

**WATERBURY DEVELOPMENT REVIEW BOARD**  
**General Minutes—December 4, 2019**

Board members present: David Frothingham (Chair), David Rogers, Bud Wilson, Andrew Strniste, and Alex Tolstoi. Staff present: Dina Bookmyer-Baker (ZA) and Patti Martin (Secretary).

David Frothingham, Chair, opened the meeting at 6:35 p.m. with a quorum present of 5 members, in the Steele Community room in the Municipal Center, at 28 North Main Street, Waterbury, Vermont. Attendees were advised that the DRB is a 7-member Board and that any approval will require 4 votes in the affirmative.

- 1) **#105-19: Tim Mack, Trader Tim LLC** (owner/applicant)  
After-the-fact setback waiver request for an existing deck addition at 78 Blush Hill Road.  
(VCOM zoning district)

Present and Sworn in:  
Tim Mack, Owner/Applicant

The Board approved the project with conditions and will issue a written decision within 45 days.

- 2) **#093-19: David & Joann Scherk** (owner/applicant)  
Site Plan/Conditional Use for commercial storage building at 2687 Waterbury-Stowe Road.  
(RT100 zoning district)

Present and Sworn in:  
David Scherk, Owner/Applicant

The Board approved the project with conditions and will issue a written decision within 45 days.

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

- Final plat review: #023-19, KCOS Holdings LLC (owner), Caleb Ainsworth (applicant), two-lot subdivision of parcel #010-1295, US Route 2 (MDR/SFHA). DRB hearing: 5/1/19; decision approved: 7/24/19; final plat due: 1/20/2020 (180 days).

Dave Rogers moved, and Andrew Strniste seconded the motion, to approve the final plat as presented.

**Vote:** Motion approved: 5–0.

- Review minutes and decisions from the previous meeting:  
Alex Tolstoi moved, and Bud Wilson seconded the motion, to approve the general minutes for November 20, 2019, and the decisions for applications #102-19 (Sherman), and #104-19 (O'Brien), as amended.

**Vote:** Motion approved: 5–0.

**Adjournment:** There being no other business, the meeting was adjourned at 8:25 p.m.

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

12/18/2019  
(date)

These minutes were approved: December 18, 2019.

**Notice of upcoming meetings:**

Wednesday, December 18, 2019, 6:30 p.m.

Wednesday, January 8, 2020, **7:00 p.m.** (*Note: Mtg. on 2nd Wed. & 30 mins. later than usual.*)

Wednesday, February 5, 2020, 6:30 p.m.

**Town of Waterbury**  
**Development Review Board**  
**Decision #105-19 ▪ December 4, 2019**

Board members present: David Frothingham (Chair), David Rogers, Bud Wilson, Andrew Strniste, and Alex Tolstoi. Staff present: Dina Bookmyer-Baker (ZA) and Patti Martin (Secretary).

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Owner/Applicant:	Tim Mack/Trader Tim LLC	
Address/Location:	78 Blush Hill Road, Waterbury, VT	
Zone:	Village Commercial (VCOM)	
Application #	105-19	Tax Map # 13-075.000

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**Applicant Request**

The applicant seeks approval, after-the-fact, for a deck addition constructed within the front setback at 78 Blush Hill Road in the Village Commercial zoning district.

**Present and sworn in:**

Tim Mack, Owner/Applicant

**Exhibits**

- A: Application #105-19 (3 pages: zoning, conditional use), submitted 10/22/19.
- B: Dwelling-deck diagram, prepared by Applicant, submitted 10/22/19.
- C: Site Plan, annotated by Applicant (base map from Site Plan/Survey by Grenier Engineering for subdivision of parent parcel), submitted 10/22/19.
- D: Elevation photos by Applicant, submitted 10/22/19.
- E: Parcel map with orthophoto. (Staff)
- F: Letter to adjoining landowners, mailed certified on 11/20/19.

**Findings of Fact**

1. Existing conditions: Tim Mack owns a 1.0± acre parcel located at 78 Blush Hill Road in the Village Commercial (VCOM) zoning district. The property is currently developed with a one-story single-family dwelling. The nearest front corner of dwelling is in the front-yard setback. The parcel includes frontage on and has access to 78 Blush Hill Road and is served by private well and an on-site septic system.
2. Project: The Applicant built an attached deck to the front and side of the dwelling, which extends into the front yard setback. The new deck replaced an existing landing outside the front door, which was also within the front setback. The new deck encroaches farther into the front setback than the previous landing. The new deck is 39' from the front property line. (Exhibit C).
3. Dimensional Requirements, Table 5.2: In the VCOM zoning district, the minimum setbacks are 50' for the front and 20' for the sides and rear.

