

**DEVELOPMENT REVIEW BOARD  
MINUTES**

**October 23, 2017**

**MEMBERS PRESENT:**

|                       |                        |
|-----------------------|------------------------|
| Phil Carter, Chairman | Linda Petty (by phone) |
| Julie Nicoll          | Dana Wilson            |

**MEMBERS ABSENT:**

John Boehrer

**OTHERS PRESENT:**

|                      |                  |                                  |
|----------------------|------------------|----------------------------------|
| Anthony Biancaniello | Sal Marottoli    | Andrea Sanford                   |
| Matthew Birmingham   | Michael Mattson  | Robert Sanford                   |
| Tom Bissonnette      | Steve Meyers     | Allen Shea                       |
| Ella Briggs          | Ralph Michael    | Larry Slason                     |
| Francis Brzoza       | Jean Morrill     | Ginny Snyder                     |
| Bill Drummond        | Mary Jane O’Hara | Jeffrey Strong                   |
| Ed Floyd             | Mike Peck        | Andrea Whitman                   |
| Jason Hochberg       | Francis Predom   | Ed Whitman                       |
| Steve Hochberg       | Kathryn Predom   | Vince Guerrero – Okemo Valley TV |
| Abigail Hurlburt     | Rich Russo       | Lisha Klaiber - Recorder         |

**I. CALL TO ORDER**

1. Meeting opened at 6:00 p.m. by Chairman, Phil Carter. All members present, except John Boehrer.

**II. OPEN THE RECESSED PUBLIC HEARING FOR ROGAN & ABBY LECHTHALER**

1. Phil Carter advised that this is an application to amend a Conditional Use Permit to allow outdoor dining for twenty-two (22) seats for lunch and dinner. Property is located at 190 Main Street, in the Village Residential Commercial District. It was recessed from the September 11, 2017 meeting.
2. Phil Carter administered the oath to all (Abigail Hurlburt, Mary Jane O’Hara) wishing to speak at this hearing. He advised that this hearing was left off at the September meeting with the front sidewalk tables. The tables in the side alley were not addressed. The town has since come to an agreement with the applicants and a lease agreement has been signed.
3. Abigail Hurlburt explained that the applicants wish to put two 24 inch diameter tables, with 2 chairs each, on the portion of the front sidewalk that belongs to Mamas. They want to put four 24 inch tables with chairs each plus 2 extra chairs in the side alley. This area will be roped off and the servers will walk within the roped off area. There will be NO ALCOHOL BEYOND THIS POINT signs posted
4. Phil Carter asked if there is enough room for the servers in the front, within the applicant’s part of the sidewalk.
5. Abigail Hurlburt said yes.

6. Phil Carter asked about lighting.
7. Abigail Hurlburt said she does not have that information.
8. Phil Carter explained that the DRB does not want glare or obnoxious lighting in the alley by the park. He said that lighting can't produce a hardship and should be down lit and no glare.
9. Abigail Hurlburt said she does not think that will be a problem.
10. Linda Petty said that she wants to make sure there are only 4 chairs in the front.
11. Abigail Hurlburt said there will be 2 tables with 2 chairs each in the front.
12. Phil Carter said that lighting will be a condition to not create disturbances.
13. Mary Jane O'Hara commented about the area in front.
14. Phil Carter said the portion belonging to the applicants goes from the seam of the sidewalk to the building.
15. Mary Jane O'Hara asked questions about the discussion at the Select Board meeting.
16. Phil Carter informed Mary Jane O'Hara that these are 2 separate boards and the Select Board approved the lease agreement.
17. Rose Goings explained that there appears to be some confusion regarding the lease agreement and the outside liquor consumption permit. The lease is for 5 years and the liquor license is renewed yearly.
18. Phil Carter said that this permit, if granted is for life (as long as the lease is still in effect.) If they no longer have the lease, the permit is moot.
19. **MOTION by Julie Nicoll and seconded by Dana Wilson to close this hearing. Motion passed unanimously.**

