have less mass due to the use of setbacks. He also mentioned the site of the former Rico's restaurant.

Thompson asked for feedback on the best use of the site. He proposed retail on the ground floor with setback residential above.

Chair Morrow agreed that would be more palatable and mentioned the design of the Mountain West Bank.

Commissioner Carter thought the smaller surrounding buildings would emphasize the mass of this project, making it look larger. He was supportive of pushing scale a little bit as the Core grows. But he opposed a building of this size which would only benefit the high-end residents and not the character and vibrancy of the town. He suggested an underground garage, and a commercial component on the ground floor, with multiple units on the second floor and hi-end condos on the third floor. He wanted to see a design less contemporary, with more traditional architecture and materials of old-style Ketchum.

Commissioner Moczygemba agreed the building lacked vibrancy due to the lack of engagement with the public on the ground floor and only 2 residential units.

Vice-Chair Mead touched on the mass of the building and the industrial feel, He wanted to see more undulation and wondered how materials would look over time. He was aware of losing Ketchum's heritage, he wanted to see more of older Ketchum. He thought the planter softened the façade but wanted to see more planter-scape on the street facades. He thought the triangular tiering gave it a battleship look.

Commissioner Cosgrove added that addresses for buildings are not used for directions, etc., but rather the name of the business located there. She agreed with Mead on forward thinking design with a nod to the historical buildings but with modern materials.

Commissioner Carter appreciated the willingness of the teams to work with the Commission to produce an iconic building. He thought the applicant had the opportunity to bring something special to town.

Thompson asked about first-floor commercial vs ground floor small residential space.

Chair Morrow thought either one would add vibrancy.

Commissioner Cosgrove asked Staff if live/work would be appropriate. Planner Rivin indicated it would meet code.

Commissioner Carter thought 3-4 smaller residential units would produce better engagement to the street.

Vice-Chair Mead thought an empty-store front would not be optimal. He thought first floor residential should have a relationship to the street to add vibrancy.

Thompson expressed his appreciation for the Commissions' comments. He asked if the zoning code would support a restaurant. or medical office. Planner Rivin indicated either would be permitted but there were parking requirements to be considered.

- 7. ACTION ITEM - Ketchum Boutique Hotel Re-Hearing: 260 E River Street** Project Location: Includes three parcels (251 S. Main Street – Ketchum Townsite Lots 3, 21, FR 22 Blk 82 N 10’ x 110’ of alley S 20’ x 230’ of alley, 260 E. River Street – Ketchum Townsite Lot 2 Block 82 10’ x 110’ of alley, and 280 E. River Street – Ketchum Townsite Lot 1 Block 82). **Hearing to be continued to December 22, 2020 to review findings of fact, conclusions of law and conditions of approval.**

Motion to continue the Ketchum Boutique Hotel Findings of Fact and Conclusions of Law to the December 22, 2020 at 4:30 PM Planning and Zoning Commission Meeting.

Motion made by Vice-Chairman Mead, Seconded by Commissioner Carter.

Voting Yea: Chairman Morrow, Vice-Chairman Mead, Commissioner Carter, Commissioner Cosgrove, Commissioner Moczygemba

STAFF AND COMMISSION COMMUNICATIONS (Planning & Zoning Commission Deliberation, Public Comment may be taken)—ACTION ITEMS

Senior Planner Brittany Skelton related the City Council Meeting Scheduled for December 21, 2020:

- Lot Line Shift
- Floodplain Ordinance

ADJOURNMENT

Motion to adjourn.

Motion made by Chairman Morrow, Seconded by Commissioner Cosgrove.

Voting Yea: Chairman Morrow, Vice-Chairman Mead, Commissioner Carter, Commissioner Cosgrove, Commissioner Moczygemba

Chairman Neil Morrow



**City of Ketchum
Planning & Building**

IN RE:)	
)	
Decked Building Addition)	KETCHUM PLANNING AND ZONING COMMISSION
Design Review)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
Date: January 12, 2020)	DECISION
)	
File Number: P20-027)	

FINDINGS REGARDING APPLICATION FILED

PROJECT: Decked Building Addition

FILE NUMBER: P20-078

APPLICATION TYPE: Design Review

REPRESENTATIVE: C. Michael Barker, Architect

OWNER: 345 Lewis LLC

REQUEST: Design Review for a proposed 1,825-square-foot, 25-foot tall addition to the Decked Building

LOCATION: 345 Lewis Street (Northgate Subdivision: Block 1: Lot 15)

ZONING: Light Industrial District Number 2 (LI-2)

OVERLAY: None

NOTICE: A public hearing notice for the project was mailed to all property owners within 300 ft of the development site on September 23, 2020. The public hearing notice was published in the Idaho Mountain Express on September 23, 2020. A public hearing notice was posted on the project site on October 6, 2020. The public hearing for this application was continued from the October 13th Planning & Zoning Commission Meeting.

FINDINGS REGARDING DECKED BUILDING ADDITION

The Decked Building is located at 345 Lewis Street (Northgate Subdivision: Block 1: Lot 15) within the Light Industrial District Number 2 (LI-2) Zone. The addition extends from the existing building’s north side 19 feet to the north. The two-story addition is 1,825 square feet and 25 feet tall.

The Planning & Zoning Commission previously considered this Pre-Application Design Review during their meeting on October 13th. The Commission moved to continue review of the Decked Building Addition Design Review and directed the applicant to submit a landscape plan, an updated drainage plan, and more thorough drawings highlighting the project's compliance with dimensional standards in the LI-2 Zone and the building's compatibility with the neighborhood. The applicant submitted project plans modifications that included new landscaping and drainage details. The Planning & Zoning Commission reviewed the updated project plans for the Decked Building Addition project on December 15th, 2020 and unanimously approved the Design Review application.

Decked Building Addition

The existing building was originally constructed in 1990. Decked moved into the building in 2017 and this location is now their corporate headquarters. Decked manufactures truck storage compartments. Their business operations qualify as industrial design, which is a permitted use in the LI-2 Zone:

INDUSTRIAL DESIGN: The professional service of creating and developing concepts and specifications that optimize the function, value and aesthetics of products and systems for the mutual benefit of both user and manufacturer, often employing design thinking strategies. Typically, industrial design is intended to result in tangible goods that can be mass produced. Industrial design businesses may include on-site prototyping, fabrication, and manufacturing. (Ketchum Municipal Code 17.08.020).

Light Industrial Neighborhood Context

Light industrial buildings border the property to the east, north, and south along Lewis Street and Northwood Way. The addition project's materials, colors, and signing complement neighboring buildings in the light industrial area. The proposed 25-foot tall addition extends 19 feet north to the interior side property line shared with the Roth Building Condominiums located at 401 Lewis Street. The addition project complies with the dimensional standards required in the LI-2 Zone—buildings in the light industrial area may be built all the way up to interior side property lines and the maximum allowable building height is 35 feet. The proposed addition's parapet wall will extend 3'-3" above an existing second-floor deck located on the southside of the Roth Building.

A large City-owned parcel borders the back of Northgate Subdivision. Existing development on this parcel includes the YMCA, the Northwood Place Apartments, and the Ketchum's new fire station, which is currently under construction. When the Northgate Subdivision was created in 1989, this City-owned parcel was zoned General Residential Low Density (GR-L). In 2005, the parcel was rezoned to Tourist. The 1989 Northgate Subdivision includes a plat note reflecting the prior residential zoning, which required a 15-foot rear setback with a landscaped yard. As the neighboring property was rezoned to Tourist, the more restrictive residential rear setback (KMC §17.12.050) and landscaped yard requirements (KMC §17.124.100) no longer apply. A 5-foot concrete wall was built in the 1990s to buffer these industrial zoned properties from the neighborhood to the west. Additionally, Northwood's carport wall borders the subject property's rear property line providing more screening from the light industrial area.

City Department Comments, LI-2 Zoning District Requirements, and Design Review Standards

Staff analysis of the application is provided in the following Tables 1-3 including City Department comments, Light Industrial District Number 2 (LI-2) Zoning District requirements, Design Review standards, and other provisions of Ketchum Municipal Code.

TABLE 1: FINDINGS REGARDING CITY DEPARTMENT COMMENTS

Note: City Department comments are preliminary and based on the project concept as proposed with the subject Design Review application. All City Departments shall review and approve the project through the Building Permit application process. All comments pertaining to the Design Review drawings are subject to change. All improvements shall be reviewed and approved by the City Engineer and Streets Department prior to issuance of a Building Permit for the project. All City Department requirements and associated specifications for the required improvements must be verified, reviewed, and approved prior to issuance of a Building Permit for the project.

