

**WATERBURY DEVELOPMENT REVIEW BOARD**  
**General Minutes—July 01, 2020**

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

**Staff Members:** Steve Lotspeich, Acting Zoning Administrator; Patti Martin, Secretary.

The public meeting convened at 6:30 p.m. Staff Member Steve Lotspeich was 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 accepted and followed as presented.*

The following introduction was offered by the Co-Vice Chair, Tom Kinley: 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 provide 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.

Six of seven members were present. Tom K. reminded the applicants that four votes in the affirmative were needed to pass a motion.

**1) #043-20: Charles O'Brien Sr. Family Trust (owner), Peter Hack, DBE Civil Property Investments LLC (applicant)**

Continuation of Setback Waiver review for the construction of a new single-family dwelling that is to replace a previously demolished dwelling within the setbacks at 21 Hill St. Extension. (VMR zoning district).

Testimony:

- a) The height measurement from the basement slab to the peak of the roof is 34 feet.
- b) The height measurement at the gable ends of the house (north, south and east) averages at approximately 28.5 feet.
- c) Screening on the east side of the driveway was suggested by a DRB member.
- d) Peter Hack responded to a comment by the attending neighbor that said a tree needs to be removed along this property line.

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

**2) #050-20: Joseph & Judith Duffy (owners/applicants)**

Continuation of 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) The density of the tree planting remediation on Lot A (exhibit H) will be within the

15-20 feet range, as agreed by the applicant, per his consultant.

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

**3) #055-20: Charles S. Taylor Family Trust (owner), Zachary Laporte & Dakota Clark (applicants)**

Pre-development clearing and driveway construction for a 27-acre parcel off Ring Rd. in the Ridgelines/Hillsides/Steep Slopes (RHS) Overlay District. (CNS zoning district).

Testimony:

- a) Access to the lot via the woods road, which crosses the lot to two camps, and is the route of the current VAST snowmobile trail, was discussed. Access should be researched and shown/clarified on these plans as they relate to accessing the adjacent property above the subject lot.
- b) The profile of the driveway's slope was discussed, specifically as it relates to the access for the fire department and ambulance service. A letter regarding emergency access from each entity was requested.
- c) A possible overnight parking or turn-around area at the bottom of the driveway (in the easement area) was suggested. This would be in case the personal vehicle could not get up the drive in the wintertime.
- d) Drainage along the roadway should be further discussed.
- e) The neighbor wanted to confirm that their leach field would not be compromised by the proposed driveway development and the consultant confirmed it would not.
- f) The Brady's asked about the proximity of the driveway to their house site, especially in terms of drainage issues and concerns. The project is also expected to have a long build out period (4-5 years), and therefore, privacy and noise are concerns as they relate to driveway and overall project is developed.
- g) Any work on the existing easement, which was formerly for the Campbell property, is a concern for the Brady's due to the impact to their property.

*The hearing was continued to July 15<sup>th</sup>, 2020 at 6:30 pm.*

**4) #056-20: Felix & Geraldine Callan Revocable Trust (owner/applicant)**

Three-lot subdivision at 261 Dundalk Rd. in the Ridgelines/Hillsides/Steep Slopes (RHS) Overlay District. (MDR & CNS zoning districts).

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

**Review of prior meeting minutes:**

Bud Wilson moved, and Alex Tolstoi seconded, the motion to approve the general minutes of June 17, 2020 and the decisions for applications #023-20 and #045-20, as amended.

Vote: The motion was approved 6 – 0.

The meeting was adjourned at 8:30 pm

Minutes approved:



\_\_\_\_\_  
(Chair) (Vice-Chair) (Acting Chair)

Approved: July 15, 2020  
(date)

**Next meeting:**

July 15<sup>th</sup> at 6:30 p.m. for hearings and public, to include the continued hearing from this evening, #055-20.

---

\* 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.

**Town of Waterbury  
Development Review Board  
Approved Decision  
O'Brien/Peter Hack #043-20 - June 17 & July 1, 2020**

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

**Staff Members:** Steve Lotspeich, Acting Zoning Administrator; Patti Martin, Secretary.

---

Applicant/Owner:	Peter Hack DBE Civil Property Investments LLC/Charles O'Brien Sr. Family Trust	
Address/Location:	21 Hill St. Extension, Waterbury, VT	
Zoning District:	Village Mixed Residential (VMR)	
Application #	043-20	Tax Map # 19-178.000

---

**Present and sworn in on 6/17/20:**

Peter Hack, Applicant

**Present and sworn in on 7/1/20:**

Alex King, Adjacent Landowner  
Peter Hack (already sworn in)

**Applicant Request**

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

**Exhibits:**

- A: Application #043-19 (3 pages: zoning, conditional use), submitted 5/12/19.
- B: Site Plan including previous house footprint by Grenier Engineering, revised 5/25/20
- C: Site Plan for previously approved house by Grenier Engineering, revised 5/21/20
- D: Elevations of proposed house, submitted 5/12/20
- E: Orthophoto of subject parcel and neighboring area
- F: Prior DRB decision for App. #104-19 for a waiver request, dated 11/20/19
- G: Notice to adjoining landowners, mailed certified on 5/30/20

**Findings of Fact:**

1. Existing conditions: Charles O'Brien Sr. owns a 0.16-acre parcel located at 21 Hill St. Extension. The property was previously developed with a single-family dwelling that was demolished due to its deteriorated condition. The property is accessed by an existing driveway off Hill St. Extension, and is served by municipal water and an on-site wastewater system that was reconstructed after a private system failed. This system is being maintained by the municipality even though Hill St. Extension is a private road. The parcel is located in the Village Mixed Residential (VMR) zoning district, and predates the establishment of Town's zoning regulations (1980), and therefore, the lot is considered a pre-existing and

nonconforming small lot. The previous dwelling did not meet the VR District's front, north side, and rear setback requirements as shown on Exhibit C, Site Plan.

2. Proposal: The Applicant is proposing to construct a new 26' x 36' single-family dwelling with an attached 8' x 36' porch/deck, as depicted on Exhibits B and D. Exterior lighting may be included.
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 previously existing 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'.
4. Waiver Request: The Applicant seeks a setback waiver, requesting to encroach into the front yard setback by 7' (30' minus 23') and the rear 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 proposed project conforms to the following general and specific standards:
  - a. Section 303(e)(1) Community facilities: The Applicant is not proposing to change the current use of the lot – residential. The new single-family dwelling 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 larger in scale compared to the houses in neighborhood; however, the scale of the proposed dwelling will still conform to those in the neighborhood. The application states: “This is an existing neighborhood with an eclectic mix of small lots and various home styles. This particular lot is one of the larger on this street and the house size is compatible.”
  - c. Section 303(e)(3) Municipal bylaws in effect: The use of the property will remain residential. The proposed project complies with the conditional use criteria herein.
  - d. Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The project is a new single-family dwelling, which is not expected 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, and therefore, review and analysis under this section is not required.

#### **Prior Approval:**

A previous application (Permit #: 104-19) for a setback waiver was approved by the DRB in 2019. A prior approval in Permit #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, State of Vermont Superior Court –

Environmental Division Judgement Order on Appeal of DRB decision, dated 09/13/13. As stated in Waiver Setback Request Letter from Grenier Engineering in Application #060-12-V: "Due to the fact that the Town of Waterbury has since repaired/relocated the municipal sewer line and 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-dwelling 7' within the front setback and 20' within the rear setback at 21 Hill St. Extension, as presented in application #043-20 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, Alex Tolstoi moved and Patrick Farrell seconded the motion to approve application #043-20 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 6 - 0.



\_\_\_\_\_  
(Chair)

\_\_\_\_\_  
July 15, 2020

(date)

This decision was approved on July 15, 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.*

**Town & Village of Waterbury  
Development Review Board  
Approved Decision  
June 17 & July 1, 2020**

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

**Staff Members:** Steve Lotspeich, Acting Zoning Administrator; Patti Martin, Secretary.

---

Owner/Applicant:	Joseph and Judy Duffy	
Address/Location:	Wood Farm Road, Waterbury Center, VT	
Zones:	Low-Density Residential (LDR), Conservation (CNS) & Ridgeline/Hillside/Steep Slope (RHS) overlay	
Application #	050-20	Tax Map # 14-084.000

---

**Applicant Request:**

The Applicant seeks to subdivide the existing lot on Wood Road into two residential lots in the RHS overlay district.

**Present and sworn in:**

Chris Austin, Consultant  
Damian Boyd-Boffa, Interested Party  
Heather & Mark Palmer, Abutting Property Owner

**Exhibits:**

- A: Application #050-20 (8 pp: Zoning, Conditional Use, Subdivision, Overlay District), submitted 5/22/20.
- B: Project submittal letter from Grenier Engineering, dated 5/21/20.
- C: Wood Farm Subdivision – Boundary Line Adjustments with Ripley Springs, LLC, prepared by Grenier Engineering, revised 5/19/20.
- D: Orthophotos of parcel with tax map boundaries and zoning districts (staff).
- E: Wildlife Resources Map \*
- F: Prior DRB decision for Permit #91-17, dated 10/18/17
- G: Letter to adjoining landowners, mailed certified: June 1, 2020.
- H: Tree Planting Remediation on Lot A, dated 6/25/20

**Findings of Fact:**

1. Existing conditions: Joseph and Judy Duffy own a 22.3± acre parcel located on Wood Farm Road, off of Ripley Road. The parcel has been subdivided and recombined previously (see zoning permit history below). Those approvals were subsequently undone or allowed to lapse; the existing parcel remains undeveloped. The parcel includes frontage on Ripley Road. Wood Farm Road transects the parcel and provides access (via an approved 50' right-of-way) to neighboring properties. The parcel is located in both the Low-Density Residential (LDR) and Conservation (CNS) zoning districts, with portions within

the Ridgelines/Hillsides/Steep Slopes (RHS) overlay district (Exhibit D).

2. Zoning permit history: (applicable recent permits)

- September 2014, DRB Subdivision, Conditional use, and Ridgelines/Hillsides/Steep Slopes review and approval for zoning permit #42-14-T, regarding a 3-lot subdivision (creates Lots A, D, and E) and pre-development site preparation for residential development on Lot D.
- April 2015, ZA approval of zoning permit #05-15-T for a boundary-line adjustment involving Lot A (remove), Lots E and D, and Area A from Ripley Springs, resulting in reconfigured Lots E and D (and Ripley Springs remaining lands).
- January 2016, ZA approval of zoning permit #01-16-T for a boundary-line adjustment to merge Lot E with Lot D, resulting in Lot D containing 39.5 acres.
- October 2017, DRB Subdivision, Conditional use, and Ridgelines/Hillsides/Steep Slopes review and approval for zoning permit #91-17, for a 3-lot subdivision (creates Lots A, D, and E) and pre-development site preparation for residential development on Lots A and D. Lot E was subsequently sold and approved with a DRB decision for the construction of a single-family dwelling for Palmer (Permit #070-19).
- March, 2018, ZA approval of zoning permit #027-18 for a boundary-line adjustment to transfer 6.0 acres from Lot D to Ripley Springs LLC. This permit and the associated plant also effectively merged Lots A and D.

3. Current proposal: The Applicants are proposing to subdivide the existing 22.3± acre parcel (Lot D) into two lots as follows:

- Lot A will be 10.9± acres, lies mostly in the CNS zoning district, has ±115' of frontage along (the road centerline) and an access drive to Wood Farm Road, and will be served by private well and septic for a four-bedroom single-family dwelling. The lot width at the building front line is greater than 300'.
- Lot D will be 11.4± acres, contains land in both LDR and CNS zoning districts and has ±170' of frontage along (the road centerline of) Ripley Road and will have an access drive to Wood Farm Road, which crosses the lot to provide access to neighboring properties to the east. Lot D also contains a 50' right-of-way to Lot E (the Palmer lot) for access and utilities. Lot D will be served by private well and septic for a five-bedroom single-family dwelling. The lot width at the building front line is greater than 300'.

The proposed lots will be served by private well and septic as per State water and wastewater permit WW-5-3162-4, issued October 11, 2017, and include land within the Ridgelines/Hillsides/Steep Slopes (RHS) overlay district. Both proposed building zones are between 1200 and 1350 feet in elevation (FIE). No portion of the property is above 1350 FIE (Exhibit C). At this time, the subject application is pertains only to the subdivision, not the proposed dwellings.

4. Section 504 General Dimension Requirements: Any subdivision of land must conform to the relevant criteria in Section 504. See the table below regarding specifics relating to the proposed project compared to those standards of the LDR and CNS zoning districts. Both lots conform to the aforementioned

zoning districts.

	Zoning District Minimum Lot Size	Proposed Lot Size	LDR/CNS Minimum Frontage	Proposed Frontage
Lot A	CNS: 10 acres	10.9± acres	300'	> 300'± Wood Farm Rd
Lot D	LDR: 5 acres CNS: 10 acres	11.4± acres	300'	> 300'± Ripley Rd

(definition) LOT FRONTAGE: Distance measured across the width of the lot at the building front line, or proposed building front line.

(definition) BUILDING FRONT LINE: Line parallel to the front lot line transecting the point in the building face that is closest to the front lot line....

In the LDR zoning district, the minimum setback requirements are: 70' front and 75' sides/rear. In the CNS zoning district, the minimum setback requirements are: 100' for the front, sides, and rear. The building envelopes and proposed dwellings on the lots meet the setback requirements for both districts. Each proposed lot meets the minimum lot size requirements and each lot will have access to Wood Farm Road, a private road. (Exhibit C1).

5. Section 1201 Authority and Review of Subdivisions: All applications for land division shall be reviewed by the DRB under Section 1202, unless exempt under Section 1203. This application is not exempt from Board review, as the project involves lands within the RHS overlay district.
6. Section 1202 Subdivision Review Criteria: The Board finds that the proposed subdivision conforms to the standards in Section 1202 (a)–(d).
  - (a) The Board finds that the proposed project will not have an undue adverse impact on the following:
    - (1) The capacity of community facilities: The anticipated future dwellings will not be connected to municipal water or sewer systems. The proposed project involves the creation of two new residential lots, which are not expected to cause the school system capacity to be exceeded, cause an undue adverse impact to traffic volumes, or create an unmanageable burden on fire protection services.
    - (2) The character of the area: The proposed lots are expected to be residential uses, thus conforming to the existing uses in the immediate area – residential.
    - (3) Water quality: The Applicants may be required to obtain a VT stormwater discharge permit. The Applicants have obtained the water/wastewater permit from the State of Vermont (ww-5-3162-4). