

WATERBURY DEVELOPMENT REVIEW BOARD
General Meeting Minutes
Wednesday, December 7, 2016

In Attendance: Board members present: Dave Rogers (Chair), David Frothingham, Nathaniel Fish, Rob Dombrowski, Martha Staskus, Mike Bard and Tom Kinley. Staff present: Steve Lotspeich (Community Planner), Dina Bookmyer-Baker (ZA), and Patti Spence (Secretary).

The public meeting convened at 6:30 p.m. in the Steele Community Room in the Municipal Center at 28 North Main Street, Waterbury, VT.

The agenda was approved.

6:30 p.m. #72-16-T: Joel and Michelle Baker (owner/applicant)
Site plan and conditional use review to change the use of a portion of an existing commercial structure to a fitness facility at 1930 Waterbury-Stowe Road, Waterbury Center, VT (RT 100 zoning district)

Present and sworn in:

Joel Baker, owner/applicant
Heather Manning, applicant
Kyle Smith, applicant
Kevin Roger, neighbor

Motion by Tom Kinley, seconded by Nat Fish: To approve application # 72-16-T with conditions.

Vote: Passed unanimously, 6-0. (Rogers recused.)

The Board will issue the final written decision within 45 days.

6:50 p.m. #63-16-T: Jeffrey Atwood (appellant/landowner), **John Pitrowiski** (consultant representing appellant)

Appeal of zoning administrator denial of zoning permit #63-16-T for a residential development of six dwelling units in four buildings at 3250 Waterbury-Stowe Road, Waterbury Center, VT (TNC zoning district)

This hearing was continued from November 2, 2016. Prior minutes for this hearing are in the General Minutes from November 2, 2016.

Present and sworn in:

Jeff Atwood, landowner and appellant
John Pitrowiski, consultant and appellant representative
Dina Bookmyer-Baker, Waterbury ZA and appellee
Nancy Patterson, adjoining landowner

The landowner and engineer want to move forward with the plan they have presented and they would like to be advised regarding the avenue to get there.

Testimony was closed at 7:12 p.m.

7:15 p.m. #74-16-T: Gristmill Properties (owner/applicant)

Site plan and conditional use review to construct a new commercial building and greenhouse and change the use of a portion of an existing commercial structure to medical office at 5430 Waterbury-Stowe Road, Waterbury Center, VT (RT 100 zoning district)

Present and sworn in

Brendan O'Reilly, Applicant

David Lachtrupp, Applicant business partner

John Scheer

William Cats-Baril

Steve James, adjoining landowner

Kevin Rogers, representing Waterbury Fish and Game, adjoining landowner

Charles Brady, adjoining landowner

Zoe Gordon, Economic Development Director, observing

Testimony

- The existing building was approved for business and retail.
- This application is to get approval for both lots for retail.
- To get approval to build a new commercial building on a 4,500 square foot footprint to include 3,000 SF for a commercial greenhouse.
- The greenhouse is intended to grow medical marijuana. This requires a State permit.
- And on Lot 1 to get a change of use to include medical clinic.
- One floor would be medical clinic, each floor is 4,200 square feet.
- Each of these uses requires 1 parking space per 300 square feet whether clinic, office or retail. There is no change in parking from prior approved uses.
- The owner of lot 4 pointed out that there is a second sewer easement, this needs to be added to the site plan.
- The owner of lot 4 asked that the parking be above the building that is closest to his home rather than below it.

Action items

- Make sure a copy of the final PUD covenants are in the file for this application.
- A revised site plan, showing 30 parking spaces.
- Update or provide a status of the wetland plan.
- Provide information on the storm-water runoff from the 3,000 sf greenhouse; does it need to be included on the stormwater plan.
- Bring the erosion control plan.
- Site functionality relative to new uses.
- Letter from the Town Fire Chief.
- Provide a landscaping plan.
- Lot 2 setbacks need to be added to the plan.

The application is incomplete and the review was continued to the DRB meeting on Wednesday, January 4, 2017 at 6:30 p.m.

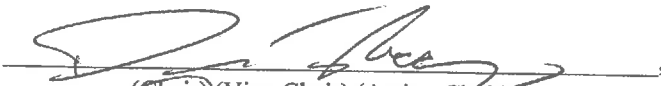
Approval of prior meeting minutes and decisions:

Motion by Tom Kinley, seconded by Dave Frothingham: To approve the general minutes of November 16, 2016 and the decisions for applications #70-16-T and #67-16T, as amended.