### III. **OPEN THE PUBLIC HEARING FOR FRANCIS AND KATHRYN PREDOM**

1. Phil Carter advised that this is an application for an amendment to a Conditional Use Permit to change the use from office space to a two-bedroom apartment. Property is located at 60 Bixby Road in the Residential Commercial 2 District.
2. Rose Goings advised that this is application 32-91 -CU, Amendment #6. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and on the website on October 3, 2017, advertised in THE VERMONT JOURNAL on October 4, 2017 and abutting property owners were notified on October 3, 2017.
3. Phil Carter administered the oath to all (Francis Predom and Kathryn Predom) wishing to speak at this hearing.
4. Francis Predom explained that they wish to convert the Physical Therapists' office into a 2 bedroom private apartment.
5. Rose Goings said that they have made the changes to the septic system and letters are in from the school, police and ambulance. They need to contact the Fire Marshall.
6. Phil Carter asked about conditions from Fire Chief, Peter Kolenda.
7. Francis Predom said they had to change the windows in the bedrooms and that has been taken care of.
8. Rose Goings said the board has not received the letter from Chief Kolenda.
9. Phil Carter asked if the chief had any other requirements such as hardwired smoke detectors.
10. Francis Predom said they are already there.
11. Kathryn Predom said they have already called the Fire Marshall and paid the fee.
12. Phil Carter said that any conditions imposed by the Fire Marshall will be part of the permit.
13. **MOTION by Dana Wilson and seconded by Julie Nicoll to close this hearing. Motion passed unanimously.**

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IV. **OPEN THE PUBLIC HEARING FOR AUBUCHON HARDWARE**

1. Phil Carter advised that this is an application to consider a Variance on signage. Property is located at 142 Main Street in the Village Residential Commercial District.
2. Rose Goings advised that this is application 459-18-CU. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and on the website on October 3, 2017, advertised in THE VERMONT JOURNAL on October 4, 2017 and abutting property owners were notified on October 3, 2017.
3. Phil Carter administered the oath to all (Michael Mattson, Tom Bissonnette, Bill Drummond and Ginny Snyder) wishing to speak at this hearing.
4. Michael Mattson explained that they have put on a sizable addition to the store. They have been there for 61 years. The awning is outdated and they wish to replace it with a green awning and the Aubuchon logo.
5. Phil Carter explained that the state requires response to 5 criteria for variances.
6. Michael Mattson said that they were told that Ludlow zoning does not allow for changes to the sign,
7. Phil Carter said that is incorrect. Their sign is grandfathered and they may maintain, repair or replace the sign. They cannot have internally lit signs.
8. Michael Mattson said they would like the sign to span across the entire store front. He said they did not create the hardship. They wanted an internally lit sign but zoning does not allow it. They want a more aesthetically pleasing sign with more square footage.
9. Phil Carter asked how long that sign has been up.
10. Michael Mattson said since 1993.
11. Phil Carter explained that the sign is grandfathered, but more than the current allowable square footage.
12. Michael Mattson said just the letters is 50.5 square feet. He said they also want the sign sloped.
13. Phil Carter noted that the proposed drawing shows 66.9 square feet.
14. Michael Mattson said they would like the sign to span the store front or to repurpose the current square footage.
15. Phil Carter asked about the Benjamin Moore sign.
16. Bill Drummond said it has been probably since the 1960s.
17. Michael Mattson said that it had previously been lit. It is still structurally sound.
18. Phil Carter said that both signs are grandfathered.
19. Ginny Snyder said that the lighting in the back of the building is bright and she would like to see the fence replaced. It is dilapidated. She said that a few years ago, they replaced the fence between the store and DJs.
20. Phil Carter explained that cannot be handled through this hearing. It is not part of the permit. They can pull the other permit from the addition and look at it for conditions.
21. Tom Bissonnette said that there are plans in the works to install a new fence and they can discuss it with Ginny Snyder.
22. **MOTION by Julie Nicoll and seconded by Linda Petty to close this hearing. Motion passed unanimously.**

V. **OPEN THE PUBLIC HEARING FOR OKEMO MARKETPLACE, INC.**

1. Phil Carter advised that this is an application to appeal the Zoning Administrator's decision denying the modification of the existing commercial building for the construction of a drive-

