

**WATERBURY DEVELOPMENT REVIEW BOARD**  
**Approved General Minutes—July 7, 2021**

**Attending:** Board members: Tom Kinley (Vice Co-chair), Alex Tolstoi, Joe Wurtzbacher , Harry Shepard, Bud Wilson  
Staff: Dina Bookmyer-Baker (Zoning Administrator- ZA), Steve Lotspeich (Community Planner).  
Patti Martin (Secretary)  
Public: Joan Liggett

Tom Kinley Vice-Chair, opened the public meeting at 6:35 p.m. and made the following introductory remarks: He let the participants know that the remote meeting will be recorded. Applicants and consultants will be given the option to be contacted when their hearing is ready to commence. Applicants should have one spokesperson. Staff will give an overview of the project. The Applicant/Spokesperson will present any new information to the Board. The DRB members will ask questions, followed by staff questions and comments. The hearing will then be opened to the public for comments and questions. Note that the DRB is a seven-member Board, five members are present; an approval requires at least four votes in the affirmative.

1) **#048-21: Shannon Cali** (owner/applicant)

The public hearing on the setback waiver request to construct a deck addition at 229 Howard Avenue. (TNC zoning district) was opened by the Vice Co-chair at 6:43 p.m.

Present and sworn in:  
Shannon Cali, owner/applicant

The applicant provided testimony on the project and the DRB members asked various questions.

The public hearing was closed at 6:50pm. The Board approved the project with conditions and will issue a written decision within 45 days.

2) **#109-19: Darren Tebeau** (owner/applicant)

The public hearing on the site Plan review to construct an 8-ft. tall privacy fence at 5 Moody Court. (VR zoning district) was opened by the Vice Co-chair at 6:55 p.m.

Present and sworn in:  
Hans Huessy, representing applicant  
Mary Koen, adjacent neighboring property owner

Testimony regarding the proposed 8' tall fence was provided by the applicant, his attorney and the adjacent property owner. Mary Koen expressed concern that the fences should not be connected to her privacy fence because that will place part of her fence on her property. She also expressed concern that his materials are leaning on her fence. Hans Huessy stated that his opinion is that this is a trespass issue and not a zoning issue.

The public hearing was closed at 7:10pm. The Board approved the project with conditions and will issue a written decision within 45 days.

3) **#049-21: Elizabeth Brown and Clarke Colon** (owner/applicant)

The public hearing on the Ridgelines/Hillsides/Steep Slopes review to construct a new single-family dwelling and attached garage on an undeveloped lot (Parcel 400-2382) off of Perry Hill

Road. (CNS/RHS zoning/overlay districts) was opened at 7:15 p.m.

Present and sworn in:

Elizabeth Brown, Applicant  
Clarke Colon, Applicant  
Karyn Scherer, Architect  
Michael Hedges, Resident  
Jason Wulff, Resident  
George McCain, Consultant  
Billy Vigdor, Resident  
Randy Dow, Nearby property owner

Testimony:

1. Michael Hedges, offered that this area sees a fair amount of recreation in the winter, with permission and cooperation of property owners.
2. Bill Vigdor spoke as a property owner in the neighborhood of the Brown/Colon parcel and not as a member of the Conservation Commission. He presented his written testimony that is Exhibit H. He requested that the DRB require the applicants to submit a wildlife habitat study and the how the changes to this property would affect the wildlife such as black bear, since the area is mapped as bear habitat on the Wildlife Map in the 2018 Waterbury Municipal Plan.
3. Randy Dow expressed concern a spring that supplies a house that he owns on Perry Hill Rd. The line from the spring to the house goes under the driveway to the Brown/Colon property where it is located on the right-of-way. He is concerned about the impact of the upgrade and plowing of the driveway on the water line and will work with the applicants to do any necessary upgrades to protect the line so it doesn't freeze.

Information requested by the DRB is to include:

1. Elevation information on the proposed dwelling. Establish what the center of the building is.
2. Site walk by DRB members to go separately if desired.
3. Additional details on the construction of the driveway – such as drainage, accessibility, grade prior to and after construction.
4. Any further information on the wildlife habitat in the area to determine if the conditional use criteria is met.

The hearing was continued to July 21, 2021 at 6:30 p.m.

