

**WATERBURY DEVELOPMENT REVIEW BOARD**  
**General Minutes—March 6, 2019**

Board members present: Dave Frothingham (Chair), Dave Rogers, Mike Bard, Bud Wilson, and Andrew Strniste.

Staff present: Dina Bookmyer-Baker (ZA), Patti Spence (Secretary).

Dave Frothingham, Chair, opened the meeting at 6:35 p.m. in the Steele Community Room in the Municipal Center, 28 North Main Street, Waterbury, VT. The meeting was audio recorded. Several items on the agenda were marked as “to be continued, date specified” and are noted below.

1) **#009-19: Sonja Garon** (applicant), **Dunvegan Associates LLC** (owner)  
Site Plan review for a change of use to include a hair salon (BGB) in a portion of the existing mixed-use building at 55 S. Main St., Waterbury, VT. (DC/DDR-HC zoning/overlay districts)

*This hearing was continued to March 20, 2019 at 6:30 p.m.*

2) **#007-19: Ben & Jerry’s Homemade Inc.** (owner/applicant)  
Site plan and conditional use review to change the use and renovate an existing accessory structure to include an employee training conference center at 1281 Waterbury-Stowe Road, Waterbury, VT. (VCOM/RT100 zoning districts)

Testimony:

1. The DRB requested some screening and the applicant's representative agreed.
2. The DRB suggested the designated handicap parking spot be marked as “employees only”.

*Hearing minutes and decision under separate cover.*

3) **#123-18: Ben and Jeremy Ayers** (applicant), **Ayers Family Legacy LLC** (owner)  
Site Plan, Conditional Use, and Special Flood Hazard Area review to change the use of existing structures to multi-family and an espresso shop at 18 Elm Street, Waterbury, VT. (DC/VR/SFHA zoning/overlay districts) —*Cont. from 1/9; Applicant requests to be continued to 4/17/19.*

*This hearing was continued to April 17, 2019 at 6:30 p.m.*

4) **#002-19: Marc & Heather Palmer, Marc George Palmer Revocable Trust**  
(applicant/owner)  
Minor Ridgeline review and setback waiver request/building zone revision to construct a single-family dwelling and attached garage on Lot E Wood Farm Road, Waterbury Center, VT. (LDR/RHS zoning/overlay districts) —*Cont. from 2/6;*

*This hearing was continued to March 20, 2019 at 6:30 p.m.*

5) **#006-19: Nick Lizotte/VTRE 26 Union Street LLC** (applicant/owner)  
Site Plan and Conditional Use review to convert a residential care home to multi-family at 26 Union Street, Waterbury, VT. (VR zoning district) —*continued from 2/20/19.*

Testimony:

3. A new parking plan was provided, exhibit C.

*Hearing minutes and decision under separate cover.*

**Approval of prior meeting minutes and decision:**

Mike Bard moved and Dave Rogers seconded to approve the general minutes of February 20, 2019 and the hearing decision for Application #005-19, as amended.

Passed 5 - 0

**Adjournment:** The meeting was adjourned at 8:05 pm.

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

Approved on: 3/20/19  
(date)

**Next meetings:**

Wednesday, March 20, 2019, 6:30 p.m. (Final order TBD)

- #013-19: J. Campbell, setback waiver, dwelling addition, 231 Mountain View Dr. (LDR)
- #014-19: K. Renele, SP-CU establish multi-family, 14 Stowebury Rd. (RT100)
- #016-19: A. Flint/Winter Woods, 6-lot SD, Guptil Rd. (TMR/MDR)
- #002-19: Palmer, Wood Farm Rd, setback waiver, minor RHS dwl-gar (LDR/RHS) – continued from 2/6
- #009-19: Garon/Dunegan LLC, SP chu: hair salon, 55 S. Main St (DC/DDR-HC- continued from 2/6

Wednesday, April 3, 2019, 6:30 p.m. (application due date: Mon. 3/4/19)

- (Other agenda items) #095-18 Final-plat review for Fuller/Walk BLA Stagecoach Lane (CNS/RHS) (due to ZA by 3/27)

Wednesday, April 17, 2019, 6:30 p.m. (application due date: Mon. 3/18/19)

- #123-18: Ayers, SP/CU/SFHA 3 apts., espresso shop, 18 Elm St. (DC/VR/SFHA) — continued from 1/9/19.

