

**Town & Village of Waterbury  
Development Review Board  
Approved General Meeting Minutes  
Date: April 1, 2015**

**IN ATTENDANCE:**

Board Members Present: Jeff Larkin, Chair; Dave Rogers, Mike Bard, David Frothingham, Nat Fish

Staff Present: Ryan Morrison, Zoning Administrator; Patti Spence, Secretary

**6:30 p.m.** Application #07-15-T, Matt Calcagni, for a Zoning Permit and Setback Waiver to construct a front porch on a residence at 217 Shaw Mansion Road, Waterbury Center, VT 05677 (Tax Map #14-028.000).

The application was heard and recorded under separate minutes.

**7:00 p.m.** Continued hearing of Application #04-15-T, Albert Fougel Revocable Trust or a Zoning Permit, Subdivision, and Ridgeline, Hillside, Steep Slope Overlay District Permit for a 2 lot subdivision of a 5.5 acre property at the corner of Shaw Mansion Road and Loomis Hill Road, Waterbury Center, VT 05677 (Tax Map #10-027.000).

The application was heard and recorded under separate minutes.

**APPROVAL OF MINUTES:**

**MOTION:**

Mike Bard moved and Nat Fish seconded the motion to approve the DRB general minutes of March 18, 2015 and the hearing minutes, #04-15-T, #02-15-T and #06-15-T, all as amended.

Vote: Passed unanimously.

The meeting was adjourned at 8:30 pm.

  
\_\_\_\_\_, Chair

Date: 4.15.15

**THESE MINUTES WERE APPROVED ON**

**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.

THESE MINUTES WERE APPROVED ON \* 4.15.15 \*

**Town & Village of Waterbury  
Development Review Board  
Approved Hearing Minutes #07-15-T  
Date: April 1, 2015**

**N ATTENDANCE:**

Board Members Present: Jeff Larkin, Chair; Dave Rogers, Mike Bard, David Frothingham, Nat Fish

Staff Present: Ryan Morrison, Zoning Administrator; Patti Spence, Secretary

Application for a setback Waiver for a new front porch on a residence located within the Medium Density Residential (MDR) Zoning District.

Permit Application #: 07-15-T

Applicant: Matt Calcagni

Property Owner: Same

Tax Map #: 14-028.000

Location of Project: 217 Shaw Mansion Road, Waterbury Center, VT

**INTRODUCTION**

*The applicant seeks to build a 156 sf porch within the property's front and side yard setbacks.*

**EXHIBITS**

Exhibit A: Application # 07-15-T

Exhibit B: Site Plan

Exhibit C: Elevation Drawings

Exhibit D: ANR Atlas map of property

Exhibit E: Notice of Public Hearing, dated March 4, 2015

Exhibit F: Letter to Adjoining landowners, dated March 10, 2015

**PROJECT DESCRIPTION**

1. *The 1.75 acre property is located within the MDR Zoning District where the minimum lot size requirement is 2 acres for a residential lot. The property is considered a pre-existing small lot.*
2. *The property currently has a single-family residence that was recently damaged by fire. The applicant plans to fully rebuild the fire-damaged structure in its existing footprint.*
3. *The existing, fire-damaged home lies within required front and side yard setbacks.*
4. *Section 304(b) – Nonconforming Uses and Noncomplying Structures – states “Nothing in this section shall prevent the issuance of a building permit for restoration or*

*reconstruction within one year of a structure damaged or destroyed by fire or other catastrophe to its condition prior to such damage or destruction."*

5. *In accordance with Section 304(b), the reconstruction of the fire damaged residence is not subject to DRB review for setback waiver.*
6. *However, the applicant is proposing to construct a new front porch, which will lie within both the front and side yard setbacks.*
7. *The district's setback requirements are: Front 60', Sides 50', Rear 50'*
8. *For the new porch, the applicant is seeking a Waiver from the front and side setback requirements, and proposes the following setbacks: Front (east) 12', Side (north) 43'*
9. *The proposed structure will meet/exceed the other side (south) setback requirement, as well as the rear (west) setback requirement.*
10. *The setback Waiver request is: Front (east) setback waiver of 48', Side (north) 7'*
11. *A setback Waiver may be granted by the DRB as per section 309 of the Waterbury Zoning Regulations.*
12. *Below are excerpts from Conditional Use Criteria and Waivers.*

### **Section 303 Conditional Uses**

*(e) Prior to granting any approval for conditional use, the Board must find that the proposed use conforms to the following general and specific standards:*