4. Waiver Request: The setback waiver request is to encroach on the front setback by 11' (50' – 39').
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 considered the following general and specific standards:
  - (a) Section 303(e)(1) Community facilities: The project will not change the residential use of the property. The project will not require additional water or sewer allocation, increase traffic, burden the school capacity, and will not unduly increase the demand for fire protection. The Board concludes that the proposal will not have an undue adverse impact on the capacity of existing or planned community facilities.
  - (b) Section 303(e)(2)(A–E) Character of the area: The use of the property will remain residential. The deck matches the materials and style of the existing dwelling (Exhibit D). The Board concludes that the project is appropriate in scale and design in relation to existing uses and structures in the district, and will not have an undue adverse impact on the character of the area affected.
  - (c) Section 303(e)(3) Municipal bylaws in effect: The project makes no change to the current residential use and conforms with the conditional use criteria. The Board concludes that the proposal will not violate any municipal bylaws and ordinances.
  - (d) Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The deck is not enclosed, and will not create the above-named nuisances. The Board concludes that no devices or special methods are necessary to prevent or 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 completed project by Tim Mack of a deck that is not closer than 39' to the front property line at 78 Blush Hill Road, as presented in application #105-19 and supporting materials, meets the Waivers and Conditional Use criteria set forth in Sections 309 and 303.

**Motion:**

On behalf of the Waterbury Development Review Board, Andrew Strniste moved, and Alex Tolstoi seconded the motion, to approve application #105-19 with the following conditions:

- (1) The Applicant shall keep 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:** Approved 5-0.

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

Approved: 12/18/2019  
(date)

This decision was approved on December 18, 2019.

State permits may be required for this project. The landowner/applicant is advised to contact Peter Kopsco, DEC Permit Specialist, at 80-505-5367 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  
Decision #093-19 ▪ December 4, 2019**

Board members present: David Frothingham (Chair), David Rogers, Bud Wilson, Andrew Strniste, and Alex Tolstoi. Staff present: Dina Bookmyer-Baker (ZA) and Patti Martin (Secretary).

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Owner/Applicant:	David and Joann Scherk, Scherk Investment Property LLC	
Address/Location:	2687 Waterbury-Stowe Road, Waterbury, VT	
Zoning District:	Route 100 (RT100)	
Application #	093-19	Tax Map # 13-135.000

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**Applicant Request**

The Applicant proposes to construct a new building for commercial and residential storage at 2687 Waterbury-Stowe Road to replace an existing storage trailer.

**Present and sworn in:**

David Scherk, Owner/Applicant

**Exhibits**

- A: Application #093-19 (4 pp: zoning, site plan, conditional use), submitted 9/10 and 11/4/19.
- B: Elevations, prepared by Applicant, submitted 9/10; revised 12/2/19.
- C: Site Plan, annotated by Applicant and Staff (base map from M & B Properties Replacement Septic System Design by Grenier Engineering, dated 4/17/09), submitted 11/4; revised 11/18/19.
- D: Aerial photo of parcel in its neighborhood. (Staff)
- E: Letter to adjoining landowners, mailed certified on: 11/18/19

**Findings of Fact**

1. Existing conditions: Scherk Investment Property LLC owns a 1.0± acre parcel located at 2687 Waterbury-Stowe Road. The property is developed with an existing two-story mixed-use building, a detached storage trailer, access drives, and parking areas. The property is served by private water and on-site septic.
2. Project: The project includes constructing a new building for commercial and residential storage that will be 24' by 32' by 2-stories tall. The roof will have a 1.5' overhang. The building will include an 8' x 7' overhead door, and a 36" x 6'8" pedestrian door. The building will replace an existing storage trailer that is 45' by 8'. The building will be utilized by the owners (not the public), and will not require any additional parking spaces.
3. Dimensional Requirements, Table 5.2: The property is in the RT100 zoning district, which requires a minimum lot size of 2 acres for residential and a minimum of 5 acres for non-residential uses. The property includes both residential and non-residential uses. Therefore, the 1.0± acre lot is nonconforming

in area for the RT100 zoning district.

