

WATERBURY DEVELOPMENT REVIEW BOARD
General Minutes—March 20, 2019

Board members present: Dave Frothingham (Chair), Dave Rogers, Bud Wilson, and Andrew Strniste.
Staff present: Dina Bookmyer-Baker (ZA) and 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. One item on the agenda was marked “to be continued, date specified” and is noted below.

- 1) **#013-19: Jennifer Campbell** (owner/applicant)
Setback waiver request for an addition to an existing dwelling within the setback at 231 Mountain View Drive. (LDR zoning district)

Hearing minutes and decision under separate minutes.

- 2) **#009-19: Sonja Garon** (applicant), **Dunvegan Associates LLC** (owner)
Site Plan review for a change of use to hair salon (BGB) in an existing mixed-use building at 55 S. Main St., Waterbury, VT. (DC/DDR-HC zoning/overlay districts) —*Continued from 3/6/19.*

Hearing minutes and decision under separate minutes.

- 3) **#014-19: Donald Keith Renecke** (owner/applicant)
Site Plan and Conditional Use review to establish multi-family for three units in the existing residential structure at 14 Stowebury Road. (RT100 zoning district)

Testimony:

—The applicant added parking and the plowing area to the site plan.

—A neighbor expressed concern with a covenant he believes exists for the Stowebury properties.

The hearing was continued to April 3, 2019 at 6:30 p.m.

- 4) **#016-19: Aaron Flint, Winter Woods LLC** (applicant/owner)
Subdivision review of a 7-lot subdivision to create six residential lots in the Winter Woods project off of Guptil Road. (TMR/MDR zoning districts)

Hearing minutes and decision under separate minutes.

- 5) **Agenda item as scheduled by the Chair:**

- Consultation with Zoning Administrator (ZA): Application #019-19: Bernard Woodard Estate c/o Pamela and Wanda Woodard, Executors (Owner/Applicant). Owner requests exemption from DRB subdivision review. Section 1203(b) authorizes the ZA to review the division of land outside the RT100 zoning district into ≤ 3 lots within the previous 5 years. Although the proposed 3-lot subdivision includes land in the RT100 zoning district, the development of that lot is deferred into the future and doesn't have frontage on Route 100.

The DRB discussed how the subdivision regulations and the special criteria for development in the Route 100 zoning district apply in this situation. The DRB advised Dina Bookmyer-

Baker that the proposed subdivision should not be exempted from DRB subdivision review and should be referred to the DRB for review.

(Resume with scheduled agenda)

- 6) **#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 2/6/19.

Hearing minutes and decision under separate minutes.

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

- Final plat review: #95-18, Dan Fuller & Elysa Walk, boundary-line adjustment of Lots 7 & 10 Stagecoach Lane (CNS/RHS). DRB hearing: 10/3/18; decision approved: 10/17/18; final plat due (180 days) by: 4/15/2019.

Motion: On behalf of the Waterbury Development Review Board Andrew Strniste moved and Dave Rogers seconded the motion to approve the final plat for application #95-18.

Vote: The motion was approved 4–0.

- **Approval of prior meeting minutes:**

Dave Rogers moved and Andrew Strniste seconded the motion to approve the decision for application #006-19, as amended.

Vote: The motion was approved 4–0.

Adjournment: The meeting was adjourned at 10:07 p.m.


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

Approved on: 4/3/2019
(date)

Next meetings:

- Wednesday, April 3, 2019, 6:30 p.m.
- Wednesday, April 17, 2019, 6:30 p.m.
- Wednesday, May 1, 2019, 6:30 p.m.

Town of Waterbury
Development Review Board
Decision #013-19 ▪ March 20, 2019

In Attendance: Board members present: David Frothingham (Chair), Dave Rogers, Bud Wilson, and Andrew Strniste. Staff present: Dina Bookmyer-Baker (ZA) and Patti Spence (Secretary).

