

**TOWN OF WATERBURY  
DEVELOPMENT REVIEW BOARD  
Approved General Minutes  
November 21, 2013**

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

Staff Present: Steve Lotspeich, Clare Rock, Patti Spence

**APPLICATION 43-13-V**

**Application #43-13-V, Alison Friedkin of Central Vermont Community Land Trust** (property owner: State of Vermont) for Site Plan and Conditional Use Review for the re-construction of Ladd Hall for 27 apartments located within the Village Mixed Residential and Interim Campus Overlay Zoning Districts, located at 103 South Main Street, Waterbury, VT (Tax map #19-409.000)

See attached minutes of the Hearing. The review was continued to Thursday, November 21, 2013 at 6:30 p.m.

**DISCUSSION OF Draft Rules of Procedure and Conflict of Interest Policy**

The conflict of interest section is being reviewed by the lawyer and a final draft will be available at the next meeting.

**Section VII**

the "interested party" wording was discussed and the use of action words vs statements. What if the Board missed reviewing or stating something in Section VII?

**Section X: Voting** - needs clarification and rewording. Is it necessary to audiotape the meetings?

**Section V: Alternate**

Confirm when an alternate can participate.

**REVIEW OF MINUTES:**

**MOTION:** Tom Kinley moved and Nat Fish second the motion to approve the CVCLT minutes of 11/7/13 and the general minutes of 11/7/13, both as amended.

VOTE: Passed unanimously.

Jeff Larkin adjourned the meeting at 8:23 p.m.

Minutes Approved:

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

Date: 12-5-13

THESE MINUTES WERE APPROVED ON \*December 5, 2013.\*

**TOWN OF WATERBURY  
DEVELOPMENT REVIEW BOARD  
Minutes, Findings & Decision  
November 21, 2013**

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Board Members Present: Tom Kinley, Acting Chair; Martha Staskus; Mike Bard; Jeff Whalen; Nat Fish

Staff Present: Steve Lotspeich, Clare Rock, Patti Spence

Application for Site Plan and Conditional Use for the reconstruction of Ladd Hall, located in the Village Residential Zoning District and within the Interim Campus Overlay District.

Permit Application #: 43-13-V  
Applicant: Alison Friedkin, Central Vermont Community Land Trust  
Landowner: Mike Obuchowski, Commissioner, VT Dept. of BGS  
Location of Project: formerly 103 South Main Street, Waterbury, VT,  
new address 36 State Drive, Waterbury, VT

The hearing was continued from 11/07/13 and was opened at 6:30 p.m.

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Attending for applicant and public on 11/07/13:

|                         |                             |
|-------------------------|-----------------------------|
| Kathy Beyer, Housing VT | Applicant, co-developer     |
| Alison Friedkin, CVCLT  | Applicant, co-developer     |
| Jessica Thyme, GBA      | Architect for Ladd Property |
| Jeffrey Larkin          | adjoining property owner    |
| Fred Messer             | adjoining property owner    |
| Miranda Orso            | Waterbury Record            |
| John Ostrum             | State of Vermont            |
| Michael Stevens         | State of Vermont            |
| Kevin Worden            | Engineer for Applicant      |

Attending for applicant and public on 11/21/13:

|                         |                             |
|-------------------------|-----------------------------|
| Kathy Beyer, Housing VT | Applicant, co-developer     |
| Alison Friedkin, CVCLT  | Applicant, co-developer     |
| Jessica Thyme, GBA      | Architect for Ladd Property |
| Jeffrey Larkin          | adjoining property owner    |

**EXHIBIT LIST:**

Exhibit A Zoning Permit Application #43-13-V  
Exhibit B Site Plan Permit Application #43-13-V  
Exhibit C Conditional Use Permit Application #43-13-V  
Exhibit D Additional applicant responses to Conditional Use Criteria  
Exhibit E Applicant responses to Campus Overlay District

- Exhibit F Parking agreement with State of Vermont for off-site parking, dated 10/7/2013
- Exhibit G Lighting Cut Sheets
- Exhibit H Memo from GBA listing submittals including Plan Set sheets, dated 10/7/2013
- Exhibit I Plan Set, dated 10/8/2013
- Exhibit J Notice sent to Adjacent Landowners dated 10/18/2013
- Exhibit K Act 250 Municipal Impact Questionnaire
- Exhibit L Supplemental Landscaping Plan

**Description of Project:**

The applicant is seeking site plan and conditional use approval for the redevelopment and change of use of Ladd Hall from State office use to a 27-unit, multi-family residential use.

