

**TOWN OF WATERBURY
DEVELOPMENT REVIEW BOARD
Approved General Minutes
September 19, 2013**

Board Members Present: Jeff Larkin, Chair; Jeff Grace, Martha Staskus, Mike Bard, David Rogers, Jeff Whalen, Tom Kinley, Nat Fish

Staff Present: Steve Lotspeich, Clare Rock, Patti Spence

Public: Tom Anderson, Dean Salvas, Frank vonTurkovich, Margaret Lindsay

APPLICATION #51-13-T, W. THOMAS ANDERSON

This is an application for a setback Waiver for the construction of a single-family dwelling in the Medium Density Residential Zoning District.

Permit Application #:	51-13-T
Applicant:	W. Thomas Anderson
Landowner:	SAME
Location of Project:	2081 US RT 2, Waterbury, VT

Jeff Larkin opened the public hearing for permit Application No. 51-13-T at 6:30pm. Jeff swore in Tom Anderson.

Clare Rock provided an overview of the project that is a request for a waiver from the front setback along U.S. Route 2.

TESTIMONY:

Tom Anderson testified that the slab elevation will be approximately 420' in elevation. This is significantly higher than the Base Flood Elevation of 411.3'. This request is for a 25' setback from the front yard setback in contrast to the previously approved 35' setback. The lot is very narrow from front to back. The septic system is on the neighboring property and has been constructed already. The 26' x 48' house will be constructed on a slab and will not have a crawl space.

EXHIBIT LIST:

Exhibit A	Zoning Permit Application # 51-13-T
Exhibit B	Property Survey
Exhibit C	Cross Section
Exhibit D	Site Plan
Exhibit E	Floodplain map
Exhibit F	FEMA Elevation Certificate
Exhibit G	Wastewater System Design Plans
Exhibit H	Notice sent to Adjacent Landowners dated September 3 rd and 4 th , 2013

Description of Project:

This project proposes to build a single family dwelling with attached garage at 2081 US RT 2, Waterbury.

1. The property is located within the Medium Density Residential (MDR) Zoning District where the minimum lot size requirement is 2 acres.
2. The lot pre-existed zoning and is 0.9 acres.
3. Building setbacks in the MDR District are as follows:
 - a. Front: 60' Side: 50' Rear: 50'
4. The proposed single family dwelling with attached garage requires a waiver from the front setback requirement to place the building outside the floodplain as the rear of the property is located within the floodplain.
5. The applicant sought and received zoning approval for the construction of a single-family house in 2006 under application #19-06-T but the house was not constructed.
6. The applicant sought and received zoning approval for the placement of fill and for the construction of a single-family house in 2007 under application #38-07-T. The fill was placed but the house not constructed.
7. The existing (not proposed) contour lines on the plans depict current conditions and placing the building 25' from the ROW for Route 2 will require no additional fill and no re-grading.
8. The base flood elevation on the property is 411.3 feet in elevation.
9. Based upon the FEMA Elevation Certificate, the lowest adjacent grade next to the building will be 413.5 feet in elevation and the top of the bottom floor will be 414 feet in elevation therefore the structure will not be located within the flood hazard area.
10. While the site plans indicate fill will be placed on the property, the applicant stated that the original site plans were based upon an initial concept where the building was to be located at least 35' from the ROW. Instead, placing the building 25' from the ROW will require no fill and no re-grading. The original contours lines are what will exist.
11. The applicant is seeking a 35' front setback waiver for the construction of a single family dwelling.
12. The new construction meets the districts other dimensional requirements.
13. Under the Waterbury Zoning Regulations, dated 4/15/2013, section 309 states:

... 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.

In order to give the applicant time to submit a revised site plan showing the correct contours, the Chair continued the hearing to October 3, 2013 at 7:15pm.

APPLICATION #44-13-T, DAVE LACHTRUPP/RIPLEY SPRINGS,

Jeff Larkin, the Chair, re-scheduled the continuation of Application #44-13-T, Dave Lachtrupp/Ripley Springs, LLC for Final Plat approval for a 2-lot subdivision off Woods Farm Road, Waterbury, VT (Tax Map # 14-084.080) for 6:30pm on Thursday October 3, 2013

APPLICATION #31-13-V, BLUSH HILL MEADOWS TEN, LLC

Jeff Larkin opened the Site Plan Review for Application #31-13-V, Blush Hill Meadows Ten, LLC

(to renew previous application #21-11-V) for a landscaped berm, pressure reducing vault and temporary staging area at 33 Kimberly Lane (off Blush Hill), Waterbury, VT. Dean Salvias and Frank vonTurkovich, applicants, and Margaret Lindsey, adjoining landowner, were in attendance.

Due to lack of proper notice by certified mail to some of the adjacent landowners on Crossroad, the Chair continued the site plan review to Thursday, October 3, 2013, at 7:45 p.m., and requested that the applicant notify those property owners by certified mail of the continuation of the site plan review at least 10 days prior to the date of the continuation.

REVIEW OF MINUTES:

MOTION:

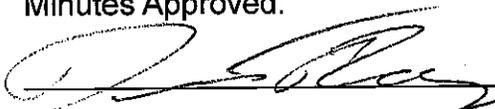
Mike Bard moved and David Rogers seconded the motion to approve the general minutes and decision for Jeffry Courchaine, Application #41-13-T, at the meeting held on September 5, 2013.

VOTE:

The motion was approved unanimously.

Jeff Larkin adjourned the meeting at 11:05 p.m.

Minutes Approved:

 Chair

Date: 10-3-13

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 *October 3, 2013.*

WATERBURY DEVELOPMENT REVIEW BOARD
Approved Hearing Minutes, Finding & Decision
Thursday, September 19, 2013

Board Members Present: Jeff Larkin, Chair; Jeff Grace, Martha Staskus, Mike Bard, David Rogers, Jeff Whalen

Staff Present: Steve Lotspeich, Clare Rock

8:00 p.m. **Application #22-13-V, John & Judith Woodruff of 18 East Street, Application #25-13-V Susan Mehrstens of 55 Clover Lane, Application #26-13-V, Janet Cote of 17 East Street, Waterbury,** for an Appeal of the Zoning Administrators determination that no permit is required for the use of 19 East Street, Waterbury, VT.

EXHIBITS:

- Exhibit A E-mail and letter from David Riegel requesting a determination from the ZA regarding the proposed use of 19 East Street, dated July 28, 2013
- Exhibit B Letter from Clare Rock, ZA to David Riegel stating that no permit is required for the proposed use of 19 East Street, dated July 30, 2013
- Exhibit C Copy of letter from Concerned Neighbors, dated July 30, 2013
- Exhibit D Application for Appeal from John and Judith Woodruff, dated July 30, 2013
- Exhibit E Letter from Riegel's to neighborhood, dated July 31, 2013
- Exhibit F Application for Appeal from Susan Mehrstens, dated August 8, 2013
- Exhibit G Application for Appeal from Janet Cote, dated August 8, 2013
- Exhibit H Letter from Interested persons, dated August 5, 2013
- Exhibit I Memo to DRB from C. Merriman, Attorney for Woodruff, dated Sept. 3, 2013
- Exhibit J Memo in Opposition to Appellants' pre-hearing memorandum, from Michael Russell, Attorney for Riegel's
- Exhibit K List of questions from Zalinger, attorney for Village Trustees
- Exhibit L Adjoining Landowner Letter sent by Woodruff's with Certified mail slips
- Exhibit M Adjoining Landowner Letter sent by Mehrstens with Certified mail slips
- Exhibit N Adjoining Landowner Letter sent by Cote with Certified mail slips
- Exhibit O Riegel's responses to Attorney Zalingers questions
- Exhibit P Letter to DRB from Appellant Mehrstens, dated September 9, 2013
- Exhibit Q Memo in opposition to memo of Appellant Cote, dated Sept 19, 2013
- Exhibit R Memo in opposition to memo of Appellant Mehrstens, dated Sept 19, 2013
- Exhibit S Supplemental memorandum in opposition to Woodruff from Russell 9 19 2013 & HCRS NOV 8-19-13 DEC from Russell Sept.19, 2013
- Exhibit T Statement from Janet Cote dated Sept.19, 2013
- Exhibit U Letter from Katie Borden dated Sept. 16, 2013
- Exhibit V Statement for DRB from Janet Cote, dated Sept. 5, 2013
- Exhibit W Statement by Susan Mehrstens, dated Sept. 5, 2013
- Exhibit X Rental Agreement
- Exhibit Y Appellants reply memo, dated Sept. 19, 2013
- Exhibit Z Affidavit of Mellissa Riegel-Garrett, dated Sept. 19, 2013

Attending for Appellants:

John & Judith Woodruff, Appellant, Charles Merriman, Attorney for Woodruff's

Susan Mehrstens, Appellant

Janet Cote, Appellant

Others in attendance:

Melissa Riegel Garrett, property owner, 19 East St	Tiffany Bell
David Riegel, brother of property owner	Laura Kessen
Andrew Gonyea, property manager, 19 East St	Caroll Spelke
Michael Russell, attorney for property owner	Scott Collins
Bill Reigel	Kathi Grace
Jacqueline Riegel	Everett Coffey
Lori Collins	Cody Lee
Roger Barr	Calvin Potter
Ann Barr	Nancy Potter
Bernadette Bloom	Bob Martin
Jaime Lemery	Erik Weinmann
Natalie Howell Sherman	Nicholas Miserendino
Edward Casey	Kelly Ross
Tom Strasser	Pamela Lowe
Charlotte Strasser	Jeff Courchaine
Bill Woodruff	Ann Courchaine
Mary Woodruff	Pauline Martin
Kate Finley Woodruff	Lawrence Sayah
John Woodruff	Gordon Wood
Jason Hart	Cynthia Felteh
Caroll Spelke	Joe Stukus
Josh Charbonneau	Tyler Hartz
Dan D'Amato	Edward Cosey
Evan Ostler	Tabbatha Henry
Curtis Ostler	Matthew Borden
Abby Fish	Kattie Borden
Paul Arnot	Jason J. Hart
Mollie Anctil	Randy Spiller
Megan Kirby	Daniel Falby
Kris Kingsbury	Chuck Sussman
Lisa Mugford	Dean Mannings
Molly Purvis	Janet Ainsworth
Tippy Lumbra	Ralph Ainsworth
Virginia Martin	Ann Lovald
Susan Chalmers	Jered Haage
Tory Ramsey	Adam Bellew
Anne Latulippe	Leighton Sullivan
Carly Craig	Mark Sikora
	Diane Sheridan
	John Woodruff IV

P. Anderson
Ron Clausen

Katie Borden

Press: Kristen Fountain, Waterbury Record
Erik Blaisdell, Times Argus

The continuation of the hearings for all three appeals was re-opened by Jeff Larkin, Chair at 8:00 p.m.

Jeff Larkin gave an overview of the procedure going forward. Jeff Larkin swore in all those that wanted to testify.

Janet Cote objected to the submittal of the Memorandum from Michael Russell.

Charles Merriman requested that the appellants have an opportunity to rebut the presentation by the property owner. Jeff Larkin stated that all those that signed up to speak at the hearing on September 5th and were unable to do so would be given the opportunity speak. Then the appellants would have the opportunity to rebut the presentation by the applicants.

Curtis Ostler who lives at the corner of Stowe St. and East St. asked if the three appeals were being heard together. Jeff Larkin said that all three appeals were being heard together. Curtis read a letter to the editor that was submitted and published in the Waterbury Record this week.

Evan Ostler testified that he has met with several of the residents of 19 East St. and has found them to be friendly and respectful. He does not believe that the neighborhood had deteriorated. He has had no experience with the claims of some of the neighbors regarding criminal activity associated with the house.

Carol Spillane is from Burlington and said that she is part of the sober community. She read a statement regarding definitions of family. Her statement advocated for a broad definition of family. She testified that she moved from an abusive nuclear family to a sober house. She said that was a very supportive environment that helped her reclaim her life.

Everett Coffey raised the concern that Robert's Rules of Order requires that people from outside the community have to request permission to speak in a public meeting. Steve Lotspeich and Mike Bard responded stating that this is a requirement for Town and Village Meeting but are not aware of any similar requirement in Robert's Rules of Order. Everett Coffey testified that the sober house should be reviewed as a profit-making business.

Kathi Grace testified that the Cubit house that was a residential care home on S. Main St. was inspected regularly by the state. She had questions regarding the limit of the number of people that can live in an apartment. Steve Lotspeich stated that Waterbury that does not have occupancy restrictions that limit the number of people that can live in an apartment.

Bill Woodruff, the Water Department Superintendent, stated that he has been involved in cases where he has had to count the number of bedrooms and beds in certain cases such as ski

hostels.

Melissa Riegel-Garrett testified that she decided to rent the house for a sober house due to the divorce that she is going through and family members that have succeeded in being sober. Her goal is to break even on covering the expenses for the house and if the house is full then the finances will work and she will break even. Occupancy in the house will go up no more than two people from the recent number of occupants.

David Riegel stated that he is open to taking questions. Janet Cote said that she has complained to the police department about the noise and the threats coming from residents of the house at 19 East St.

Mr. Merriman, representing the Woodruff's, stated that the use should be reviewed as a rooming house. He stated that the law requires that the project go through conditional use review.

A representative of Janet Cote read her statement. Her statement outlined the state definition of a sober house. Her concern is that there is no supervision, curfew, rules, enforcement, and counseling is available at 19 East St.

Michael Russell, representing the 19 East Street property owner, submitted a group of written materials. Charles Merriman objected to the submission of the additional materials. Jeff Larkin stated that if an item that is being submitted is from someone in the room, that would be acceptable. Charles Merriman objected to the supplemental Memorandum that was submitted today in that it was a sur-reply and should therefore not be entered in the record.

Joe Stukus, a resident of 19 East St., said that the neighbors have been accommodating. He understands that the neighbors would judge the residents of 19 East St. Joe stated that he talks to the Riegels on a daily basis and they follow the rules in the rental agreement. He said that the residents are respectful.

Tyler Hartz stated that this is his family since his own family is not supportive and is not a part of his daily life.

Mr. Casey said that he has two concerns. One is the definition of family. If the definition of family is only blood related then it excludes many situations where unrelated people rent an apartment together. He doesn't think it is the DRB's job to define family. He spoke about the destructive nature of addiction and the importance of the brotherhood and sisterhood of a sober house.

Tabatha Henry who lives on East St. and is a business owner in Waterbury testified. She hasn't seen any terrible things going on in the neighborhood and hopes that the neighbors would be respectful and welcoming to the residents of 19 East St. She stated that there are other houses in the area that are rented out to tenants. She said that she does not know if those tenants are blood related.

Kelly Ross lives at 20 East St. She is concerned that the proper zoning is applied. She read the definition of "change of use" from the Waterbury Zoning Regulations. She feels that the use has changed and does fit this definition. She wants to make sure that the Zoning Regulations are followed.

Dean Mannings stated that he is a life-long Vermonter. He is a friend of the Riegels and is an employee of Homeland Security. He trusts David Riegel. He stated that one in five people suffer from alcohol and drug addiction.

Jared Haage is a resident of 19 East St. He stated that he is a case worker for a non-profit agency. There is a curfew and other rules. He understands the fear that comes with having a sober house in a neighborhood.

Ann Latulippe from Duxbury stated that she is now sober and is very involved in the community. She stated that there are a lot of recovering addicts and alcoholics in the community that need support. She stated that the use of the house does not seem to be a significant change in use.

Gary Sweetser stated that he has someone living with him who is sober and it is very important to that person to have a home to live in.

Tiffany Bell from Burlington lives near sober houses and serves on the board of a sober house in Massachusetts. The ones she is familiar with are not rooming houses. The sober houses typically do not have full time on-site supervision and that is part of the program. Typically they are not permitted as rooming houses but exist as single family houses.

