

WATERBURY DEVELOPMENT REVIEW BOARD
General Minutes—May 5, 2021

Attending: Board members: Tom Kinley (Acting Chair), David Frothingham Bud Wilson, Alex Tolstoi, Patrick Farrell, and Harry Shepard. Staff: Dina Bookmyer-Baker (ZA) and Steve Lotspeich (Community Planner/Acting Secretary). Also: Conservation Commission member Allan Thompson and Billy Vigdor; Public: Linda Gilpin, Joan Liggett, and Joan Beard.

Tom Kinley, Acting Chair, opened the public meeting at 6:33 p.m. and made the following introductory remarks: 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) **#009-21: Lane Simon** (applicant), **Phyllis Simon** (owner)

Continued Setback waiver, Variance, and Special Flood Hazard Area review to construct an attached garage/deck in the setback that exceeds the maximum lot coverage at 143 South Main Street. (VMR/SFHA zoning and overlay districts) The hearing was continued from Wednesday, April 7, 2021.

Present and sworn in:

Lane Simon, applicant

Phyllis Simon, owner

George McCain, Consultant

The project is the removal of the existing attached shed and replacement of the shed with a garage with storage and a small deck on top of the structure that will be accessed from the upstairs residence. The property is located entirely in the mapped 100-year floodplain.

The project was discussed and the additional information that had been requested by the Development Review Board was presented by the Simons and their consultant, George McCain. The following additional testimony was provided:

- a. Concerning the hardship that needs to be demonstrated to meet the variance criteria for the requested building coverage exceeding maximum allowed, the Simon's want to have everything required for the business in the building to be located on the site so they don't have to re-locate the business. This includes the additional parking and indoor storage in the garage for the business.
- b. The adequacy of the anchoring shown on the wall/foundation cross section for the attaching the sill plate to the concrete foundation for the garage was questioned since the building is located in the floodplain and needs to resist floatation.
- c. The quantity, location and design of the flood vents was discussed and it was agreed by the DRB that they will need an engineer's certification.

The public hearing was closed at 7:19 pm. The Board approved the project with conditions and will issue a written decision within 45 days.

2) **#011-21: Ari Fishman (applicant), Stephen Fishman (owner)**

Continued Special Flood Hazard Area review to construct a new dwelling and garage on undeveloped Lot 2 Guptil Road. (MDR/SFHA zoning/overlay districts) The hearing was continued from Wednesday, April 21st

Present and sworn in:

Ari Fishman, Applicant

George McCain, Consultant

The project was discussed and the additional information that had been requested by the Development Review Board was presented by Ari Fishman and his consultant, George McCain. The following additional testimony was provided and questions asked:

- a. A note was added to the site plan stating that no fill was added to the site after 2011.
- b. The building height for the house is 33'+ and is less than the maximum of 35'.
- c. The revised location for the garage and driveway is shown on the site plan and was discussed. It was explained that no new fill in the floodplain is required for the construction of the driveway. The finish floor (FF) elevation of the garage is at or above the Base Flood Elevation (BFE).
- d. The mound septic system for the new house and the cut and fill for that system was approved in the 2011 review and zoning permit for the subdivision and flood hazard area review for this parcel.
- e. The lot meets the minimum lot size and the structures both meet all the setbacks for the Medium Density Residential (MDR) zoning district.
- f. The required compensatory cut for the fill that was placed on the site in 2011 was questioned. A letter from the project engineer, Peter Lazorchak, P.E. from December 14, 2011 was presented that certifies that the permitted cut and fill was completed prior to that date. George McCain testified that survey work was done at that time that confirmed that the cut and fill was done in accordance with the grading plan and the approval associated with the zoning permit for the subdivision at that time.

The public hearing was closed at 7:59 pm. The Board approved the project with conditions and will issue a written decision within 45 days.

3) **#023-21: John Thraikill (owner/applicant)**

This project is for a variance request and Ridgeline/Hillside/Steep Slope review to modify the previously-approved building zone and construct a new single-family dwelling that exceeds the maximum building height on Lot A, Wood Farm Road, Waterbury Center, VT. (CNS/RHS zoning/overlay districts) — The hearing was continued, without review, to May 19, 2021 due to an incomplete application.