4) **#055-21: Elliott Bent & Quincy Campbell** (owner/applicant)

The public hearing on the Ridgelines/Hillsides/Steep Slopes review to modify the previously-approved building zone and construct a new single-family dwelling on an undeveloped lot (Parcel 535-0970) off of Ring Road. (CNS/RHS zoning/overlay districts) was opened by the Co-vice Chair at 8:35 p.m.

Present and sworn in:

Elliott Bent & Quincy Campbell, owner/applicants  
George McCain, Consultant

The public hearing was closed at 8:50pm. The Board approved the project with conditions and will issue a written decision within 45 days.

- 5) **#039-21: Perry Hill Partners, c/o Aaron Flint and Jason Wulff** (owner/applicant)  
The continuation of the Site Plan and Downtown Design Review for a change of use to a restaurant/bar with retail and indoor live music as an accessory use on the first and basement floors and outdoor dining at the Bell's Block building at 28 Stowe Street. (DWN/DDR zoning/overlay districts) was commenced at 8:55 p.m.  
—Continued from 6/2/21.

Testimony was provided on the changes to the site plan related to delivery and pick up of materials for the brewpub. The screening of the refuse area was discussed.

The public hearing was closed at 9:15pm. The Board approved the project with conditions and will issue a written decision within 45 days.

1) **Agenda items as scheduled by the Chair:**

- Public comment / Other business:

Mike Bard, Selectboard, joined to offer some comments. Dina was wished well on her retirement and thanked for her years of contribution to the Town of Waterbury as Zoning Administrator.

- Review prior meeting minutes and decisions (6/16/21):

Motion: Harry Shepard moved and Bud Wilson seconded the motion to approve the DRB general meeting minutes for June 16, 2021 and the decisions for applications #023-21 and #003-21, as corrected.

Vote: The motion was approved 5 - 0.

**Adjournment:** There being no other business, the meeting was adjourned at 9:43 pm.

Approved:  \_\_\_\_\_ Date: July 21, 2021  
Tom Kinley, Vice Co-chair

**Next Meetings:**

Wednesday, July 21, 2021, 6:30 p.m.

- #062-21, Mason/Juenker, SP/DD chg. of use 3d floor, One Stowe St. (DWN/DDR)
- #046-21: Anderson/Merchant, DD, exterior stair at 25 N. Main Street (VMR/DDR) —*review cont'd fr 6/19/21.*
- #041-21: Gristmill Properties/Brendan O'Reilly, SP/CU mixed use bldg., 5430 Waterbury-Stowe Rd. (RT100) —*review cont'd fr 6/19/21.*
- #049-21, Ridgelines/Hillsides/Steep Slopes review to construct a new single-family dwelling and attached garage on an undeveloped lot (Parcel 400-2382) off of Perry Hill Road. (CNS/RHS zoning/overlay districts)  
*review cont'd fr 7/07/21*

**Town of Waterbury  
Development Review Board  
Approved Decision #048-21 ▪ July 7, 2021**

**Attending:** Board members: Tom Kinley (Acting Chair), Alex Tolstoi, Joe Wurtzbacher, Harry Shepard, Bud Wilson

Staff: Dina Bookmyer-Baker (Zoning Administrator- ZA), Steve Lotspeich (Community Planner). Patti Martin (Secretary)

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Owner/Applicant:	Shannon Cali	
Address/Location:	229 Howard Avenue, Waterbury Center, VT	
Zoning District(s):	Town Neighborhood Commercial (TNC)	
Application #	048-21	Tax Map #09-246.000

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**Applicant Request**

The Applicant seeks a setback waiver to construct a deck addition at 229 Howard Avenue.

**Present and sworn in:**

Shannon Cali, Applicant

**Exhibits**

- A: Application #048-21 (4 pages: zoning, conditional use), submitted 5/20/21.
- B: Three-dimensional view of project, prepared by Applicant, submitted 5/20/21.
- C: Site Plan prepared by Applicant, submitted 5/20/21.
- D: Parcel maps with orthophoto base map. (Staff)
- E: Letter to adjoining landowners, mailed certified on 6/21/21. \*