Vote: Passed unanimously: 7-0.

Next meeting: Wednesday, December 21, 2016, at 6:30 p.m.

Adjournment: The meeting was adjourned at 8:40 p.m.


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

12-21-16
(date)

These minutes were approved: December 21, 2016

**Town & Village of Waterbury
Development Review Board
Decision #72-16-T
December 7, 2016**

Attending Board Members: David Frothingham (Co-Chair), Nathaniel Fish, Martha Staskus, Rob Dombrowski, Mike Bard and Tom Kinley. **Attending Staff:** Steve Dina Bookmyer-Baker (ZA), Steve Lotspeich (Community Planner), and Patti Spence (Secretary).

Owner/ Applicant:	Joel and Michelle Baker	
Address/Location:	1930 Waterbury-Stowe Road, Waterbury Center, VT	
Zoning District:	Route 100 (RT100)	
Application #	72-16-T	Tax Map # 13-116.000

Applicant Request

The applicant seeks approval to change the use of a portion of an existing commercial structure to a fitness facility at 1930 Waterbury-Stowe Road.

Present and sworn in:

Joel Baker, owner/applicant
Heather Manning, applicant
Kyle Smith, applicant
Kevin Roger, neighbor

Exhibits

- A: Application #72-16-T (4 pages: Zoning Permit, Site Plan, and Conditional Use), dated Nov. 4, 2016.
- B: Project introduction and site plan and conditional use review narrative (3 pages).
- C: Site Plan (Sheet 1 of 1), prepared by McCain Consulting Inc., dated August 21, 2008, revised 12/7/16.
- D: Floor Plans, Roof Plan, and Exterior Elevations (2 pages), prepared by Joseph Architects, dated 4/13/15.
- E: Aerial photo of parcel in its neighborhood. (staff)
- F: Notice of Public Hearing, published November 17, 2016.
- G: Letter to adjoining landowners, mailed certified on: November 21, 2016.

Findings of Fact

1. Existing conditions: Joel and Michelle Baker own a 3.8± acre parcel located at 1930 Waterbury-Stowe Road. The property is developed with an existing one and two-story building, pole-barn, access drive, and parking areas. The property is served by private well and septic, includes 400± feet of frontage, and has driveway access to Route 100. The parcel is located in the Route 100 (RT100) zoning district.

Background: The existing commercial building (to be 5,625 square feet, currently under construction) was approved for construction and for business professional office and retail sales/service uses in February 2016 (zoning permit #05-16-T). No change in use is proposed for the existing pole barn, which was previously approved as storage for the retail business.

Project scope: The proposal makes no change to the previously approved building size or location, but proposes to change the use of 3,300 SF of floor area to fitness facility and reconfigure the previously approved parking layout. (Exhibit C).

2. Table of Uses, Section 503: A fitness facility meets the definition of a recreation/amusement facility, which includes, but is not limited to: *“bowling alleys, miniature golf, theater, table tennis or pool halls, indoor skating rinks, gymnasiums, indoor swimming pools, indoor tennis courts, stadiums, and similar places of commercial recreation.”* A recreation/amusement facility is a conditional use in the RT100 zoning district.

3. Site Plan Review and Approval, Section 301:

No change in the pedestrian access to, or the exterior dimensions of the existing structure, is proposed; the project involves a change of use and reconfiguring the parking-area. The Board will take into consideration the following objectives:

a. Traffic access, Section 301(f)(1) (A-D): Vehicular access to the site will continue to be via the existing curb cut on Waterbury-Stowe Rd. The access point has been reconstructed to meet the Vermont Agency of Transportation’s (VTrans) B-71 standard to accommodate large delivery trucks. The existing gravel access drive into the site has been widened to accommodate two-way traffic. (Exhibit C). No change is proposed to the existing access to Route 100. No change is proposed to the existing pedestrian entrances to the building.

b. Circulation and parking, Section 301(f)(2) (A-G): Vehicular circulation through the site will be via the aisles in the gravel surface parking areas to the handicapped-access spaces below and the upper parking area. The lower open area in front of the pole-barn, which includes at least 10,000 SF, provides adequate area for large delivery trucks to turn-around and can be used for overflow parking. A concrete sidewalk connects the main building to the parking. Twenty-five parking spaces, including three handicapped-access spaces, are proposed (Exhibit C). See compliance with the parking regulations in Section 414, below.