Applicant/Owner:	Jennifer Campbell	
Address/Location:	231 Mountain View Drive, Waterbury Center, VT	
Zoning District:	Low-Density Residential (LDR)	
Application #	013-19	Tax Map # 09-108.000

Applicant Request:

The applicant seeks approval to construct a porch addition to an existing dwelling within the setback at 231 Mountain View Drive.

Present and sworn in:

Jennifer Campbell (owner/applicant)

Exhibits:

- A: Application #013-19 (3 pages: zoning, conditional use), submitted 2/15/2019.
- B: Applicant's project summary and response to conditional use criteria.
- C: Project elevations, prepared by Gordon Dixon, dated 2/18/19.
- D: Orthophotos of subject parcel and neighboring parcels with LDR setback overlay. (Staff)
- E: Letter to adjoining landowners, mailed certified on: 3/04/19

Findings of Fact:

1. Existing conditions: Jennifer Campbell owns a 0.75± acre parcel located at 231 Mountain View Drive. The property is developed with a single-family dwelling, built in 1970, with a shed and detached garage. The property has 156'± of frontage on and, an access drive to, 231 Mountain View Drive; is served by municipal water and an on-site septic system; and is located in the Low-Density Residential (LDR) zoning district. The lot and the dwelling predate the establishment of zoning regulations in the Town (the zoning regulations were implemented in 1980), and the lot is considered a pre-existing, nonconforming small lot. Due to the narrowness of the lot, the existing structures do not meet the LDR setback requirements.
2. Proposal: The proposal is to build a front porch with a roof and stairs that will be 10' by 12' overall. The porch stairs will be located 110'± from the centerline of Mountain View Drive. The porch and stairs will not extend closer to the side property line than the house, which is located 60'± from the side property line to the south.

3. LDR Dimensional Requirements, Table 5.2: Minimum lot area: 5 acres; minimum frontage: 300'; minimum setbacks: 70' front, 75' sides/ rear. The lot does not meet the minimum lot size and frontage requirements. The existing house does not meet the side and rear setback requirements. The front porch addition will meet the front setback and, although it will not extend closer to the side property line than the house, will be located 63'± from the side property line to the south.
4. Waiver Request: The setback waiver request is to encroach into the side-yard setback by 12' (75' minus 63').
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 must find that the proposal conforms to the following general and specific standards:
 - a. Section 303(e)(1) Community facilities: No change in the residential use of the property is proposed. The residential addition does not require additional municipal water or sewer allocation, will not burden the school capacity, and will not increase the demand for fire protection.
 - b. Section 303(e)(2)(A–E) Character of the area: The use of the property will remain residential. The proposed front porch will match the materials and style of the existing dwelling (Exhibit C).
 - c. Section 303(e)(3) Municipal bylaws in effect: The use of the property will remain residential. This project application presents compliance with the conditional use criteria.
 - d. Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The project is an open-sided extension to an existing dwelling. A typical resident use will not emit any of the above-named nuisances. No controls are proposed.
 - e. Section 303(h) Removal of earth or mineral products conditions: The project does not include earth-removal activities. This provision does not apply.

Conclusion:

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Jennifer Campbell to construct a front porch addition to an existing dwelling 12' within the side setback at 231 Mountain View Drive, as presented in application #013-19 and supporting materials, meets the Waivers and Conditional Use criteria set forth in Sections 309 and 303.

Motion:

On behalf of the Waterbury Development Review Board, Dave Rogers moved and Andrew Strniste seconded the motion to approve application #013-19 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.

Vote: Passed 4-0.

Dave L Frothingham
(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, 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 #009-19 ■ March 20, 2019

In Attendance: Board members present: David Frothingham (Chair), Dave Rogers, Bud Wilson, and Andrew Strniste. Staff present: Dina Bookmyer-Baker (ZA) and Patti Spence (Secretary).

