

WATERBURY DEVELOPMENT REVIEW BOARD
Approved General Minutes—July 21, 2021

Attending: Board members: David Frothingham, Chair; Tom Kinley (Vice Co-chair), Alex Tolstoi, Joe Wurtzbacher (Alternate), Harry Shepard, Bud Wilson, Dave Rogers, Patrick Farrell
Staff: Steve Lotspeich (Planning & Zoning Director and Acting Zoning Administrator), Patti Martin (Secretary)

Public: Joan Liggett, Dina Bookmyer-Baker (Previous Zoning Administrator, now retired)

David Frothingham, Chair, opened the public meeting at 6:33 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, seven members are present; an approval requires at least four votes in the affirmative.

- 1) **#062-21: One Stowe Street LLC, c/o Lynn Mason & David Juenker** (owner/applicant)
The Chair opened Site Plan and Downtown Design Review for a change of use to a business professional office on the top floor of the building at 1 Stowe Street. (DWN/DDR zoning/overlay districts), at 6:35 p.m.

Present and sworn in:

Lynn Mason & David Juenker, Owners/applicants

The site plan review was closed at 6:45pm. The Board approved the project with conditions and will issue a written decision within 45 days.

- 2) **#046-21: Amy Anderson and Mike Merchant** (owner/applicant)
The Chair opened the continuation of the Downtown Design review, after-the-fact, for a new second-floor entrance and exterior stair at 25 N. Main Street. (VMR/DDR zoning/overlay districts), at 6:48 p.m. This review was continued from 6/16/21.

Present and sworn in:

Amy Anderson and Mike Merchant, Owners/applicants

Lauren Kolitch, Attorney for applicants

Dina Bookmyer-Baker, former Zoning Administrator

Testimony:

1. The owner intends to stain the railings and the balusters and the post.
2. The exterior stairs address a fire safety issue for residents in the home.
3. Other fire escape options present a problem/concern with the neighboring property.

At 7:36 p.m. the hearing remained open until further deliberation by the DRB.

The DRB deliberated on the project later on in this meeting and requested the following information for the August 4th meeting:

1. Floor plan of how the apartment is laid out and picture of the interior stair in the front apartment in the building.

2. Comparison of the options that were considered and why this was the solution chosen.
3. Presentation to understand the safety issues with interior stairs.

At 9:40 p.m. the hearing was continued to August 4, 2021 at 6:30 p.m.

3) **#041-21: Gristmill Properties** (owner), **Brendan O'Reilly** (applicant)

The Chair opened the continuation of the Site Plan/Conditional Use review to construct a mixed-use building for equipment/tool storage and parking on the ground- & first-floors, accessory to the business offices in the existing building, and two dwelling units on the 2nd floor, in the existing PUD at 5430 Waterbury-Stowe Rd. (RT100 zoning district), at 7:40 p.m. This review was continued from 6/16/21, due to the lack of proper notice time at that date.

Present and sworn in:

Brendan O'Reilly, applicant

Bud Wilson, Architect/Consultant

At 8:12 p.m. the hearing was continued to August 4, 2021 at 6:30 p.m.

4) **#049-21: Elizabeth Brown and Clarke Colon** (owner/applicant)

The Chair opened the continuation of 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), at 8:15 p.m. This review was continued from 7/7/21.

Present and sworn in:

Elizabeth Brown, Owner/applicant

Clarke Colon, Owner/applicant

Karyn Scherer, Architect

Derrick Martens, Builder

Billy Vigdor, Neighbor

Eben Ernstoff, Adjacent property owner

Jane LeGard Ernstoff, Adjacent property owner

Joel Ernstoff, Adjacent property owner

Harry Shepard reported that he visited the site since the last review on July 7th with Mike Hedges, a nearby property owner who participated in that part of the review on July 7th. Harry stated that he decided to recuse himself from the remainder of the review of this application due to the appearance of ex parte communication and a possible conflict of interest.

The revised plans for the house were discussed and the issue of the building height was resolved.

Jane LeGard Ernstoff, a neighboring property owner spoke in support of the applicant's and the application, as community members in good standing.

