

**WATERBURY DEVELOPMENT REVIEW BOARD**  
**General Minutes—June 17, 2020**

**Members:** David Frothingham (Chair), Tom Kinley (co-Vice Chair), Alex Tolstoi, Andrew Strniste, Bud Wilson, Patrick Farrell, Harry Shepard.

**Staff Members:** Steve Lotspeich, Community Planner/Acting ZA; Patti Martin, Secretary.

The public meeting convened at 6:30 p.m. with Staff Member Steve Lotspeich present in the Steele Community Room in the Municipal Center, 28 North Main Street, Waterbury, VT, while all other attendees participated in the meeting via ZOOM.

Call to order by the Chair. *(Meeting will be audio recorded.) The agenda was followed as presented.*

The following introduction was offered by the Chair, David Frothingham: Applicants and consultants will be given the option to be contacted once their hearing was ready to commence. The applicants should try and have one spokesperson. Steve will give a staff overview. The spokesperson (and/or applicant) will make a presentation of new information to the Board. DRB members will be asked one at a time to ask questions, followed by staff questions and comments. Then the hearing will be opened to public for comments and questions.

Seven of seven members were present. David F. reminded the applicants that four votes in the affirmative were needed to pass a motion.

1. **#023-20: Loc Nguyen** (owner/applicant)  
Continuation of Site Plan, Conditional Use, and Special Flood Hazard Area review to expand the existing restaurant use to include banquets and outdoor events at 1675 U.S. Route 2. (MDR/SFHA zoning and overlay districts)

**Testimony:**

Outside tent/s will be required to be anchored due to the location(s) in the 100-year floodplain. This was acknowledged by the Applicant.

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

2. **#043-20: Charles O'Brien Sr. Family Trust** (owner), **Peter Hack, DBE Civil Property Investments LLC** (applicant)  
Setback Waiver review for a single-family dwelling to replace a dwelling that has been demolished, in the setbacks at 21 Hill St. Extension. (VMR zoning district).

**Testimony:**

- a. The DRB members requested that the site grading plan have accurate grading information that matches the proposed elevations for the house.
- b. Some of the area to be graded in order for the runoff from the proposed driveway to reach the catch basin near the street, is not on the property.
- c. Grenier Engineering will be consulted to provide a revised grading plan, and therefore, the hearing was continued. The Applicant will also consult with Grenier Engineering

regarding who is responsibility for grading to the catch basin since the area in question is outside of the property line.

*The hearing was continued to July 1<sup>st</sup> at 6:30 p.m.*

3. **#045-20: Stanley & Rene Morse (owners/applicants)**  
Setback Waiver review for a shed in the rear setback at 9 High St. (VMR zoning district).

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

4. **#050-20: Joseph & Judith Duffy (owners/applicants)**  
Conditional Use and minor Ridgelines/Hillsides/Steep Slopes (RHS) review for a two-lot subdivision of Lot D on Wood Farm Rd. (LDR/CNS zoning districts, RHS overlay district).

**Testimony:**

- a. An adjacent landowner expressed concern that Lot A has been overcut and that they would not want to have the same thing happen with Lot D, which is closest to their property.
- b. A potential buyer for the lot offered testimony that he felt the current clear cutting seemed in keeping with the area.
- c. It needs to be clarified by the Zoning Administrator if this is a new sub-division or a change to an existing subdivision permit that only involves changes to the clearing for the two lots.

*The hearing was continued to July 1<sup>st</sup> at 6:30 p.m.*

**Review of prior meeting minutes**

Tom Kinley moved and Alex Tolstoi seconded the motion to approve the general minutes of 6-3-20 and the decision for applications #026-20, as amended.

Vote: The motion was approved 7 – 0.

The meeting was adjourned at 9:06 pm.

Thomas A Kinley,  
(Chair) (Vice-Chair) (Acting Chair) (date)

7-1-2020

**Next meeting:**

July 1<sup>st</sup> at 6:00 p.m. for DRB members to have a possible deliberative session and 6:30 p.m. for hearings and public, to include 2 continued hearings from this evening, #043-20 and #050-20

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## APPROVED

\* During the declared COVID 19 emergency, a public body is not required to provide a physical location for an open meeting or have a person physically present. The state legislature amended the Open Meeting Law to allow a public body to hold its meeting by phone, electronic, or other remote means, provided that the public can participate and information about how and when the public can access the meeting is published in the agenda. A quorum or more of the members of the public body must participate in the meeting.