Applicant/Owner:	Sonja Garon (Applicant), Robert McLeod/Dunvegan Associates LLC (Owner)	
Address/Location:	55 South Main Street, Waterbury, VT	
Zoning Districts:	Downtown Commercial (DC), Downtown Design Review (DDR), Historic Commercial (HC) overlay and sub-district.	
Application #	009-19	Tax Map # 19-366.000

Applicant Request:

The applicant seeks approval to change one of the uses in a portion of the mixed-use building at 55 South Main Street to include a hair salon (BGB).

Present and sworn in:

Sonja Garon (Applicant)
Robert McLeod (property manager, representing Owner)

Exhibits:

- A: Application #009-19 (3 pages: Zoning Permit, Site Plan), submitted 2/5/2019.
- B: Site plan, dated 1/6/1994.
- C: Floor plans for building from Parcel ID card and p/o architectural plans, submitted 2/5/2019.
- D: Orthophoto of parcel with tax map boundaries. (Staff)
- E: Letter from Robert McLeod re. overall usage of building, dated 2/5/19
- F: Letter to adjoining landowners, mailed certified on: 3/8/19.

Findings of Fact:

1. Existing conditions: Dunvegan Associates LLC owns a 0.53± acre parcel located at 55 South Main Street. The property is developed with a two-story, mixed-use building that includes three separate office spaces on the first floor that occupy a total of 2,200 sq. ft. of space. There were two 1-bedroom apartment on the second floor, in addition to a massage studio. One of the apartments has been converted to an artist studio. The property is served by municipal water and sewer and includes eleven on-site parking spaces. The parking area has an access drive to S. Main St. The lot is located in the Downtown Commercial (DC) zoning district and the Downtown Design Review (DDR) overlay/Historic Commercial (HC) sub-district.
2. Proposal: The proposal is to change the use of approximately 800 SF of office space at the rear of the building to a hair salon, as shown in Exhibit C, the floor plans. The hair salon will include two chairs and two staff members. No changes, other than a new panel on the existing sign, are proposed to the exterior of the building. This proposal includes converting the one-bedroom apartment on the second floor to an

office space. The second one-bedroom apartment will remain.

3. Table of Uses, Section 503: A Barber shop/Beauty salon is a permitted use in the DC zoning district.
4. Site Plan Review and Approval, Section 301: To ensure adequate and appropriate traffic and pedestrian access, circulation, parking, landscaping, and screening, the Board considered the following criteria:
 - a. Section 301(f)(1) (A-D), Traffic access and pedestrian safety: No change to the approved vehicular access and pedestrian access is proposed.
 - b. Section 301(f)(2) (A-G), Circulation and parking, loading, refuse, and service areas: No change to the existing vehicular access, circulation, and parking is proposed. See the parking requirements in paragraph 5, below.
 - c. Section 301(f)(3) (A-F), Landscaping, screening, and lighting: No change is proposed to the existing landscaping, screening, or lighting.
5. Parking Regulations, Section 414: The lot includes eleven on-site parking spaces to serve one 1-bedroom apartment, and five business tenants. The parking requirements are as follows:
 - a) Dwelling units: each 1-bedroom unit requires one on-site parking space
 - One 1-bedroom apartment requires: 1 parking space;
 - b) Offices require 1 space for every 300 SF of floor area
 - H & R Block office (1,100 SF ÷ 300) requires: 4 parking spaces;
 - Vacant office (300 SF ÷ 300) requires: 1 parking space;
 - Second floor office (300 SF ÷ 300) requires: 1 parking space;
 - c) Barber shop/Beauty salons: lacking a specific parking requirement for beauty salons, the calculation applied previously has been 1 space for each customer chair plus 1 for each staff person
 - BGB Salon: 2 customer chairs plus 2 staff requires: 4 parking spaces;
 - d) Massage therapist: a medical clinic (patients are treated by medical professionals on an out-patient basis) requires 1 space for every 300 SF of floor area
 - Julia Garufi massage therapy (300 SF ÷ 300) requires:..... 1 parking space.