City Department Comments
<p>Fire Department:</p> <ul style="list-style-type: none">• It is the General Contractor’s responsibility to understand and adhere to all Fire Protection Ordinance #1125 requirements in addition to any and all other City of Ketchum requirements in effect at the time of Building Permit issuance. Failure to comply with all local ordinances and codes may result in project work stoppage as well as criminal penalties.• The above project shall meet all 2012 International Fire Code requirements in addition to specific City Building and Fire Ordinances.• Approved address numbers shall be placed in such a position to be plainly visible and legible from the road fronting the property. Numbers and letters shall be a minimum of four (4) inches tall, contrast with their background and be positioned a minimum of forty-eight (48) inches above final grade.• Vehicle parking and material storage during construction shall not restrict or obstruct public streets or access to any building. A minimum twenty-foot travel lane for emergency vehicle access shall be maintained clear and unobstructed at all times. All required Fire Lanes, including within 15 feet of fire hydrants, shall be maintained clear and unobstructed at all times.• An approved fire detection system shall be installed per City of Ketchum Ordinance #1125 (www.ketchumfire.org) and the requirements of NFPA 72. Two (2) sets of alarm system plans shall be submitted to the Ketchum Fire Department for approval and a permit is required prior to installation of alarm systems. Inspections of fire detection systems by the Fire Chief or an appointee are required and shall be scheduled at least 48 hours in advance.• Fire extinguishers shall be installed and maintained per 2012 IFC Section 906 both during construction and upon occupancy of the building. (Five (5) 5 lbs. fire extinguishers shall be required for this project).• The appropriate keys, for emergency fire department access, shall be provided and installed in the existing Knox box.• The existing required monitored alarm system shall be modified to meet the current requirements of NFPA 72 and Ketchum Ordinance #1125.• Final inspections of all fire department required installations by the Fire Chief or an appointee are required and shall be scheduled at least 48 hours in advance. A Final Inspection Checklist can be found at www.ketchumfire.org.

<ul style="list-style-type: none"> • Fire Department requirements and associated specifications for the required improvements must be verified, reviewed, and approved prior to issuance of a Building Permit for the project.
<p>City Engineer & Streets Department:</p> <ul style="list-style-type: none"> • All drainage shall be retained on site including water from any roof drains (KMC §17.96.060.C.1). • All construction for the project must comply with the standards set forth in Ketchum Municipal Code, Chapter 15.06 Construction Activity Standards. The applicant shall submit a Construction Activity Plan addressing all applicable activities (KMC §15.06.030), including how materials will be off-loaded at the site, plan for coordinating with neighbors on temporary closures, temporary traffic control, and construction fencing with appropriate screening, to be reviewed and approved prior to issuance of a Building Permit for the project. Pursuant to KMC §15.06.030.A.2, the applicant shall provide notice of the project, construction schedule, and general contractor’s contact information to all neighbors with properties adjacent to the project site. • The Building Permit plans and construction drawings shall meet all applicable sections of Chapter 12 of Ketchum Municipal Code. • Sidewalk snow removal is the responsibility of the property owner. • The use of City right-of-way for construction including the closure of adjacent streets or sidewalks requires a Temporary Use of Right-of-Way Permit (“TURP”). • Final civil drawings for the project shall be submitted with the Building Permit application to be verified, reviewed, and approved by the City Engineer and Streets Department prior to issuance of a Building Permit for the project.
<p>Utilities:</p> <ul style="list-style-type: none"> • Requirements and specifications for the water and sewer connections will be verified, reviewed, and approved by the Utilities Department prior to issuance of a Building Permit for the project.
<p>Building:</p> <ul style="list-style-type: none"> • The building must meet the 2012 International Building Code and Title 15 Buildings and Construction of Ketchum Municipal Code. • Building Department requirements and associated specifications for the required improvements must be verified, reviewed, and approved prior to issuance of a Building Permit for the project.
<p>Planning and Zoning: Comments are denoted throughout Tables 1, 2, and 3</p>

TABLE 2: FINDINGS REGARDING ZONING AND DIMENSIONAL STANDARDS

Compliance with Zoning and Dimensional Standards				
Compliant			Standards and P&Z Commission Findings	
Yes	No	N/A	Ketchum Municipal Code Standard	City Standards and P&Z Commission Findings
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.050	Minimum Lot Area
			P&Z Commission Findings	Required: 8,000 square feet minimum Existing: Lot 15 has a total area of 10,726 square feet sq ft (0.23 acres)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.050	Building Coverage
			P&Z Commission Findings	Permitted: 75% Proposed: Existing Decked Building: 2,305 square feet building coverage Addition: 1,051 square feet building coverage

				Proposed Total Building Coverage: 32% (3,356 square feet building coverage/10,726 square feet lot area)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.050	Minimum Building Setbacks
			P&Z Commission Findings	<p>Minimum Required Setbacks: Front: 20' Side: 0' for internal side yards Rear: 0'</p> <p>Proposed: Front (Lewis Street/east): 43' Side (interior/north): 0' Side interior/side): 10' Rear (west): 10'</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.12.050	Building Height
			P&Z Commission Findings	<p>Maximum Building Height Permitted: 35' Non-habitable Structures Located on Building Rooftops: 6 ft above roof surface height Parapets and Rooftop Walls Screening/Enclosing Mechanical Equipment: 4 ft above roof surface height Rooftop Solar and Mechanical Equipment Above Roof Surface: 5 ft above roof surface height</p> <p>Proposed: Existing Decked Building Height: 24 feet Proposed Addition Building Height Top of Roof: 24 feet Proposed Addition Building Height Top of Parapet: 25 feet</p> <p>The project plans do not indicate rooftop mechanical equipment or non-habitable structures. Roof and ground mounted mechanical and electrical equipment shall be fully screened from public view. Screening shall be compatible with the overall building design (Ketchum Municipal Code §17.96.070.C2).</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.125. 030.H	Curb Cut
			P&Z Commission Findings	<p>Maximum Permitted: A total of 35% of the linear footage of any street frontage can be devoted to access off street parking.</p> <p>Proposed: No changes are proposed to the access from Lewis Street. The property has 88 feet of frontage along Lewis Street. Two 13-foot wide driveways access the development along Lewis Street at the north and south corners of the property. 30% (26-feet of rolled curb/88 linear feet along Lewis Street) of the property's street frontage along Lewis Street is used to access the Decked Building.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.125.020.A1 & 17.125.040.B	Parking Spaces

			<p>P&Z Commission Findings</p>	<p>Required: Pursuant to KMC §17.125.020.A2, off-street parking requirements apply to any existing structure or use that is expanded or enlarged. Additional off-street parking spaces shall be required only to serve the enlarged or expanded area, not the entire building or use.</p> <p><u>Light Industrial Districts Parking Requirements</u> Wholesale, Manufacturing, Industrial Laundry, Hybrid Production Facility, and all other permitted uses: 1 parking space per 1,000 gross square feet</p> <p><u>Decked Addition Parking Requirements</u> Existing Decked Building: 4,071 gross square feet: 4 parking spaces required Proposed Addition: 1,825 gross square feet: 2 parking spaces required Total Required: 6 parking spaces</p> <p>Proposed: 8 parking spaces are designated within the surface parking lot.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>17.125.040.D</p> <p>P&Z Commission Findings</p>	<p>Off Street Vehicle Loading Area</p> <p>Required: In the LI-1, LI-2, and LI-3 Districts, off street loading areas shall be required as an accessory use for new construction or additions involving an increase in gross floor area as follows: 1. Number Of Spaces: a. One off street loading space is required for gross floor area in excess of two thousand (2,000) square feet. b. No loading space shall occupy any part of a public street, alley, driveway, or sidewalk. Where practicable to do so, an alley may be used in lieu of the requirement for off street loading space(s) if permission is granted by the Administrator. 2. Dimensions: An off-street loading space shall be a minimum of one hundred eighty (180) square feet with no length of the space being less than ten feet (10').</p> <p>Proposed: The site plan indicates 1 loading area in front of the proposed addition. The associated dimensions of the loading area have not been indicated on the project plans. The loading space shall be a minimum of 180 square feet with no length of the space being less than 10 feet. The project plans submitted with the Building Permit application shall specify the dimensions of the loading space to ensure compliance with Ketchum Municipal Code §17.125.040.D.</p>

TABLE 3: FINDINGS REGARDING DESIGN REVIEW STANDARDS

Design Review Requirements				
IMPROVEMENTS AND STANDARDS: 17.96.060				
Yes	No	N/A	City Code	City Standards and P&Z Commission Findings
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.A1 Streets	The applicant shall be responsible for all costs associated with providing a connection from an existing city street to their development.
			P&Z Commission Findings	The existing Decked Building development is accessed off Lewis Street.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.A2 Streets	All street designs shall be approved by the City Engineer.
			P&Z Commission Findings	No changes are proposed to Lewis Street or the existing driveway accesses.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.B1	All projects under 17.96.010(A) that qualify as a “Substantial Improvement” shall install sidewalks as required by the Public Works Department.
			P&Z Commission Findings	<p>Ketchum Municipal Code §17.08.020 defines substantial improvement as any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure over a 3 year time frame either: (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred.</p> <p>The applicant has indicated that the proposed addition project will not qualify as a substantial improvement. The Decked Building was built in 1990. The last improvement was constructed 4 years ago in 2016. According to the Blaine County Assessor’s Office, the market value of the commercial structure is \$448,167.</p> <p>Staff will confirm that the project does not qualify as substantial improvement prior to issuance of a Building Permit for the project. The applicant shall submit the estimated cost of construction with the Building Permit application. This estimated cost of construction shall include the total value of the work, including materials and labor. The Building Official may require documentation of the valuation as necessary to ensure correct valuation of the project. If the estimated cost of construction exceeds 50% of the market value of the structure, then the developer shall install sidewalks to the City’s right-of-way standards.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060B2c	Sidewalk width shall conform to the City’s right-of-way standards, however the City Engineer may reduce or increase the sidewalk width and design standard requirements at their discretion.
			P&Z Commission Findings	See analysis for Ketchum Municipal Code §17.96.060.B1. The developer is not required to install sidewalks as the project does not qualify as a substantial improvement. An existing 5-foot sidewalk borders the property along Lewis Street. The Lewis Street right-of-way is 80 feet wide. The City right-of-way standard for 80-foot wide streets includes an 8-foot sidewalk.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.B3	Sidewalks may be waived if one of the following criteria is met: a. The project comprises an addition of less than 250 square feet of conditioned space.