**Town of Waterbury  
Development Review Board  
Decision #007-19 - March 6, 2019**

**In Attendance:** Board members David Frothingham (Chair), Dave Rogers, Mike Bard, Bud Wilson, and Andrew Strniste. Staff attending: Dina Bookmyer-Baker (ZA) and Patti Spence (Secretary). Alyssa Johnson (Economic Development Director) was also present.

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Owner/Applicant:	Ben & Jerry's Homemade Inc.	
Address/Location:	1281 Waterbury-Stowe Road, Waterbury, VT	
Zones:	Village Commercial (VCOM) & Route 100 (RT100)	
Application #	007-19	Tax Map # 13-110.000

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**Applicant Request**

The applicant seeks approval to change the use and renovate an existing accessory structure to house an employee training conference center in addition to the existing company store.

**Present and sworn in:**

Dereck Woolridge, applicant consultant, Cross Consulting Engineers  
Kaitlyn Evarts, owner's representative, PC Construction

**Exhibits**

- A: Application #007-19 (4 pages: zoning, site plan, conditional use), submitted 1/29/19.
- B: Site Plan and conditional use criteria, submitted 1/29/19.
- C: Site Plans (Overall, Site Layout, Grading, Landscape & Lighting, Details, and Gravel Wetland), prepared by Cross Consulting Engineers, dated 1/14/19; Landscape & Lighting Plan (C4), revised 3/11/19.
- D: Lighting specification sheets for bollard, ceiling-mounted, and wall-mounted light fixtures, by BEGA & Louis Poulsen Lighting.
- E: Orthophoto of property and structures. (Staff)
- F: Letter to adjoining landowners, mailed certified on 2/15/19.

**Findings of Fact**Existing conditions: Ben & Jerry's Homemade, Inc. owns a 46.7-acre parcel developed with a 54,000 SF industrial plant, related structures, and a small out-building currently used for office and the company store. The property is in the Village Commercial (VCOM) and Route 100 (RT100) zoning districts. The small building is located on the portion of the site that is in the VCOM zoning district. The lot is served by the municipal water and wastewater systems.

- 2. Project: The proposal is to renovate the existing offices and company store within a small out-building to be used as a conference center for employees for training (Pint University). The company store that is currently on the first floor will be moved to the lower level. Exterior improvements include rebuilding the main entrance, adding an access ramp, relocating the gravel walkway, adding a gravel patio to the lower level, removing the existing back porch on the first floor and constructing a larger deck in its

place. Cosmetic improvements will be made to the garage and new lighting is proposed.

3. Site Plan Review and Approval, Section 301: The project does not enlarge the existing structure, but the renovations to the front entrance, access ramp, walkway, rear patio, and deck, impact the pedestrian access and safety. The Board considered the following criteria:
  - a. Traffic access and pedestrian safety, Section 301(f)(1) (A-D): Vehicular access to the site will remain unchanged and the Applicant does not anticipate that the proposed change of use will increase the number of trips generated. Pedestrian access is improved by the changes to the walkways, access ramp, and patio.
  - b. Circulation and parking, loading, refuse, and service areas, Section 301(f)(2) (A-G): The employee parking area provided north of the visitor parking is sufficient to accommodate all employees using the training center and store.
  - c. Adequacy of landscaping, screening, and lighting, Section 301(f)(3)(A-F): The existing landscaping around the building is mature and sufficiently screens the building from Route 100. The bollard lighting for the walkway, the building and patio lighting have full cut-off fixtures (Exhibit D). The Applicant states that the lighting is designed to provide minimal lighting for security while respecting the intent of the Regulations (Exhibit B1).
  - d. Uses in the Route 100 District, Section 301(g)–(h): The project and structure are located in the VCOM zoning district.
  - e. Special considerations for uses of property bordering Route 100, Section 301(j): The design minimizes the impact to Route 100 by maintaining the mature landscaping along Route 100 and using full cut-off fixtures.
4. Conditional Use criteria, Section 303: The existing facility is a conditional use. The Board considered the following general and specific standards as per Applicant's Exhibit B2.