***The Waterbury DRB has 1 Alternate positions open:*** The DRB meets twice a month and reviews commercial projects, larger subdivisions, Planned-Unit developments, and Ridgeline-Hillside-Steep Slope projects. Contact Dina Bookmyer-Baker (ZA), 802-244-1018 or [dbookmyerbaker@waterburyvt.com](mailto:dbookmyerbaker@waterburyvt.com) for more information or to apply. These volunteer positions will be filled by Select Board appointment.

**Town of Waterbury  
Development Review Board  
Approved Decision**

**Application #023-20 - April 15 / May 6, 2020 / June 17, 2020**

**In Attendance:**

Board members present: David Frothingham (Chair), Bud Wilson, Tom Kinley, Andrew Strniste, Alex Tolstoi, Patrick Farrell, Harry Shepard

Staff present: Steve Lotspeich (Acting Zoning Administrator) and Patti Martin (Secretary).

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Owner/Applicant:	Loc Nguyen / Loc Lan LLC	
Address/Location:	1675 U.S. Route 2, Waterbury, VT	
Zoning District:	Medium Density Residential (MDR)	
Application #	023-20	Tax Map # 12-026.000

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**Applicant Request:**

The Applicant seeks approval to extend the non-conforming existing restaurant/bar and retail use to include outdoor events such as weddings, banquets and private parties, at 1675 U.S. Route 2.

**Present and sworn in:**

Loc Nguyen, owner/applicant  
Daniel & Emily Nguyen, applicants  
George McCain, consultant

**Exhibits:**

- A. Application #023-20 (7 pp: Zoning Permit, Site Plan, Conditional Use, Special Flood Hazard Area Overlay District), submitted 3/15/20.
- B. Project description prepared by Applicant, submitted 3/15/20 (B1) with additional updates for the 5/6/20 meeting (B2), and an additional update for the 6/17/20 (B3) meeting.
- C. Site Plan for two-lot subdivision showing existing condition, prepared by McCain Consulting, Inc., dated 4/3/13.
- D. Site Plan – Parking Plan – Outdoor events and restaurant, prepared by McCain Consulting, Inc., dated 4/9/20.
- E. Aerial view and photos of site prepared by the Applicant, submitted 3/15/20.
- F. Orthophoto of parcel boundaries and special flood hazard area. (Staff)
- G. Letter to adjoining landowners, mailed certified on 3/28/20.
- H. Aerial Imagery Plan submitted for 5/6/20

**Findings of Fact:**

1. Existing conditions: Loc Lan LLC owns a 6.12± acre parcel with 390± feet of frontage on U.S. Route 2 and two access drives on U.S. Route 2. The main access to the gravel surface parking area is for the restaurant use. The other westerly access serves two apartments in the building, which have a separate

parking area, as depicted on Exhibits C and D. This westerly access also provides service access for the restaurant use in the building. The property is developed and contains an existing two-story building with a 100-seat restaurant and a previously approved 500 sq. ft. retail space adjacent to the restaurant. The property is served by on-site water supply and septic and is in the Medium Density Village Residential (MDR) zoning district.

Background: The existing building had been operating as a restaurant prior to 1980 when zoning was established in the Town of Waterbury. In 2006, the facility obtained site plan and conditional use approval from the Planning Commission and Town Zoning Board of Adjustment to convert 500 sq. ft. of the restaurant to retail use (see Permit # 21-06-T). After Tropical Storm Irene in August 2011, the restaurant and retail use was closed; however, the owners renovated the building for continued restaurant use, as well as continuing to advertise that building as a restaurant.

2. Project: The Applicant is not proposing to change the building exterior, but proposes to convert the existing 100-seat restaurant to be a combination of a restaurant and a banquet – special event facility, which will include weddings and other events. The proposal is to extend the banquet - special events use to include both the 500 sq. ft. retail space that will be a banquet room and the rear yard of the property as shown on Exhibit D. The banquet - special events use will be utilized in accordance with the described provided in Exhibit B, and there will be no more than two outdoor events per month. These events will not include outdoor music, but may include outdoor wedding ceremonies and receptions utilizing a tent set up for each occasion. There will be no more than 200 people attending each event. The main events, weddings, and receptions will be located in the upper lawn as shown on Exhibits D, E and H. The lower lawn will be used for extra seating and an area for people to mingle. The lower field, which is in close proximity to the Winooski River, will be used for mingling and picture taking, and the overflow parking area.

3. General Dimension, Location, and Height Requirements, Section 504: In the MDR zoning district, the minimum lot size is two acres for all uses. There is no proposed change to the footprint of the existing building so the existing setbacks for the building will remain the same.