**Findings of Fact**

1. Existing conditions: Shannon Cali owns a 0.25± acre parcel at 229 Howard Avenue in the Town Neighborhood Commercial (TNC) zoning district. The property is developed with a two-story single-family dwelling, built in 1899 (*prior to the enactment of the Zoning Regulations in 1973 for the Village*) with an attached 1-1/2 story garage. The dwelling is located 10' from the nearest side property line to the west. The lot has frontage on and driveway access to Howard Avenue and is served by municipal water and private wastewater.
2. Project: To construct an ell-shaped deck on the back of the dwelling, around the mudroom, to the end of the garage (Exhibit C). The deck will be 5' by 16'6" by 19' by 8', and will not come closer to the side property line (10') than the closest portion of the dwelling. The portion of the deck along the side of the dwelling/mudroom is located where previously there was an enclosed porch.
3. TNC Dimensional Requirements, Table 5.2: *Minimum lot area: 10,000 SF; minimum setbacks: 30' front/rear, 15' sides.* The lot meets the minimum lot size. The existing dwelling encroaches on the

westerly side setback. The proposed addition will not meet the minimum setback requirements.

4. Waiver Request, Section 309: The proposed addition will be 10' from the nearest side property line (Exhibit C). The setback waiver request is to encroach on the westerly side setback by 5-feet (15' minus 10').
5. Conditional Use/Waiver criteria: As set forth in Section 309, the DRB may grant a waiver of building setbacks as a conditional use review in accordance with Section 303, provided that the encroachment does not have an undue adverse impact on the use and enjoyment of adjoining properties. The Board must find that the proposal conforms to the following general and specific standards:
  - (a) Section 303(e)(1) Community facilities: The project will not change the residential use as a single-family dwelling. The project will not increase the occupancy, unduly increase traffic, burden the school capacity, or increase the demand for fire protection.
  - (b) Section 303(e)(2)(A-E) Character of the area: The use of the property will remain residential. The style and dimensions of the addition are compatible with existing homes in the area.
  - (c) Section 303(e)(3) Municipal bylaws in effect: The use of the property will remain residential. This project application presents compliance with the conditional use criteria.
  - (d) Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: No change to the residential use is proposed; the project will not create the above-named nuisances. Minor impacts during construction to occur during normal business hours.
  - (e) Section 303(h) Removal of earth or mineral products conditions: The project does not include earth-removal activities. This provision does not apply.

**Conclusion:**

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the project proposed by Shannon Cali for a deck addition that will not come closer than 10' to the side property line at 229 Howard Avenue, as presented in application #048-21 and supporting materials, meets the Waivers and Conditional Use criteria set forth in Sections 309 and 303.

**Decision:**

On behalf of the Waterbury Development Review Board, Alex Tolstoi moved and Harry Shepard seconded to approve application #048-21 with the following conditions:

- (1) The Applicant shall complete the project in accordance with the Board's findings and conclusions and the approved plans and exhibits.
- (2) All exterior lighting shall be downcast and shielded.

**Vote:** The motion was approved 5-0.

Thomas D. Kealey  
(Chair) (Vice-Chair) (Acting Chair)

Approved: July 21, 2021  
(date)

Additional state permits may be required for this project. The landowner/applicant is advised to contact Peter Kopsco, DEC Permit Specialist, at 802-505-5367 or [pete.kopsco@vermont.gov](mailto:pete.kopsco@vermont.gov), and the appropriate state agencies to determine what permits must be obtained.

**NOTICE:** *This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. An appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.*

**Town of Waterbury  
Development Review Board  
Approved Decision #109-19 ■ July 7, 2021**

**Attending:** Board members: Tom Kinley (Acting Chair), Alex Tolstoi, Joe Wurtzbacher, Harry Shepard, Bud Wilson

Staff: Dina Bookmyer-Baker (Zoning Administrator- ZA), Steve Lotspeich (Community Planner). Patti Martin (Secretary)

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Owner/Applicant:	Darren Tebeau	
Address/Location:	5 Moody Court, Waterbury, VT	
Zoning District(s):	Downtown (DWN)	
Application #	109-19	Tax Map #19-394.000

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**Applicant Request**

The Applicant seeks approval to construct an 8-ft. tall privacy fence along a side property line at 5 Moody Court.