**Conclusion:**

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Ben & Jerry's Homemade, Inc. to change the use and renovate an existing accessory structure at 1281 Waterbury-Stowe Road, as presented in application #007-19 and supporting materials, meets the Site Plan Review and Conditional Use criteria set forth in Sections 301 and 303.

**Motion:**

On behalf of the Waterbury Development Review Board, Mike Bard moved and David Rogers seconded the motion, to approve application #007-19 with the following conditions:

- (1) The applicant shall complete the project in accordance with the Board's findings and conclusions and the approved plans and exhibits.

- (2) All exterior lighting shall be downcast and shielded.
- (3) Except as amended herein, this approval incorporates all Findings of Fact, Conclusions of Law, and Conditions in all previous approvals.
- (4) A revised landscaping plan shall be provided to the Zoning Administrator.

**Vote:** The motion passed 5-0.

David L. Forthugh  
(Chair) (Vice-Chair) (Acting Chair)

4/3/2019  
(date)

This decision was approved on April 3, 2019.

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](mailto:pete.kopsco@vermont.gov), and the appropriate state agencies to determine permits that must be obtained.

**NOTICE:** *This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. An appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.*

**Town of Waterbury**  
**Development Review Board**  
**Decision #006-19 - February 20 / March 6, 2019**

**In Attendance:** (2/20/19) Board members present: David Frothingham (Chair), Mike Bard, Bud Wilson, and Andrew Strniste. Staff present: Dina Bookmyer-Baker (ZA) and Patti Spence (Secretary). Alyssa Johnson (Economic Development Director) was also present. (Board member Dave Rogers recused himself for this application.)

(3/6/19) Board members present: David Frothingham (Chair), Mike Bard, Bud Wilson, and Andrew Strniste. Staff present: Dina Bookmyer-Baker (ZA) and Patti Spence (Secretary). Alyssa Johnson (Economic Development Director) was also present. (Board member Dave Rogers recused himself for this application.)

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Owner/Applicant:	Nick Lizotte, VTRE 26 Union LLC	
Address/Location:	26 Union Street, Waterbury, VT	
Zoning District:	Village Residential (VR)	
Application #	006-19	Tax Map # 19-222.000

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**Applicant Request:**

The applicant seeks approval to convert the existing nonconforming use as a residential care home at 26 Union Street to a multi-family dwelling with four apartments.

**Present and sworn in:**

(2/20/19) Nick Lizotte, Applicant, member/manager VTRE 26 Union LLC  
George McCain, Consultant (McCain Consulting Inc.)  
Karen and Rick Weston, adjoining landowner  
Patti Tomeny, adjoining landowner  
Mark Alberghini, adjoining landowner  
James King, adjoining landowner

(3/6/19) Nick Lizotte, Applicant, member/manager VTRE 26 Union LLC  
George McCain, Consultant (McCain Consulting Inc.)  
Mark Alberghini, adjoining landowner  
James King, adjoining landowner  
Karen Weston, adjoining landowner

**Exhibits**

- A: Application #006-19 (6 pp: Zoning Permit, Site Plan, Conditional Use), submitted 1/21/19.
- B: Project narrative, prepared by McCain Consulting, Inc., dated 1/21/19.
- C: Site Plan for VTRE 26 Union LLC, prepared by McCain Consulting, Inc., Sheet C-1, dated 1/21/19, revised 2/26/19.
- D: Floor plans, First & Second Floor (existing), prepared by Justin Bourne, dated 11/12/18;  
Floor plans, First & Second Floor (proposed), prepared by Justin Bourne, Sheets A1-A2, dated 2/26/19.
- E: Orthophotos of parcel boundaries and zoning districts and assessor photos. (Staff)

- F: Copy of prior DRB decision for zoning permit #031-16-V, DRB hearing 1/4/17, for reference. (Staff)  
G: Letter to adjoining landowners, mailed certified on 2/1/19.  
H: Letter to ZA & DRB from adjoining landowners Karen and Rick Weston, dated 3/6/19.