The parking area is proposed to be screened from view from the Waterbury-Stowe Road by eighteen coniferous trees (Exhibit C). A proposed dumpster is shown on the site plan and the Site Plan Review narrative (Exhibit B2) states that there is adequate space surrounding the parking area for snow-storage and management, loading and unloading, screened refuse, and service areas.

c. Landscaping, screening, and lighting, Section 301(f)(3) (A-F): The property includes existing and proposed trees and shrubs (Exhibits C, E). The building includes 5-6 outside lighting fixtures that will be downcast and shielded, as previously approved.

d. Requirements for Uses in the Route 100 District, Sections 301(g) & (h): In addition to the standard site plan review criteria, the special criteria for projects in the Route 100 Zoning District in Sections 301 (g) and (h) apply. A minimum of 25% of the road frontage (100') along Waterbury-Stowe Road will remain undeveloped for a depth of 250'. In addition, a minimum of 50% (1.9± acres or 82,764 SF) of the entire 3.8± acre site, including the area described above, will remain undeveloped. (Exhibit C)

- e. Special considerations for property bordering Route 100, Section 301(j): The building is adequately screened, the parking area is located behind the building, the property is served by one access point, and the site layout includes an undeveloped strip along Route 100. (Exhibit C)
4. Parking Regulations, Section 414(b): The parking spaces measure to be at least 9' by 18' and all will have unobstructed access. As set forth in Section 414(d): offices and retail stores or services shall provide one (1) space for every three hundred (300) square feet of floor area. A private club requires one (1) space for every four (4) seats. Applicant states that of the 5,625 SF building, 3,300 SF will be dedicated to the fitness facility, with the remaining 2,325 SF being for office/retail use. The fitness facility will have a maximum of 40 stations plus 2 employees, which will require 12 parking spaces. The office/retail use will require 10 parking spaces. A total of 22 parking spaces are required. The site plan shows 25 total parking spaces (22 standard and 3 handicapped). In addition, the open area in front of the pole-barn can provide overflow parking for 10–12 spaces.
 5. Conditional Use criteria, Section 303:
The proposed fitness facility is a conditional use in the Route 100 zoning district. Prior to granting approval for conditional use, the Board must find that the proposed use conforms to the following general and specific standards:
 - a. Section 303(e)(1) Community facilities: The proposed use will not unduly impact the roads, is served by private water and wastewater systems, does not include a single-family dwelling, and does not increase demand for fire protection. No shower facilities are planned. The proposed use will not have an undue adverse impact on the capacity of existing or planned community facilities.
 - b. Section 303(e)(2) Character of the area: Some of the adjacent properties include residential uses. No exterior changes are proposed to the previously approved structure. The fitness facility is proposed to be open 24 hours per day, seven days per week, with peak periods projected to be in the mornings and early-evenings before and after work hours.
 - c. Section 303(e)(3) Municipal bylaws in effect: The proposed change of use will not violate any municipal bylaws and ordinances in effect.
 - d. Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The fitness facility will operate as a drop-in facility without scheduled classes that will be conducted to music. The uses will not generate fumes gas, dust, smoke, odor, excessive noise, or vibration.
 - e. Section 303(h) Removal of earth or mineral products conditions: The proposed use does not include earth removal activities. This provision does not apply.

Conclusion/Decision:


Based upon these findings, and subject to the conditions set forth below, the Board concludes that Joel and Michelle Baker's proposal to change the use of a portion of an existing commercial structure to a fitness facility at 1930 Waterbury-Stowe Road, as presented in application #72-16-T and supporting materials meets the site plan and conditional use criteria as set forth in Sections 301, 303 and 414.

Motion

On behalf of the Waterbury Development Review Board, Tom Kinley moved and Nat Fish seconded to approve application #72-16-T 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 existing and proposed exterior lighting shall be downcast and shielded.

Vote: Passed unanimously, 6 to 0. (Rogers recused.)



