

**WATERBURY DEVELOPMENT REVIEW BOARD**  
**General Minutes—November 20, 2019**

Board members present: David Rogers (Acting Chair), Bud Wilson, Andrew Strniste, and Alex Tolstoi. Staff present: Dina Bookmyer-Baker (ZA) and Patti Martin (Secretary).

David Rogers, Acting Chair, opened the meeting at 6:30 p.m., with a quorum present, in the Steele Community room in the Municipal Center, at 28 North Main Street, Waterbury, Vermont.

- 1) **#102-19: Natalie & John Sherman** (owner/applicant)  
Setback Waiver and Variance request to construct a dwelling addition in the setback that exceeds the maximum lot coverage at 21 Union Street. (VR zoning district)

Present and Sworn in:

Natalie and John Sherman, Owner/Applicant  
Patti Tomeny, Adjoining Landowner

The Board approved the project with conditions and will issue a written decision within 45 days.

- 2) **#104-19: Charles O'Brien Sr. Family Trust** (owner/applicant)  
Setback Waiver to construct a new single-family dwelling at 21 Hill Street Extension. (VMR zoning district)

Present and Sworn in:

John Grenier, Engineer for Applicant  
Chris Austin, Consultant for Applicant  
Alex King & Kerrie Lohr, Adjoining Landowners  
Ben DeJong, Adjoining Landowner  
BetsyAnn Wrask & George Eget, Neighbors

Testimony:

- Neighbors expressed concerns regarding stormwater runoff and drainage, and noted that it has improved with the installation of the new stormwater collection system for Hill Street Extension.
- Neighbors expressed concern over maintaining the character of the area.

The Board approved the project with conditions and will issue a written decision within 45 days.

- 3) **Agenda items as scheduled by the Chair:**

• Consultation with ZA:

187 U.S. Route 2, EFUD wastewater treatment plant, government use. Owner/Applicant requests exemption from Site Plan review, as per Section 301(a)(5) and setback requirements, as per Section 400(f)(2) and (5), to construct an additional drying bed. (IND/SFHA zoning and overlay districts). The Board determined the project is exempt from the above, as the drying bed is similar to a pond with a low (18") wall. The Board requests that the Applicant submit a Site Plan with measurements to be included with the zoning permit application materials.

- Review minutes and decisions from the previous meeting:  
Alex Tolstoi moved, and Bud Wilson seconded the motion, to approve the general minutes for October 16, 2019, as amended.

**Vote:** Motion approved: 4-0.

**Adjournment:** There being no other business, the meeting was adjourned at 8:40 p.m.

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

12/4/2019  
(date)

These minutes were approved: December 4, 2019.

**Notice of upcoming meetings:**

Wednesday, December 4, 2019, 6:30 p.m.

Wednesday, December 18, 2019, 6:30 p.m.

Wednesday, January 8, 2020, 6:30 p.m. (Note: Scheduled for 2nd Wed., due to New Year holiday.)

**Town & Village of Waterbury  
Development Review Board  
Decision #102-19 ▪ November 20, 2019**

Board members present: Dave Rogers (Acting Chair), Bud Wilson, Andrew Strniste, and Alex Tolstoi. Staff present: Dina Bookmyer-Baker (ZA) and Patti Martin (Secretary).

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Owner/Applicant:	Natalie and John Sherman	
Address/Location:	21 Union Street, Waterbury, VT	
Zone:	Village Residential (VR)	
Application #	102-19	Tax Map # 19-218.000

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**Applicant Request**

The Applicant seeks approval to construct a dwelling addition in the side and rear setbacks that will exceed the maximum lot coverage at 21 Union Street in the Village Residential zoning district.

**Present and sworn in:**

Natalie and John Sherman, Owner/Applicant  
Patti Tomeny, Neighbor

**Exhibits**

- A: Application #102-19 (7 pages: zoning, conditional use, variance), submitted 10/15 & 10/25/19.
- B: Infill Diagram, prepared by Applicant, submitted 10/15/19.
- C: Elevation photo & mock-up, existing and proposed, prepared by Applicant, submitted 11/1/19.
- D: Parcel map with orthophoto. (Staff)
- E: DRB decision for zoning permit #43-17 for a pergola in the setback, approved 6/21/17. (Staff)
- F: Assessor card, updated in 2014, building sketch, and photographs. (Staff)
- G: Letter to adjoining landowners, mailed certified on 10/28/19.

**Findings of Fact**

1. Existing conditions: Natalie and John Sherman own a 0.19± acre (8,276 SF) parcel located at 21 Union Street in the Village Residential (VR) zoning district. The property is currently developed with a 1 1/2 story single-family dwelling with a 1 1/2 story 2-bay attached garage. The dwelling was built circa 1850 and is listed as a contributing structure on the National Historic Register. The nearest portion of the existing dwelling is < 5' from the side property line to the north; the existing garage is 12' from the rear property line. The footprints of the existing roofed structures exceed the maximum lot coverage of 25%. The parcel includes frontage on and has access to Union Street, a town road, and is served by municipal water and sewer systems.