A total of 12 parking spaces are required and 12 parking spaces are provided (Exhibit B), including an overflow spot on the grass area at the rear of the parking area. As per Section 414(e)(1) “*Parking requirements may be reduced by up to twenty-five (25) percent, provided that this space be dedicated as lawn or landscaping and have the potential of future conversion to parking should it be determined that more parking spaces are necessary.*”

Conclusion:

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Sonja Garon and Dunvegan Associates, LLC to change the use of a portion of the existing mixed-use building at 55 South Main Street, from offices to a hair salon as presented in application #009-19 and supporting materials, meets the Site Plan and Parking criteria set forth in Sections 301 and 414. The requirement for one of the parking spaces is satisfied by the grass overflow parking space at the rear of the existing parking area as per Section 414(e)(1).

Decision Motion:

On behalf of the Waterbury Development Review Board, Dave Rogers moved and Bud Wilson seconded the motion, to approve application #009-19 with the following condition:

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

Vote: The motion was approved 4-0.

David L Frothingham
 (Chair) (Vice-Chair) (Acting Chair)

Approved: 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, and the appropriate state agencies to determine what permits must be obtained.

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

Town of Waterbury
Development Review Board
Decision #016-19 ▪ March 20, 2019

In Attendance: Board members present: David Frothingham (Chair), Dave Rogers, Bud Wilson, and Andrew Strniste. Staff present: Dina Bookmyer-Baker (ZA) and Patti Spence (Secretary).

Applicant/Owner:	Aaron Flint (applicant), Winter Woods LLC (owner)	
Address/Location:	1790 Guptil Road, Waterbury, VT	
Zoning Districts:	Town Mixed Residential (TMR)/Medium-Density Residential (MDR)	
Application #	016-19	Tax Map # 09-206.010

Applicant Request:

The applicant seeks approval to create six building lots: Lots 1, 4, 5, 6, 7 and 8, and one additional Lot 11 that will remain a undeveloped parcel, on Guptil Road.

Present and sworn in:

Aaron Flint, Applicant
George McCain, Consultant
William & Andrea Andrus, adjoining landowners
Nadine Berrini & Christopher Moore, adjoining landowners
John Gallagher, adjoining landowner
Mark Stirewalt, adjoining landowner
Adrianna & Scott Benson, adjoining landowners

Exhibits:

- A: Application #016-19 (4 pp: Zoning Permit, Subdivision), submitted 2/15/19.
- B: Project Description Applicant Response to Subdivision Criteria, dated 2/15/19.
- C: Subdivision Survey for creation of Lots 1, 4-8 and 11, prepared by McCain Consulting, LLC, dated 2/15/19.
- D: Overview of 11-lot Subdivision and Site Plans for Lots 1-8, prepared by McCain Consulting, LLC, dated 4/8/14 and 2/15/19. (4 pages).
- E: Aerial photo of parcel with tax map boundary, and parcel with zoning districts (staff)
- F: Letter to adjoining landowners, mailed certified on 3/1/19.

Findings of Fact:

1. The Applicant proposes to further subdivide land he owns, of the previously approved #21-14-T, Winter Woods Development Master Plan, into six building lots. Lots 1, 4, 5, 6, 7 & 8 are each proposed to be developed with a single-family dwelling. Lot 11 is proposed to remain an undeveloped 6.4 ± acre parcel.
2. The proposed subdivision is located off of Guptil Road and lies within the Town Mixed Residential (TMR) and the Medium Density Residential (MDR) zoning districts.