The property was historically part of the VT State Complex at 103 South Main Street. Earlier in 2013, the State received zoning approval (under application #07-13-V) to subdivide off portions of the State Complex Property for divestment. Ladd Hall was subdivided off and is now located on a 0.99 acre/43,124.4 sf parcel. The newly created parcel has recently received a new E911 address, the new address is 36 State Drive, and the new owner will be the Central Vermont Community Land Trust.

**Testimony from 11/07/13:**

Allison Friedkin with the Central Vermont Community Land Trust (CVCLT) explained that this affordable housing project grew out of the Long-term Community Recovery planning process after Tropical Storm Irene.

Jessica Thyme, Architect with Gossens Bachman Architects gave a detailed description of the project. There is a system of paths that link the building to the sidewalk on S. Main St. The main access to the building will be at the rear of the building. There will also be a sidewalk along the rear of the building that will lead to a new sidewalk on State Drive. The existing parking lot will be narrowed in width and there will be fewer parking spaces than those that currently exist. All improvements will be on the site that CVCLT is purchasing from the State of Vermont. Regarding parking, there will one space allocated by CVCLT for each of the 27 units.

Jeff Larkin expressed concern about the limited number of on-site parking spaces and the possible impact on his adjacent multi-family building.

John Ostrum explained the pre-existing layout of the building had an entrance on the west corner of the building with a sidewalk directly out to S. Main St. That entrance and the sidewalk will no longer exist in that location.

The building has 12 one-bedroom, 13 two-bedrooms, and two three bedroom apartment. Kathy Beyer with Housing Vermont, that is a partner for the project, stated that their

experience with this type of affordable housing project has fewer cars than a more suburban multi-family project. Kevin Worden stated that they looked at providing more parking spaces on the site and it is not feasible.

The 9 off-site parking spaces will be on the State Office Complex. The nearest state lot is to the west and is close to the Ladd Hall site. The nine spaces will either be in that lot or along the east side of the Horseshoe Drive. The Act 250 permit for the State Office complex identifies that there are a few spaces more than have existed previously and there will be significantly fewer employees. The previous Ladd Hall office building had 60 employees working in it. The agreement with the state does not designate where the spaces will be located. Currently Weeks Hall that is adjacent to the Ladd Hall site is not programmed for specific offices.

The possibility of a fence along the property line to the west was discussed. The applicant does not want to create a wall between adjacent properties and the new apartments. A fence would also tend to collect trash. Additional landscaping with a solid line of shrubs along the western boundary was discussed.

Snow removal was discussed. The State Office Complex is plowed in the very early morning. CVCLT will plow in the early morning and during the day when residents have left the site. The trash and recyclables will all be handled in totes that will be in an enclosure. An allocation request for water and sewer is pending with the Village of Waterbury.

The lighting is more residential in character and is described in the Lighting cut Sheets.

The building elevations were discussed including the materials the main siding on the new building wing will be 4" and 6" fiber-cement or wooden clapboards, but will not be vinyl. The colors of the clapboards is yet to be determined. The materials and color of the third story of the new wing will mimic the third floor of the historic portion of the building that is being retained.

Fred Messier who owns a residential rental property across S. Main St. and is very concerned about the competition that this subsidized housing will provide. He is concerned that this will make it very difficult for him to rent his apartments when they become vacant. The issue of the role of affordable housing in the Waterbury community and the Long-term Community Recovery process was discussed. CVCLT did two housing needs studies as part of the planning and funding for the project. One study was done regionally and one examined the local housing needs.

The issue of the landscape buffer on the western side of the site was discussed. It was agreed that the applicant would prepare a landscape plan for a vegetative buffer along the northeast property boundary.

Testimony from 11/21/13:

The landscaping plan includes deciduous shrubs as needed to replace 7 trees, to the mutual benefit and agreement of the landowners.

There will be heat recovery units on the roof. The meters are in the building. The bulk of the mechanical room is in the basement.

Regarding the discharge of storm water runoff: there are two storm water drains in the parking lot and will runoff is towards Weeks Hall. The drains will be directed toward the storm water swale behind the Public Safety Building.

The goal with the landscaping is to improve the definition of the north side of the property. The property owner will maintain the property definition with the vegetative growth.

Testimony was closed on November 21, 2013 at 7:10 p.m.

Based on the application and exhibits the following finds of fact are presented:

- 1) Ladd Hall is located on a 0.99 acre property within the Village Mixed Residential (VMR) Zoning District and within the Interim Campus Overlay District.
- 2) The existing building comprises of an 1850's brick structure with a 1951 era, 14,000sf, 3-story brick addition and was utilized by the State as an office building.
- 3) The project proposed to demolish the 14,000sf, 3-story brick addition and rebuild a new 26,300sf, 3-story addition. The 1850 brick structure will be renovated.
- 4) The new and renovated building will be a multi-family residential building with 27 units.
- 5) Multi-family uses are subject to site plan review which addresses traffic, circulation, parking, storm water, landscaping. Multi-family uses are a conditional use within the VMR District and address additional impacts.
  - a. Vehicle access to the site will be from the historical south entrance to the complex; this driveway is newly named State Drive.
  - b. Pedestrian access into the building will be from the parking lot in the rear of the building. Secondary pedestrian access will be from South Main Street.
  - c. The parking requirements for 27 units are 1.5 spaces per unit = ~41 spaces. The existing parking lot will be reconfigured and will provide 31 on-site spaces (including 2 handicapped.) The State of Vermont has agreed to allocate 10 off-site spaces to total the required amount. See Exhibit F *Parking agreement with State of Vermont for off-site parking, dated 10/7/2013*
  - d. Traffic impacts are projected to be less than the previous use. As stated in Exhibit D, the office use generated 24 trips at peak hour; the residential use is anticipated to generate 18 trips at peak hour.
  - e. A bike rack will be installed in the rear of the building.
  - f. An enclosed/screened trash and recycling area will be located within the parking area.
  - g. A newly installed walkway will provide pedestrian from South Main Street.

- h. Plantings along the new walkway and along the rear handicap ramp will include a mix of hardy perennials and shrubs.
  - i. A shrub boarder will be planted along the northeasterly property boundary.
  - j. In the event that any existing vegetation along the north boundary doesn't survive construction the property owners will come to a mutual agreed upon replacement that will be installed by the applicant.
  - k. Three pole mounted light fixtures (SA4 and SA2) will illuminate the parking area and 3 recessed lights (F) will be recessed within the canopy over the rear entrance. One recessed light fixture (F) will also be located at each entrance (total of 3) at the front of the building. One bollard-like pathway light (SB) will be installed along the pedestrian path. See Exhibit G Lighting Cut Sheets and the lighting plan within Exhibit I.
  - l. The Site Plan Review criteria and the Conditional Use review is listed at the end of the Staff Report.
- 6) The proposed development is also located within the Campus Overlay District where the dimensional standards are as follows:
- Along the outside boundary of the Campus district, the setback shall be 15 feet for new structures and new additions to existing structures, and 5 feet for existing structures. Within the Campus Overlay District no other setbacks shall apply. The minimum lot size shall be 10,000 square feet. The maximum height shall be 50'. The maximum coverage shall be 30%.*
- AND** *The Density standard...for multifamily will be 30 units per acre and 30 units per building.*
- a. The front property line and western side property line follow the outside boundary of the Campus District. The side setback of the new building on the western side is 16 ft and therefore exceeds the setback requirement. The other setbacks do not apply.
  - b. The new addition will be 34'7" tall and does not exceed the Districts height requirement. The height of the addition is slightly shorter/lower than the existing height of the remaining 1850's brick building.
  - c. The project is required to meet the Secretary's of the Interior Section 106 Standards as the 1850's building is a contributing historic structure. This includes a review of the designs and materials. Additional information about the building materials are listed on Exhibit E.
  - d. The Campus Overlay District's Review Standards are listed at the end of this Decision.
- 7) Excerpts from Site Plan, Conditional Use, and Interim Campus Overlay are listed below:

Section 301                      Site Plan Review and Approval

*(f) The DRB will take into consideration the following objectives prior to approval or denial:*

*(1) Adequacy of traffic access. Considerations shall include:*

*(A) Traffic flows at the intersection of driveways or access roads with public roads and at other affected streets and intersections.*

*(B) Location of driveway entrances and exits so as to have sufficient sight distances.*

- (C) *The need for turning lanes, traffic-control devices, or special provisions for emergency vehicles.*
- (D) *Pedestrian safety and convenience.*
- (2) *Adequacy of circulation and parking. Considerations shall include:*
  - (A) *Assurance that the criteria of Section 414 of this bylaw are met.*
  - (B) *The need for additional off-street spaces beyond the number required in Section 414.*
  - (C) *The adequacy of surfacing and provisions for the runoff and discharge of stormwater.*
  - (D) *The provision of appropriate buffer space and landscaping to insulate parking areas from adjoining properties and public streets.*
  - (E) *Placement of trees and shrubs around the periphery of parking lots and in the interior so as to break up large parking areas. Large parking lots of 20 or more spaces shall include at least 1 tree for every 8 spaces.*
  - (F) *The adequacy of parking, loading, refuse, and service areas.*
  - (G) *Provisions for clearing snow for maintaining parking areas.*
- (3) *Adequacy of landscaping and screening. Considerations shall include:*
  - (A) *Adequacy of landscaping, screening, and setbacks with regard to achieving maximum compatibility with and protection for adjacent properties and public roads.*
  - (B) *Preservation of attractive or functional existing vegetation.*
  - (C) *The adequacy of landscaping materials to meet seasonal, soil, and topographical conditions.*
  - (D) *Reduction of lighting and glare to the necessary minimum, including provision of appropriate landscaping to reduce the impact of lighting and glare on adjacent properties*
  - (E) *Screening of unloading zones, trash bins, storage, and other service areas.*
  - (F) *The need for landscaping buffers, fences, or berms to reduce noise.*

Section 303                      Conditional Uses

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

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

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

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

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

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

### **ARTICLE XIII INTERIM CAMPUS OVERLAY DISTRICT**

#### **Section 1303 Dimensional Standards, Density, and Uses**

(a) The dimensional standards in the Campus Overlay District shall be as follows: Along the outside boundary of the Campus district, the setback shall be 15 feet for new structures and new additions to existing structures, and 5 feet for existing structures. Within the Campus Overlay District no other setbacks shall apply. The minimum lot size shall be 10,000 square feet. The maximum height shall be 50'. The maximum coverage shall be 30%.

#### **Section 1304 Review Procedure**

(a) Applications for development within the Campus Overlay District shall be reviewed concurrently with applications for site plan review in accordance with Section 301 of this bylaw. In the event the proposed development does not require site plan approval, the Development Review Board shall approve or disapprove an application of a project within forty-five (45) days from the close of the public review.

#### **Section 1306 Campus Overlay District Review Standards**

(a) Prior to granting approval under this Chapter, the Development Review Board shall find that the proposed development meets the following standards, where applicable:

(1) Historic Structures:

(A) Original materials or materials typical of the architectural style of the structures shall be preserved or replaced with like materials to the extent feasible and appropriate.

(B) Historic building features shall be preserved or replicated to the extent feasible and appropriate.

(2) New Buildings and Additions to Existing Structures:

(A) New building designs shall reinforce historic streetscape patterns, including orientation and setbacks. Building sites, including road and pedestrian networks, shall be designed in a manner that is integrated and compatible with adjoining parcels and areas.

(B) New buildings shall maintain overall height, size, massing, scale, and proportions compatible with those of buildings in the vicinity. New buildings shall incorporate building forms, lines, roof shapes, features, and materials compatible with those of buildings in the vicinity, but are not required to conform to a particular architectural style.

(C) New additions should be designed to complement and be compatible with, rather than detract from or obscure, the original structure.

(D) Buildings, or portions thereof, having eave heights of twenty (20) feet or less above ground level shall incorporate moderately to steeply pitched roofs, unless the Development Review Board determines that another roof type is appropriate.

(3) All development shall comply with the following standards:

(A) Project design shall reinforce a pedestrian streetscape through the provision, where appropriate, of such features as connecting walkways, landscaping and street trees, the incorporation of architectural features such as porches, store fronts and windows, and pedestrian-scaled street furniture and lighting.

(B) On-site utilities shall be buried and utility boxes shall be screened from public view if the utilities along the street serving that structure are also buried.

(C) Clearly defined pedestrian walkways shall be provided through parking areas, between buildings, and from public sidewalks to the site.

## CONCLUSION

Based upon these findings (and subject to the conditions set forth below) the Waterbury Development Review Board concludes that application #43-13-V for site plan and conditional use review for the reconstruction of Ladd Hall, located in the Village Residential Zoning District and within the Interim Campus Overlay District for 27-unit apartment building (tax map #19-409.000) meets the standards for section 301 site plan, section 303 conditional uses and 1303 and 1306 of the Interim Campus Overlay District.

## MOTION

On behalf of the Waterbury Development Review Board, Jeff Whalen moved and Nat Fish seconded the motion to approve application #43-13-V, for the construction of a multi-family structure located at 103 South South Main Street, with a new address to be 36 State Drive, Waterbury, VT, located in the Village Residential Zoning District and within the Interim Campus Overlay District (tax map #19-409.000) with the following conditions:

1. This permit is granted on the condition that the applicant completes the project consistent with the Board's findings and conclusions and the approved plans and exhibits.
2. Any lights on the interior of the building that are designed or directed so as to increase the amount of light outside of the building require a revision of the site plan.
3. Prior to the start of construction copies of the water and sewer allocation documents will be submitted to the zoning administrator for the zoning file.

VOTE: Approved unanimously.

Minutes Approved:

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

Date: 12.5.13

**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 \*December 5, 2013.\*

**Town and Village of Waterbury**  
**DEVELOPMENT REVIEW BOARD**  
***Draft Rules of Procedure and Conflict of Interest Policy***

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**Section I: Authority**

The Development Review Board of the Town and Village of Waterbury (the “Board”) hereby adopts the following rules of procedure (hereinafter referred to as the “Rules”) in accordance with 24 V.S.A. § 4461(a) and 1 V.S.A. § 312(e), (f), and (h).

**Section II: Policy**

These Rules are adopted to ensure consistent and fair treatment of applicants and interested persons, and participants, orderly and efficient public proceedings, and compliance with state and federal law. These Rules shall also ensure that no board member will gain a personal or financial advantage from his or her work for the board, and so that the public trust in municipal government will be preserved.

**Section III: Adoption & Amendments**

The Rules shall be those adopted by the Board in accordance with 24 VSA § 4461(a). Upon adoption of the rules, the Administrative Officer shall file a copy of these rules and all amendments with the City Clerk as a public record and post a record of the Rules in one or more public places.

These Rules may be amended at any regular or special meeting by a majority vote of the Board, provided that each Board member has been presented a written copy of the proposed amendment at least twenty-four (24) hours before the meeting at which the vote is taken.