				<p>b. The City Engineer finds that sidewalks are not necessary because of existing geographic limitations, pedestrian traffic on the street does not warrant a sidewalk, or if a sidewalk would not be beneficial to the general welfare and safety of the public.</p>
			P&Z Commission Findings	N/A. Sidewalks are not required to be installed as the project does not qualify as a substantial improvement.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.B4	The length of sidewalk improvements constructed shall be equal to the length of the subject property line(s) adjacent to any public street or private street.
			P&Z Commission Findings	N/A. The developer is not required to install sidewalks as the project does not qualify as a substantial improvement. The existing 5-foot sidewalk extends the full length of the front property line along Lewis Street.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.B5	New sidewalks shall be planned to provide pedestrian connections to any existing or future sidewalks adjacent to the site. In addition, sidewalks shall be constructed to provide safe pedestrian access to and around a building.
			P&Z Commission Findings	N/A. The developer is not required to install sidewalks as the project does not qualify as a substantial improvement. The existing sidewalk connects to the 5-foot sidewalk along Lewis Street.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.B6	The City may approve and accept voluntary cash contributions in-lieu of the above described improvements, which contributions must be segregated by the City and not used for any purpose other than the provision of these improvements. The contribution amount shall be one hundred ten percent (110%) of the estimated costs of concrete sidewalk and drainage improvements provided by a qualified contractor, plus associated engineering costs, as approved by the City Engineer. Any approved in-lieu contribution shall be paid before the City issues a certificate of occupancy.
			P&Z Commission Findings	N/A. Staff does not recommend a voluntary cash contribution in-lieu of improvements for this project.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.C1	All storm water shall be retained on site.
			P&Z Commission Findings	<p>All storm water shall be retained on site including water from roof drains. The applicant has indicated that existing drainage will be retained. The site plan indicates the installation of a new drywell to capture roof drainage.</p> <p>Prior to issuance of a Building Permit for the project, the City Engineer and Streets Department shall determine if the proposed drainage plan is sufficient. Drainage improvements shall be indicated on civil drawings stamped by an Idaho-licensed engineer for final review and approval by the City Engineer and Streets Department. See Table 1 for City Department comments including City Engineer and Streets Department conditions.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.C2	Drainage improvements constructed shall be equal to the length of the subject property lines adjacent to any public street or private street.
			P&Z Commission Findings	See above P&Z Commission Findings for Ketchum Municipal Code §17.96.060(C)(1). All drainage improvements are required to meet City standards. Prior to issuance of a Building Permit for the project, the City Engineer and Streets Department shall determine if additional drainage

				improvements are necessary. All drainage improvements shall be indicated on civil plans stamped by an Idaho licensed engineer and require review approval from the City Engineer & Streets Department prior to issuance of a Building Permit for the project.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.C.3	The City Engineer may require additional drainage improvements as necessary, depending on the unique characteristics of a site.
			P&Z Commission Findings	Prior to issuance of a Building Permit for the project, the City Engineer and Streets Department shall determine if additional drainage improvements are necessary. If additional drainage improvements are required, then the drainage improvements shall be indicated on civil drawings stamped by an Idaho-licensed engineer for final review and approval by the City Engineer and Streets Department. See Table 1 for City Department comments including City Engineer and Streets Department conditions.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.C.4	Drainage facilities shall be constructed per City standards.
			P&Z Commission Findings	See above P&Z Commission Findings for Ketchum Municipal Code §17.96.060(C)(1). All drainage improvements are required to meet City standards. All drainage improvements shall be indicated on civil plans stamped by an Idaho licensed engineer and require review approval from the City Engineer & Streets Department prior to issuance of a Building Permit for the project.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.D1	All utilities necessary for the development shall be improved and installed at the sole expense of the applicant.
			P&Z Commission Findings	The applicant is aware of this requirement. The existing development is connected to the municipal water and sewer system. If Idaho Power requires an upgrade to the electrical service to serve the proposed addition, then the applicant shall indicate all utility upgrades on the project plans submitted with the Building Permit application. See Table 2 for Utilities Department comments and conditions. Roof and ground mounted mechanical and electrical equipment shall be fully screened from public view. Screening shall be compatible with the overall building design (Ketchum Municipal Code §17.96.070.C2).
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.D2	Utilities shall be located underground and utility, power, and communication lines within the development site shall be concealed from public view.
			P&Z Commission Findings	All utilities within the development site shall be underground and concealed from public view. Sheet A-1 of the project plans indicates that utility meters will be installed at the rear of the addition behind the existing Decked Building. Prior to issuance of a Certificate of Occupancy for the project, Planning & Building Department Staff will conduct an inspection to ensure that all utilities are concealed from public view. See above P&Z Commission Findings for Ketchum Municipal Code §17.96.060(D)(1).
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.D3	When extension of utilities is necessary all developers will be required to pay for and install two (2") inch SDR11 fiber optical conduit. The placement and construction of the fiber optical conduit shall be done in accordance with city of Ketchum standards and at the discretion of the City Engineer.

			P&Z Commission Findings	The applicant is aware of this requirement and will comply with these standards.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.E1	The project's materials, colors and signing shall be complementary with the townscape, surrounding neighborhoods and adjoining structures.
			P&Z Commission Findings	The addition project will match the existing building's colors and materials. The exterior materials and colors include gray stucco, dark bronze metal fascia and trim, vertical wood siding, and windows. The project's materials, colors, and signing complement neighboring buildings in the light industrial area. The neighboring building to the south is comprised of grayish-brown split-block face. The Roth Building Condominiums to the north is comprised of stucco and glass.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.E2	Preservation of significant landmarks shall be encouraged and protected, where applicable. A significant landmark is one which gives historical and/or cultural importance to the neighborhood and/or community.
			P&Z Commission Findings	N/A. There are no identified landmarks on the property.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.E3	Additions to existing buildings, built prior to 1940, shall be complementary in design and use similar material and finishes of the building being added to.
			P&Z Commission Findings	As noted on Sheet A-1 of the project plans, the addition's exterior materials will match the existing building. The two-story addition matches the scale of the existing building with consistent dimensions and box-shaped building form.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.F1	Building(s) shall provide unobstructed pedestrian access to the nearest sidewalk and the entryway shall be clearly defined.
			P&Z Commission Findings	The existing building is setback 43 feet from the front property line along Lewis Street. The addition will add an additional entrance to the Decked Building. The building entrances are defined by overhanging elements. The addition project includes a dark bronze steel deck that extends over the entrance to the new addition.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.F2	The building character shall be clearly defined by use of architectural features.
			P&Z Commission Findings	The addition project will add more character and visual texture to the front façade. The two-story addition combines a garage door on the first level with a cantilevered deck and large rectangular windows at the second level to add visual interest. The existing vertical wood siding in the middle of the front façade further distinguishes this light industrial building.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.F3	There shall be continuity of materials, colors and signing within the project.
			P&Z Commission Findings	The same materials and color schemes are used on all four facades of the building. The addition project will match the existing building's colors and materials. The exterior materials and colors include gray stucco, dark bronze metal fascia and trim, vertical wood siding, and windows. The project's materials, colors, and signing complement neighboring buildings in the light industrial area.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.F4	Accessory structures, fences, walls and landscape features within the project shall match or complement the principal building.