- (1) The proposed use will not have an undue adverse impact on the capacity of existing or planned community facilities to accommodate it. The proposed use:*
  - (A) Will not cause the level of service on roads and highways to fall below a reasonable standard;*
  - (B) Will not cause an unmanageable burden on municipal water or sewer systems;*
  - (C) Will not lead to such additional school enrollments that existing and planned school system capacity is exceeded; and*
  - (D) Will not cause an unmanageable burden on fire protection services.*
  - (E) The Board may seek or require advisory input from the Municipal Manager, Fire Department, Police Department, School Board, or other municipal officials regarding relevant facilities. The Board will also take into account sections of the Municipal Plan and of any duly adopted capital plan which specify anticipated demand growth, service standards, and facility construction plans.*
- (2) The proposed use will not have an undue adverse impact on the character of the area affected as defined by the Municipal Plan and the zoning district in which the proposed project is located. Specifically, the proposed use:*
  - (A) Will not result in undue water pollution, undue adverse impacts to downstream properties, and will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result; in making this determination, the Board shall at least consider the elevation, the slope of the land,*

*and the nature of soils and subsoils and their ability to adequately support waste disposal;*

*(B) Will not result in undue noise, light, or air pollution, including offensive odors, dust, smoke, or noxious gasses;*

*(C) Will not have an undue adverse effect on the scenic or natural beauty of the area, historic sites, or rare and irreplaceable natural areas;*

*(D) Will not be otherwise inconsistent with existing uses in the immediate area; in determining the appropriateness of the use or structure in an area, the Board shall consider the scale and design of the proposed use or structure in relation to the scale and design of existing uses and structures in the same district; and*

*(E) Will not cause danger of fire, explosion, or electrical hazard, or in any other way jeopardize the health and safety of the area.*

*(3) The proposed use will not violate any municipal bylaws and ordinances in effect.*

*(4) The proposed use will comply with the specific lot area, setbacks, and lot coverage requirements set forth in this bylaw. The Board may require the proposed use to conform to more stringent lot area, setback, and lot coverage requirements as it may deem necessary to implement the purposes of the district in which the use is located and other provisions in this bylaw.*

### **Section 309 Waivers**

*(a) Notwithstanding the minimum setback standards set forth in Table 5.2, in accordance with 24 V.S.A. § 4414(8), the Development Review Board may grant a waiver of building setbacks as a conditional use reviewed in accordance with Section 303; provided, however, that the encroachment does not have an undue adverse impact on the use and enjoyment of adjoining properties from which the setback waiver is sought.*

*(b) Any applicant for a setback waiver pursuant to Section 309(a) must notify adjacent land owners by certified mail of the nature of the application and of upcoming Development Review Board public hearing at least ten days prior to such hearing. The applicant must submit copies of certified mail receipts indicating that all adjacent landowners have received notice, and a copy of the notice sent.*

### **CONCLUSION:**

Based upon these findings (and subject to the conditions set forth below) the Waterbury Development Review Board concludes that **Application #07-15-T, Matt Calcagni**, for a Zoning Permit and Setback Waiver to construct a front porch on a residence at 217 Shaw Mansion Road, Waterbury Center, VT 05677 (Tax Map #14-028.000) meets the standards for Waterbury including section 309 waivers.

**MOTION:**

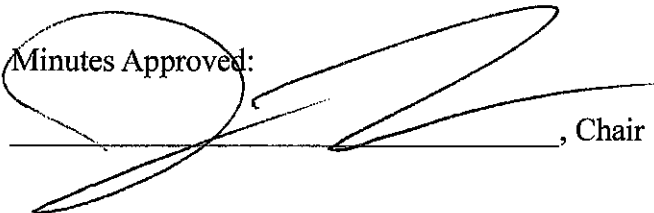
Dave Rogers moved and Nat Fish seconded the motion to approved application #07-15-T with the following conditions.

1. This permit is granted on the condition that the applicant complete the project consistent with the Board's findings and conclusions and the approved plans and exhibits.
2. Any exterior lighting will be downcast and shielded.

**VOTE:**

Passed unanimously.

Minutes Approved:

 \_\_\_\_\_, Chair

Date: 4-15-15

**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.

**THESE MINUTES WERE APPROVED ON \*** 4-15-15 **.\***

**TOWN OF WATERBURY  
DEVELOPMENT REVIEW BOARD  
Approved Hearing Minutes, #04-15-T  
March 18, 2015, continued April 1, 2015**

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**IN ATTENDANCE:**

Board Members Present: Jeff Larkin, Chair; Dave Rogers, Nat Fish, Mike Bard, David Frothingham

Staff Present: Ryan Morrison, Zoning Administrator; Patti Spence, Secretary

Present and sworn in:

George McCain, representing applicant

Michael Woodard

James Abair

Jeff Kilgore

Catherine & Jarett Emert, Adjoining landowners

April 1st:

Gunner McCain, Consultant

John Woodruff, Cemetery Commissioner

Application for a 2-lot Subdivision in the Medium Density Residential Zoning District and Ridgeline, Hillside, Steep Slope Overlay District.