Kris Kingsbury stated that he is a recovering alcoholic and is a Navy veteran. He lives in Waterbury Center and has two successful businesses. He doesn't understand why the word "sober" would lower property values and feels that this is prejudicial.

Bill Woodruff stated that the use should be regulated as a rooming house. In addition, the sober house at 19 East St. is not a licensed facility and shouldn't be exempted from needing a zoning permit as a single-family residence.

Kate Finley Woodruff was raised in Vermont. She said that there is no better definition of a neighbor than the Woodruffs. She said that they are not judging the people living at 19 East St. She said that the lease arrangement is indicative of a transient population.

Mary Woodruff lives on Stowe St. She is the former Health Officer for Waterbury and currently works for a state agency that regulates care facilities. She said that the sober house should be regulated.

Pam Lowe lives at 21 East St. She feels that it is a change of use and needs a permit that would address traffic and other issues.

Katie Borden read her letter regarding the value of sober houses and the Oxford House system. She has mentored at sober houses and provides objective support. All sober houses

have a zero tolerance of drug and alcohol use. She testified that Andrew Gonyea is an accomplished mentor with his six years of experience.

David Riegel testified that 19 East St., Apt. 2 will in the basement level will be rented by the month similar to the way it has been done for the past ten years. 19 East St., Apt. 1 on the upper level will have six occupants. This is an increase of one person from the five occupants that lived in the apartment when Melissa Riegel-Garrett lived there recently. The occupants of Apt. 1 all sign the lease agreement. The shortest lease term is six months. Everyone pays a security deposit. Each individual also signs a rules document that commits them to those rules including sobriety. They also commit that if they break the rules they have a consequence that may include having to move out of the building.

A question was raised regarding whether drug and alcohol testing is indicative of a change of use.

A member of the audience testified that there are tenant houses on East Street that are rented by non-related individuals.

Jeff Larkin closed the public testimony portion of the hearing at 9:45 p.m.

MOTION:

Jeff Whalen moved and Mike Bard seconded the motion to go into a private deliberative session.

VOTE:

The motion was approved unanimously.

The Development Review Board conducted a private deliberative session.

MOTION:

Jeff Whalen moved and Jeff Grace seconded the motion to go out of the private deliberative session.

VOTE:

The motion was approved unanimously.

FINDINGS OF FACT:

1. The use of the property is continuing as a two-family dwelling.
2. There will be a comparable number of people in each of the units as compared to prior occupancy.
3. Each unit has its own kitchen and bathroom that are shared among the occupants. The occupants pool financial resources for operation of the households.
4. The bedrooms do not have locks on the doors.
5. The current occupants of the two units at 19 East St. meet the definition of "family" as defined in the Waterbury Zoning Regulations.

6. The six-month term of the lease is not so short that the occupants would be considered transient.
7. The house has sufficient parking because there are ten spaces available on the property and a minimum of three spaces are required by the Waterbury parking requirements.
8. The occupants of each separate dwelling unit are living independently as two separate household units and do not share any services or utilities between the two units.

CONCLUSION:

In conclusion the Development Board upholds the Zoning Administrator's decision that there has been no change of use and no zoning permit is required. This is based on the Findings of Fact, Exhibits, and testimony.

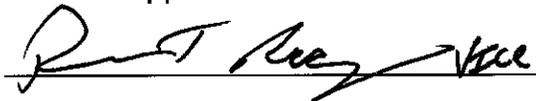
MOTION:

Jeff Grace moved and Jeff Whalen seconded the motion to uphold the Zoning Administrator's decision that no permit is required for the use of 19 East St., Waterbury, Vermont, thereby denying Application #22-13-V, John & Judith Woodruff of 18 East Street, Application #25-13-V Susan Mehrtens of 55 Clover Lane, and Application #26-13-V, Janet Cote of 17 East Street, Waterbury, for appeal.

VOTE:

The motion was approved unanimously.

Minutes Approved:

 , Chair

Date: 10-3-13

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THESE MINUTES WERE APPROVED ON *October 3, 2013.*