3. The following table establishes that the proposed lots exceed the minimum lot size requirements:

	Zoning District	Minimum Lot Size	Proposed Lot Size
Lot 1	TMR	1 acre	3.7+/- acres
Lot 4	MDR/TMR	2 acres	4.1+/- acres
Lot 5	MDR	2 acres	3.3+/- acres
Lot 6	MDR	2 acres	3.0+/- acres
Lot 7	TMR/MDR	1 acre	1.7+/- acres
Lot 8	TMR	1 acre	4.3+/- acres
Remaining Lands	MDR	2 acres	6.4+/- acres

4. Access to all the proposed lots will be directly off Guptil Rd. through a 50' right-of-way, as shown in Exhibit C. The Curb Cut Permit has been issued, and allows for access off the town road.
5. The building zones have been delineated, and portrayed in Exhibits C and D and illustrate that the general building zones comply with the setbacks, and are not located within the areas of the identified Class III wetlands.
6. The applicant has previously provided an excerpt from his property deed which prohibits the construction of permanent residences or structures on the portion of the property called "Main Meadow," as delineated in zoning permit #21-14-T.
7. The project was referred to the Development Review Board in conformance with Section 1201 of Article XII.
8. This proposed subdivision conforms to the Subdivision Review Criteria that are contained within Article XII, Section 1202.

Conclusion:

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the Winter Woods LLC proposal to create a seven-lot subdivision of an undeveloped parcel on Guptil Road, as presented in application #016-19 and supporting materials, meets the Dimensional Requirements and Subdivision criteria as set forth in Sections 504 and 1202.

Motion:

On behalf of the Waterbury Development Review Board, Dave Rogers moved and Andrew Strniste seconded the motion to approve application #016-19 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) The approved final plat, signed by the DRB Chair (or Acting Chair), shall be duly filed or recorded in the office of the clerk of the Town of Waterbury within 180 days from this approval, in accordance with 24 V.S.A. § 4463.

- (3) The approved final plat shall include delineation of the main meadow, as well as a Sheet S-1.
- (4) This approval shall incorporate all Findings of Fact, Conclusions of Law, and Conditions in permits, #21-14-T, #60-15-T, #02-16-T, and #17-17-T.

Vote: Passed 4-0.

David L. Frothingham Jr.
(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, 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
Approved Decision #002-19 ■ February 6/March 20, 2019

In Attendance:

(2/6/19) Board members present: Dave Rogers (Acting Chair), Mike Bard, Bud Wilson, and Andrew Strniste. Staff present: Dina Bookmyer-Baker (ZA), Steve Lotspeich (Community Planner), and Patti Spence (Secretary). Alyssa Johnson (Economic Development Director) was also present.

(3/20/19) Board members present: David Frothingham (Chair), Dave Rogers, Bud Wilson, and Andrew Strniste. Staff present: Dina Bookmyer-Baker (ZA) and Patti Spence (Secretary).

Owner/Applicant:	Marc George Palmer Revocable Trust (owner), Marc & Heather Palmer (applicant)	
Address/Location:	Lot E Wood Farm Road, Waterbury Center, VT	
Zones:	Low-Density Residential (LDR), Conservation (CNS), & Ridgelines/Hillsides/Steep Slopes (RHS) overlay	
Application #	002-19	Tax Map #: 14-084.000

Applicant Request:

The applicant seeks approval to construct a single family dwelling with an attached garage within the rear setback, as well as a detached accessory structure within a revised building zone on Lot E, Wood Farm Road, and seeks minor RHS review of the proposed structures.

Present and sworn in:

(2/6/19) Heather and Marc Palmer, owner/applicants
Mark Bromley, architect
John Buck, adjacent landowner
William Shepeluk, adjacent landowner

(3/20/19) Marc Palmer and Heather Palmer (via speaker-phone), owner/applicants
Mark Bromley, architect
William Shepeluk, adjacent landowner
Joan Liggett, neighbor

Exhibits:

- A: Application #002-19 (6 pp: Zoning, Conditional Use, Overlay District), submitted 1/7/19.
- B: Palmer Residence Site Plan prepared by Hillview Design Collaborative, dated 12/20/18, 1/4, & 3/14/19.
- C: Perspective views of proposed house, by Hillview Design Collaborative, dated 12/20/18 & 3/14/19.
- D: Letter to adjoining landowners, mailed certified on 1/22/19.
- E: Waterbury Wildlife Resources Map from 2018 Municipal Plan.
- F: Elevations, Palmer Residence Design Development, by Hillview Design Collaborative, dated 3/14/19.
- G: Brief narrative by Heather Palmer (email), dated 3/18/19.