Permit Application #: 04-15-T

Applicant: Albert Fougel Revocable Trust

Landowner: SAME

Location of Project: SE corner of Loomis Hill Rd. and Shaw Mansion Rd.,  
Waterbury Center, VT

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**EXHIBIT LIST:**

- Exhibit A Permit Application # 04-15-T
- Exhibit B Site Plan, dated December 1, 2014
- Exhibit C ANR Atlas map of property
- Exhibit D Notice of Public Hearing, dated February 18, 2015
- Exhibit E Notice to Adjacent Landowners, dated March 2, 2015
- Exhibit F Letter from adjacent property owner, J Emert, dated March 18, 2015
- Exhibit G George McCain email to Waterbury Historical Society, dated March 19, 2015

**Testimony:**

1. Mike Woodard expressed concern with the wells and septic in the area and how the subdivision on this property would affect the neighboring properties.
2. It was stated that there will be no site preparation work done prior to a building application being approved.
3. Exhibit A, strike #4 in the response to the conditional use criteria.
4. It was discussed that this hearing is only to approve the subdivision.

5. The adjacent landowners, the Emerts, raised some concerns
  - a. there is a boundary dispute
  - b. concern with the adjacent historic sites - Loomis Hill Cemetery, Old Notch Road
  - c. concerns with the wildlife corridor in this area
6. Jeff Kilgore, who manages the property for the trust, pointed out that other neighbors, the Perrault's property, have a right of way on the Old Notch Road. The deeded access to the cemetery is from Loomis Hill Road. The cemetery abuts this Loomis Hill Road property. The proposed septic does not encroach on the cemetery property.
7. Michael Woodard commented that another right-of-way to the cemetery is on the Hoar property but you have to walk up the driveway on that property for access.

At 7:30 p.m. the hearing was continued to April 1, 2015 at 7:00 p.m.

CONTINUED, added testimony:

8. The Waterbury Historical Society was contacted by email and did not respond.
9. The Cemetery Commissioner, John Woodruff, expressed concern with accessing the property to upkeep to the cemetery. Access is the primary concern.
10. It was pointed out by Gunner McCain that the boundary dispute is not applicable to this application. Then it was discussed further and the Emert party pointed out that his dispute with the boundary needs to be resolved prior to this application being approved. It was agreed to be worked out by the presentation of the final plat.

**Description of Project:**

The applicant is seeking approval for a 2-lot subdivision of a 5.5 acre property, located at the SE corner of the Loomis Hill Road and Shaw Mansion Road intersection, Waterbury Center, VT (Tax map # 10-027.000)

1. The existing 5.5+/- parcel is located at the SE corner of the Loomis Hill Road and Shaw Mansion Road intersection, and lies within the Medium Density Residential (MDR) Zoning District and the Ridgeline, Hillside, Steep Slope (RHS) Overlay Zoning District.
2. The applicant proposes to subdivide the property into 2 lots. Lot 1 will be 2.3+/- acres in size and Lot 2 will be 3.2+/- acres in size.
3. The MDR Zoning District has a minimum lot size requirement of 2 acres and a minimum lot frontage requirement of 200 feet. Both lots will conform to the minimum lot size requirement and minimum lot frontage requirement.
4. The property lies entirely within the Ridgeline, Hillside, Steep Slope Overlay District. The property has an approximate elevation range of 1,200 to 1,260 feet.
5. Section 1203(b) requires any subdivision of property lying in the RHS Overlay District to be reviewed under Section 1202 by the Development Review Board.
6. Development at or above 1,200 feet in elevation (FIE), but below 1,500 FIE shall be considered "minor" development.
7. "Development" is defined in the Waterbury Zoning Regulations as "*The division of a parcel into two or more parcels...*" The applicant is only applying to subdivide the property at this time.