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- through pharmacy dispensary for Ludlow Pharmacy. The project is located at 57 Pond Street in the Village Residential/Commercial District.
2. Julie Nicoll advised that this is application 460-18-AP. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and on the website on October 3, 2017, advertised in THE VERMONT JOURNAL on October 4, 2017 and abutting property owners were notified on October 3, 2017.
  3. Phil Carter administered the oath to all (Larry Slason, Steve Hochberg, Jason Hochberg and Rose Goings) wishing to speak at this hearing. He advised that this is an appeal of a denial of an application by the Zoning Administrator.
  4. Larry Slason advised that he has spoken to the Town Counsel and was advised that the DRB can have some discretion on this. He has submitted exhibits as evidence. If the exhibits are persuasive and convince the DRB that a Pharmaceutical Dispensary is a “professional service,” then it is a conditional use in the district. If the evidence is not persuasive, and the DRB denies the appeal, it will go to the Environmental Court. If the court agrees that it is a professional service, they can grant the permit. If they do not agree, they will remand it back to the DRB.
  5. Phil Carter said this hearing is an appeal of the Zoning Administrator’s decision. That Conditional Use does not exist. The permit was denied. That is now moot. There is no process for us to hear this, because it was not warned. This hearing is just to appeal the Zoning Administrator’s decision.
  6. Larry Slason said the application was denied, not the permit. We will address this in our findings of fact.
  7. Rose Goings said that document was only given to just Phil Carter today.
  8. Larry Slason that at the Pharmacy Dispensary, they will ask for identification, ask what medication is being prescribed, do counseling and provide other services. Our position is that it will be a permanent accessory to the existing pharmacy. It is customary and incidental to the primary use. In his evidence, he said that he provided case law from New Jersey where it was permitted as an accessory use.
  9. Phil Carter noted that the permit for the Pharmacy is under a Conditional Use Permit.
  10. Larry Slason said if it is a permitted use, an accessory does not require an additional change.
  11. Phil Carter said that the entire Marketplace is under a Conditional Use permit and wouldn’t all changes at the Marketplace have all come to the DRB. Were they wrong to come to the DRB?
  12. Larry Slason said no. If it’s a change of use, it should have come. There’s an exception to permitted use and there’s only a few permitted uses. If it’s truly an accessory use, it is deemed permitted and not be required to come to the DRB.
  13. Julie Nicoll asked if it is a structural change, why they don’t need input from the Fire and Police.
  14. Larry Slason said if it’s truly incidental and accessory and minor, when it is a permitted use in Ludlow do you require all permitted uses to come to the DRB? Do they require comments from all of the departments and do you require site plan review. A pharmacy dispensary is a professional service. The only people who will work there are licensed pharmacists and licensed pharmacy technicians. The pharmacy may have an aspect of retail, but the dispensary will be separate to administer medications, dispense medications and counsel. In Ferrisburg VT, the town had language in their zoning similar to Ludlow’s. Champlain Oil wanted a drive through and the Supreme Court said the language in Ferrisburg’s zoning was inherently confusing concerning drive up and drive through. It was ambiguous and they allowed the project until Ferrisburg modified its bylaws. They must find in favor of the landowner. He believes that the original intent in Ludlow may have been to refuse fast food drive ins. He added that banks are less regulated than a pharmacy and no less professional and Ludlow allows drive ups for them. Ludlow could allow the dispensary as a professional service and can explain the difference between it and fast food. He said that the Ludlow ordinances are not clear and suggests that the court may consider it discriminatory. The court may look at Ferrisburg. There is no language in the Ludlow bylaws that clearly prohibits drive through pharmacy dispensaries. They are highly

regulated and not retail use. If it is not a retail use, Ludlow does have drive through use for professional services. This clearly meets the definition of drive through and is used for safety and for the elderly. The facilities, design and regulations encourage that. He then asked questions of Steve Hochberg. He is the licensed pharmacist who will run the facility.

- a) Larry Slason asked Steve Hochberg what is his occupation
  - b) Steve Hochberg said he is a licensed pharmacist in VT
  - c) Larry Slason asked Steve Hochberg if he is an owner and operator of the Ludlow Pharmacy
  - d) Steve Hochberg said yes
  - e) Larry Slason asked Steve Hochberg why he has applied for a drive through pharmacy dispensary
  - f) Steve Hochberg said it is now common knowledge and use and a pharmacy almost always has a pharmacy drive through. It's for safety, and convenience. Safety is the most important. We have folks that are sick and can't get out of their cars. We have young moms with sick kids. It would be so much easier and safer
  - g) Larry Slason asked Steve Hochberg to describe his professional training.
  - h) Steve Hochberg said he has a 5 year degree (now it would be 6 years) and graduated as a Doctor of Pharmacy. To operate a pharmacy, you must be a licensed pharmacist.
  - i) Larry Slason asked Steve Hochberg who manages the pharmacy.
  - j) Steve Hochberg said the pharmacy is managed by a licensed pharmacist, designated as the manager or subordinate, but must be a licensed pharmacist.
  - k) Larry Slason asked Steve Hochberg if a licensed pharmacist must be on the premises at all times.
  - l) Steve Hochberg said absolutely. The store/pharmacy cannot open without a licensed pharmacist.
  - m) Larry Slason asked Steve Hochberg, how did your pharmacy obtain its license? Is the pharmacy itself licensed in addition to your own license?
  - n) Steve Hochberg said the pharmacy first has to apply to the office of professional regulations to open a pharmacy plus go through an entire process of applications and verifying who you are, who's going to run it. There's a site visit involved. It must meet regulations. The pharmacy part must be totally locked up and separated from the rest of the store.
  - o) Larry Slason asked (referring to a drawing) is that the portion of the pharmacy dispensary.
  - p) Steve Hochberg indicated the drive up area, saying that it would not be accessible to the public from inside the store.
  - q) Larry Slason asked Steve Hochberg if the pharmacy dispensary is the portion of the pharmacy in which the practice of pharmacy is carried out?
  - r) Steve Hochberg said yes. If someone comes in with a prescription, everything will be dealt with at the pharmacy window as well as at the counter, including "do you have any questions" or needs.
15. Phil Carter asked if the plan is to have the window and who's going to be handing stuff through the window?
  16. Steve Hochberg said it might be a pharmacist or licensed pharmacy technician.
  17. Phil Carter asked if it would be the clerk that's running the front desk.