Findings of Fact:

1. Existing conditions: Marc & Heather Palmer own a 6.16 acre parcel (Lot E) located on Wood Farm Road, off Ripley Road. The parcel has been previously subdivided (see zoning permit history, below) and the parcel remains undeveloped. The parcel includes frontage on Ripley Road and Wood Farm . Wood Farm Road transects the parcel to provide access (via an approved 50' right-of-way) to neighboring properties. The parcel is in both the Low-Density Residential (LDR) and Conservation (CNS) zoning districts, with portions within the Ridgelines/Hillsides/Steep Slopes (RHS) overlay district (Exhibit C).

Zoning permit history: (applicable recent permits)

- October, 2018, the Development Review Board (DRB) approved 2-lot subdivision of Lot D (28.5± acres) to create residential Lot E and the proposed building envelop (#104-18). As part of the application for the subdivision, the then property owner/applicant had also proposed a building envelope that encroached upon the rear setback requirement, effectively depicting and requesting a setback waiver. The Applicant had informed the Board that the prospective buyer for the subject lot wished to construct a single-family dwelling that would be within the rear setback. Upon hearing the Board's reservation of the setback waiver request, rather than having his application denied, the applicant withdrew the request for the setback waiver during the hearing.
2. Current proposal: Review of this application pertains to the construction of a single family dwelling, attached garage, and detached accessory structure on undeveloped Lot E, at an elevation above 1200 FIE, the house-garage within the rear setback requires a waiver of the setback requirements. The detached accessory structure proposed within the revised building zone will meet the setback requirement (Exhibits B, C). There will be no additional clearing on the lot. During the review process, the Applicant on several occasions has informed the Board that they could provide a project proposal that satisfies the setback requirements; however, the submitted proposal depicts the most desirable location and orientation of the dwelling that will provide the best views to the west towards Camels Hump. The Applicants also advised through hearing testimony that the proposed configuration of the garage will not be visible in front of the house from Wood Farm Road, thereby providing a more aesthetically pleasing structure to view from the road.
 3. LDR Dimensional Requirements, Table 5.2: Minimum lot area; 5 acres; minimum setbacks: 70' front, 75' sides/rear. The lot meets the minimum lot area, but the proposed development will not satisfy the rear setback requirement. The dwelling is proposed to be not closer than 48'4" from the rear property line (Exhibit B).
 4. Waiver Request: The setback waiver request is to encroach into the rear-yard setback by 26-feet 8-inches (75' minus 48'4"). The Applicants have requested a waiver stating via testimony that the proposed location of the structure will reduce the impact to the open meadow, as well as be in a location that is the least offensive to users of Wood Farm Road and provides the best westward views.
 5. Conditional Use/Waiver criteria: As set forth in Section 309, the DRB may grant a waiver of building setbacks as a conditional use reviewed in accordance with Section 303; provided 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. The Board considered the following general and specific standards:

- a. Section 303(e)(1) Community facilities: The Applicants propose the construction of a single-family dwelling, a permitted use that will be served by private well and septic. The project will not unduly increase the traffic, does not require additional municipal water or sewer allocation, will not burden the school capacity, and will not unduly increase the demand for fire protection. The Board concludes that the proposal will not have an undue adverse impact on the capacity of existing or planned community facilities.
- b. Section 303(e)(2)(A-E) Character of the area: The proposed use of the property will be residential, specifically a single-family dwelling. The addition of exterior lighting is unknown. The Applicants intend to preserve the existing meadow in the lower portion of the property, which they support in their application by stating: "By pushing the building as far up the hill as possible, it will leave as much of the open field untouched, while staying out of the adjacent gully to the south. This will also allow the house to appear lower in the ground, as (o)pposed to looming over the gully." See Applicant's Exhibit C for a perspective view of the building on the parcel.