**Section IV: Regular Officers**

The Board shall consist of seven (7) regular members. As soon as is practical following the annual Town Select Board appointments, or at other times throughout the year as needed, the Board shall hold an organizational meeting and elect from the appointed Board members by majority vote, a Chair, Vice Chair and Clerk.

- A. The Chair shall preside at all meetings, hearings, and deliberations, decide all points of order or procedure, and appoint members to any committee of the Board. The Chair may administer oaths and may request the attendance of witnesses and the production of material germane to any issue under consideration.
- B. The Vice Chair shall assume the duties of the Chair whenever the Chair is absent, or at the Chair's request. The Clerk shall assume such duties whenever the Chair and the Vice Chair are absent, or at their request.
- C. It shall be the duty of all Board members to review the minutes and other official records of Board meetings and actions, and correct and ratify these when appropriate and necessary.

- D. The Clerk shall take minutes of all meetings, unless delegated to staff.
- E. Upon majority vote, the Board may request that the legislative body remove a Board member from the Board. Board members may be removed for cause by the legislative body upon written charges and after public hearing. 24 V.S.A. § 4460(c).

### **Section V: Alternate Members**

The Selectboard shall annually, or as needed, appoint up to two alternates who may temporarily serve as Board members in the event of a recusal or absence of one or more members.

- A. An alphabetical roster of all alternate members shall be kept by the Board. The assignment of alternates will begin with the first alternate in alphabetical order and rotate through the list until all alternates have served and then the rotation will be repeated.
- B. Whenever a regular member recuses him or herself or is otherwise unable to serve on the Board, the Chair of the Board, or his or her designee, may appoint an alternate to serve temporarily as a member of the Board by selecting an individual from the roster as provided in Paragraph A, above. Whenever necessary for the Board to conduct its business or to take an official act, the Chair of the Board, or his or her designee, shall appoint an alternate to serve temporarily as a member of the Board by selecting an individual from the roster as provided in Paragraph A, above.
- C. If the Chair of the Board does not appoint an alternate as permitted or required under Paragraph B, a majority of the members of the Board present and voting may appoint an alternate to serve in accordance with Paragraph B.
- D. An alternate member who is appointed to serve temporarily as a Board member shall be required to be a Board member from the time of the first meeting until a final decision is made on any application heard by the Board during the time period that the alternate was appointed as a Board member and shall participate in the review of and decision on such applications. Participation includes attending deliberative sessions and any continuance of a public hearing if the application has been tabled or adjourned to another date.
- E. The Board may decide at any point in its review of an application that it would like to request that an alternate be appointed temporarily as a Board member to participate in the review of and decision on said application. Any alternate appointed for this purpose may participate in the decision on an application only if he or she has reviewed the audiotape of the proceedings and any evidence submitted. If the Board has closed the hearing on the application, the Board may reopen the hearing if the Board determines that additional information or evidence is needed before it can make a decision.

### **Section VI: Regular and Special Meetings**

Regular meetings to conduct business of the Board shall be held in the municipal offices at 6:30 p.m. on the first and third Thursdays of the month, or as warranted. The Chair may cancel meetings at any time.

- A. Special meetings may be called by the Chair, provided at least twenty-four (24) hours notice in advance is given to each Board member and the time and place of each special meeting is publicly announced at least twenty-four (24) hours before the meeting.

- B. A quorum shall consist of a majority of the entire board.
- C. Board members may participate by telephone as long as the absent member can hear everything that is occurring at the meeting and everyone present at the meeting can hear the Board member.
- D. All meetings shall be open to the public unless the board, by majority vote, has entered a deliberative or executive session. The board may only hold an executive session pursuant to the reasons permitted by 1 V.S.A. § 313, and only after a majority vote to enter executive session.
- E. There shall be an agenda for each meeting, with time allotted for each item or group of items to be considered. The Chair shall determine the content and order of the agenda.
- F. All business shall be conducted in the same order as it appears on the agenda, except that by consent of a majority of the Board, the Chair may alter the order of items to be considered and/or the time allotted.
- G. At each meeting, there shall be a ten minute period of time reserved for public comment near the end of the meeting. The Chair may extend or reduce this period of time as necessary. Speakers may participate at other times throughout the meeting but only when recognized by the Chair. Such comment shall be limited to three minutes per speaker, unless by majority consent the Board sets a different time limit. The Board shall apply consistent time limits to all recognized to speak.
- H. The Chair shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 V.S.A. § 312(h).
- I. The Board shall convene a joint meeting at least once a year with the Waterbury Planning Commission to discuss adoption, amendment, or repeal of the bylaws and other regulatory tools.
- J. Notice for hearings on the adoption, amendment, or repeal of the bylaw and other regulatory tools shall be pursuant to 24 V.S.A. § 4444, as amended.

## **Section VII: Public Hearings and Order of Business**

Public hearings shall be conducted as quasi-judicial proceedings pursuant to 1 V.S.A. § 310(5)(B). Hearings shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1), (2), as amended. The Chair should conduct the hearing in the following manner:

- A. Open the hearing by reading the warning of the hearing, as it appears on the agenda.
- B. Review the order of events, remind all present that the proceeding will be conducted in an orderly manner, and make copies of these Rules available.
- C. Request disclosure of conflicts of interest and ex parte communications.
- D. Review the definition of interested persons in 24 V.S.A. § 4465(b).
- E. Explain that, pursuant to 24 V.S.A. § 4471(a), only an interested person who has participated in this proceeding may take an appeal of any decision issued in this proceeding.
- F. Ask all who believe they meet the definition of interested person to identify themselves and to provide contact information. The Board shall only make determinations as to party status in proceedings for appeals of administrative officer decisions. As these Rules do not differentiate between persons with interested person status and those without, anyone seeking to participate in a proceeding may do so, subject to these Rules and those

established by the Chair. Members of the public who are not interested persons may offer comment on an application, after recognition by the Chair. The Chair shall limit such public comment to three (3) minutes per speaker, unless by consent of a majority of the Board, the Board sets a different time limit. The Board shall apply consistent time limits to all recognized to speak.

- G. Direct the applicant or his/her representative and all interested persons to step forward and take the following oath: *I hereby swear that the evidence I give in the cause under consideration shall be the whole truth and nothing but the truth so help me God (or, under the pains and penalties of perjury).*
- H. Accept written information presented to the Board.
- I. Invite the applicant or applicant's representative to present such application or proposal.
- J. Invite Board members to ask questions of the applicant or applicant's representative.
- K. Invite interested persons and members of the public to present their information regarding the application or proposal.
- L. Invite the applicant or applicant's representative to respond to information presented.
- M. Invite more questions or comments from members of the Board.
- N. Invite more questions from interested persons and members of the public.
- O. Allow final comments or questions from the applicant or his/her representative or members of the Board.
- P. Upon motion and majority approval, the Chair shall either adjourn the hearing to a time certain, or close the proceedings by stating that this is the final public hearing on the matter.

### **Section VIII: Site Visits**

Site visits shall be open to the public; however, no testimony shall be taken and no ex parte communication shall occur. Site visits shall be held pursuant to the following conditions:

- A. If, prior to a hearing, the Chair determines that a site visit will be necessary, the site visit shall be scheduled immediately prior to a public hearing. Such site visits shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1), (2).
- B. If necessary, the board may recess a hearing to conduct a site visit at a property which is the subject of an application before the board.
- C. If necessary, the board may adjourn a hearing to a time certain to conduct a site visit at a property which is the subject of an application before the board.
- D. The minutes of the proceeding shall reflect that a site visit was held, who was present, and the nature and duration of the site visit.

### **Section IX: Service List**

The staff shall create a list of all individuals who participated. The list shall include those who participated orally and those who participated in writing. All decisions of the Board shall be mailed to those on the list. The list shall include:

- A. The names of those who participated in the proceedings.
- B. The nature and content of participation by those who participated.
- C. The mailing address of each of these persons.

### **Section X: Voting**

Members of the Board who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not vote. Except that absent Board members may participate if they have reviewed the audiotape and minutes of the proceedings, and any evidence submitted. The following rules shall apply to voting on decisions:

- A. Motions shall be made in the affirmative.
- B. The Chair has the same voting rights as all members and can make motions.
- C. A motion and a second shall be required for a motion to have the floor.
- D. All Board members present are expected to vote unless they have recused themselves.
- E. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
- F. For a motion to pass, it must receive the concurrence of a majority of the entire Board, regardless of how many are present. 1 V.S.A. § 172; 24 V.S.A. § 4461(a).

### **Section XI: Decisions**

The decision shall set forth the findings of fact and conclusions of law reached by the Board on the matter.

- A. The decision shall be reviewed and signed by the member of the Board who presided as the Chair or Vice Chair at the hearing if it accurately reflects the Board's findings of fact and conclusions of law, and any applicable conditions as determined by the Board.
- B. The Board may attach additional reasonable conditions, safeguards, and time limitations necessary and appropriate under the circumstances to implement the purposes of the Vermont Planning and Development Act and the Town's plan and bylaws. 24 V.S.A. § 4464(b)(2).
- C. The Board shall issue a written decision within forty-five (45) days of the adjournment of the public hearing. 24 V.S.A. § 4464(b)(1).
- D. The Board may reject an application for rehearing or reconsideration without a hearing and render a decision thereon, which shall include findings of fact within ten (10) days of the date of filing of the application if (a) the Board concludes the issues raised by the applicant in his or her application have been decided in an earlier appeal, and (b) there has been no substantial change in the evidence, facts, regulations, law or circumstances of the case. The decision shall be rendered, or notice given, as in this Section.

### **Section XII: Conflicts of Interest**

Participation, disclosure of conflicts, and recusal shall be governed by the Town of Waterbury Conflict of Interest Policy, as adopted on March 18, 2013, as amended.

### **Section XIII: Ex Parte Communications**

Ex parte communication is prohibited. Any Board member who inadvertently conducts ex parte communication must disclose such communication as required below:

- A. At each hearing, the Chair shall request that members disclose any ex parte communications. Board members who have received written ex parte communications

shall place in the record copies of all written communications received as well as all written responses to those communications.

- B. Members shall prepare a memorandum stating the substance of all oral communications received, all responses made and the identity of each person making the ex parte communication, which shall become a part of the record of the proceedings.

#### **Section XIV: Attendance**

If any Board member misses more than one-third of the meetings in any consecutive three-month period, the Board may recommend that the Selectboard replace that member.

#### **Section XV: Definitions**

- A. "Board" means the Development Review Board.
- B. "Board member" means a regular member of the Development Review Board or an alternate who has been appointed to serve temporarily as member of the Development Review Board.
- C. "Conflict of interest" shall have the same meaning as used in the Town of Waterbury Conflict of Interest Policy, as adopted on March 18, 2013, as amended.
- D. "Deliberative session" means a private session of the Board to weigh, examine, and discuss the reasons for and against an act or decision, from which the public is excluded. There shall be no taking of evidence or submission of testimony, nor need a deliberative session be publicly noticed. By motion and majority vote, the Board may enter deliberative session during a hearing to consider a matter before it.
- E. "Executive session" means a session of a public body from which the public is excluded, pursuant to 1 V.S.A. § 313. Such private session may only be held for one of the reasons permitted by the statute, and no binding action may be taken in executive session.
- F. "Ex parte communication" means direct or indirect communication between a member of an appropriate municipal panel and any party, party's representative, party's counselor or any person interested in the outcome of any proceeding before the panel, that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding.
- G. "Official act or action" means any legislative, administrative or quasi-judicial act performed by the Board.
- H. "Recuse" means to remove oneself from a particular board proceeding because of a real or perceived conflict of interest.

Adopted by the Development Review Board on \_\_\_\_\_ day of \_\_\_\_\_, 2013

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Jeffrey Larkin, Chair,  
Development Review Board