**Findings of Fact:**

1. Existing conditions: VTRE 26 Union LLC owns a 0.53± acre parcel with 200± feet of frontage on and three access drives to Union Street. The property is developed with an existing two-story 5,053± SF residential building, driveways, and parking areas. The property is served by municipal water and septic and is in the Village Residential (VR) zoning district.

Background: The existing residential-style building had been operating as a residential care home since 1992. In 1998, the facility obtained site plan approval from the Planning Commission to add an entry foyer, access ramp, elevator, and upstairs landing; and conditional use approval from the Zoning Board of Adjustment to increase the overall capacity to serve 12 residents (zoning permit #039-98-V). In 2016, the facility obtained DRB approval to expand the nonconforming use from 10 to 11 residential bedrooms for a total occupancy of 14 residents (zoning permit #031-16-V). The facility was licensed by the State to serve not more than 14 residents. In November 2018, the structure was vacated and its use as a residential care home was abandoned.

2. Project: The project makes no change to the building exterior, but proposes to convert the existing 14-resident care home into four residential apartments. Existing on-site parking areas will be reconfigured and expanded to accommodate twelve parking spaces (Exhibit C).
3. General Dimension, Location, and Height Requirements, Section 504: In the VR zoning district, the minimum lot size is 10,000 SF for a one-family dwelling, 15,000 SF for a two-family dwelling, and 20,000 SF for other uses. At 23,086 SF, the lot meets the minimum lot size for “other uses,” which would include a multi-family dwelling (although multi-family is not a permitted use in VR, see next paragraph).
4. Table of Uses, Section 503: In the VR zoning district, a Nursing/Community-Care Home (definition below) that serves more than eight residents is not a permitted use; therefore, it is considered a nonconforming use. A multi-family dwelling is not a permitted use in VR. Applicant seeks approval to change one nonconforming use to another nonconforming use.

*(definition) Nursing/Community-Care Home: An extended- or intermediate-care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness, or infirmity, are unable to care for themselves.*

*(definition) Multiple-Family Dwelling: Detached, attached, or semi-attached buildings in which three or more families are living independently on the same lot. May include family dwelling, condominium, or planned unit development.*

5. Nonconforming Uses and Noncomplying Structures: The existing and proposed uses are nonconforming.

Section 304(a)(1): The Board may allow a nonconforming use to be changed to another nonconforming use if it finds the change to be more conforming with the district requirements and allowable uses. The proposal includes creating four dwelling units with a total number of 12 bedrooms. Additional municipal water or sewer allocation will not be required (project narrative, Exhibit B). The proposal will increase and the total number of parking spaces to 10. The proposed use requires fewer parking spaces than the previous use. The residential care home for 14 residents and five staff required eight parking spaces; a multi-family dwelling of four 3-bedroom units requires six parking spaces and 10 are proposed.

Section 304(a)(2): The project includes reconfiguring the access drives and expanding the two parking areas that provided a total of eight parking spaces to provide ten on-site parking spaces. The Board considers this as an extension of a nonconforming use. A nonconforming use may be extended (see definition) with the approval of the DRB, which must find that the proposed nonconforming use meets the general and specific standards for conditional uses specified in Section 303.