			P&Z Commission Findings	The rear property line is bordered by a 5-foot tall concrete wall built in the 1990s to buffer the light industrial area from the neighborhood to the west. This buffer is enhanced by the Northwood Place Apartment's carport wall. The existing swinging bench resembling a chairlift placed at the front of the building is a unique feature that adds a piece of mountain-town flair to the development. The proposed landscaping includes new planters bordering the front property line to buffer the suffer parking lot from Lewis Street.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.F5	Building walls shall provide undulation/relief, thus reducing the appearance of bulk and flatness.
			P&Z Commission Findings	The proposed elevation views provided by the applicant show that all building walls provide undulation and relief, serving to reduce the appearance of bulk and flatness at all façades. The façades combine horizontal and vertical elements with one- and two-story elements through the variation of siding and exterior materials, projecting elements, and fenestration provided through multiple window and door openings. The addition project will add more character and visual texture to the front façade. The two-story addition includes combines a garage door on the first level with a cantilevered deck and large rectangular windows at the second level to add visual interest. The existing vertical wood siding in the middle of the front façade further distinguishes this light industrial building.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.F6	Building(s) shall orient towards their primary street frontage.
			P&Z Commission Findings	The front façade of the building orients towards Lewis Street.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.F7	Garbage storage areas and satellite receivers shall be screened from public view and located off alleys.
			P&Z Commission Findings	The dumpster and recycling area will be located at the southwest corner of the property. The project plans indicate that a gate will enclose this area and screen the dumpster from public view. Details and specifications have not been indicated on the project plans for the proposed gate. Pursuant to Ketchum Municipal Code §17.124.130.D, freestanding fences and walls shall not exceed 7 feet in the light industrial zones. The applicant shall provide specifications for the proposed garbage-enclosure-gate with the project plans submitted with the Building Permit application for review and approval by the Planning Department. Prior to issuance of a Building Permit, the applicant shall submit written approval from Clear Creek for the proposed dumpster location.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.F8	Building design shall include weather protection which prevents water to drip or snow to slide on areas where pedestrians gather and circulate or onto adjacent properties.
			P&Z Commission Findings	The majority of the roof system is flat with roof drains that prevent water from dripping or snow from sliding onto circulation areas. The new balcony projecting from the second floor of the addition and the existing projecting band that over the recessed doorway will provide weather protection for people entering and exiting the building.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.G1	Pedestrian, equestrian and bicycle access shall be located to connect with existing and anticipated easements and pathways.

			P&Z Commission Findings	An existing 5-foot sidewalk extends across Northgate Subdivision along Lewis Street.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.G2	Awnings extending over public sidewalks shall extend five (5') feet or more across the public sidewalk but shall not extend within two (2') feet of parking or travel lanes within the right of way.
			P&Z Commission Findings	N/A as no awnings are proposed to extend across the public sidewalk.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.G3	Traffic shall flow safely within the project and onto adjacent streets. Traffic includes vehicle, bicycle, pedestrian and equestrian use. Consideration shall be given to adequate sight distances and proper signage.
			P&Z Commission Findings	Vehicular traffic will access the development from Lewis Street. Prior to issuance of a Building Permit for the project, the City Engineer and Streets Department shall review the civil drawings to ensure adequate sight distances and proper signage are provided for the proposed parking access.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.G4	Curb cuts and driveway entrances shall be no closer than twenty (20') feet to the nearest intersection of two or more streets, as measured along the property line adjacent to the right of way. Due to site conditions or current/projected traffic levels or speed, the City Engineer may increase the minimum distance requirements.
			P&Z Commission Findings	No changes are proposed to the two 13-foot driveway entrances. Prior to issuance of a Building Permit for the project, the City Engineer and Streets Department shall review the civil drawings to ensure adequate sight distances and proper signage for the proposed parking access.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.G5	Unobstructed access shall be provided for emergency vehicles, snowplows, garbage trucks and similar service vehicles to all necessary locations within the proposed project.
			P&Z Commission Findings	Lewis Street provides unobstructed access for emergency vehicles, snowplows, garbage trucks, and similar service vehicles. Prior to issuance of a Building Permit for the project, the applicant shall submit written approval from Clear Creek Disposal for the relocated dumpster.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.H1	Snow storage areas shall not be less than thirty percent (30%) of the improved parking and pedestrian circulation areas.
			P&Z Commission Findings	As permitted pursuant to KMC §17.96.060.H4, the applicant has proposed hauling the snow off-site in lieu of providing a designated snow storage area.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.H2	Snow storage areas shall be provided on-site.
			P&Z Commission Findings	N/A. As indicated on Sheet CS of the project plans, the applicant has proposed hauling snow from the site as permitted pursuant to KMC §17.96.060.H4.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.H3	A designated snow storage area shall not have any dimension less than five (5') feet and shall be a minimum of twenty-five (25) square feet.
			P&Z Commission Findings	As permitted pursuant to KMC §17.96.060.H4, the applicant has proposed hauling the snow off-site in lieu of providing a designated snow storage area.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.H4	In lieu of providing snow storage areas, snow melt and hauling of snow may be allowed.

			P&Z Commission Findings	As noted on Sheet CS of the drawings, the applicant has proposed hauling the snow off-site in lieu of providing a snow storage area on-site. Prior to issuance of a Building Permit for the project, the applicant shall submit the Off-Site Snow Storage Permit application and associated fee to the Planning & Building Department for review and approval. The permit shall specify the address as well as the dimensions of the proposed off-site snow storage area.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.I1	Landscaping is required for all projects.
			P&Z Commission Findings	The landscape plan is indicated on Sheet CS.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.I2	Landscape materials and vegetation types specified shall be readily adaptable to a site's microclimate, soil conditions, orientation and aspect, and shall serve to enhance and complement the neighborhood and townscape.
			P&Z Commission Findings	The landscape plan includes new planters bordering the front property line to buffer the surface parking lot from Lewis Street. The plant list includes lilacs, willows, and shrubs. The landscape materials and vegetation types shall be readily adaptable to the site's microclimate, soil conditions, orientation, and aspect.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.I3	All trees, shrubs, grasses and perennials shall be drought tolerant. Native species are recommended but not required.
			P&Z Commission Findings	The landscape plan is indicated on Sheet CS. The plant list includes lilacs, willows, and shrubs. All proposed landscape materials and vegetation types shall be drought tolerant. The applicant is encouraged to select native species.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	17.96.060.I4	Landscaping shall provide a substantial buffer between land uses, including, but not limited to, structures, streets and parking lots. The development of landscaped public courtyards, including trees and shrubs where appropriate, shall be encouraged.
			P&Z Commission Findings	The landscape plan is indicated on Sheet CS. The landscape plan includes new planters bordering the front property line to buffer the surface parking lot from Lewis Street. The plant list includes lilacs, willows, and shrubs. Landscaping shall provide a substantial buffer between land uses, including, but not limited to, structures, streets and parking lots. The development of landscaped public courtyards, including trees and shrubs where appropriate, shall be encouraged.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	17.96.060.J1	Where sidewalks are required, pedestrian amenities shall be installed. Amenities may include, but are not limited to, benches and other seating, kiosks, bus shelters, trash receptacles, restrooms, fountains, art, etc. All public amenities shall receive approval from the Public Works Department prior to design review approval from the Commission.
			P&Z Commission Findings	N/A. Sidewalks are not required for this project as the addition does not qualify as a substantial improvement.

CONCLUSIONS OF LAW

1. The City of Ketchum is a municipal corporation established in accordance with Article XII of the Constitution of the State of Idaho and Title 50 Idaho Code and is required and has exercised its authority pursuant to the Local Land Use Planning Act codified at Chapter 65 of Title 67 Idaho Code and pursuant to Chapters 3, 9 and 13 of Title 50 Idaho Code to enact the ordinances and regulations, which ordinances are codified in the Ketchum Municipal Code (“KMC”) and are identified in the Findings of Fact and which are herein restated as Conclusions of Law by this reference and which City Ordinances govern the Applicant’s Design Review Application for the development and use of the project site.
2. The Commission has authority to hear the applicant’s Design Review Application pursuant to Chapter 17.96 of Ketchum Code Title 17.
3. The City of Ketchum Planning Department provided adequate notice for the review of this application.
2. The Design Review application is governed under Ketchum Municipal Code Chapters 17.96, 17.124, 17.08, 17.12, 17.18, and 17.128.
4. The Decked Building Addition Design Review application meets the standards specified in Title 17 of Ketchum Municipal Code subject to conditions of approval.

DECISION

THEREFORE, the Ketchum Planning and Zoning Commission **approves** this Design Review application this Tuesday, January 12th, 2021 subject to the following conditions:

CONDITIONS OF APPROVAL

1. This Design Review approval is subject to all comments and conditions as described in Tables 1, 2, and 3.
2. This Design Review approval is based on the plans and information presented and approved at the meeting on the date noted herein. Building Permit plans for all on-site improvements 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.
3. Prior to issuance of a Building Permit for the project, the applicant shall submit the Off-Site Snow Storage Permit application and associated fee to the Planning & Building Department for review and approval. The permit shall specify the address as well as the dimensions of the proposed off-site snow storage area.
4. Prior to issuance of a Building Permit, the applicant shall submit written approval from Clear Creek Disposal for the proposed dumpster location. The dumpster must be fully screened from public view.