4. Table of Uses, Section 503: In the MDR zoning district, the Restaurant/Bar (see definition below) and Retail uses are not permitted use; therefore, they are considered non-conforming uses. The two existing apartments constitute a duplex and are a permitted use in the MDR zoning district. The Applicant seeks approval to discontinue the retail use and intends the restaurant/bar use to include indoor and outdoor events such as weddings and banquets. The special events could be considered accessory to the Restaurant/Bar use as defined below.

*(definition) Restaurant/Bar: An establishment where the primary business is the preparation and service of meals or drinks to the public for consumption on the premises; this shall exclude any service directly to customers in automobiles, such as drive-up or drive-through service.*

*(definition) Accessory Use or Building: A use of land or building or a portion thereof that is customarily incidental and subordinate to the principal use of the land or building and located on the same lot.*

5. Nonconforming Uses and Noncomplying Structures: The existing Restaurant/Bar use is nonconforming and may be extended under the following definitions and subsection:

*(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.*

Section 304(a)(2): A nonconforming use may be extended (see definition of extension of use) within the boundary lines of a parcel or lot existing on the date of this bylaw, or an amendment thereto, with the approval of the Development Review Board and with the granting of all required permits. The Development Review Board must find that a proposed nonconforming use meets the general and specific standards for conditional uses specified in Section 303. The Board finds that the Applicant has satisfied these requirements.

The proposal includes creating an outdoor event area in the rear yard with a grass access drive and overflow parking area as shown on Exhibit D.

6. Site Plan Review and Approval, Section 301: As the proposal involves changes to vehicular access and circulation for a grass parking lot and pedestrian access and safety, it is subject to site plan review. The Board considered the following criteria and made the following determinations:

- a. Traffic access and pedestrian safety, Section 301(f)(1) (A-D): Vehicular access will continue to be via the existing curb cuts on U.S, Route 2. Pedestrian access to the existing building from the existing parking area will remain unchanged. Pedestrian access to the events area in the rear yard will be via the existing lawn as shown on Exhibit D.
- b. Circulation and parking, loading, refuse, and service areas, Section 301(f)(2) (A-G): There is no change to the existing gravel surface parking area; however, a new grass access drive and grass overflow parking area will be created in the side and rear yard, as shown on Exhibit D. The site plan shows 46 parking spaces in the existing gravel parking area, including two handicap spaces. The 100-seat restaurant requires one space for each three seats (34 spaces) plus one for each of the 10 restaurant employees (34 + 10 = 44). There are 68 parking spaces shown in the grass overflow parking area for a total number of 114 spaces on the site. The total maximum capacity of the events is 200 people which require a minimum of 67 spaces plus spaces for the catering staff which will vary in number for each event. If there is an event and restaurant use occurring simultaneously 111 parking spaces are required (67 + 44). This figure does not include catering or other staff that would serve the special event. The dumpsters for refuse and recyclables are not shown on Exhibit D, but are located off the driveway for the two apartments and are screened from view from U.S. Route 2. A minimum of three additional parking spaces are provided in this area for the two apartments. The temporary toilets (Port-a-Johns) to be brought in for special events will also be located off the same northwesterly driveway in the area shown on Exhibit D. Area for snow storage is at the easterly end

of the gravel parking area. The service area for the building is on the rear side.

- c. Landscaping, screening, and lighting, Section 301(f)(3) (A-F): The site is developed. The creation of the grass access drive to the overflow parking area will necessitate the removal of one existing Japanese Maple trees. The creation of the grass access drive and overflow parking area will not disrupt the green space and landscaping for the building or the mature trees in the rear yard. There is a row of mature cedars on the neighboring property immediately to the southeast of the grass access driveway (see Exhibit D) that provide screening for the driveway and upper lawn area where the main ceremonies and receptions will take place. There will be temporary exterior lighting set up for events that will be along the grass access drive, upper lawn for main ceremonies/receptions, and for the overflow parking area. These lights will be proposed to be downcast and shielded as described in Exhibit B3. The large tents set up for events will have side panels to block the sound from the participants and are not proposed to have live or recorded music occurring inside or outside the tents.
  
7. Conditional Use criteria, Section 303: The existing use as a Restaurant/Bar is nonconforming in the MDR zoning district. The proposal to extend the nonconforming use is reviewed as a conditional use. Prior to granting approval for a conditional use application, the Board must find, and did find, that the proposed use conforms to the general and specific standards below. See Applicant's response to the conditional use criteria, Exhibit A4.
  - a. Section 303(e)(1) Community facilities: Extending the Restaurant/Bar use 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 as a restaurant for more than 40 years. The Applicant responds that "the project does not alter the land or require any new permanent structures." The extension of the Restaurant/Bar use will not have an undue adverse impact on the character of the area (Exhibit A6).
  - c. Section 303(e)(3) Municipal bylaws in effect: This application is before the Board complies with the site plan and conditional use criteria.
  - d. Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The restaurant use typically does 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.
  - f. Article VI, Flood Hazard Area Regulations and Overlay District: There are no permanent structures, no alterations to the existing building, and no grading proposed in the Special Flood Hazard Area on the site as shown on Exhibit F; therefore, the review criteria in these bylaws are not impacted. However, all tents shall be anchored to prevent flotation in the event of a flood.