**Present and sworn in:**

Hans Huessy, Attorney representing applicant  
Mary Koen, Adjacent landowner

**Exhibits**

- A: Application #109-19 (3 pages: zoning, site plan), submitted 11/5/19, revised 6/8/21.
- B: Site Plan prepared by Applicant, submitted 6/8/21.
- C: (C1) Parcel map with orthophoto base map.  
(C2) Excerpt Village zoning map with DWN zoning district (Staff)
- D: Letter to adjoining landowners, mailed certified on 6/21/21. \*

**Findings of Fact**

1. Existing conditions: Darren Tebeau owns a 0.03± acre (~1,307 SF) parcel at 5 Moody Court in the Downtown (DWN) zoning district. The property is developed with a 1-1/2 story single-family dwelling, built in 1900 (*prior to the enactment of the Zoning Regulations in 1973 for the Village*). The lot has frontage on Moody Court and is served by municipal water and sewer.
2. Project: To construct an 8-ft. tall privacy fence along the northerly side property line.
3. Site Plan, Section 301; Fences, Section 408: In all districts, fences are restricted to a height of six (6) feet, unless otherwise permitted in site plan. The fence is proposed to be 8' tall, will be placed on the northerly property line as shown on Exhibit B.

Most of the Site Plan criteria do not apply to a fence. The height of the fence on this side is desired to

match the height of the fence on the neighboring property to the west.

**Conclusion:**

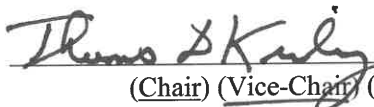
Based upon these findings, and subject to the conditions set forth below, the Board concludes that the project proposed by Darren Tebeau for an 8-ft. tall privacy fence the northerly side property line at 5 Moody Court, as presented in application #109-19 and supporting materials, meets the Site Plan Review criteria set forth in Section 301.

**Decision:**

On behalf of the Waterbury Development Review Board, Alex Tolstoi moved and Harry Shepard seconded to approve application #109-19 with the following conditions:

- (1) The Applicant shall complete the project in accordance with the Board's findings and conclusions and the approved plans and exhibits.
  
- (2) All exterior lighting shall be downcast and shielded.

**Vote:** The motion was approved 5 - 0.

  
\_\_\_\_\_  
(Chair) (Vice-Chair) (Acting Chair)

Approved: July 21, 2021  
(date)

Additional state permits may be required for this project. The landowner/applicant is advised to contact Peter Kopsco, DEC Permit Specialist, at 802-505-5367 or [pete.kopsco@vermont.gov](mailto:pete.kopsco@vermont.gov), and the appropriate state agencies to determine what permits must be obtained.

**NOTICE:** *This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. An appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.*



**Town & Village of Waterbury  
Development Review Board  
Approved Decision #55-21 - July 7, 2021**

**Attending:** Board members: Tom Kinley (Acting Chair), Alex Tolstoi, Joe Wurtzbacher, Harry Shepard, Bud Wilson

Staff: Dina Bookmyer-Baker (Zoning Administrator- ZA), Steve Lotspeich (Community Planner), Patti Martin (Secretary)

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Owner/Applicant:	Elliot Bent & Quincy Campbell	
Address/Location:	Ring Rd., Waterbury Center, VT	
Zones:	Conservation (CNS) & Ridgeline/Hillside/Steep Slope (RHS) overlay	
Application #	055-21	Tax Map # 14-053.200

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**Applicant Request:** Ridgelines/Hillsides/Steep Slopes review to modify the previously-approved building zone and construct a new single-family dwelling on an undeveloped lot (Parcel 535-0970) off of Ring Road. (CNS/RHS zoning/overlay districts)

Present and sworn in:

Elliott Bent & Quincy Campbell, owner/applicants  
Goerge McCain, Consultant

**EXHIBIT LIST:**

Exhibit A	Zoning Permit Application #55-21
Exhibit B	Cover Letter from McCain Consulting, dated 6/4/21
Exhibit C	Site Plan & enlargement of building area, dated 6/4/21 (2 pp.)
Exhibit D	Aerial Overview Plan dated 6/4/21
Exhibit E	Response to RHS Major Dev. & Conditional Use Criteria submitted 6/7/21
Exhibit F	Elevations of Proposed Tiny House submitted 6/7/21 (5 pp.)
Exhibit G	Vantage Point Photos submitted 6/7/21 (5 pp.)
Exhibit H	Prior Approved DRB Decision for App. #20-13-T, Dan & Kim Fodor, dated 6/6/13
Exhibit I	Notice sent to Adjacent Landowners dated 6/18/21

**Findings of Fact:**

1. This project proposes to construct a single-family dwelling (tiny house) within the previously approved clearing limit area on the 10.4-acre lot located off Ring Road.