National Register of Historic Places, Inventory #54, description: House, 21 Union St, c. 1850: 1 1/2 story, 3-bay, frame sidehall plan house, sided in clapboards. Blind sidelights frame door.

2. Project: The Applicant proposes to rebuild the unconditioned storage space in the rear of the dwelling, which was formerly an outhouse; enlarge the structure to fill in the open corner; and renovate the first floor to create a master bedroom and bathroom. The additional enclosed area will be 145 SF. The addition will continue the existing build-line of the dwelling parallel to the side property line to the north ( $\geq 5'$ ) and will be inset by 1' from the garage to be 13' from the rear property line (Exhibit B). The renovation will increase the area and volume of structure that encroaches on the side- and rear-yard setbacks, but will not come closer than the existing build line.
3. Dimensional Requirements, Table 5.2: In the VR zoning district, the minimum setbacks are 30' for the front/rear and 10' for the sides. The project will encroach into the side yard setback by 5' and into the rear yard setback by 17'.

In VR, the minimum lot area for a single-family dwelling is 10,000 SF. At 8,276 SF, the lot is undersized by 1,724 SF. The maximum lot coverage is 25%, which for this size lot equals 2,068 SF. The combined coverage of the dwelling, garage, covered porch, and attached shed equals 2,314 SF. The footprints of the existing roofed structures exceed the maximum lot coverage by 246 SF (2,314 SF minus 2,068 SF). The project will increase the lot coverage by 145 SF. See the definition of lot coverage below.

*(definition)* Coverage (or Lot Coverage): That percentage of the lot area covered by the footprints of all existing and proposed roofed structures, including principal and accessory buildings and structures open at the sides, such as porches or carports.

4. Waiver Request: The setback waiver request is to encroach on the side setback by 5' ( $10' - 5'$ ) and rear setback by 17' ( $30'$  minus  $13'$ ).
5. Conditional Use/Waiver criteria: As set forth in Section 309, the DRB may grant a waiver of building setbacks as a conditional use review in accordance with Section 303; provided that the encroachment does not have an undue adverse impact on the use and enjoyment of adjoining properties. The Board considered the following general and specific standards:
  - (a) Section 303(e)(1) Community facilities: The project will not change the residential use of the property, but will add a bedroom. The municipal water/sewer allocation will need to be updated. The project will not unduly increase traffic, 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 use of the property will remain residential. The proposed addition will be consistent with the design and character of the dwelling (Exhibit C). The Board concludes that the project is appropriate in scale and design in relation to existing uses and structures in the district and will not have an undue adverse impact on the character of the area.
  - (c) Section 303(e)(3) Municipal bylaws in effect: The project makes no change to the current residential use and this application is presented to comply with the conditional use criteria. The Board concludes that the proposal will not violate any municipal bylaws and ordinances.

(d) Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: No change to the residential use is proposed and therefore, no mitigation is proposed to control the items stated above. The Board 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 include earth-removal activities. This provision does not apply.

6. Section 308 Variances: The Applicant requests a Variance for the project to exceed the maximum lot coverage requirement. A variance may be granted only if all the following facts are found and the finding is stated in the Board's decision:

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

—The lot is nonconforming in size. The maximum lot coverage of 25% for a 10,000 SF lot (minimum lot size in VR) is 2,500 SF. The project would result in 2,459 SF total lot coverage (2,314 SF existing + 145 SF for the project), which does not exceed the maximum lot coverage for the minimum lot size in VR.

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

—Due to the nonconforming lot size and the existing nonconforming structure, the Applicant is unable to construct an addition of any size and meet the maximum lot coverage requirement in Section 504.

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

—The Applicant purchased the lot in its current nonconforming size with the existing buildings in their current size and configuration. The Applicant has not increased the lot coverage prior to this request. The Applicant's unforeseen mobility requirements necessitate the dwelling addition. The Applicant considered other renovation plans that would not expand the footprint, but which were discarded in favor of this design that will accommodate the anticipated need for a wheelchair.

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

—The project makes no change to the residential use of the property. The addition will not be visible from the front and will be shielded from view from the side properties. The addition will have the same siding and roofing as the existing dwelling and barn (Exhibit C). The project will extend the existing sidehall at the same height and will not be taller than the structures on this and the adjoining property and will not impair the use of, or reduce access to renewable energy resources on, adjacent properties.

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

—Due to the existing building layout, the proposed addition represents the minimum footprint expansion (145 SF) that will meet the unique access needs of the Applicant.

**Conclusion:**


Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Natalie and John Sherman to construct a dwelling addition, not greater-than 145 sf in area, not coming closer than 13' to the rear property line and 5' to the side property line at 21 Union Street, as presented in application #102-19 and supporting materials, meets the Waivers, Conditional Use, and Variance criteria set forth in Sections 309, 303, and 308.

**Motion:**

On behalf of the Waterbury Development Review Board, Andrew Strniste moved and Alex Tolstoi seconded the motion to approve application #102-19 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 installed shall be downcast and shielded.
- (3) The Applicant shall submit a site plan to the Zoning Administrator that reflects the project as presented and approved in the hearing review, prior to issuance of the zoning permit.
- (4) Except as amended herein, this approval incorporates all Findings of Fact, Conclusions of Law, and Conditions in prior zoning permit approval #43-17.