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

- Meeting with members of the Waterbury Conservation Commission: Allan Thompson, chair of the Conservation Commission gave an overview of the Shutesville Wildlife Corridor, including the corridor in the context of the region of the whole northeastern U.S. The Shutesville Wildlife Corridor serves as a linkage between important local and regional areas of wildlife habitat. Allan also reviewed the language in the 2018 Waterbury Municipal Plan and the current Zoning Regulations that addresses the Shutesville corridor specifically and wildlife corridors in general. The map of the Shutesville corridor, developed by the Shutesville Partnership, including the Waterbury Conservation Commission, was reviewed

and discussed.

The development review process in Waterbury was discussed. A referral process to get input from the Conservation Commission on specific projects is being developed and implemented. The topic of updating wildlife studies that have been submitted as part of development proposals was discussed. It was agreed that these studies should be updated as development progresses in the areas identified in the studies.

- Public comment / Other business: There was no public comment or other business conducted.
- Review prior meeting minutes and decisions:
Motion: Tom Kinley moved and Alex Tolstoi seconded the motion to approve the DRB general meeting minutes for April 21, 2021 and the decisions for applications #017-21 (Eastridge) and #019-21 (LJBC), as amended.
Vote: The motion was approved 6-0.

Adjournment: There being no other business, the meeting was adjourned at 9:05 p.m.



(David Frothingham, Chair)

Approved: May 19, 2021

Notice of upcoming meetings:

Wednesday, May 19, 2021, 6:30 p.m. Wednesday, June 2, 2021, 6:30 p.m.
Wednesday, June 16, 2021, 6:30 p.m.

Town of Waterbury
Development Review Board
Decision #009-21 ▪ April 7/May 5, 2021

Attending:

(4/7/21) Board members: Tom Kinley (Acting Chair), Bud Wilson, Alex Tolstoi, Patrick Farrell, Harry Shepard, and George Lester (Alternate). Staff: Dina Bookmyer-Baker (ZA), Steve Lotspeich (Community Planner), and Patti Martin (Secretary).

(5/5/21) Board members: Tom Kinley (Acting Chair), David Frothingham, Bud Wilson, Alex Tolstoi, Patrick Farrell, and Harry Shepard. Staff: Dina Bookmyer-Baker (ZA) and Steve Lotspeich (Community Planner/Acting Secretary).

Owner/Applicant:	Lane Simon (applicant), Phyllis Simon (owner)
Address/Location:	143 South Main Street, Waterbury, VT
Zoning Districts:	Village Mixed Residential (VMR)/Special Flood Hazard Area (SFHA)
Application #	009-21 Tax Map #19-450.000

Applicant Request

The Applicant seeks approval to construct an attached 3-bay garage with storage and a second-story deck in the setback, that exceeds the maximum lot coverage, and is in the Special Flood Hazard Area at 143 South Main Street.

Present and sworn in:

Lane Simon, Applicant (4/7, 5/5/21)
Phyllis Simon, Owner (4/7, 5/5/21)
George McCain Jr., project consultant (5/5/21)

Exhibits:

- A: Application #009-21 (8 pp: zoning, Site Plan, conditional use, variance, SFHA), submitted 2/26/21.
- B: Site Plan for Phyllis Simon prepared by McCain Consulting Inc., dated 7/1/20, revised 4/27/21.
- C: Elevations, prepared by Applicant, dated 8/4/20; revision submitted 4/28/21:
(C1) South, (C2) West, (C3) North.
- D: Floor Plans, prepared by Applicant, submitted 2/26/21:
(D1) Foundation (shows location of flood vents, (D2) First-floor framing, (D3) Roof/deck.
- E: Section, prepared by Applicant, submitted 2/26/21.
- F: Flood Vent cut-sheet by Smart Vent.
- G: (G1) Comment from Ned Swanberg, 3/12/21,
(G2) ANR Atlas map DFIRM, showing the SFHA, Zone AE, dated 8/5/20.
- H: Orthophoto of the parcel. (Staff)
- I: Letter to adjoining landowners, mailed certified on 3/22/21.
- J: Photos of existing main building and shed, submitted 4/28/21 (5 pp.).