4. Table of Uses, Section 503: Multi-family and retail are conditional uses in the RT100 zoning district.
5. Nonconforming Uses and Noncomplying Structures, Section 304(a)(2): A nonconforming use may be extended (see definition below) within the boundary lines of a parcel or lot with the approval of the DRB, which must find that a proposed nonconforming use meets the general and specific standards for conditional uses specified in Section 303.

(definition) Extension of Nonconforming Use: A nonconforming use that involves the use of increased area on a lot, either in a structure or outside, that does not involve a substantial change to the character of the nonconforming use.

6. Site Plan Review and Approval, Section 301(a): Any use shall be subject to site plan approval by the DRB before a zoning permit may be issued. The project involves an expansion of the existing uses in a new structure that includes exterior lighting and pedestrian and loading access. The Board considered the following criteria:
  - a. Subsection (f)(1)(A-D), Adequacy of traffic access and pedestrian safety: The project makes no change to the existing driveway access, nor will it increase traffic to the site. The pedestrian access to the building is shown on the gable end, facing the parking lot. (Exhibit B)
  - b. Subsection (f)(2), Adequacy of circulation and parking: The project does not require any parking-lot or driveway construction, expansion, or relocation. If the structure must be moved into the parking area, two extra parking spaces are available on the South end of the building (Exhibit C). The project will not change the adequacy of the circulation and parking.
  - c. Subsection (f)(3), Adequacy of landscaping, screening, and lighting: No additional landscaping or screening is proposed. One exterior wall light is proposed that will be downcast, shielded, and on a motion-sensor.
  - d. Subsection 301(j), Special considerations for uses of property bordering Route 100: The site is developed and landscaping exists. The parking areas are established. The new structure will be located behind the existing parking lot. A continuous grassy strip is maintained between the street line and the existing mixed-use building.
7. Parking Regulations, Section 414: No change is proposed to the number of parking spaces (16). The project does not increase the retail space, but relocates the retail storage from the trailer (to be removed) to the new structure. The structure is for commercial and residential storage only, and does not require additional parking. If needed, the layout of the parking might change slightly, to accommodate the structure shifting farther from the septic field and the northerly property line.

8. Conditional Use criteria, Section 303: The existing use of the property includes retail and multi-family, which are conditional uses in the RT100 zoning district. Also, the project extends the existing nonconforming use. Prior to granting approval for a 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 structure will have no bedrooms, no bathrooms, and no running water. The project does not increase the number of dwelling units or retail space, will not unduly increase the traffic, does not require addition municipal water or sewer allocation, and does not increase the demand for fire protection. The Board concludes that the proposed expansion to the existing 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: The structure will be clad with the same materials as the existing apartment building and antique store. The structure is appropriate in scale and design in relation to the existing uses and structures in the district (Exhibit B). The Board concludes that the project will not have an undue adverse impact on the character of the area.
  - c. Section 303(e)(3) Municipal bylaws in effect: The new structure expands the footprint of the trailer that it replaces by some 400± SF. The project conforms with the Site Plan and Conditional Use criteria. The Board concludes that the project as presented 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 proposed building is for storage only and will not create the above-named nuisances. The Board concludes that 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 David and Joann Scherk to construct a new building for commercial and residential storage at 2687 Waterbury-Stowe Road, as presented in application #093-19 and supporting materials, meets the Site Plan and Conditional Use criteria set forth in Sections 301 and 303.



**Motion:**

On behalf of the Waterbury Development Review Board, Andrew Strniste moved, and Alex Tolstoi seconded the motion, to approve application #093-19 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) If the structure must be moved, to provide a buffer between it and the septic field or a possible wetland, as discussed during the hearing, and the new location will encroach on one or more parking spaces, then the Applicant shall submit an updated Site Plan to the ZA prior to the issuance of the permit.
- (3) All exterior lighting shall be downcast and shielded.

**Vote:** Approved 5–0.

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

Approved: 12/18/2019  
\_\_\_\_\_  
(date)

This decision was approved on December 18, 2019.

State permits may be required for this project. The landowner/applicant is advised to contact Peter Kopsco, DEC Permit Specialist, at 80-505-5367 or [pete.kopsco@vermont.gov](mailto:pete.kopsco@vermont.gov), and the appropriate state agencies to determine what permits must be obtained.

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