**Conclusion:**

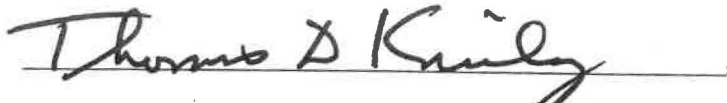
Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Loc Lan LLC to extend the existing Restaurant/Bar use as presented in application #023-20 and supporting materials, meets the Site Plan, Conditional Use, and Flood Hazard Area criteria set forth in Sections 301 and 303, and Article VI.

**Motion:**

On behalf of the Waterbury Development Review Board, Tom Kinley moved and Alex Tolstoi seconded the motion to approve application #023-20 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. Prior to issuing the zoning permit, the Applicant shall submit a plan illustrating the desired landscape screening along the north property line in the vicinity of “the lower lawn area for mingling.” These plants shall be installed by the end of spring, 2021.
4. Tents shall be anchored against flotation.
5. There shall be no live, recorded or amplified music outdoors during an event.
6. Except as amended herein, this approval incorporates all Findings of Fact, Conclusions of Law, and Conditions in zoning permit #21-06-T.

**Vote:** The motion was approved 6 – 0 plus one abstention.

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

7-1-2020

This decision was approved on July 1, 2020.

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 DRB Decision  
Stanley & Rene Morse - #045-20 - June 17, 2020**

**In Attendance:**

Board members present: David Frothingham (Chair), Bud Wilson, Tom Kinley, Andrew Strniste, Alex Tolstoi, Patrick Farrell, Harry Shepard

Staff present: Steve Lotspeich (Acting Zoning Administrator) and Patti Martin (Secretary).

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Owner/Applicant:	Stanley & Rene Morse	
Address/Location:	9 High St., Waterbury, VT	
Zoning District:	Village Mixed Residential (VMR)	
Application #	045-20	Tax Map # 19-164.000

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**Applicant Request**

The Applicant seeks approval to construct a new 10' x 12' storage shed within the rear setbacks at 9 High Street.

**Present and sworn in:**

Stanley & Rene Morse, Owners/Applicants

**Exhibits:**

- Application #046-19 (3 pages: zoning, conditional use), submitted 5/20/20.
- Survey of Site.
- Orthophoto of subject parcel and neighboring area.
- Pictures of the rear yard.
- Notice to adjoining landowners, mailed certified on May 30, 2020.

**Findings of Fact:**

1. Existing conditions: Stanley & Rene Morse own a 0.22-acre parcel located at 9 High Street. The property contains a single-family dwelling. The lot predates the establishment of zoning regulations in the Town in 1980, and therefore, the lot is considered a pre-existing and nonconforming small lot.
2. Proposal: The Applicants are proposing to construct a new 10' x 12' storage shed, which is depicted on Exhibits A and D.
3. 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 existing lot frontage (lot width at the building front line) is approximately 82.5'.

4. Waiver Request: The Applicants are seeking a setback waiver that will allow them to encroach into the rear yard setback by 20' (30 minus 10').

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 finds that the proposal conforms to the following general and specific standards, as outlined below:

- a. Section 303(e)(1) Community facilities: No change in the residential use of the property is proposed. The new shed will be for storage purposes only; and 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 shed will be similar in scale to the accessory structures in neighborhood. The Applicants states the “shed will come pre-built and sit on footprint of a barn once there” (see application).
- c. Section 303(e)(3) Municipal bylaws in effect: The use of the property will remain residential. This project application complies 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 shed and is not anticipated to 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 the Stanley & Rene Morse to construct a new shed 20' within the rear setback at 9 High Street, as presented in application #045-20 and supporting materials, meets the Waivers and Conditional Use criteria set forth in Sections 309 and 303.

**Decision Motion:**

On behalf of the Waterbury Development Review Board, Alex Tolstoi moved and Bud Wilson seconded the motion to approve application #045-20 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:** The motion was approved 7 – 0.

Thomas D. Kinley  
(Chair) (Vice-Chair) (Acting Chair)

7-1-2020

This decision was approved on July 1, 2020.

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.