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18. Steve Hochberg said in Ludlow, we actually don't have clerks. Everyone who works in that store is a licensed pharmacy technician.
  19. Phil Carter said but, you could have a clerk. You're not required by law not to have clerks.
  20. Steve Hochberg said that every person working in the pharmacy has a permit from the state of Vermont.
  21. Phil Carter said yes, the pharmacy, but he is talking about the retail counter.
  22. Steve Hochberg said, at the retail counter. If they are handling medications, helping the pharmacist or assisting, as they do in Ludlow, they must be a licensed technician.
  23. Phil Carter said but, he is talking about the person at the retail counter. You can hire a clerk and they could go and be a clerk at the retail counter, but they not pharmacists.
  24. Steve Hochberg said you have to have a permit from the state of Vermont.
  25. Phil Carter said he does not think that is correct.
  26. Larry Slason said, let me make a representation. He does not know what Phil Carter is referring to as the retail counter, but you can have a retail counter in a pharmacy where you may sell film or soda goods, but we're not talking about that. We are not asking for that approval. We're asking for a pharmacy dispensary where you can go to the counter, today, under Vermont regulations.
  27. Phil Carter said that's not what he is asking about. Would there ever be a scenario in your store, where a non-licensed person is operating that window?
  28. Larry Slason said it would be illegal.
  29. Phil Carter said it doesn't make sense. At Wilcox Pharmacy, they have store clerks handing out medications.
  30. Steve Hochberg said he also has a Rutland Store and everybody at the pharmacy counter and behind are all licensed by the state of Vermont.
  31. Phil Carter said again, if there would be a scenario where a non-licensed person hands stuff out that window.
  32. Steve Hochberg said no.
  33. Jason Hochberg said that the State of Vermont requires that anyone handling a prescription must be licensed by the State of Vermont. They have to reapply every two years and have to be approved by the Office of Professional Regulations. Anybody physically handling prescriptions must be licensed.
  34. Larry Slason said their licenses must be displayed. Any one in possession or physical contact with prescription drugs, in the State of Vermont, must be duly licensed and the license must be posted. Larry Slason continued with his questions for Steve Hochberg.
    - a) Larry Slason asked Steve Hochberg if he provides patient services within his practice of pharmacy.
    - b) Steve Hochberg said yes, that's part of the rules of what pharmacists do, verifying prescriptions, making sure they're appropriate, asking if the patient has any questions. Any questions must be answered by the pharmacist. The services are whatever is necessary for you to take that prescription comfortably and any questions should be totally answered.
    - c) Larry Slason said that the state statute provides and lists the practice of pharmacy on what patient services. Do you :
      - d) Provide the interpretation or evaluation of prescription orders
      - e) Steve Hochberg said yes.
      - f) Larry Slason asked do you compound and dispense and labeling or drugs
      - g) Steve Hochberg said yes
      - h) Larry Slason asked do you counsel patients
      - i) Steve Hochberg said absolutely

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- j) Larry Slason asked do you participate in drug selection and drug utilization
  - k) Steve Hochberg said yes
  - l) Larry Slason asked do you instruct regarding safe storage of drugs and maintenance of proper records
  - m) Steve Hochberg said yes
  - n) Larry Slason asked do you advise patients regarding therapeutic values, content hazards and use of drugs
  - o) Steve Hochberg said yes
  - p) Larry Slason asked do you assist MDs and other health care providers to optimize drug therapy through practice of clinical pharmacy.
  - q) Steve Hochberg said yes
  - r) Larry Slason asked if all of that will be happening in the pharmacy dispensary proposed for the Ludlow Okemo Marketplace.
  - s) Steve Hochberg said yes. It would be no different from when someone was in the store picking up a prescription.
  - t) Larry Slason asked if, in his opinion, the practice of pharmacy is a professional service.
  - u) Steve Hochberg said absolutely.
  - v) Larry Slason asked if Steve Hochberg considers a pharmacy dispensary a retail use.
  - w) Steve Hochberg said no, dispensing prescriptions is not retail
  - x) Larry Slason asked if someone could take a drug from him and sell it lawfully, like customer retail goods.
  - y) Steve Hochberg said not lawfully.
  - z) Larry Slason asked will the pharmacy dispensary be staffed at all times by a licensed pharmacist.
  - aa) Steve Hochberg said it has to be.
  - bb) Larry Slason asked if there is any reason in his mind why pharmacy should be considered less of a profession than many of the others such as medical doctors, family nurse practitioners and others who deal in health care.
  - cc) Steve Hochberg said no, as a matter of fact, we are regulated by the same bodies and on top of that, we have the DEA and FDA also on our backs at all times.
  - dd) Larry Slason asked if he acknowledges that a portion of the pharmacy may engage in the sale of retail goods.
  - ee) Steve Hochberg said yes.
  - ff) Larry Slason said, but, no sale of retail goods will occur at the pharmacy dispensary.
  - gg) Steve Hochberg said no.
35. Phil Carter said, the business is one business and they do have a retail piece, and clearly a professional piece. So, can you enlighten the DRB as to why would one supersede the other.
36. Larry Slason said he is not sure that one does supersede the other. They are 2 coexisting compatible uses, which the courts are saying that the pharmacy dispensary is an accessory use. It's a use commonplace in most modern pharmacies. They coexist. They complement one another. He supposed that there doesn't have to be much of a retail section in the pharmacy. You can expand it as much as you want. Some retail pharmacies are larger than others. We are not asking for a retail pharmacy or a conditional use to ask for additional retail goods. We are asking

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- for approval to be authorized as a professional service in the town of Ludlow, utilizing a drive through service for which there is no exclusion in the Ludlow zoning ordinances.
37. Phil Carter asked Rose Goings why she denied the application.
38. Rose Goings said she denied the application because drive throughs are not allowed as a conditional use in the Village Residential Commercial District. She does not believe that to be a professional service. She believes the pharmacy to be a retail use. Now, listening to the argument, she does not believe it to be an accessory and a permitted use. So, she would still deny that as a permitted use and send it to the DRB. She said, at first, she believed it to be a variance, but Larry Slason did not want to go that way because variances are very difficult to get. She does not believe this to be a professional service. She believes it to be a retail use and that is why she denied it. Drive throughs are not allowed as a Conditional Use in any district in the Village or the Town of Ludlow in the zoning regulations.
39. Phil Carter asked Steve Hochberg if when the pharmacy puts together a prescription order, is there a retail mark-up on it.
40. Steve Hochberg said of course there's profit to any business.
41. Phil Carter asked why that wouldn't be a retail transaction. Despite the product, you have marked it up and you sell it.
42. Steve Hochberg said you can't just walk into a pharmacy and run it. You would have to have a professional licensed pharmacist to operate the pharmacy.
43. Phil Carter said they understand that there is a professional component to what you do, but there's also a retail component and they seem to be married. He's just trying to figure out, for the board's benefit, how we look at one as opposed to the other. We can't take zoning and cherry pick parts that we want and ignore the parts that we don't want. So you have an organization that clearly has a retail component and clearly a professional component. How does one supersede the other? I'm guessing this is where Rose Goings is coming from. You are arguing that one does.
44. Larry Slason said no, they are not. If you are suggesting that the sale of prescription drugs is the retail component,
45. Phil Carter said he's not saying that. He said there is retail in the store and that would include the drugs because there's a markup, so there's a retail component. There's also walkers and canes. That's clearly retail.
46. Larry Slason said there is retail in the retail portion of the pharmacy.
47. Phil Carter said it is a business. We have established that. How do we ignore part of it?
48. Larry Slason said you are not ignoring it. It's a preexisting pharmacy, but the pharmacy dispensary is a professional service. It's not a retail service. We are not selling your customary walk-in store kinds of goods. It's heavily regulated and that's the distinction. It's a professional service. If you go to the doctor and he give you medicine, and you pay for it, is that retail. Does that make part of the doctor's office retail use? The MD is a professional provider. The pharmacy dispensary is a professional provider and why can't they be licensed as both. There is nothing in the Ludlow zoning that prohibits a professional pharmacy drive through.
49. Phil Carter said but there is something that prohibits it if it is retail.
50. Larry Slason said that is what the DRB is going to have to decide. The cases that we've cited suggest that a pharmacy dispensary is a professional service. The Ferrisburg case talked about drive in and drive through. The case says when it becomes ambiguous; you have to rule on the side of the landowner. That is the position that we are taking. I can see why you are looking at one or the other and Rose Goings believes that there is a retail to this and there may well be. The part that we are emphasizing is that it is distinguished from your Cumberland Farms or Mac Donald's. That's why Ludlow adopted it in the first place. They weren't trying to keep professional people out of business. The fact that Ludlow allows banks to have drive throughs and you can't do a professional pharmacy is bothersome. And, he thinks it will bother the court, because it is a professional service. It is much more highly regulated than the banks. You don't have to be licensed to touch the money, but to touch his drugs, you have to be licensed, pass