**Vote:** The motion was approved 4-0.

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

12-11-19  
(date)

This decision was approved on December 4, 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](mailto: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 #104-19 ▪ November 20, 2019**

Board members present: Dave Rogers (Acting Chair), Bud Wilson, Andrew Strniste, and Alex Tolstoi. Staff present: Dina Bookmyer-Baker (ZA) and Patti Martin (Secretary).

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Applicant/Owner:	Charles O'Brien Sr. Family Trust	
Address/Location:	21 Hill St. Extension, Waterbury, VT	
Zoning District:	Village Mixed Residential (VMR)	
Application #	104-19	Tax Map # 19-178.000

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**Applicant Request**

The Applicant seeks approval to construct a new single-family dwelling within the front and rear setbacks at 21 Hill St. Extension.

**Present and sworn in:**

John Grenier, Engineer for Applicant  
Chris Austin, Consultant for Applicant  
Alex King & Kerrie Lohr, Adjoining Landowners  
Ben DeJong, Adjoining Landowner  
BetsyAnn Wrask & George Eget, Neighbors

**Exhibits:**

- A: Application #104-19 (3 pages: zoning, conditional use), submitted 10/21/19.
- B: Waiver Setback Request Letter from Grenier Engineering, dated 10/21/19
- C: Site Plan including neighboring houses by Grenier Engineering, dated 11/13/19
- D: Prior DRB decision for App. No. 060-12-V for variance request, dated 11/1/12.
- E: State of Vermont Superior Court – Environmental Division Judgement Order on Appeal of DRB decision, dated 9/13/13.
- F: Denial of Zoning Permit App. No. 060-12-V.
- G: Orthophoto of subject parcel and neighboring area, dated 11/6/19.
- H: Notice to adjoining landowners, mailed certified on 11/5/19.

**Findings of Fact:**

1. Existing conditions: Charles O'Brien owns a 0.16 acre parcel located at 21 Hill St. Extension in the Village Mixed Residential (VMR) zoning district. The property was previously developed with a single-family dwelling that was demolished. The property is accessed by an existing driveway on Hill St. Extension. The property is served by municipal water and sewer systems that were reconstructed after a private system failed. This system is being maintained by the municipality although Hill St. Extension is a private road. The lot predates the establishment of the Town's Zoning Regulations in 1980 and is considered an existing small lot. The previous dwelling did not meet the VMR front, north side, and rear setback requirements as shown on Exhibit C.

2. VMR Dimensional Requirements, Table 5.2: Minimum lot area: 10,000 sq. ft.; minimum frontage: no minimum requirement; minimum setbacks: 30' front, 10' sides, 30' rear. The lot does not meet the minimum lot size. The prior house did not meet front, north side, and rear setback requirements. The existing lot frontage (lot width at the building front line) is approximately 95'.
3. Waiver Request: The setback waiver request is to encroach into the front yard setback by 4' (30' minus 26') and the rear by 16' (30 minus 14').
4. Conditional Use/Waiver criteria: As set forth in Section 309, the DRB may grant a waiver of building setbacks as a conditional use review in accordance with Section 303; provided that the encroachment does not have an undue adverse impact on the use and enjoyment of adjoining properties. The Board considered the following general and specific standards:
  - a. Section 303(e)(1) Community facilities: No change in the residential use of the property is proposed. The new single-family house will not require an expansion of the municipal water or sewer system, 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 new house will be similar in scale to the houses in neighborhood. The application states: “Due to repair of municipal sewer & stormdrain lines in the area, the proposed residence on an existing residential lot will not cause any undue adverse impact.” A proposed swale along the southwestern boundaries of the property will divert surface drainage to the existing catch basin near Hill St. Extension, as shown on Exhibit C, the Site Plan.
  - 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 a new single-family dwelling. A typical residential 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.

**Prior Approval:**

- I: The previous approval in Permit No. 060-12-V for a variance was appealed to the State of Vermont Superior Court–Environmental Division and was overturned as stated in Exhibit E. As stated in Waiver Setback Request Letter from Grenier Engineering: “Due to the fact that the Town of Waterbury has since repaired/relocated the municipal sewer line and the storm-drain system for Hill St. Extension, and due to the fact that the Town of Waterbury zoning regulations now contain Section 309, Waivers (only Variance existed previously), the project that is being applied for is a new application due to the substantial changes noted above (and shown on the enclosed site plan) that have occurred since 2012.”



**Conclusion:**


Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by the Charles O'Brien Sr. Family Trust to construct a new single-family dwelling 4' within the front setback and 16' within the rear setback at 21 Hill St. Extension, as presented in application #104-19 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, Andrew Strniste moved and Alex Tolstoi seconded the motion to approve application #104-19 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) The building shall not exceed 1.5 stories, and plans shall consider scale and architectural characteristics of the Hill Street Extension neighborhood.

**Vote:** The motion was approved 4-0.

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

12-11-19  
\_\_\_\_\_  
(date)

This decision was approved on December 4, 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 what permits must be obtained.

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