(a) The property is located within the Conservation Zoning District where the minimum lot size requirement is 10 acres. The lot size is 10.4 acres.

- (b) The lot was created in 2012 under application #66-12-T (2-lot subdivision).
  - (c) The property is also located with the Ridgeline/Hillside/Steep Slope (RHS) Overlay District which regulates development at and above 1,200 FIE.
  - (d) Based upon the RHS Regulations “development and pre-development site preparation at or above 1,500 FIE, ... shall be considered “major” development.”
  - (e) The proposed site development and the construction of a 200 +/- tiny house is proposed between 1,570 FIE and 1,660 FIE and is therefore classified as “major” development.
  - (f) The driveway construction has already occurred. Additional clearing and/or grading for the house site and septic system, and related work, will occur as previously approved under Application #20-13-T and the associated DRB decision that is Exhibit H.
  - (g) The site work that has already occurred includes the following:
    - a. Constructing a driveway – the proposed driveway enters the property from the west by crossing the neighboring property. It involved clearing an area approximately 60’x230’ on the neighboring property. The maximum grade of the driveway is 13.1%
    - b. Clearing the house site – the proposed house site is located between 1,640 FIE and 1,650 FIE and will involve additional clearing of an area that is approximately 130’x210’. Final grading will be minimal to accommodate the tiny house shown in Exhibit F.
    - c. Installing septic system – a 20’ x 110’ area will be cleared for the sewer line which will connect to an already permitted shared leach field. The leach field is located to the north of the property on an adjacent lot.
  - (h) There are no identified critical wildlife corridors or wildlife habitats on the property. Nor are there any Rare, Threatened or Endangered Species on the property, as illustrated by the VT Environmental Atlas Map that is part of the approval under App. #20-13-T.
  - (i) The limits of disturbance will be flagged to ensure no trees outside that area will be impacted. Clearing of trees will conform to the *1987 Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont*.
  - (j) Erosion and storm water control measures consistent with State standards will be implemented during construction.
2. Section 303 Conditional Use criteria: Development of lands within the RHS overlay district shall comply with the following conditional use review standards:
- (a) Section 303(e)(1) Community facilities: The Board must find that the proposal will not have an undue adverse impact on the following: The capacity of community facilities: The dwelling will not be connected to municipal water or sewer systems. The proposal to construct a dwelling on the residential lot will not exceed the school system capacity, or cause an undue adverse impact to traffic volumes, or create an unmanageable burden on fire protection services.
  - (b) Section 303(e)(2)(A–E) Character of the area: The existing uses in area are residential with large areas of existing forest. Light and noise impacts will be typical of standard residential

use, which will not cause danger of fire, explosion, or electrical hazard, or in any other way jeopardize the health and safety of the area. The application materials do not specify any historic sites, or rare or irreplaceable natural areas on the parcel. The Waterbury Wildlife Resources Map in the 2018 Municipal Plan does not identify any rare, threatened, or endangered species, or deer wintering areas on the parcel. The Wildlife Resources Map does identify a very large bear habitat area that includes this parcel. The site is very well screened from any neighboring nearby properties in the area by the wooded areas on the site and the neighboring property.

- (c) Section 303(e)(3) Municipal bylaws in effect: Residential dwellings are a permitted use within the CNS zoning district and are a conditional use when they are located within the RHS overlay district. The application *represents/does not represent* compliance with the conditional use bylaws.
- (d) Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The proposed residential use will not typically create the above-named nuisances and therefore no devices or special methods are required to control these impacts.
- (e) Section 303(h) Removal of earth or mineral products conditions: The project does not include earth removal activities. This provision does not apply.

3. Major Development: In addition to the review applicable to minor development projects, the Development Review Board shall find that the application for a major development project complies with all of the applicable standards:

Exhibit G, Vantage Point Photos, demonstrates that the construction of the tiny house and the associated clearing will be minimally visible as defined in the Zoning Regulations and will be in conformance with the previous Permit #20-13-T and the associated Approved DRB Decision that is Exhibit H.

**Conclusion:**

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Elliot Bent & Quincy Campbell to construct a single-family dwelling (tiny house) off Ring Road in the RHS overlay district, as presented in application #055-21 and supporting materials, meets the Conditional Use, and Ridgelines/Hillsides/Steep Slopes, Major Development criteria as set forth in Sections 303 and 1004.

**Motion:**

On behalf of the Waterbury Development Review Board, Alex Tolstoi moved and Harry Shepard seconded the motion to approve application #055-21 with the following conditions:

- (1) The applicant shall complete the project in accordance with the Board's findings and conclusions and the approved plans and exhibits;
- (2) The applicant shall comply with erosion protection and sediment control measures when development commences on the lots. [Section 1202(a)3]
- (3) All exterior lighting shall be downcast and shielded.
- (4) All findings and conditions of approval in Permits #66-12-T and #20-13-T and the associated DRB approved decisions shall remain in effect.
- (5) An additional single-family dwelling or any accessory structures shall require an additional zoning permit(s) and any appropriate review and approval by the Development Review Board.

Vote: The motion was approved 5 – 0.

  
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(Chair) (Vice-Chair) (Acting Chair)

Approved: July 21, 2021  
(date)

Additional state permits may be required for this project. The landowner/applicant is advised to contact Peter Kopsco, DEC Permit Specialist, at 802-505-5367 or [pete.kopsco@vermont.gov](mailto:pete.kopsco@vermont.gov), and the appropriate state agencies to determine what permits must be obtained.

***NOTICE:*** *This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. An appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.*

**Town of Waterbury  
Development Review Board  
Approved Decision #039-21, June 2, 2021 - July 7, 2021**

**Attending (6/2/21):** Board members: David Frothingham (Chair), Tom Kinley, Bud Wilson, Patrick Farrell, George Lester, Joe Wurtzbacher, Alex Tolstoi, Staff: Dina Bookmyer-Baker (Zoning Administrator- ZA), Steve Lotspeich (Community Planner), Patti Martin, Secretary

**Attending (7/7/21):** Board members: Tom Kinley (Acting Chair), Alex Tolstoi, Joe Wurtzbacher , Harry Shepard, Bud Wilson  
Staff: Dina Bookmyer-Baker (Zoning Administrator- ZA), Steve Lotspeich (Community Planner). Patti Martin (Secretary)

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Owner/Applicant:	Perry Hill Partners, c/o Aaron Flint & Jason Wulff	
Address/Location:	28 Stowe Street, Waterbury, VT	
Zoning Districts:	Downtown zoning district (DWN), Downtown Design Review (DDR)/Historic Commercial (HC) overlay and sub-districts	
Application #	039-21	Tax Map #19-294.000

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**Applicant Request:**

This request is for a change of use of the first floor from retail/office to a taproom (restaurant/bar use) with an associated brewery and retail space at 28 Stowe Street. This application requires Site Plan and Downtown Design Review for a change of use to a restaurant/bar, and with the associated brewing operation, with retail and indoor live music as an accessory use, on the first and basement floors of the Bell's Block building at 28 Stowe Street. (DWN/DDR zoning/overlay districts).

**Present and sworn in (6/2/21):**

Jason Wulff, owner/Applicant  
George McCain, project consultant  
Ryan Miller & Lillian MacNamara, Owner/Brewer Freak Folk Bier (proposed tenant)

**Present and sworn in (7/7/21):**

Same parties as 6/2/21.

**Zoning Bylaw History:**

Interim Bylaws for the Downtown Zoning District: The Interim Bylaws for the Downtown Zoning District were adopted on April 26, 2021 and apply to this current application along with the applicable Articles and Sections of the Waterbury Zoning Regulations, as Amended through May 16, 2016.

**Exhibits:**

- A. Application #039-21, (3 pp) Zoning permit application and Overlay District information submitted 05/03/21.
- B. Application cover letter by McCain Consulting dated 05/03/21
- C. Project Narrative and Supporting Information (2 pp) submitted 05/03/21

- D. Site Plan, Perry Hill Partners, Revisions to Multi-Use Development, by McCain Consulting dated 12/24/19
- E. Floor Plans for First Floor and Basement for 28 Stowe St. for Freak Folk Bier, “For Review Only” dated 06/29/21.
- F. Hearing notice letter to adjoining landowners, sent 05/14/21, & certified-mail receipts.
- G. Comment e-mail from Gary Dillon, Fire Chief, Waterbury Fire Dept. dated 05/17/21.
- H. Resubmission of materials cover letter by McCain Consulting dated 06/30/21.
- I. Outdoor flex seating layout & photos of examples for front yard of building.
- J. Waste management plan outlining disposal of materials from brewing operation.
- K. Photo of north side of existing building dated 6/15/21.

**Findings of Fact:**

1. Existing conditions: Perry Hill Partners own a three-story mixed use commercial building located at 28 Stowe Street. The building is located on a 0.24+/- acre lot that is in the Downtown (DWN) zoning district. There is a one-way access off Stowe Street and a one-way exit through an adjacent parcel located at 11 North Main Street that is also owned by Perry Hill Partners. There is shared parking area that has been permitted both for this building at 28 Stowe Street and the building located at 11 North Main Street. The building at 28 Stowe Street is served by the municipal water and wastewater systems.
2. Prior approvals: The prior zoning permits and DRB approvals include: Application #19-16V for the removal of the residential building that was located at 28 Stowe Street, Application #135-18, a boundary line adjustment with the parcel located at 11 North Main Street and construction of new 7,808 SF building at 28 Stowe Street, Application #002-20 for a change of use for the third floor of the building at 28 Stowe Street from dwelling units to business professional offices/retail, and Application #075-20 for exterior lighting changes for 28 Stowe Street
3. Project description: Application #122-20 is for a change of use for the 2,085 SF first floor from retail/office to a 21-seat restaurant/taproom with an associated in-house brewery and 900 SF of retail space. Exhibit E, the Floor Plans for the First Floor and Basement, show the areas of the interior that will be accessible to the general public, including a general tasting area (taproom – restaurant bar use) in the front (easterly) portion of the first floor of the building and a small retail area in the rear of the first floor of the building. The remaining floor area is labeled for activities associated with the brewing operation, including a brewery room with a brewing kettle, brewing barrels, a hand packaging area, a bottle storage area, and a walk-in cooler with an adjacent concrete bar. The basement floor plan indicates that it will be closed to the general public and shows a large mechanical room surrounding the elevator pit and elevator machine room that serves the entire building as well as a condensing unit for the walk-in cooler and glycol chiller that serve the brewing operation.
4. Determination of Uses for Project: Exhibit C, the Project Narrative and Supporting Information states that: “Freak Folk Bier is a craft brewer that is seeking to create a 21-seat drinking establishment. Accessory to this will be a small retail area of the finished products and a production area. The retail component is allocated 900 sf and the remaining 1,185 sf to the restaurant/bar and production. No commercial kitchen or food preparation is proposed. Bar type snacks shall be served as regulated by the State of Vermont.

The applicant will produce less than 2,000 barrels of alcoholic beverage on-site, and at least 25% of the beverage produced on-site will be sold on the premises. The applicant intends to have periodic live music events. Events would be during other tenant non-business hours. Live entertainment is acceptable as an accessory use under the definition of Restaurant/Bar.”

Therefore, the DRB determines that the brewing operation is part of the Restaurant/Bar use as defined in the Interim Bylaws for the Downtown Zoning District. The Restaurant/Bar use is less than 4,000 sq. ft. each and is permitted uses as prescribed in the Interim Bylaws for the Downtown Zoning District and both require site plan review. The 900 sq. ft. of retail use is determined to be accessory to the Restaurant/Bar use.

Exhibit C, the Project Narrative and Supporting Information states that: “There are limited proposed exterior changes except for claiming the one additional parking space, previously reserved for GMP guywire.” Therefore, the DRB may find that this project is exempt from review under the Downtown Design Review Overlay District criteria in Section 1108.

5. Waste Management Plan:

Exhibit J, Waste management plan outlining disposal of materials from brewing operation, outlines how the organic waste from the brewing operation will be managed and how the waste will be disposed of. The dry spent grain will be placed in 44-gallon plastic buckets that will be placed outside the first floor door for immediate pick up by a farmer. The liquid used for rinsing the brewing vessels will be pumped into a 200-gallon plastic come bottom tank with a top port. This tank will normally be located inside the building and will be brought outside for disposal. Grow Compost will pump the liquid waste out through a valve at the bottom of the tank and haul it away for proper disposal.