- exams, renew you license at all times. It is hard to think of anybody more highly regulated than a person dealing with prescription drugs. That's why this is a professional service.
51. Linda Petty asked about the HIPA logs and if they are secure when talking through the window.
  52. Steve Hochberg said the counseling can be provided at the window, but there is a private room for counseling in the store. We have to have that room by law, so it really would not be a HIPA violation.
  53. **MOTION by Linda Petty and seconded by Phil Carter to close this hearing. Motion passed unanimously.**

***NOTE: Phil Carter advised that the following two hearings are for Jewel Brook Development LLC and asked the applicant if they could be addressed concurrently. The applicant's representative agreed.***

**VI. OPEN THE PUBLIC HEARING FOR JEWEL BROOK DEVELOPMENT LLC**

1. Phil Carter advised that this is an application to amend a Conditional Use Permit to change previously permitted structure from a 34 condominium complex to a hotel containing 72 rental rooms and 1 condominium. Property is located at 1 Parker Avenue in the Village Residential Commercial District.
2. Rose Goings advised that this is application 300-07-CU, Amendment #4. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and on the website on October 3, 2017, advertised in THE VERMONT JOURNAL on October 4, 2017 and abutting property owners were notified on October 3, 2017.

**VII. OPEN THE PUBLIC HEARING FOR JEWEL BROOK DEVELOPMENT LLC**

1. Phil Carter advised that this is an application for Local Act250 Review to change previously permitted structure from a 34 condominium complex to a hotel containing 72 rental rooms and 1 condominium. Property is located at 1 Parker Avenue in the Village Residential Commercial District.
2. Rose Goings advised that this is application 458-17-ACT250. Posted in the Town Hall bulletin boards, the Berkshire Bank Bulletin Board and the Post Office Bulletin Board and on the website on October 3, 2017, advertised in THE VERMONT JOURNAL on October 4, 2017 and abutting property owners were notified on October 3, 2017.
3. Phil Carter administered the oath to all (Sal Marottoli, Matt Birmingham, Mike Peck, Andrea Sanford, Robert Sanford, Jean Morrill, Ed Floyd, and Steve Meyers) wishing to speak at this hearing. He advised that this is a new hearing and evidence previously heard is not part of this hearing.
4. Sal Marottoli explained that he has done other similar projects where he takes distressed properties cleans them up and renovates them. Originally, the Jewel Brook project was permitted for 34 condominium units. That was 11 years ago. They cleaned up the property and removed the old mill, saving the old beams. They contracted with CB Richard Ellis (CBRE) to do a market study and had favorable findings. They discussed the project with VEDA and after reviewing the plans, VEDA committed to \$1.5 million for the project. They have spoken to companies to be brand partners and Marriott, Hilton and Ascend have all agreed to be brand partner. In a soft brand relationship, the property does not actually say the brand name. The brand partner will mostly handle the reservations and management systems. The footprint for this project is smaller than the footprint for the Jewel Brook project. It will consist of a 72 room hotel