Bill Vigdor presented a follow up letter that he had previously submitted and discussed his request for a wildlife study and the issue of the Brown parcel being mapped bear habitat in the Wildlife Map in the 2018 Waterbury Municipal Plan.

The site plan review was closed at 9:00 p.m. The Board approved the project with conditions and will issue a written decision within 45 days.

5) Agenda items as scheduled by the Chair:

- Review prior meeting minutes and decisions from 7/7/21:

Tom Kinley moved and Alex Tolstoi seconded to approve the general minutes of 07-07-21 and the hearing decisions for applications #109-19, #048-21, #039-21, #055-21, as corrected, and the decision on application #035-21, from 06-06-21.

- Consultation with Acting ZA re: #069-21: Perry Hill Partners, LLC, change of use from business professional office to medical office for 300 sq. ft., 11 N. Main St., VMR/DDR. Owner/Applicant requests Site Plan and Design Review exemption per Sections 301(a)(5) and 1104(a)(3), for a project that is minor in nature and would not cause a substantial increase in traffic or otherwise adversely affect the purposes of the Site Plan review criteria, and that does not substantially alter the building façade.

Tom Kinley moved and Harry Shepard seconded to exempt application #069-21 from review and that the Acting Zoning Administrator process this application.

Vote: the motion was approved 7 - 0.

- Public comment / Other business: There was none

Adjournment: There being no other business, the meeting was adjourned at 9:42 p.m.

Approved:  _____ Date: 8/4/2021
Tom Kinley, Co Vice-chair

Next meetings:

Wednesday, August 4, 2021, 6:30 p.m. (Applications due: Fri. 7/2/21)

- #063-21: Anderson-Merchant, Appeal of denial of #047-21 for 4th apt. 25 North Main St. (VMR/DDR)

Wednesday, August 18, 2021, 6:30 p.m. (Applications due: Mon. 7/19/21)

Wednesday, September 1, 2021, 6:30 p.m. (Applications due: Mon. 8/2/21) Motion: Harry Shepard moved and Bud Wilson seconded the motion to approve the DRB general meeting minutes for July 7, 2021 and the decisions for applications as corrected.

**Town & Village of Waterbury
Development Review Board
Approved Decision #062-21 ▪ July 21, 2021**

Attending: Board members: David Frothingham, Chair; Tom Kinley (Vice Co-chair), Alex Tolstoi, Harry Shepard, Bud Wilson, Dave Rogers, Patrick Farrell

Staff: Steve Lotspeich (Planning & Zoning Director and Acting Zoning Administrator). Patti Martin (Secretary)

Owner:	One Stowe St. LLC
Applicant:	Lynn Mason & David Juenker
Address/Location:	1 Stowe Street, Waterbury, VT
Zoning District:	Downtown (DWN), Downtown Design Review (DDR) overlay district
Application #	062-21 Tax Map # 19-302.000

Applicant Request:

The applicant seeks approval to change the use of 900 sq. ft. on the 4th floor (top floor) of the existing building from an apartment to the office, professional, business or administrative service use at 1 Stowe Street.

Present and sworn in:

Lynn Mason & David Juenker, owners/applicants

Exhibits:

- A: Application #062-21 (4 pages: Zoning Permit, Site Plan, DDR Overlay), submitted 6/24/21.
- B: Sketch/area Table Addendum from Listers Card, submitted 6/24/21.
- C: Site Plan for Downtown Streetscape Improvements, prepared by Stephen Lotspeich, (submitted with application #20-11V), dated 8/4/2011, showing the building at 1 Stowe Street.
- D: Aerial photos of parcel in its neighborhood (staff).
- E: Letter to adjoining landowners, mailed certified on: 7/6/21.