6. Site Plan Review criteria as set forth in Section 301(f): Exhibit C, the Project Narrative and Supporting Information states that there will be no changes to the traffic access and circulation, pedestrian access, landscaping, lighting and refuse. Exhibit C states that all deliveries for the brewing operation will be handled by box trucks and no deliveries by semi-tractor trailer trucks will be required. There is a loading parking space located directly to the rear of the building to be used for deliveries and pick-up of waste and other materials. The refuse area at the rear corner of the parking lot will be screened on three sides by a six-foot tall wooden privacy fence. Exhibit D, the Site Plan notes that there will be no overnight storage of brewery waste in the refuse area.

An outdoor flex seating area is proposed in front of the building as shown on Exhibit I. This area will have approximately 10 seats that will be used on a seasonal basis, as weather permits. When these seats are in use, the 21 seats that are inside the building will be reduced by the same number of seats.

Exhibit C outlines the parking requirements for the approved and proposed uses for the building, including the first floor as follows:

Retail stores or services: 900 sq. ft. (one space per 300 sq. ft.)	3 spaces
Restaurant/Bar (one space per three seats plus one space per employee)	
21 proposed seats	7 spaces
1 space per employee	<u>3 spaces</u>
<u>Subtotal:</u>	13 spaces

Perry Hill Partnership expects to manage the available 23 spaces as follows:

Office/clinic uses: Monday – Friday 8:00am to 5:00pm	14 spaces
Freak Folk Bier: Monday – Friday 6:00am to 6:00pm	<u>9 spaces</u>
<u>Subtotal</u>	23 spaces

Freak Folk Bier: Monday – Friday 3:00pm to 11:00pm	21 spaces
Freak Folk Bier: Saturday - Sunday	21 spaces

**Conclusion:**

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the project proposed by Perry Hill Partners LLC (Owner/Appellant) to change the use of the 2,085 SF first floor in the existing mixed-use building at 28 Stowe St. from retail/office to a 21-seat taproom (Restaurant/Bar use) with an in-house brewery and 900 SF of accessory retail, as presented in application #039-21 and supporting materials, meets the Site Plan and Downtown Design Review Overlay District Review criteria set forth in Sections 301 and 1108. Furthermore, the DRB concludes that the proposed in-house brewery as proposed in Application #039-20 is part of the Restaurant/Bar use of the first floor and basement of the 28 Stowe Street structure.

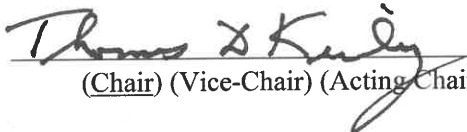
**Decision Motion:**

On behalf of the Waterbury Development Review Board, Alex Tolstoi moved and Harry Shepard seconded the motion to approve Application #039-21 with the following conditions:



- (1) Applicant shall complete the project in accordance with the Board's findings and conclusions and the approved plans and exhibits.
- (2) The applicant shall obtain any required additional wastewater and water supply allocation associated with the change of use, from the Edward Farrar Utility District.
- (3) Any entertainment associated with the restaurant/bar use shall require a separate Entertainment Permit to be issued by the Town of Waterbury.
- (4) Perry Hill Partners shall provide the necessary access keys to the entire building to the Waterbury Fire Dept. as outlined in Exhibit G, e-mail from Gary Dillon, Fire Chief, dated May 17, 2021.
- (5) Perry Hill Partners shall install a sign located at the entrance to the one-way access driveway off Stowe St. prohibiting parking on and blocking that driveway in order to assure emergency and non-emergency access to the interior portions of the property.
- (6) All exterior lighting shall be downcast and shielded.

**Vote:** The motion was approved 5 – 0.

  
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 (Chair) (Vice-Chair) (Acting Chair)

Approved: July 21, 2021  
 (date)

Additional state permits may be required for this project. The landowner/applicant is advised to contact Peter Kopsco, DEC Permit Specialist, at 802-505-5367 or [pete.kopsco@vermont.gov](mailto:pete.kopsco@vermont.gov), and the appropriate state agencies to determine what permits must be obtained.

**NOTICE:** *This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. An appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.*