The Board finds that the proposed project does not conform to the character of the LDR/RHS districts. To note, no setback waivers have ever been granted to recently subdivided lots in the project area (Wood Farm Road, Ring Road and Bear Creek Lane); no setback waivers have been granted for the development of an undeveloped lot in a subdivision in the RHS overlay district. The Board finds that the side and rear setback requirements in LDR are 75-feet. Furthermore, various adjoining lots and those on Wood Farm Road are in the Conservation (CNS) zoning district, where the minimum setback requirement is 100-feet. As a result, the Board finds that a reduced setback requirement for the proposed development would have an undue adverse impact on the character of the area for the reasons stated above.

- c. Section 303(e)(3) Municipal bylaws in effect: The Applicants have submitted a proposal for a single-family residence. Should the Board grant the setback waiver, the project would conform with the municipal bylaws and ordinance; however, for the reasons stated directly above under Section 303(e)(2), the Board finds that the proposed project does not comply with the conditional use and RHS criteria. Therefore, the Board concludes that the proposal violates the municipal bylaws and ordinances.
 - d. Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The proposed residential use will not typically create the above-named nuisances and therefore no devices or special methods are proposed to control these impacts. The Board agrees and concludes that no devices or special methods are necessary to prevent or control these impacts.
 - e. Section 303(h) Removal of earth or mineral products conditions: The project does not involve earth removal.
6. Section 1001 RHS Applicability: The Board finds that the property is in the RHS overlay district above 1,200 feet in elevation (FIE), but below 1,500 FIE. Subsection (b) states that development in the RHS

district below 1,500 FIE shall be considered “minor” development.

Section 1001(c) states that permitted uses are treated as conditional uses in the RHS overlay district.

Section 1004 (b) states that minor development projects shall be subject to conditional use review, as set forth in Section 303, and all other applicable regulations. See the project’s compliance with the conditional use criteria in paragraph 5 (a)–(e), above.

Conclusions:

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Marc & Heather Palmer to construct a single-family dwelling with an attached garage 26’ 8” within the rear setback on Lot E Wood Farm Road, as presented in application #002-19 and supporting materials, does not meet the Waivers, Conditional Use, and Ridgelines/Hillsides/Steep Slopes criteria as set forth in Sections 309, 303, and 1004. While each setback request application differs from one another, the Board strives to be consistent in their granting of waivers for unique characteristics and/or unique and extenuating circumstances. The Board is mindful that granting a waiver from the setback requirements should apply equally. Had the Board granted a setback waiver in this situation, the Board finds that it will have granted a setback waiver for the first time to an Applicant who had acknowledged the ability to conform with the setbacks.

In regards to the accessory structure, the Board concludes that the proposal by Marc & Heather Palmer to construct a detached accessory structure within a revised building zone that meets the setbacks on Lot E Wood Farm Road, as presented in application #002-19 and supporting materials, meets the Waivers, Conditional Use, and Ridgelines/Hillsides/ Steep Slopes criteria as set forth in Sections 309, 303, and 1004.

Decision Motion 1:

On behalf of the Waterbury Development Review Board, Andrew Strniste moved and Dave Rogers seconded the motion to approve the rear setback waiver for the dwelling-garage as shown in application #002-19, Exhibit B.

Vote: In favor: 0; Opposed: 4. The motion did not carry.

Decision Motion 2:

On behalf of the Waterbury Development Review Board, Andrew Strniste moved and Dave Rogers seconded the motion to approve the revised building envelope as shown in application #002-19 Exhibit B, 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) Except as amended herein, this approval incorporates all Findings of Fact, Conclusions of Law, and Conditions in zoning permit approvals #91-17, #01-18, #27-18, and #104-18.

Vote: Motion approved 4–0. Motion carried.

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

Approved: 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 80-505-5367 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 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.*