Findings of Fact

1. Existing conditions: One Stowe St. LLC (Lynn Mason & David Juenker) owns a 0.05± acre (2,178 SF) parcel located at 1 Stowe Street. The property is currently developed with a 4-story commercial building of 4,788 SF. The uses in the building include: (1) Blackback Pub, a restaurant/bar, occupying 3600± SF; on the first and second floor; and business professional office, occupying 1650 SF on the second floor. The building covers nearly all of the property. The parcel, located on the corner of Stowe Street and South Main Street, does not include an access drive or parking. An access drive serving a neighboring property abuts the parcel to the north. The property is served by municipal water and septic. The parcel is located in the Downtown (DWN) zoning district and the Downtown Design Review (DDR) overlay district.

Project scope: The project will not enlarge or change the exterior dimensions of the building. The project includes renovating 900 sq. ft. on the 4th floor (top floor) of the building from an apartment to

the office, professional, business or administrative service use. No physical changes are needed for the space other than new flooring material.

2. Use Table, Section 1606.1: The office, professional, business or administrative service use totaling less than 4,000 sq. ft. is a permitted use in the DWN zoning district as listed in the Interim Bylaws for the Downtown Zoning District adopted April 26, 2021. The proposal will add 900 sq. ft. for a total of 2,550 sq. ft. of the office, professional, business or administrative service use in the building.
3. DWN Dimensional Requirements, Section 504, Table 5.2: The property is in the DWN zoning district as listed in the Interim Bylaws for the Downtown Zoning District in which the minimum lot size is 2,000 sq. ft. and there are no minimum setbacks. This is a conforming lot. The proposal makes no enlargement to the exterior dimensions of the building.
4. Site Plan Review and Approval, Section 301: No change in the pedestrian access to, or the exterior dimensions of, the existing structure is proposed. As the project involves a change of use, is not exempt from site plan review [WZR Section 301(a)(3)]. The Board will take into consideration the following objectives:
 - a. Section 301(f)(1) (A-D), Traffic access and pedestrian safety: The property does not include an access drive. The property is served by a public sidewalk on its Stowe Street and S. Main Street sides. The building includes a deck with 7 seats on the Stowe Street side. No change is proposed to the existing pedestrian entrances to the building, of which there are six (Exhibit C).
 - b. Section 301(f)(2) (A-G), Circulation and parking, loading, refuse, and service areas: The property does not include on-site parking. See compliance with the parking regulations in Section 414, paragraph 5, below. Deliveries are made from the access drive between 1 Stowe St. and 5 Stowe St., the neighboring parcel to the north. The refuse containers are located off of this driveway access, as well.
 - c. Section 301(f)(3) (A-F), Landscaping, screening, and lighting: The site is developed almost entirely with the building. Raised planter boxes are located on the S. Main Street side of the building. No change to the existing landscaping, screening, or exterior lighting is proposed.
 - d. Section 301(j), Special considerations for property bordering Route 2: South Main Street is also U.S Route 2. The property is developed with existing structures and landscaping. These provisions do not apply.
5. Parking Regulations, Section 414: All of the parking will be street parking, as the property has no on-site parking. The building is proposed to include two uses: Blackback Pub, a restaurant/bar, on the first and second floors, and the office, professional, business or administrative service use on the third and fourth floors. The parking requirement for the third floor of the office, professional, business or administrative service use 6 spaces was previously approved in application #34-09V. The second floor where the Cork Wine Bar was located had 12 spaces approved in application #20-11-V. The Blackback Pub on the first or lower level was previously approved for 23 spaces. With the apartment on the fourth floor requiring 2 spaces, the building was previously approved for a total of $2+6+12+23=43$ spaces. The Blackback Pub

will have seven employees normally working on the premises during any one shift and will have a total of 92 seats, including bar stools. Parking is needed for 92 seats + 7 employees. $31 (92/3) + 7 = 38$ spaces. The new total of 2,550 sq ft. of office space will require $8.5 (2,550/300)$ spaces. The total requirement for the entire building will be $1.5 + 8.5 + 38 = 48$ spaces.