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- and one condominium. There will be a drive under in the front. Their vision is to perpetuate a feeling of a beautiful ski lodge. We will use the old beams in the entrance which will be 3 stories high with a fireplace. Furnishings will be local source and Vermont-centric. They will use organic Vermont soaps and incorporate things from the Okemo Valley. They will help guests by organizing things like fly fishing and golf trips in the summer.
5. Andrea Sanford said she is an abutter and they want to maintain a country feeling in their neighborhood. She feels that this project will take away from their way of life.
  6. Sal Marottoli said that his concept is to make the project feel and look like Ludlow. He said the pergolas will be raw wood. There will be a 36 seat restaurant. He said they made changes to the site plan parking. They will also run a shuttle to local restaurants.
  7. Bob Sanford said that the project is not part of our neighborhood. Our neighborhood is residential.
  8. Phil Carter said the area is Residential Commercial and if the neighbors want to have that changed; they would need to go to the Planning Commission.
  9. Bob Sanford asked what the project budget is.
  10. Sal Marottoli said this project is a permitted use in the zoning regulations. This project will be about \$10 million and be a six-figure taxpayer. Water/sewer hookup fees will be more than 6 figures and usage fees will be high. We will create 22 jobs, 10 will be full time. These will be jobs for people who need more money. We will hire support services for lawns and plumbing. It will be great for the tax base.
  11. Steve Meyers asked who will be their target market.
  12. Sal Marottoli said skiing families who will stay 2 to 3 days, maybe 7-8 times per season. People who don't want to be on the mountain. We will have small business meetings. Also, summer visitors.
  13. Ed Floyd said the plans have had several iterations. Referring to the drawings, he showed the entrance on Parker Avenue and the Emergency Access area. He said the existing condo will be relocated and they will eliminate a curb cut. There will be 88 parking spaces: 72 for the hotel rooms, 10 for the restaurant, 4 for the Conference Center and 2 for the condo. There will be 4 loading/unloading spaces. Water/sewer will be supplied by the town and they will have a sprinkler system. They will address Local Act 250. A traffic study was done by John Bruno. The study indicated that traffic on Route 100 has decreased over the last 10 years. The project meets the criteria for Level of Service and will not create undesirable conditions. Sight distances will exceed standards. There will be no impact on Education Services. Letters have been submitted for municipal services. The project is consistent with the town plan, promoting year round economy. The project will preserve the Village vitality and the restaurant and pool will be open to the public. Water resources are maximum levels. Regarding storm water infiltration, he said it is flat ground with a wall along it. All state storm water requirements are met and the amount of storm water after the project will be the same or less than before the project. A Landscape plan is included showing maples and birches along the brook. He listed the plants that are indicated on the drawings. He said there will be extensive signage such as NO OUTLET signs on Parker Avenue, NO PARKING ON ROADWAY and DO NOT ENTER.
  14. Phil Carter noted that Chief Billings had wanted VEHICLES ENTERING/EXITING signs at the north and south ends of Parker Avenue.
  15. Ed Floyd indicated those signs on the drawing. He indicated the gated breakaway entry for Emergency vehicles only. If you bump the gate, it will open. He indicated signs on the parking lot side.
  16. Francis Brzoza said that Parker Avenue is narrow and the swing around is tight. If people are speeding around the bridge, you can't get out of your driveway.
  17. Ed Floyd said that once built, the entries are not wide and people won't be speeding as much. The traffic engineer found the sight distance far in excess of posted signs. He added that the speed limit is set by the town and if it is not enforced, it is out of the project's control.

18. Andrea Sanford feels that the project is too big for the area.
19. Ed Floyd replied that the problem is with zoning.
20. Steve Meyers said he feels the project does not fit on the property.
21. Ed Floyd said the survey was done in 2005.
22. Phil Carter said the project is an allowed use in the district. He added that if people are unhappy with the zoning in Ludlow, they should go to the Planning Commission to change it. He added that people don't take action until a project comes up. So far, as this has been presented, it is within Ludlow zoning regulations. He said if a project meets the letter of the law, we (the DRB) cannot deny it. You need to start with the Planning Commission. He added that this project has already been applied for under the existing zoning regulations.
23. Andrea Sanford said she was OK with condos.
24. Bob Sanford said the condos were single family homes and residential. He asked if the project has to go to ACT 250.
25. Sal Marottoli said yes.
26. Ed Floyd said they have an ACT250 permit and it will have to be amended.
27. Steve Meyers said the survey says 334 feet, but he measured it and it isn't.
28. Ed Floyd said the fire hydrant is on the property line.
29. Sal Marottoli said that the certified site plan (by Michael Engineering) is on file.
30. Steve Meyers said the frontage is off.
31. Rose Goings said that the town has it listed as No Survey. The map was not recorded in the town clerk's office and it needs to be recorded.
32. Sal Marottoli said the town ordered the survey.
33. Rose Goings said the property owners are responsible to record the survey.
34. Phil Carter said to have the survey recorded.
35. Ed Floyd said it was signed by Ralph Michael in 2005.
36. Phil Carter said if a survey is incorrect, it stops the process.
37. Jean Morrill asked if the deed was recorded.
38. Matt Birmingham said it will be recorded tomorrow.
39. Jean Morrill asked about the tree line abutting the easement. She said she wants it to be maintained on both sides. She added that white pines grow fast.
40. Ed Floyd said they can be trimmed.
41. Phil Carter asked what they are considering for a buffer.
42. Jean Morrill said she would like fencing, like at Steve Meyers.
43. Phil Carter suggested changing the white pines to arborvitae, evergreens or junipers.
44. Jean Morrill said they can talk about it. She noted that lilacs have leaves and when the leaves come off, it is not a buffer.
45. Phil Carter asked Sal Marottoli if he is ok with changing the landscaping.
46. Sal Marottoli said yes.
47. Phil Carter suggested maybe a fence and some greenery.
48. Sal Marottoli said we can do that.
49. Jean Morrill asked about drainage from the parking lot and the easement.
50. Matt Birmingham said for the easement, they duplicated the language in the 209 Quit Claim deed. It is exactly the same. The Jewel Brook can use the ROW with you.
51. Sal Marottoli said they will mow the lawn and trim the trees.
52. Phil Carter said they will be held to the Site Plan. If they start using the easement for other reasons, it will be a violation of the permit. He asked about storm water, noting that there is a lot of imperious surface.
53. Ed Floyd said the existing drainage has one catch basin near the office and all of the pavement is directed toward it.
54. Phil Carter asked about when it freezes.