8. Subdivisions in the RHS Overlay Zoning District are subject to review by the Development Review Board.
9. Below are excerpts of the Subdivision Review Criteria, RHS Review Criteria for 'minor' projects:

**ARTICLE XII            SUBDIVISIONS**  
**Section 1202            Review Criteria**

*(c) Any division of land in the Ridgeline/Hillside/Steep Slope (RHS) Overlay District shall conform to the following criteria in addition to the relevant criteria in Section 401, Dimensional Requirements, and Section 504, General Dimension, Location, and Height Requirements:  
The standards set forth for development in Article X.*

**ARTICLE X            RIDGELINES, HILLSIDES, STEEP SLOPES** Section 1004 Standards of Review (RHS)

- (a) Development of lands identified within the RHS Overlay District shall comply with all other applicable regulations, including conditional use review standards, within this bylaw and with the standards of review set forth in the following subsections.*
- (b) Minor Development: Minor development projects shall be subject to conditional use review, as set forth in Section 303, and all other applicable regulations.*

**ARTICLE III            PERMITS, APPEALS, and ENFORCEMENT**  
**Section 303            Conditional Uses**

*(e) Prior to granting any approval for conditional use, the Board must find that the proposed use conforms to the following general and specific standards:*

- (1) The proposed use will not have an undue adverse impact on the capacity of existing or planned community facilities to accommodate it. The proposed use:*
  - (A) Will not cause the level of service on roads and highways to fall below a reasonable standard;*
  - (B) Will not cause an unmanageable burden on municipal water or sewer systems;*
  - (C) Will not lead to such additional school enrollments that existing and planned school system capacity is exceeded; and*
  - (D) Will not cause an unmanageable burden on fire protection services.*
  - (E) The Board may seek or require advisory input from the Municipal Manager, Fire Department, Police Department, School Board, or other municipal officials regarding relevant facilities. The Board will also take into account sections of the Municipal Plan and of any duly adopted capital plan which specify anticipated demand growth, service standards, and facility construction plans.*
- (2) The proposed use will not have an undue adverse impact on the character of the area affected as defined by the Municipal Plan and the zoning district in which the proposed project is located. Specifically, the proposed use:*
  - (A) Will not result in undue water pollution, undue adverse impacts to downstream properties, and will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result; in making this determination, the Board shall at least consider the elevation, the slope of the land, and the nature of soils and subsoils and their ability to adequately support waste disposal;*



*(B) Will not result in undue noise, light, or air pollution, including offensive odors, dust, smoke, or noxious gasses;*

*(C) Will not have an undue adverse effect on the scenic or natural beauty of the area, historic sites, or rare and irreplaceable natural areas;*

*(D) Will not be otherwise inconsistent with existing uses in the immediate area; in determining the appropriateness of the use or structure in an area, the Board shall consider the scale and design of the proposed use or structure in relation to the scale and design of existing uses and structures in the same district; and*

*(E) Will not cause danger of fire, explosion, or electrical hazard, or in any other way jeopardize the health and safety of the area.*

*(3) The proposed use will not violate any municipal bylaws and ordinances in effect.*

*(4) The proposed use will comply with the specific lot area, setbacks, and lot coverage requirements set forth in this bylaw. The Board may require the proposed use to conform to more stringent lot area, setback, and lot coverage requirements as it may deem necessary to implement the purposes of the district in which the use is located and other provisions in this bylaw.*

*(f) The Board may attach any reasonable conditions and safeguards it may deem necessary to implement the purposes of the district in which the use is located and other provisions in this bylaw, including, but not limited to, the following conditions:*

## CONCLUSION

Based upon these findings (and subject to the conditions set forth below) the Waterbury Development Review Board concludes that application #04-15-T Albert Fougel Revocable Trust for a Zoning Permit, Subdivision, and Ridgeline, Hillside, Steep Slope Overlay District Permit for a 2 lot subdivision of a 5.5 acre property at the corner of Shaw Mansion Road and Loomis Hill Road, Waterbury Center, VT 05677 (Tax Map #10-027.000) meets the standards of the Waterbury Zoning Bylaws, Article XII, section 1202, Article X, section 1004 and Article III, Section 303.

## MOTION


On behalf of the Waterbury Development Review Board, Nat Fish moved and Mike Bard seconded the motion to approve application #04-15-T, with the following conditions:

1. This permit is granted on the condition that the applicant complete the project consistent with the Board's findings and conclusions and the approved plans and exhibits.
2. The applicant brings copies of the Final Plat to the Zoning Administrator within 150 days so the Development review Board can sign off on the Final Plat and meet the 180-day timeline for recording the plat as required by 24 V.S.A., section 4463.

## VOTE

Passed unanimously.

Minutes Approved:

  
\_\_\_\_\_, Chair

Date: 4.15.15

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THESE MINUTES WERE APPROVED ON \* 4.15.15 \*