The Blackback Pub hours of operation are: Tuesday-Saturday 12:00 noon to 11:00 p.m., and closed on Sundays and Mondays. The second-floor part of the restaurant is open only from 5:00pm to 11:00 p.m. on these days and has 46 seats. These hours overlap with the office, professional, business or administrative service use, however the 16+ parking spaces required for the restaurant seating on the second floor can be utilized and shared by the office, professional, business or administrative service use in the building during the day in accordance with Section 414(e)(2). Therefore the DRB finds that no additional on-street parking spaces need to be allocated for the building and the current number of approved on-street parking spaces meets the parking requirement for the building including the change of use for the fourth floor.

6. **Downtown Design Review:** Due to the fact that there are no exterior changes proposed for the building, the DRB finds that this project is exempt from review under the Downtown Design Review Overlay District criteria in Section 1108.

Conclusion:

Based upon these findings, and subject to the conditions set forth below, the Board concludes that One Stowe Street, LLC's proposal to change the use of change the use of 900 sq. ft. on the 4th floor (top floor) of the existing building from an apartment to the office, professional, business or administrative service use at 1 Stowe Street, as presented in application #062-21 and supporting materials, meets the Site Plan Review criteria set forth in Section 301.

Motion:

On behalf of the Waterbury Development Review Board, Harry Shepard moved and Alex Tolstoi seconded to approve application #062-21 with the following condition:

- (1) The Applicant shall complete the project in accordance with the Board's findings and conclusions and the approved plans and exhibits.

Vote: The motion was approved 7 - 0.



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

Approved: August 4, 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, 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 #49-21 ■ July 7 & July 21, 2021**

Attending (7/07): 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)

Attending (7/21): Board members: Dave Frothingham (Chair), Tom Kinley, Alex Tolstoi, Joe Wurtzbacher, Harry Shepard, Bud Wilson, Patrick Farrell. Staff: Steve Lotspeich (Planning & Zoning Director and Acting Zoning Administrator), Patti Martin (Secretary)

Owner/Applicant:	Elizabeth Brown & Clarke Colon	
Address/Location:	Lot / Parcel ID #400-2382 off Perry Hill Rd, Waterbury, VT	
Zones:	Conservation (CNS) & Ridgeline/Hillside/Steep Slope (RHS) overlay	
Application #	049-21	Tax Map # 13-249.000

Applicant Request:

The applicant seeks to construct a single-family dwelling on the existing Lot, Parcel ID #400-2382 off Perry Hill Rd. in the RHS overlay district.

Present and sworn in:

Elizabeth Brown, Owner/applicant
Clarke Colon, Owner/applicant
Karyn Scherer, Architect
Derrick Martens, Builder
Billy Vigdor, Nearby property owner
Eben Ernstof, Adjacent property owner
Jane LeGard Ernstof, Adjacent property owner
Joel Ernstof, Adjacent property owner
Michael Hedges, Nearby property owner
George McCain, McCain Consulting on behalf of neighbor, Rick Darby
Jason Wulff, Nearby property owner
Randy Dow, Nearby property owner

Exhibits:

- A: Application #049-21 (5 pp: Zoning, Conditional Use, Overlay District), submitted 5/20/21.
- B: Site Survey – Land of Nancy Laird & Thomas Meaker by Little River Survey Co., dated April 2004.
- C: Site Plan – Brown/Colon Residence prepared by Karyn Sherer Architecture, dated 4/30/21.
- D: Building elevations by Karyn Sherer Architecture dated 4/16/21.
- E: Orthophotos of parcel with zoning districts, 100' setback box (4 pp. - staff).
- F: Excerpt of Site Plan showing building footprint & prop. contours (staff mark-up).
- G: Wastewater & Water Supply Permit with site plan dated 6/11/07.

- H: Statement of Billy Vigdor regarding App. 49-21 with attachments dated 7/7/21.
- I: Letter to adjoining landowners, mailed certified: June 18, 2021 .
- J: E-mailed comments from applicants regarding slope and improvements to driveway, various dates.
- K: Email from Gary Dillion, Fire Chief, dated July 18, 2021, regarding emergency access to the property.
- L: Letter from Billy Vigdor, dated July 18, 2021, regarding the application.

Findings of Fact:

1. Existing conditions: Elizabeth Brown & Clarke Colon own a 12± acre lot (Parcel ID #400-2382) off Perry Hill Rd. The lot is currently wooded and undeveloped. It is accessed via an existing 50’ wide right-of-way from Perry Hill Rd., with an existing woods road that was improved by the previous owner (see Exhibit J). The parcel is located in the Conservation (CNS) zoning districts, and is entirely within the Ridgelines/Hillsides/Steep Slopes (RHS) overlay district (Exhibit E1).
2. Permit history: (applicable recent permits)
 - February, 2006, On-site Septic System Permit issued by the town on 2/28/06.
3. Current proposal: To develop the existing 12± acre parcel with a 3,600’ sq. ft. single-family dwelling that includes an attached garage, as follows:
 - The lot (Parcel ID #400-2382) is 12± acres, lies in the CNS zoning district, and has a 50’ wide right-of-way connecting to Perry Hill Road. The existing woods road / driveway has a slope of approximately 8% with no part of the driveway exceeding approximately a 10% slope as stated in Exhibit J.
 - The lot will be served by private well and septic as per State water and wastewater permit WW-5-4280, issued June, 11, 2007. The proposed lot is entirely within the Ridgelines/Hillsides/Steep Slopes (RHS) overlay district and the proposed building zones is between 1200 and 1500 feet in elevation (FIE). A very small portion of the property is below 1200 FIE (Exhibit E1).
 - The proposal is to create a building envelope and create thinned areas as shown on Exhibit C. The areas proposed for thinning are entirely below 1500 FIE and would be as shown on Exhibit C. The southerly area would have 25% of the trees cleared and the northerly area would have 50% of the trees cleared, all as shown on Exhibit C.
 - The building will have wooden siding and an asphalt shingle roof, with the exception of the one-story connector that will have a metal standing seam roof, as shown on Exhibit D. All exterior lighting will include downcast and shielded.
4. Section 504 General Dimension Requirements: The single-family dwelling must conform to the relevant criteria in Section 504. The dwelling is proposed to be located in the CNS zoning district therefore, the table below is for compliance with the CNS zoning district.

	Zoning District Minimum Lot Size	Existing Lot Size	CNS Minimum Frontage	Proposed Frontage
Lot A	CNS: 10 acres	12± acres	300'	Access by 50’ wide R.O.W.

The proposed dwelling has a maximum height of 35' above the existing grade as shown on Exhibit D. The lot width at the building front line is greater than 300'.

(definition) LOT FRONTAGE: Distance measured across the width of the lot at the building front line, or proposed building front line.

(definition) BUILDING FRONT LINE: Line parallel to the front lot line transecting the point in the building face that is closest to the front lot line...

(definition) BUILDING HEIGHT: Vertical distance measured from the average elevation of the existing grade or finished grade, whichever is lower, at the center of the building to the highest point of the roof.

In the CNS zoning district, the minimum setbacks are: 100' for the front, sides, and rear. The proposed location of the dwelling on the lot meets the setback requirements. The lot meets the minimum lot size requirement and has direct access to Perry Hill Rd., a town road. (Exhibit B).

5. Section 1004 RHS Standards of Review: All of the proposed development is located below 1,499 FIE. As per Section 1001, the project is classified as "minor" development. Minor development projects on lands within the RHS overlay district shall be subject to conditional use review.

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 and open fields. 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.

Conclusion:

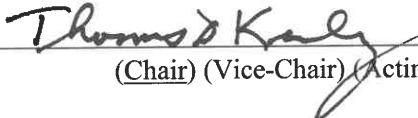
Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Elizabeth Brown & Clarke Colon to construct a single-family dwelling off Perry Hill Road in the RHS overlay district, as presented in application #049-21 and supporting materials, meets the Conditional Use, and Ridgelines/Hillsides/Steep Slopes criteria as set forth in Sections 303 and 1004.

Motion:

On behalf of the Waterbury Development Review Board, Alex Tolstoi moved and Tom Kinley seconded the motion to approve application #049-21 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.

Vote: The motion was approved 6 - 0.



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

Approved: August 4, 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, and the appropriate state agencies to determine what permits must be obtained.

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