5. If required for the addition project, all utility upgrades, including new transformers, must be indicated on the project site plan for review and approval by the City Engineer and Planning Department prior to issuance of a Building Permit. The applicant must submit written approval from Idaho Power for the siting of all new utility infrastructure. All utilities must be fully screened from public view.
6. All governing ordinances, requirements, and regulations of the Fire Department (2012 International Fire Code and local Fire Protection Ordinance No.1125), Building Department (2012 International Building Code, the 2012 International Residential Code, and Title 15 of Ketchum Municipal Code), Utilities Department, Street Department (Title 12 of Ketchum Municipal Code), and the City Engineer shall be met prior to Certificate of Occupancy.
7. The applicant shall submit final civil drawings prepared by an engineer registered in the State of Idaho to include specification for any ROW, utilities, and drainage improvements to be reviewed and approved by the City Engineer, Streets, and Utilities departments prior to issuance of a Building Permit for the project.
8. The term of Design Review approval shall be twelve (12) months from the date that the Findings of Fact, Conclusions of Law, and Decision are adopted by the Commission or upon appeal, the date the approval is granted by the Council subject to changes in zoning regulations (KMC §17.96.090).
9. All Design Review elements shall be completed prior to issuance of a Certificate of Occupancy for the building.
10. All exterior lighting on the property shall comply with Ketchum Municipal Code, Chapter 17.132, Dark Skies, and shall be inspected by Planning Staff and approved prior the issuance of a Certificate of Occupancy for the building.
11. The project shall comply with the requirements of §17.124.040 Development Standards as adopted on the date a Building Permit is submitted for the project.
12. Prior to issuance of a Building Permit for the project, the applicant shall submit a construction management plans, which addresses each of the standards as set forth in Ketchum Municipal Code, Chapter 15.06 Construction Activity Standards.
13. In addition to the requirements set forth in this Design Review approval, this project shall comply with all applicable local, state, and federal laws.

Findings of Fact **adopted** this 12th day of January 2021.

Neil Morrow, Chair
City of Ketchum
Planning and Zoning Commission



City of Ketchum
Planning & Building

STAFF REPORT
KETCHUM PLANNING AND ZONING COMMISSION
JANUARY 12, 2021

PROJECT: 1st and 4th Development Agreement First Amendment

FILE NUMBER: P20-122

REPRESENTATIVE: Jack Bariteau

OWNER: Bariteau Separate Property Trust/Main Trust Properties, LLC

REQUEST: Amend Development Agreement 20427

LOCATION: 120 W 4th Street & 391 N 1st Avenue (Ketchum Townsite: Block 57: Lots 1A & 2A)

ZONING: Community Core, Sub-district 2 – Mixed Use

NOTICE: Public notice was published to in the Idaho Mountain Express and mailed to political subdivisions and property owners within 300 feet on December 23, 2020. Public notice was posted to the city website and on the premises on January 5, 2021.

BACKGROUND

In December 2020, the City Council approved Development Agreement 20427 for the 1st and 4th mixed use development (Attachment A). The Agreement contains specific performance dates. Due to issues outlined in the December 7, 2020 letter from the applicant's attorney (Attachment B), the applicant, Jack Bariteau is requesting an amendment to the Development Agreement 20427 to extend the performance dates for the project (Attachment C).

Staff is recommending the Commission review the requested amendments and make a recommendation to the City Council.

The Development Agreement 20427 contains the following provisions:

Section 3 Right to Develop: "Pursuant to KMC §17.96.090, the design review approval on this Project shall be valid for twelve (12) months from the date of final decision on the associated Findings of Fact, Conclusions of Law, and Decision. Application for a building permit must be done within this time as specified in KMC §17.96.090(A)(2). Any extension shall only be as allowed and specified in KMC §17.96.090.

Any application for a building permit submitted by Owner shall substantially comply with the requirements of applicable codes, agreements, approvals, plans, permits and other documents as such requirements exist on the day the building permit application is submitted. A building permit must be obtained within fourteen (14) months from the date of the final decision on the associated Findings of Fact, Conclusions of Law and Decision, and a certificate of occupancy must be obtained for the Project no later than 18 months after the building permit is issued unless the time for completion of the Project is extended by the City Council."

Staff Comment: The design review application findings of fact were approved on June 10, 2019. The design review permit was valid until June 10, 2020. The development agreement required a building permit application to be submitted by June 10, 2020 and a building permit to be issued by August 10, 2020. A certificate of occupancy is required within 18 months of the date the building permit is issued. The applicant is requesting an extension of these performance dates.

Section 13 Term. "The term of this Agreement shall be two years and eight months (2 years 8 months) from the date of the final decision on the associated Findings of Fact, Conclusions of Law and Decision except such term will not be considered to supersede or amend the standard validity periods as specified in KMC, which may be shorter as to specific approvals and necessary steps (e.g. KMC §17.96.090 specifying that design review approval is only valid for twelve months without additional steps for extension)."

Staff Comment: The findings of fact were approved June 10, 2019 and the agreement would be in effect until February 10, 2022. Because the project has not yet started construction, the applicant is proposing to extend the effective date of the agreement.

Section 16 q: Force Majeure. "If either party hereto is delayed in the performance of any of its obligations hereunder because of abnormal and unforeseeable inclement weather, material shortages, labor shortages, dispute or strike, civil strife, acts beyond the reasonable control of the delayed party including acts of God, and actions by the United States of America, the State of Idaho, the City or any of their agencies, the time of performance hereunder, shall be reasonably extended for the same time as lost by the cause hereinabove set forth. Any claim of a force majeure event must be submitted to the other party within thirty days of such event."

Staff Comment: The applicant is requesting to amend this section to include a Pandemic as a reason to extend the timelines in the Agreement.

ANALYSIS

Attachment C Contains the amendments proposed by the applicant and staff's recommended revisions to the applicant's request.

Staff is in general agreement with extending the performance dates due to the challenges of COVID-19. Staff is recommending the following key changes to the applicant's request:

Section 2.1: Add a date when the building permit must be obtained by the applicant for the project. Because the date for the certificate of occupancy and the effective date of the Agreement are tied to issuance of building permit, there needs to be a date when the applicant must obtain the building permit. Otherwise, the possibility exists the applicant may delay obtaining a building permit and the agreement and completion of the project could be a significant period of time. The existing development agreement contains a deadline for obtaining a building permit and staff recommends the amendment also contain a deadline for obtaining a building permit.

Section 2.3: The applicant is proposing to add a Pandemic as a reason for invoking the Force Majeure clause of the Agreement. Staff does not support this addition. The addition of Pandemic is ambiguous and will lead to different interpretations as to the meaning and length of automatic extension for the project. Instead, if there are additional delays due to a future Pandemic, the applicant can return to the City for an amendment to the Agreement.

ATTACHMENTS

Attachment A: Development Agreement 20427

Attachment B: December 7, 2020 letter from Applicant

Attachment C: Proposed Development Agreement Amendment

Instrument # 665841

HAILEY, BLAINE, IDAHO

12-29-2019 01:32:29 PM No. of Pages: 12

Recorded for : CITY OF KETCHUM

JOLYNN DRAGE

Fee: 0.00

Ex-Officio Recorder Deputy

Index to: AGREEMENT/CORRECTION



RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:	
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(SPACE ABOVE LINE FOR RECORDER'S USE)

DEVELOPMENT AGREEMENT #20427

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is dated for reference purposes this 16 h day of Decembe , 2019, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation (“**Ketchum**” or “**City**”) and JACK E. BARITEAU, JR. as Trustee of the JACK E. BARITEAU, JR. SEPARATE PROPERTY TRUST, under agreement dated October 2, 1996 and MAIN DRIVE PROPERTIES, LLC, a Tennessee limited liability company (collectively “**Owner**”, and together with the City, the “**Parties**”).

BACKGROUND AND CONTEXT

A. Ketchum is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to vacate rights-of-way, to grant variances to building height restrictions, to remove lot lines, grant rights to exceed building floor area ratio limitations, to grant licenses to encroach into the public right-of-way and the power to contract. A development agreement between the Parties is a collaboration that will provide mutual benefit for the Parties, businesses in the Commercial Core District and residents of the City.

B. Owner owns the real property situated in the State of Idaho, County of Blaine, commonly known as 391 N. 1st Avenue, Ketchum, Idaho and more particularly described as Lots 1 and 2 of Re-Division of Lots 1 and 2, Block 57, Original Ketchum Townsite, according to the plat thereof, recorded as Instrument No. 191607, records of Blaine County, Idaho (“**Property**”).

C. Owner has petitioned City to amend the current Property description to (a) vacate the common internal lot line between Lots 1 and 2 of the Property and (b) include the vacated fifteen-foot by one hundred and ten-foot (15’ x 110’) portion of alleyway adjacent the Property in Block 57, as more particularly described in paragraphs 5 and 6 above.

D. Owner has applied for design review approval for construction of improvements on the Property (“**Project**”) consisting of an approximately 34,729 gross square foot mixed use residential and commercial building to be constructed on and over a 15,225 square foot underground garage parking which will provide substantial public benefits, including a master lease of apartment units to Trail Creek Fund, LLC, successor Harriman Hotel, LLC, or other successor (“**Hotel Developer**”) to fulfill its obligation for hotel employee housing as set forth in the June 4, 2018 First Amendment to the Amended and Restated Development Agreement between the City and Trail Creek Fund, LLC. City acknowledges the square footages recited are

approximate and the actual square footages will not be known until construction documents are prepared and submitted to the City for a building permit following which submittal the actual square footages shall apply to the Project.

E. The Parties agree that the Property shall be developed in accordance with this Agreement; all applicable City ordinances; and any additional conditions and requirements imposed upon the Property by the Ketchum Planning and Zoning Commission (“**Commission**”) and/or City Council (“**Council**”) during the design review, vacation, development agreement, plat amendment, and 4th Street / 1st Avenue encroachment approval processes.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the Parties agree as hereinafter provided.

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into and made an integral part of this Agreement.

2. Incorporation of Related Findings, Agreements, Approvals, Permits and Plans. The following findings of fact, approvals, permits, plans, and documents are hereby incorporated into and made an integral part of this Agreement by reference as if restated herein in full:

- a. Findings of Act, Conclusion of Law, and Order regarding the request for vacation;
- b. FAR Exceedance Agreement;
- c. Preliminary and final plat documents and approvals;
- d. Decision and orders related to the 1st & 4th Mixed Use Building Design Review;
- e. Decision and orders related to Owner’s application for encroachment;
- f. Design review drawings;
- g. Alley, 1st Avenue, and 4th Street sidewalk and landscaping plans;

Any material failure to comply with the terms and conditions of any of the above-referenced documents shall constitute a breach of this Agreement.

In the event of any inconsistency between the terms and conditions of this Agreement and the findings of fact, approvals, permits and plans listed above, the more restrictive terms and conditions shall govern. Development of the Project shall be vested and governed by policies, procedures, guidelines, ordinances, codes and regulations of the City governing land use in effect as of the date this Agreement is recorded and continue consistent with §17.96.090 of the Ketchum Municipal Code.

Owner may request to be bound by future amendments to the Ketchum Municipal Code (“**KMC**”), or other regulations, policies or guidelines affecting development, and such request

may be approved administratively, by the Commission, and/or by the Ketchum City Council consistent with the KMC.

3. Right to Develop. Subject to the requirements of this Agreement and KMC, the Owner and all future owners of some or all of the Property shall have the right to demolish all or any portion of the existing structures and redevelop, construct, improve and use the Property as a mixed use residential and commercial building as depicted and described in the approved plans incorporated into the Agreement as fully set forth in the recitals, including the Planning and Zoning Commission approved Pivot North Architecture plans approved on June 10, 2019 (“Plans”). The improvements on the Property shall be built exclusively as permitted under §17.96 of the KMC relating to design review approval. Any development of any portion of the Property substantially inconsistent with this Agreement or the design review approval for the Project shall constitute a breach of this Agreement by Owner.

Pursuant to KMC §17.96.090, the design review approval on this Project shall be valid for twelve (12) months from the date of final decision on the associated Findings of Fact, Conclusions of Law, and Decision. Application for a building permit must be done within this time as specified in KMC §17.96.090(A)(2). Any extension shall only be as allowed and specified in KMC §17.96.090.

Any application for a building permit submitted by Owner shall substantially comply with the requirements of applicable codes, agreements, approvals, plans, permits and other documents as such requirements exist on the day the building permit application is submitted. A building permit must be obtained within fourteen (14) months from the date of the final decision on the associated Findings of Fact, Conclusions of Law and Decision, and a certificate of occupancy must be obtained for the Project no later than 18 months after the building permit is issued unless the time for completion of the Project is extended by the City Council.

A building permit application that does not substantially comply with the requirements contained in applicable codes, agreements, approvals, plans, permits and other project documents may be rejected by the City within a reasonable time after completing review of the application by providing written notice to Owner describing the non-compliance in detail unless the non-compliance is cured by Owner within thirty (30) days. If a building permit application contains material changes to the above-referenced applicable codes, agreements, approvals, plans, permits and other documents an amendment to this Agreement must be applied for by Owner and considered by the City Council. If such amendment is approved by City Council, all inconsistent terms and conditions of the approvals referenced in Section 2 shall be deemed to have been amended to conform the amendment to this Agreement.

4. FAR Exceedance Agreement. The Parties agree Owner may exceed the gross floor area ratio limitations under KMC §17.124.040 and construct improvements on the Property having a floor area ratio up to and including 2.25, pursuant to that separate FAR Exceedance Agreement, and all conditions thereon, entered into by the Parties, and hereby incorporated by reference.

5. Vacation of Alley. Owner has made application to the City for vacation of the alley right-of-way pursuant to KMC §16.04.050. If approved via separate City vacation process,

such order or decision on vacation, including any and all conditions thereon, is hereby incorporated by reference and made a part of this Agreement. Owner shall assume and be responsible for maintenance of the entirety of the alley, including appropriate snow and snowmelt maintenance, to be further specified by a separate alley maintenance agreement. Any such alley vacation shall be deemed null and void in the event the Project is not commenced and completed within the time limits set forth in this Agreement.

6. Removal of Lot Lines and Inclusion of Vacated Alley. Owner has made application to the City for removal of the lot lines bisecting the Property, pursuant to Part L of KMC §16.04.030. As set forth in the April 2019 Preliminary Plat by Benchmark Associates, subject plat amendment will remove the lot line bisecting the Property and include the vacated portion of alley described in paragraph 5 above into a new Lot 1B, Block 57, Original Ketchum Townsite (“**Amended Property**”). Notwithstanding the City approval of the final plat map, the final plat map reflecting such changes shall not be recorded and become effective until after issuance of the Certificate of Occupancy for the Project.

7. Sidewalk Improvements. Owner has proposed and hereby commits for the Project to include ten-foot wide sidewalks along both 1st Avenue and 4th Street. All of the proposed sidewalk improvements along 4th Street are in the public Right of Way (“**ROW**”), while half of the sidewalk improvements (+/- 5’ wide) along 1st Avenue are in the public ROW. Subject sidewalk improvements include snowmelt, raised landscape planters, street trees with decorative tree grates, public art, bike racks, pedestrian walkway lighting, and street lighting. Final approval of subject improvements will be subject to review and approval through a separate encroachment agreement and to assure compliance with federal ADA and city standards. Such encroachment agreement shall be obtained prior to issuance of a building permit for the Project.

8. Encroachment on Right of Way. Owner has made application to the City for license for encroachments along the public Right of Way (“**ROW**”) for proposed sidewalk improvements along 4th Street, pursuant to KMC 12.08.040. If approved via separate City encroachment process, such order or decision on encroachment, including any and all conditions thereon, is hereby incorporated by reference and made a part of this Agreement.

9. On-Site Employee Housing Units. Owner commits to construction and provision of on-site employee housing units as specified in the Planning and Zoning approved design review documents, dated May 31, 2019. Three of such depicted units shall be deed-restricted community housing units, with such covenant to be managed by Blaine County Housing Authority. Twelve such depicted units shall be dedicated to on-site employee housing. In the event Owner determines not to use such for on-site employee housing, then such units shall be committed as deed-restricted community housing units, with such covenant to be managed by Blaine County Housing Authority.

10. Master Lease of Employee Housing Units. The Parties agree Owner may enter into a master lease with the Hotel Developer for apartment units containing at least eighteen (18) beds and thereby satisfy those certain related obligations of Trail Creek Fund, LLC under the Amended and Restated Development Agreement dated October 15, 2015 as amended by the Corrected Amendment to Amended and Restated Development Agreement dated June 21, 2016

and the First Amendment to Amended and Restated Development Agreement dated June 4, 2018 (“**Hotel Development Agreement**”). All apartment units leased to the Hotel Developer may be subleased, assigned or otherwise made available to employees of the Hotel Developer on terms and conditions determined by it in the exercise of its discretion. If the Hotel Development Agreement is terminated for any reason the apartment units shall cease to be governed by the master lease and all use restrictions of the Hotel Development Agreement. Any such units committed to Hotel Developer as satisfaction of Hotel Developer’s obligations may not also be counted as satisfaction of any required units necessary under the FAR Exceedance Agreement for the Project. Units satisfying the requirements of the FAR Exceedance Agreement may be included in the master lease with the Hotel Developer.

11. Conditions to Owner’s Obligations. Owner’s obligations hereunder are conditioned upon (1) receiving all the referenced approvals from the City and (2) securing financing for the Project. If either of those conditions (or part of one) is not satisfied, then this Agreement shall no longer be valid.

12. Required Improvements by Owner. Prior to issuance of a building permit, Owner agrees to provide the City an irrevocable letter of credit for completion of the improvements to both 4th Street and the vacated Block 57 alleyway consistent with the referenced approvals, plans and other documents. Subject security shall be approved as to both form and amount by the Ketchum City Council after receiving input from the City Attorney and City Engineer. The amount of security shall be at 150% of engineering estimates for the improvements.

13. Term. The term of this Agreement shall be two years and eight months (2 years 8 months) from the date of the final decision on the associated Findings of Fact, Conclusions of Law and Decision except such term will not be considered to supersede or amend the standard validity periods as specified in KMC, which may be shorter as to specific approvals and necessary steps (e.g. KMC §17.96.090 specifying that design review approval is only valid for twelve months without additional steps for extension).

14. Financing. Prior to the issuance of a building permit for the Project, Owner shall provide evidence to the reasonable satisfaction of the City Council of Owner’s receipt of one or more funding commitments for the cost of construction of the Project. Within sixty days after the issuance of a building permit for the Project, Owner shall provide evidence to the City of closure of the construction financing, such as a deed of trust to secure a construction loan, for completion of the Project. Owner shall not commence additional excavation or construction work on the Property except as may be required to maintain existing permits until receipt of City approval of such financing commitment

15. Site Restoration. Owner shall submit to City, prior to issuance of building permit, a Site Restoration Plan and a security instrument naming City as beneficiary sufficient to fund such restoration. The Restoration Plan shall:

- a. Identify a clear restoration plan sufficient to restore site to finished elevations compatible with neighboring streets and residences, including landscaping and other details, and subject to City review and approval;

- b. Be accompanied by a licensed engineer's estimate of one hundred and fifty percent (150%) of the estimated reclamation costs, with such estimate subject to verification and approval by the City not to be unreasonably withheld, delayed or conditioned;
- c. Be accompanied by a letter of credit or performance bond naming City as beneficiary, with the proposed method and form of such security subject to City review and approval not to be unreasonably withheld, delayed or conditioned, in the amount of the 150% reclamation cost estimate and provide for the City to immediately pursue reclamation and restoration on the site in the event of a material failure of condition, other material breach of the Development Agreement, or abandonment of the Project.

In the event Owner materially fails a condition or otherwise breaches this Amendment and/or the Agreement then City shall be entitled to immediately commence reclamation and restoration pursuant to such Restoration Plan and security instrument.

16. Miscellaneous Provisions.

a) Police Powers. Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of Ketchum or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation not expressly provided for herein, including, without limitation, applicable building codes, fire codes, Ketchum's Zoning Ordinance, Ketchum's Subdivision Ordinance, and Planned Unit Development requirements for the Property.

b) Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both Parties and as evidenced by amended plats and development plans.

c) Specific Performance. In the event of a breach of this Agreement, in addition to all other remedies at law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

d) Attorney's Fees. In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, or to recover damages resulting from a breach hereof, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees incurred, whether or not litigation is actually instituted or concluded.

e) Notices. All notices required or provided for under this Agreement shall be in writing and deemed delivered upon delivery in person or upon mailing by certified mail, return receipt requested, postage prepaid. However, the time period in which a response to such notice must be given shall commence to run from the date of receipt on the return receipt of the notice. Rejection or refusal to accept, or the inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice.

Notices to City shall be addressed as follows:

City of Ketchum
Post Office Box 2315
Ketchum, ID 83340
Attn: John Gaeddert, Planning Director
Telephone: 208.726-7801
Email: jgaeddert@ketchumidaho.org

Notices given to Owner shall be addressed as follows:

Jack E. Bariteau, Jr.
Post Office Box 84
Sun Valley, ID 83353
Telephone: 650.906-5636
Email: jack@waypointsunvalley.com

with a copy to:

Lawson Laski Clark & Pogue, PLLC
675 Sun Valley Road, Suite A
Post Office Box 3310
Ketchum, Idaho 83340
Attn.: Edward A. Lawson
Telephone: 208.725-0055
Email: eal@lawsonlaski.com

A party may change the address to which further notices are to be sent by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

f) Reliance by the Parties. This Agreement is intended by Owner to be considered by Ketchum as part of Owner's application for design review approval for the Project and the ancillary applications referenced. Owner acknowledges and intends the City to consider and rely upon this Agreement in its review and consideration of said applications.

g) Relationship of Parties. It is understood that the contractual relationship between City and Owner is such that neither party is the agent, partner, or joint venturer of the other party.

h) Successors and Assigns; Covenant Running With the Land. This Agreement shall inure to the benefit of City and Owner and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns. City acknowledges and agrees Owner may assign its rights hereunder to a new entity formed for the purpose of developing the Property or to a lender providing a construction or permanent loan, or both.

i) Recordation and Release. This Agreement shall be recorded with the Blaine County Recorder. The Parties agree to execute all appropriate documentation to cause the encumbrance of this Agreement to be terminated in the event of termination.

j) No Waiver. In the event that City or Owner, or its successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Owner, City, or their successors and assigns, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

k) Partial Invalidity. In the event any portion of this Agreement, or part hereof, shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.

l) Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the parties hereto. Excluding formal conditions placed upon the design review approval, subsequent plat approvals or other matters related to the public process, no representations or warranties made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.

m) Exhibits. All exhibits referred to herein are incorporated in this Agreement by reference, whether or not actually attached.

n) Authority. Each of the persons executing this Agreement represents and warrants that he or she has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

o) Recitals. The Recitals are incorporated herein and made a part of this Agreement by this reference.

p) Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Idaho, which shall be the sole jurisdiction and venue for any action which may be brought by either party with respect to this Agreement or the subject matter hereof. Venue shall be in Blaine County, Idaho.

q) Force Majeure. If either party hereto is delayed in the performance of any of its obligations hereunder because of abnormal and unforeseeable inclement weather, material shortages, labor shortages, dispute or strike, civil strife, acts beyond the reasonable control of the delayed party including acts of God, and actions by the United States of America, the State of Idaho, the City or any of their agencies, the time of performance hereunder, shall be reasonably extended for the same time as lost by the cause hereinabove set forth. Any claim of a force majeure event must be submitted to the other party within thirty days of such event.

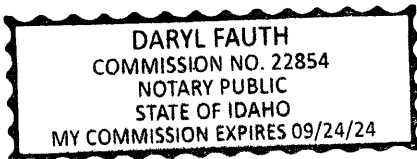
Subscribed and sworn before me on this _____ day of _____, 2019, before me a Notary Public in and for said State, personally appeared WILLIAM ALLISON known or identified to me to be the Managing Member of MAIN DRIVE PROPERTIES, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

Notary Public
Residing at _____
My Commission Expires _____

State of IDAHO)
)ss.
County of)

On this 17th day of December, 2019, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the Trustee, or one of the Trustees of THE JACK E. BARITEAU, JR. SEPARATE PROPERTY TRUST under trust agreement dated October 2, 19967, and acknowledged to me that by said Trustee's signature on the foregoing instrument, the foregoing named Trust executed the same.



[Handwritten Signature]

My Commission Expires 9/24/24
Notary Public for Idaho
Residing At Idaho, ID

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Main Drive Properties, LLC, a Tennessee limited liability company

City of Ketchum, Idaho, a municipal corporation

By: William Allison
William Allison, Managing Member

By: _____
Neil Bradshaw, Mayor

Jack E. Bariteau, Jr. as trustee of the Jack E. Bariteau, Jr. Separate Property Trust
u/a/d October 2, 1996

Attest: _____
Robin Crotty, City Clerk

ACKNOWLEDGMENTS

STATE OF IDAHO)
)ss.
County of Blaine)

Subscribed and sworn before me on this ____ day of _____, 2019, before me a Notary Public in and for said State, personally appeared NEAL BRADSHAW, known to me to be the Mayor of the CITY OF KETCHUM, IDAHO and the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of the City Of Ketchum, Idaho.

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

Notary Public
Residing at _____
My Commission Expires _____

STATE OF)
)ss.
County of)

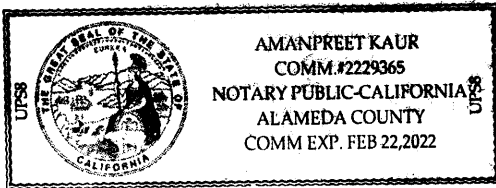
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Subscribed and sworn before me on this 17 day of Dec, 2019, before me a Notary Public in and for said State, personally appeared WILLIAM ALLISON known or identified to me to be the Managing Member of MAIN DRIVE PROPERTIES, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

Amankaur

Notary Public
Residing at Emeryville CA
My Commission Expires Feb 22, 2022



State of IDAHO)
)ss.
County of)

On this _____ day of _____, 2019, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the Trustee, or one of the Trustees of THE JACK E. BARITEAU, JR. SEPARATE PROPERTY TRUST under trust agreement dated October 2, 19967, and acknowledged to me that by said Trustee's signature on the foregoing instrument, the foregoing named Trust executed the same.

My Commission Expires _____
Notary Public for Idaho
Residing At _____

December 7, 2020

Ms. Suzanne Frick, Administrator
City of Ketchum
480 East Avenue N.
Post Office Box 2315
Ketchum, ID 83340

Re: Jack E. Bariteau, Jr. and Main Drive Properties, LLC
Mixed Use Project at 391 N. 1st Avenue
Our File No. 70359-020

Dear Suzanne:

I and my firm represent Jack E. Bariteau, Jr. as trustee of the Jack E. Bariteau, Jr. Separate Property Trust and Main Drive Properties, LLC the owners ("Owners") of the property a 391 N. 1st Avenue ("Property") entitled for a 34,729 square foot mixed use residential and commercial project ("Mixed-Use Project"). In our representative capacity we have been asked to reply to your December 2, 2020 letter regarding the above-referenced matter.

For the reasons summarized below we request the City of Ketchum ("City") acknowledge and agree that the Owners' performance obligations referred to in your letter be extended pursuant to Section 16(q) of the December 16, 2020 Development Agreement #20427 between the City and the Owners ("Development Agreement").

Initially it must be observed, the Mixed-Use Project is inextricably related to and being pursued to fulfill obligations for employee housing associated with the Harriman Hotel Project. See, Recital paragraph D and Sections 9 and 10 of the Development Agreement. As such, the ability to fulfill the Owners' obligations under the Development Agreement are materially impacted by decisions the City has made in connection with the Hotel Project. In particular, the ability to prove the existence of financing under Section 14 of the Development Agreement is adversely affected by the City's decision to assert a breach of the Hotel Project development agreement. This is because as the City knows a master lease between the Owners and the Hotel for the employee housing and the payment of rent is contemplated as an element of the Mixed-Use Project. Therefore, the questions raised by the City's decisions challenging the viability of the Hotel Project affect the viability of the Mixed-Use Project.

Significant delays in the Mixed-Use Project occurred due to the City's determination that the proposed alley vacation required an amendment to its zoning ordinance to permit dead end alleys in the public right of way all after the Planning and Zoning Commission had approved the project in June of 2019. The decision resulted in months of delay in the Owners'

ability to move forward with the project design team to complete construction permit ready drawings, obtain bids and seriously explore construction financing of the Mixed-Use Project.

The virus and measures addressing it create uncertainty and make performance of obligations essential to development of the Mixed-Use Project simply impossible. During this period of uncertainty, the completion of design and pricing effort has been seriously interrupted. Design team consultants have been furloughed or key personnel are working from home part time. As a result, the final plans, construction drawings, off-site civil engineering and landscape design plans within the City right-of-way and general contractor requirements were significantly delayed.

Material supply chain problems also exist as supplier factories have been shuttered or are working with a minimal staff. Some vendors will not even quote pricing in key component areas. Insurance issues have arisen regarding how to effectively plan for social distancing to avoid infection among construction workers. Builder's Risk insurance, like other policies of this type, is not offering coverage for pandemic or viral infections that could be attributed to working on the site and within the building as it is erected. Conrad Brothers, the general contractor, is presently evaluating its overall building responsibilities and liabilities once commencing construction is deemed to be safe.

In the context of the foregoing, the City continued to process applications, work with the Owners and Benchmark Engineering and Rob King on the public improvements on Fourth Street and First Avenue North, the final alley design and satisfying neighboring property concerns regarding the balance of the public alley that will not be vacated by the City and otherwise perform its obligations under the Development Agreement. As an example, the Right-Of-Way Encroachment Agreement was finally approved in form and then executed on October 19, 2020, or four months after the purported expiration of design review approval of the Mixed-Use Project. These ongoing actions led the Owners' to reasonably believe the City was not intending to assert a breach of the Development Agreement. The Owners further proceeded to have the project consultant team restart the construction drawings once the project team could resume its work in office in Boise and submit to the City the required building permit set of drawings as prepared by Pivot North Architecture on September 30, 2020. The Owners paid the initial requisite Agency Review fees of \$126,221.00.

In view of the foregoing conditions Owners have been and will be hindered, delayed or prevented from the performance of their obligations under the Development Agreement. Owners believe their performance is excused by the common law doctrines of impossibility or impracticability of performance and under the Force Majeure provision of Section 16(q) of the Development Agreement which provides in part as follows:

"In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement because of acts beyond the

Ms. Suzanne Frick
December 4, 2020
Page 3

reasonable control of the delayed party, including acts of God and actions by . . . the City, then the time for performance hereunder shall be reasonably extended for the same time as lost by the cause hereinabove set forth."

Clearly the global pandemic caused by the coronavirus is an "act of God" beyond Owners' reasonable control. Similarly, the government regulations enacted in response to the virus and the decisions to amend the zoning ordinance and assert a breach of the Hotel Project development agreement are "actions by the City" which have "delayed or hindered or prevented" performance of the Owners' obligations under the Development Agreement. In any event, the risk of non-performance due to the virus and the decisions by the City were not expected or foreseeable and therefore it was assumed such an event and decisions would not occur and performance has been rendered impossible or impracticable.

The Owners are disappointed in the delays caused by all of the unprecedented and unforeseeable conditions and wish to assure the City they remain committed to beginning the improvements which are an integral part of the Mixed-Use Project as soon as reasonably possible. Toward that end, we would request that the City acknowledge the time delays that have resulted from the public alley issues that resulted in the Development Agreement not being fully approved and recorded until December of 2019 and recognize the impacts of the pandemic under the force majeure language cited above. If you feel it would be best to meet and confer with the City in person to allow the project to proceed with extended timelines reflective of the ongoing pandemic and prior delays, please let me know at your earliest convenience.

Sincerely,

LAWSON LASKI CLARK, PLLC


Edward A. Lawson

cc: Neil Bradshaw, Mayor
Mathew Johnson
Jack Bariteau
Paul Conrad

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

OFFICE OF THE CITY CLERK
CITY OF KETCHUM
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340

(Space Above Line For Recorder's Use)

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT #20427

This Amendment ("Amendment") is made as of January __, 2021 by and between the City of Ketchum, Idaho ("Ketchum"), a municipal corporation, and Main Drive Properties, LLC, a Tennessee limited liability company and Jack E. Bariteau, Jr. as trustee of the Jack E. Bariteau Jr. Separate Property Trust, dated October 2, 1996 (collectively "Owner", and together with Ketchum, the "Parties").

1. Recitals. This Amendment is made in contemplation of the following facts and purposes:

1.1 Ketchum and Owner are parties to Development Agreement #20427 ("Agreement"), dated December 16, 2019, and recorded on December 20, 2019 in the records of Blaine County, Idaho as Instrument No. 665841, under and by virtue of which the Parties established certain rights and obligations with regard to the ~~development annexation~~ of the real property commonly known as 391 N. 1st Avenue, Ketchum, Idaho ("Property").

1.2 The parties desire to amend and supplement the Agreement as hereinafter provided pursuant to section 16. b) thereof.

1.2.1.3 ~~With the exception of the amendments in this Agreement, all terms of Agreement 20427 shall remain in effect.~~

2. Amendments. In view of the foregoing, the Parties agree to amend and supplement the Agreement including the extension of the design review approval to June 10, 2021, as follows:

2.1 The Parties have adopted the following schedule for the performance of the obligations of Owner under the Agreement and all related permits, approvals, and consents:

Performance Obligation

Completion Deadline

~~Subject to Section 3, S~~submit for Building Permit

Building Permit submitted 9/26/20

~~Receipt of Building Permit~~

~~In Review. Subject to City issuance~~

<u>Subject to Section 3, Obtain a Building Permit</u>	<u>Within 90 days of approval of this Development Agreement Amendment</u>
<u>Subject to Section 8, Submit Right-Of-Way Encroachment Agreement</u>	Signed 10/19/20; Recorded 10/29/20
<u>Subject to Section 15, Submit Site Restoration Plan and Bond</u>	Prior to issuance of building permit
<u>Subject to Section 14, Submit Evidence of Construction Loan Commitment</u>	Prior to issuance of building permit
<u>Subject to Section 14, Submit Evidence of Construction Loan Recordation</u>	Within 60 days of building permit issuance
<u>Subject to Section 12, Submit Letter of Credit for Off Site Improvements</u>	Prior to issuance of building permit
<u>Subject to Section 3, Receipt of Certificate of Occupancy</u>	Within 18 months after issuance of building permit

2.2 Section 13 is amended to provide that the term of the Agreement shall be 2 years ~~and 8 months~~ from issuance of the building permit.

~~2.3 — The terms “a pandemic” are added to the first sentence of Section 16 q after the word “including”.~~

3. Construction. This Amendment and the Agreement constitute one agreement between the Parties. In the event of any inconsistency between this Amendment and the Agreement the terms of this Amendment shall govern. All capitalized terms in the Agreement shall have the meaning in the Agreement when used in this Amendment, unless otherwise defined herein.

4. Ratification. The Agreement, as amended and supplemented by this Amendment, is hereby ratified and affirmed.

5. Counterparts. This Agreement may be executed in any number of counterparts.

This Amendment is executed by the Parties as of the date first above written.

Main Drive Properties, LLC, a Tennessee limited liability company

City of Ketchum, Idaho, a municipal corporation

By: _____
William Allison, Managing Member

By: _____
Neil Bradshaw, Mayor

By: _____
Jack E. Bariteau, Jr. as Trustee of the Jack E. Bariteau,
Jr. Separate Property Trust u/a/d October 2, 1996

STATE OF IDAHO)
)ss.
County of Blaine)

On this ____ day of _____, 2021, before me, a Notary Public in and for said State, personally appeared JACK E. BARITEAU, JR., known or identified to me to be the Trustee, or one of the Trustees of the Jack E Bariteau, Jr. Separate Property Trust under trust agreement dated October 2, 1996, and acknowledged to me that by said Trustee's signature on the foregoing instrument, the foregoing named Trust executed the same.

My Commission Expires _____
Notary Public for Idaho
Residing at _____

STATE OF IDAHO)
) ss.
County of Blaine)

On this ____ day of _____, 2021, before me, a Notary Public in and for said State, personally appeared NEIL BRADSHAW, Mayor of the City of Ketchum, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the Mayor of the City of Ketchum, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Ketchum, Idaho.

Notary Public for Idaho
Residing at _____
Commission expires _____

State of _____)
) ss.
County of _____)

On this ____ day of _____, 2021, before me, a Notary Public in and for said State, personally appeared WILLIAM ALLISON, known or identified to me to be the Manager of Main Drive Properties, LLC, a limited liability company and the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he executed the same in the name of said limited liability company.

Notary Public for _____
Residing at _____
My Commission expires _____