*(definition) Nonconforming Use: A use of land or a structure that does not comply with all zoning regulations where such use conformed to all applicable laws, ordinances, and regulations prior to the enactment of such regulations.*

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

6. Site Plan Review and Approval, Section 301: As the proposal involves changes to vehicular access and circulation, parking lot and driveway construction, expansion, or relocation, and pedestrian access and safety, it is subject to site plan review. The Board considered the following:
  - a. Traffic access and pedestrian safety, Section 301(f)(1) (A-D): Vehicular access will continue to be via the existing curb cuts on Union Street. A sidewalk exists along the property frontage on Union Street; the pedestrian flow along Union Street will remain unchanged (Exhibit C).
  - b. Circulation and parking, loading, refuse, and service areas, Section 301(f)(2) (A-G): There is little change to the vehicular circulation to and within the site, although more parking spaces are provided to serve the change of use. The site plan shows 12 parking spaces, which is more than required. See compliance with the parking regulations in Section 414, in paragraph 7, below. Refuse dumpsters are not shown. The facility owner has not decided the refuse needs for the change of use and will site appropriate refuse containers accordingly. Areas for snow storage are marked on the Site Plan (Exhibit C). Service areas are not needed for the proposed use.
  - c. Landscaping, screening, and lighting, Section 301(f)(3) (A-F): The site is developed. Changes to the parking layout will not disrupt the green space and landscaping for the building or the mature trees along Union Street (Exhibit D: Lister photos). No additional or change to the existing exterior lighting was proposed.
7. Parking Regulations, Section 414: The previous use as a residential care home required 8 parking spaces. The proposed change of use is for four 3-bedroom units. Each dwelling unit of 2 or more bedrooms



requires 1.5 parking spaces. A total of 6 parking spaces are required to serve the proposed use. The proposed project includes 10 on-site parking spaces.

8. Conditional Use criteria, Section 303: The existing use as a residential care home serving more than eight residents is nonconforming in the VR zoning district. A multi-family dwelling is not an allowed use in VR. A proposal to convert a nonconforming use to another nonconforming use, as well as extend a nonconforming use, is reviewed as a conditional use. Prior to granting approval for a conditional use application, the Board must find that the proposed use conforms to the general and specific standards below. See Applicant's response to the conditional use criteria, Exhibit A6.
  - a. Section 303(e)(1) Community facilities: The Applicant responds that creating four 3-bedroom dwelling units and will not unduly increase the traffic, does not require additional municipal water or sewer allocation, will not burden the school system, and will not increase the demand for fire protection.
  - b. Section 303(e)(2) Character of the area: No exterior changes are proposed to the existing building. The structure has been used to provide elderly care for more than 25 years, and most-recently, for 14 residents. The Applicant responds that proposed conversion of the existing use will not have an undue adverse impact on the character of the area and cites proposed changes to the Waterbury Zoning Regulations (Exhibit A6).
  - c. Section 303(e)(3) Municipal bylaws in effect: This application is before the Board to comply with the site plan and conditional use criteria.
  - d. Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: Residential uses typically do not create the above-named nuisances, and therefore, no devices or special methods are proposed to control these impacts.
  - e. Section 303(h) Removal of earth or mineral products conditions: The proposed use does not include earth removal activities. This provision does not apply.

**Conclusion:**

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Nick Lizotte and VTRE 26 Union LLC to convert the residential care home to a multi-family dwelling at 26 Union Street, as presented in application #006-19 and supporting materials, meets the Site Plan and Conditional Use criteria set forth in Sections 301 and 303.

**Motion:**


On behalf of the Waterbury Development Review Board, Mike Bard moved and Bud Wilson seconded the motion to approve application #006-19 with the following conditions:

- (1) The Applicant shall complete the project in accordance with the Board's findings and conclusions and the approved plans and exhibits.

- (2) All proposed exterior lighting shall be downcast and shielded.
- (3) Except as amended herein, this approval incorporates all Findings of Fact, Conclusions of Law, and Conditions in zoning permit #31-16-V.
- (4) All trash receptacles shall be screened by a small fence or vegetative screen.
- (5) No permanent trash receptacles shall be located on the street side.
- (6) The lower parking lot shall include a hedge and diversion berm between the property and the Weston property.

**Note:** The motion passed 4-0. (Board member Dave Rogers recused himself.)

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

  
\_\_\_\_\_  
(date)

This decision was approved on March 20, 2019.

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](mailto:pete.kopsco@vermont.gov), and the appropriate state agencies to determine permits that must be obtained.

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