Findings of Fact:

1. Existing conditions: Phyllis Simon owns a 0.19± acre (8,276 SF) parcel at 143 South Main Street in the Village Mixed Residential (VMR) and Special Flood Hazard Area (SFHA) zoning and overlay districts. The property is developed with a two-story mixed-use building that includes business professional offices on the first-floor and two apartments. The structure was built in 1890, well before the enactment of the Zoning Regulations. The building is a contributing structure to the Waterbury Village Historic District that is listed on the State and National Registers of Historic Places. The existing building is within the front setback, 5' 9" from the nearest side property line to the north, and 43' 4" from the rear property line. The lot has frontage on and an access drive to South Main Street. The lot is served by municipal water and wastewater.
2. Project: To remove the existing attached shed and construct an attached 3-bay garage with storage space for the business located in the main building, and a second-story deck in the setback, that exceeds the maximum lot coverage and is located within the Special Flood Hazard Area at 143 South Main Street. All exterior siding materials, windows, and doors for the garage/storage addition shall be as shown on Exhibit C in order to match and be compatible with the existing building that is documented in the photos in Exhibit J.
3. VMR Dimensional Requirements, Table 5.2: *Minimum lot area for other uses: 20,000 SF; no minimum frontage requirement; maximum lot coverage: 25%; minimum setbacks: 40' front, 25' sides, 50' rear.* The lot does not meet the minimum lot size. The existing mixed-use structure encroaches on the front, north side, and rear setbacks. The proposed addition will replace a shed that is in the rear and northerly side setback and will further encroach on that same side setback and the rear setback, and will cause the footprint of the overall building to exceed the maximum lot coverage. (Exhibit B).
4. Waiver Request, Section 309: The proposed garage will be 5.8' from the northerly side property line and 6.5' from the rear property line (Exhibit B). The setback waiver request is to encroach on the northerly side yard setback by 19.2 feet (25' minus 5.8') and by 43.5 feet on the westerly rear yard setback (50' minus 6.5').
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 mixed residential/commercial use as business professional offices and two apartments. The project will not increase the occupancy, unduly increase traffic, burden the school capacity, or 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/commercial. The style and dimensions of the garage/storage building addition are compatible with the area, as shown in Applicant's Exhibit C. 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.

- (c) Section 303(e)(3) Municipal bylaws in effect: The use of the property will remain residential/commercial. This project application presents compliance 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: No change to the residential/commercial use is proposed; it will not create the above-named nuisances. The Board concludes that no devices or special methods would be 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.
6. Section 308 Variances: The Applicant requests a Variance for the project to exceed the maximum lot coverage requirement. A variance may be granted only if all the following facts are found and the finding is stated in the Board's decision:

Section 308(a)(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not to the circumstances or conditions generally created by this bylaw in the district in which the property is located;

—The lot is nonconforming in size. The maximum lot coverage of 25% for a 20,000 SF lot (minimum lot size in VR) is 5,000 SF. The project would result in 2,678 SF total lot coverage which does not exceed the maximum lot coverage for the minimum lot size in VMR. However, the 2,678 SF total lot coverage resulting from the addition of the garage/storage addition is 31% of the existing lot area that is 8,556 SF. Therefore, a variance from the required maximum lot coverage is required. The application states: "The lot dimensions, overall size and existing setbacks are currently non-conforming to the VMR requirements. This limits any improvements to the property."

Section 308(a)(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this bylaw and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

—Due to the nonconforming lot size and the existing nonconforming structure, the Applicant is unable to construct an addition of any size and meet the maximum lot coverage requirement in Section 504. The application states: "The existing storage is deteriorating and is necessary for safe, secure storage of business supplies and equipment. There is no covered parking on site. We would like to address both of these items by replacing the shed and adding the enclosed parking for the residence/office on the back of the existing structure."

Section 308(a)(3) That such unnecessary hardship has not been created by the Applicant;

—The Applicant purchased the lot in its current nonconforming size with the existing buildings in their current size and configuration. The Applicant has not increased the lot coverage prior to this request. The

application states that the hardship that will result if the variance is not granted is: “Possible damage to vehicles, equipment and supplies. The existing roof is quite steep and metal. Snow sliding off the roof limits where vehicles can be safely parked.”

Section 308(a)(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare;

—The project makes no change to the commercial/residential use of the property. The addition will have the same siding and roofing as the existing building (Exhibit C). The application states: “There are numerous mixed use and residential properties with storage sheds and garages in the immediate vicinity. We foresee no change in character to the neighborhood. The addition will be minimally visible from the street, if at all. Construction will be consistent with the current structure and should have no visual impact to neighbors.” The project will not impair the use of, or reduce access to renewable energy resources on adjacent properties.

Section 308(a)(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from this bylaw and from the Municipal Plan.