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

12-21-16
(date)

This decision was approved on December 21, 2016

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
Decision on Appeal of ZA Denial of Application #63-16-T
December 7, 2016

Owner/Appellant: Jeff Atwood (landowner/appellant)
John Pitrowiski (consultant representing landowner/appellant)
Address/Location: 3250 Waterbury-Stowe Road, Waterbury Center, VT
Zones: Town Neighborhood Commercial (TNC)
Project: To construct a residential development of six dwelling units in four buildings on one lot.
Appeal of: #63-16-T permit denial Tax Map # 09-311.000

Procedural History and Appellant Request

1. On September 12, 2016 Jeffrey Atwood, owner/applicant, submitted a zoning permit application (#63-16-T) to "Remove existing barn, construct two new duplex units (Units 2&3 and 4&5), relocate existing SFH (Unit 1), construct new SFH (Unit 6)," stating that "There will be a total of 6 units in 4 buildings in this PUD," on the "2.1 acre*" lot at 3250 Waterbury-Stowe Road, noting, "*Lot is bisected by road, total acreage for both parcels is 6.3 acres."
2. The Administrative Officer denied the Zoning Permit Application on October 3, 2016, citing that the proposal did not meet the dimensional requirements of a PUD, as the 2.1 acre lot on which the development was proposed does not meet the minimum parcel size of three or more acres that is required for a PUD proposal, as set forth in the Waterbury Zoning Regulations ("Regulations") Section 701(a).
3. Applicant/appellant Jeffrey Atwood and his representative, John Pitrowiski, filed a Letter of Appeal on October 4, 2016, followed by a Notice of Appeal and fees, filed on October 11, 2016. Applicant/Appellant requested "Approval of the Zoning Permit after further explanation of how the project meets development regulations. Potentially circumstantial approval if the previous permit application for this project was approved in error." as relief.
4. The notice of public hearing was published in the *Waterbury Record* newspaper on October 13, 2016, posted at the municipal offices, the Waterbury Post Office, and at a local bank in the Village of Waterbury. The subject parcel landowner and adjoining landowners were notified by certified mail sent on October 14, 2016. The hearing notice poster was placed on the subject parcel, 3250 Waterbury-Stowe Road, on or before October 18, 2016.
5. On November 2, 2016 the Development Review Board (Board) conducted a warned public hearing. Board members present who participated in the review: Dave Rogers (Chair), Nathaniel Fish, Mike Bard, and Martha Staskus. Staff present: Steve Lotspeich (Community Planner) and Patti Spence (Secretary). Others present and sworn in: Jeff Atwood, landowner/appellant; John Pitrowiski, consultant representing landowner/appellant; Nancy Patterson, adjoining landowner; Amy James, adjoining landowner; Andrew Abair, adjoining landowner; and Dina Bookmyer-Baker, Waterbury ZA/appellee.

Materials submitted and/or made available to the Board included the following Exhibits:

- A: Appeal of denial of zoning permit #63-16-T, 10/11/16.
- B: Letter of Appeal from John Pitrowiski, 10/4/16.
- C: Site Plan and variations (4 pages), prepared by Trudell Consulting Engineers:
 - Sheet C2-01 Site Plan, dated 8/25/15, revised 3/1/16, representing the site plan submitted with zoning permit #63-16T, which was denied (Exhibit C1);
 - Sheet C2-02 Density Plan, dated 10/17/16, illustrating that each hypothetical lot could have individual or shared access that would not create a driveway that provides access to more than five dwelling units or more than five lots (Exhibit C2);
 - Sheet C2-01 Site Plan, representing the site plan submitted with zoning permit #63-16T, overlaid with the site plan for zoning permit #57-15T in red, to illustrate the differences in the two plans (Exhibit C3);
 - Sheet C2-01 Site Plan, representing the site plan submitted with zoning permit #57-15T, which was approved in 2015 (Exhibit C4).
- D: Zoning Permit Denial Notice (3 pages): Letter of denial of zoning permit application #63-16T, with Regulations excerpts, issued October 3, 2016.
- E: Zoning permit application #63-16T (2 sides), dated 9/12/16.
- F: Project overview, prepared by John Pitrowiski, to accompany application #63-16T, dated 9/7/16.
- G: Site Plan (Sheet C2-01), prepared by Trudell Consulting Engineers, dated 8/25/15, revised 3/1/16: *Move drive, Wetland Permit, & Add Single Unit*. Site plan submitted with zoning permit #63-16T, which was denied.
- H: Comments and exhibits from adjoining landowner Nancy Patterson (10 pages), submitted 11/2/16.
- I: Orthophoto of parcel in its neighborhood. (staff)
- J: Letter to adjoining landowners, mailed certified on October 14, 2016.

Testimony was taken and the materials were reviewed. The hearing was continued to December 7, 2016 at 6:30 p.m.

6. On December 7, 2016 the Board continued the review at a warned public hearing. Board members present who participated in the review: Dave Rogers (Chair), Tom Kinley, David Frothingham, Martha Staskus, Nathaniel Fish, Mike Bard, and Rob Dombrowski. Board members who were not present at the initial review on November 2 reviewed the meeting minutes and application materials prior to this meeting. Staff Present: Steve Lotspeich (Community Planner) and Patti Spence (Secretary). Others present and sworn in: Jeff Atwood, landowner/appellant; John Pitrowiski, consultant representing landowner/appellant; Nancy Patterson, adjoining landowner; and Dina Bookmyer-Baker, Waterbury ZA/appellee. In addition to the application packet from the previous meeting, the following materials were submitted and/or made available to the Board:

Exhibit K: Correspondence dated December 6, 2016 from attorney Paul S. Gillies, of Tarrant, Gillies and Richardson, to John Pitrowiski, addressing vested rights.

Appellant reviewed the project proposal. Additional testimony and public comment was taken and the materials were reviewed. Testimony was closed at 7:12 p.m. The Board moved to deliberate in closed deliberative session.

Findings of Fact

Based on the Notice of Appeal, testimony, exhibits, and other evidence, the Board makes the following findings:

1. Jeffrey Atwood owns a 2.1± acre parcel located at 3250 Waterbury-Stowe Road that includes 141± feet of frontage on and has driveway access to Route 100. The property is developed with an existing one and one-half story single-family dwelling. The property is served by municipal water and on-site septic. The parcel is located in the Route 100 (RT100) zoning district.
2. A zoning permit was issued in September 2015 to remove the existing detached barn-style accessory structure, construct two new duplexes, and to relocate and convert the existing single-family dwelling into a duplex.
3. The barn has been removed and the dwelling was relocated as proposed, but remains a single-family dwelling.
4. This matter is an appeal of the Administrative Officer's denial of Zoning Permit Application #63-16-T, submitted on September 12, 2016. In the Zoning Permit Application, the Applicant/Appellant proposed a Planned Unit Development, or PUD, on two lots, consisting of 2.1 acres and 4.2 acres, across Route 100 from each other. Specifically, Applicant/Appellant proposed on the 2.1-acre lot to remove the existing barn, to relocate the existing single family dwelling on the lot, and to construct five dwelling units in three new buildings: two duplexes and one single family dwelling. With this application, Applicant proposed to increase the area of the residential buildings on the 2.1 acre lot from 2,216 square feet to 17,758 square feet. Owner/Applicant has not proposed any land development on the 4.2-acre portion of the PUD, and the proposed plans do not depict the entire 4.2-acre parcel.
5. The Administrative Officer denied the Zoning Permit Application on October 3, 2016. As relief, the Applicant/Appellant asked, in his Notice of Appeal filed on October 11, 2016, that the DRB grant both his appeal and the Zoning Permit Application.
6. Under the Regulations, the Administrative Officer does not have authority to approve a Planned Unit Development (PUD). In addition, the Regulations do not allow the approval of a PUD with the grant of a Zoning Permit Application. Section VII of the Regulations requires that the Development Review Board review applications for a PUD. Before the Administrative Officer may issue a zoning permit for any part a proposed PUD, the Board must find that the proposed land development meets the standards for a PUD and approve the PUD application.
7. The Regulations allow land development to be considered as a PUD only if the subject parcel consists of at least three acres. While Applicant/Appellant only proposed uses and structures on the 2.1-acre lot, this application must include both the 2.1-acre and the 4.2-acre lots in order to be considered as a PUD.

Applicant/Appellant's application is incomplete because the proposed plans do not depict the entire 6.3-acre PUD.

8. The Applicant has not submitted a complete application for a PUD for review by the Board during a warned public hearing.

Conclusion

Based upon these findings, the Board concludes that it cannot approve Zoning Permit Application #63-16-T because it is incomplete and because the Regulations require review of a proposed PUD by the Board under Article VII. The Board does not conclude that the proposed project fails to comply with the Regulations. Until Applicant submits a complete application for approval of a PUD for review by the Board during a warned public hearing, the Board cannot review the proposed project for compliance with the applicable standards in the Regulations.


Motion

On behalf of the Waterbury Development Review Board, Tom Kinley moved and Rob Dombrowski seconded a motion to deny the Appeal and Zoning Permit Application #63-16-T.


Vote: Passed unanimously: 7 to 0.

Decision

The Development Review Board's decision is to deny the Appeal and Zoning Permit Application #63-16-T, proposed by Jeffrey Atwood, Applicant/Appellant.



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



(date)

This decision was approved on December 21, 2016

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.