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55. Ed Floyd said there won't be run-off. The state considers it overland flow. He added that one foot of dry soil will remove the deleterious matter. The ground water table is very low. He said they will need a storm water permit that will be recertified every 5 years and inspected.
  56. Phil Carter asked about the aesthetics of the main building and lighting.
  57. Ed Floyd said the lighting will be dark sky compliant and down lit.
  58. Sal Marottoli said the building will be clapboard on the bottom and shake, separated by trim boards. The colors will be the same as the existing condo; deep barn red and light beige.
  59. Phil Carter asked if the windows will be tinted
  60. Sal Marottoli said no. He said the lighting will be shoe box lights, designed for commercial parking lots with baffles on the top. The heights will vary around 14 feet.
  61. Phil Carter asked about lighting on the building.
  62. Sal Marottoli said only 2 lights by the front door.
  63. Steve Meyers asked about the stairs.
  64. Sal Marottoli said that was required by the fire chief to comply with code.
  65. Phil Carter asked about snow removal.
  66. Sal Marottoli said there will be a property management company that will be given a set of criteria. After a certain amount of snow, they will bucket load the snow to an area away from Route 100 or haul it off site.
  67. Phil Carter asked where they will plow the snow.
  68. Sal Marottoli said they will push it to open areas or if there is too much, they will haul it off site.
  69. Phil Carter asked what is too much.
  70. Sal Marottoli said headlight sight line.
  71. Ed Floyd said it depends on the time of year. If it is a low occupancy time, they may block off some parking spaces. In reality, they will probably use the bucket loader.
  72. Mike Peck said this project will have 24/7 management and it will be enforced.
  73. Rose Goings said that there may be complaints, about the noises, if they are plowing snow at midnight.
  74. Sal Marottoli said we will have a maintenance book that will be filed with the zoning enforcement people and the management staff must go by it. We will incorporate times of day for tasks.
  75. Rose Goings asked the height of the building.
  76. Sal Marottoli said 34'6"
  77. Rose Goings asked about the two ends of the building.
  78. Sal Marottoli said those are the staircases required by the fire chief as a place of refuge outside of the building.
  79. Phil Carter asked if there would be alarms with video cameras.
  80. Sal Marottoli said yes.
  81. Rose Goings asked if they had received the letter from the fire chief that requires the Fire Equipment Fund Fee.
  82. Sal Marottoli said yes.
  83. Steve Meyers asked why not go smaller and get 100% occupancy.
  84. Sal Marottoli said on average it will be about 52%, but we will have those times when it will be 92%. It has to be enough to offset infrastructure costs.
  85. Phil Carter said that on the site visit, we noted that cars leaving the horseshoe area will have an impact on Steve Meyers' property. We would like to know your concerns about screening.
  86. Steve Meyers said he would like them to put up a fence, on his property and he will maintain it.
  87. Sal Marottoli said okay and that they had talked about that.
  88. Francis Brzoza voiced his concerns about snow plowing on Parker Avenue.
  89. Phil Carter said the town is responsible for that. If they push the snow on his property, he'll have to move it off and there's no construction past where you are referring to.
  90. Linda Petty asked where they will move the existing condo.
  91. Phil Carter said closer to the hotel.

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92. Steve Meyers said that the state told him that this project will require a new permit.
  93. Ed Floyd said they have not communicated with the state yet.
  94. Phil Carter asked about Labor and Industry.
  95. Ed Floyd said the project is architect-designed and will meet state regulations.
  96. Sal Marottoli said their process is to come to the DRB first, then go to ACT250 and then Labor and Industry.
  97. **MOTION by Linda Petty and seconded by Dana Wilson to close this hearing. Motion passed unanimously.**

VIII. **APPROVE MINUTES**

1. Phil Carter advised that the minutes to be reviewed are from September 11, 2017. He would like to review them at the November meeting.

IX. **OTHER BUSINESS**

1. Next Regular Meeting – Monday November 13, 2017.

X. **ADJOURN**

1. **MOTION by Phil Carter and seconded by Dana Wilson to adjourn. Motion passed unanimously.**
2. Meeting adjourned at 8:52 p.m.

Respectfully submitted,

Lisha Klaiber

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Phil Carter, Chairman

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Linda Petty

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John Boehrer

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Dana Wilson

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Julie Nicoll