The applicant has stated that due to the existing building and lot layout and configuration, the proposed garage/storage addition represents the minimum footprint expansion (997 SF) that will meet the unique needs of the Applicant.

7. Section 604 Special Flood Hazard Area Development Standards: All of the parcel lies within the Special Flood Hazard Area (SFHA) Zone AE (Exhibit H), including the site for the proposed garage/storage addition. The BFE at the site is 427.2' and the finished floor elevation (FFE) of the garage/storage addition will be 424.2' (Exhibit B). All utilities that can be damaged by flooding shall be elevated at least two feet above the BFE or at least at or above elevation 429.2'. The garage/storage addition shall have a minimum of eight Smart Vents located so that the bottom of the vents are no more than 12" above the finish floor of the garage/storage addition as shown on Exhibits D1 and F. The foundation, slab, mud sill, and wall materials for the garage/storage addition shall be as shown on Exhibit E. These materials shall be in conformance with the FEMA Technical Bulletin 2, Flood Damage – Resistant Material Requirements, dated August, 2008. The garage/storage addition shall be used only for the storage of vehicles and miscellaneous materials and equipment associated with the business professional offices and apartment in the main building. The garage/storage addition shall not be utilized for any other uses to be in conformance with Section 604(a)(4)(I).

Conclusion:


Based upon these findings, and subject to the conditions set forth below, the Board concludes that the project proposed by Phyllis Simon and Lane Simon for a garage/storage addition that will not come closer than 5.8' to the northerly side property line (a 19.2' waiver) and 6.5' from the rear westerly property line (a 43.5' waiver) at 143 South Main Street, as presented in application #009-21 and supporting materials, meets the Waivers and Conditional Use, Variance, and Flood Hazard Area Review criteria set forth in Sections 309, 303, 308, and 604.

Decision:

On behalf of the Waterbury Development Review Board, Alex Tolstoi moved and David Frothingham seconded the motion to approve application #009-21 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 submit an application for a Certificate of Completion, including a copy of the Elevation Certificate and all other submittal requirements, upon completion of the garage/storage addition and related site work, and obtain approval of same, prior to commencing the use or occupancy of the structure.
- (3) The adjusted locations and opening size of the flood vents shall be certified by a professional engineer prior to issuance of the zoning permit.
- (4) All exterior lighting shall be downcast and shielded.

Vote: The motion was approved, 6-0.



(Chair David Frothingham)

Approved: May 19, 2021

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 Environmental Division of the Vermont Superior 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 #011-21 ■ April 21/May 5, 2021

Attending:

(4/21/21) Board members: Tom Kinley (Acting Chair), Bud Wilson, Alex Tolstoi, Patrick Farrell, Harry Shepard, George Lester (Alternate), and Joe Wurtzbacher (Alternate). Staff: Dina Bookmyer-Baker (ZA), Steve Lotspeich (Community Planner), and Patti Spence (Secretary).

(5/5/21) Board members: David Frothingham (Chair), Tom Kinley (Vice-Chair), Bud Wilson, Alex Tolstoi, Patrick Farrell, and Harry Shepard. Staff: Dina Bookmyer-Baker (ZA) and Steve Lotspeich (Community Planner/Acting Secretary).

Owner/Applicant:	Stephen Fishman (owner), Ari Fishman (applicant)	
Address/Location:	534 (Lot 2) Guptil Road, Waterbury Center, VT	
Zones:	Medium-Density Residential (MDR)/Special Flood Hazard Area (SFHA) overlay	
Application #	011-21	Tax Map # 13-180.000

Applicant Request:

The Applicant seeks approval to construct a new dwelling, garage, and septic system on undeveloped Lot 2 within the Thatcher Brook floodplain at 534 Guptil Road, Waterbury Center, VT.

Present and sworn in:

(4/21/21)	(5/5/21)
Stephen Fishman, Owner	Ari Fishman, Applicant
George McCain, project consultant	George McCain, project consultant

Exhibits:

- A: Application #011-21, submitted 3/8/21, revised 3/29/21.
- B: (B1) Elevation Certificate for Construction Drawings, prepared by Keith Van Iderstine, McCain Consulting Inc., (2 pages) dated and submitted 4/29/21
(B3) Building diagram 1B (Staff)
- C: Project Site Plan for Ari Fishman, Lot 2 House Site & Floodplain, prepared by McCain Consulting Inc., Sheet C-1, dated 1/20/20, revised 4/27/21: *Revised driveway, added SFHA notes per DRB comments*, submitted 4/28/21.
- D: Comments from Ned Swanberg, Central Vermont Floodplain Manager, CFM, dated 4/7/21.
(D2) SFHA Zone-AE at Lot 2 Guptil Rd, submitted by N. Swanberg, 3/23/21
(D3) Letter from Peter Lazorchak, PE for McCain Consulting, dated 12/14/2011, referenced in Ned Swanberg's comments.
- E: Parcel maps of the property (Staff).
- F: Letter to adjoining landowners, mailed certified on 3/31/21.
- G: Exterior Elevations for Tonino/Fishman Residence, prepared by RMC Design, Sheet A2.00, dated 2/23/21, submitted 4/28/21.

H: Wastewater System and Potable Water Supply Permit WW-5-5434-1 to re-design the primary and replacement wastewater disposal systems for Lot 2 and Lot 3, with each lot served by municipal water, issued 9/2/10.

Findings of Fact

1. Existing conditions: Stephen Fishman owns a 2.15± acre undeveloped parcel at 534 (Lot 2) Guptil Road. The includes frontage on and a driveway access to Guptil Road. The property is in the Medium-Density Residential (MDR) zoning district and lies within the Special Flood Hazard Area (SFHA) overlay district. The lot also has frontage on the Thatcher Brook.

Prior approval:

The Fishmans subdivided their property into three lots in 2010 and obtained Planning Commission and ZBA approval (zp #70-10-T) to prepare two house sites on Lot 2 and Lot 3, placing fill within and above the base flood elevation (BFE) and offsetting that with an equal or greater volume of compensatory storage to equalize the fill placed within the SFHA.

2. Project: Applicant proposes to construct a new dwelling with a detached garage on Lot 2 on ground above the BFE, and no new fill, or net increase in fill, will be placed in the SFHA as shown on Applicant's Exhibit C and noted on plan:

—SFHA limit 7,130± SF. No fill allowed in the SFHA (shaded area).

—Contractor to excavate driveway within SFHA prior to placement of base and surface material to ensure no net fill within the SFHA, provide written certification that material removed meets or exceeds material added.

—Per a site visit by McCain Consulting on 4/27/21, and testimony provided by the client, there's no evidence of inappropriate fill being placed on Lot 2 after the Certificate of Compliance for cuts and fills provided to the Town of Waterbury December 14, 2011.

3. Article VI Flood Hazard Area Regulations and Overlay District, Section 604(a) All development within the SFHA shall neither reduce the effective flood storage volume of the SFHA nor create a net increase in the BFE as set forth in subsection (1)(B). The application was reviewed in accordance with the applicable provisions under Section 604(a):

—The first finished floor of the dwelling is greater than 2-feet above BFE (Exhibit B).

—The garage slab is at the same elevation as the BFE, therefore flood vents are not required. (Exhibit C)

—Per Section 604(a)(4)(F) Applicant shall obtain an allocation for municipal water and must design and install the water supply system to minimize or eliminate infiltration of flood waters in the systems.

—Wastewater System and Potable Water Supply Permit WW-5-5434-1 has been obtained (Exhibit H).

—See additional comments from Ned Swanberg, dated 4/7/21 (Exhibit D).

Conclusion:

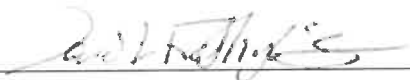
Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Stephen and Ari Fishman to construct a single-family dwelling, garage, driveway, and septic system in the Thatcher Brook floodplain at 534 Guptil Road, as presented in application 011-21, and supporting materials, meets the Special Flood Hazard Area development standards set forth in Section 604.

Decision:

On behalf of the Waterbury Development Review Board, David Frothingham moved and Patrick Farrell seconded the motion to approve application #011-21 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 follow the Low-Risk Erosion Protection and Sediment Control measures during construction.
- (3) The Applicant shall submit an application for a Certificate of Completion, and all submittal requirements, upon completion of the project and related site work, and obtain approval of same, prior to commencing the use or occupancy of the structures.
- (4) Except as amended herein, this approval incorporates all Findings of Fact, Conclusions of Law, and Conditions in prior zoning permit approval #70-10-T.

Vote: The motion was approved, 5-1 (Shepard).



(Chair David Frothingham)

Approved: May 19, 2021

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 Environmental Division of the Vermont Superior 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.*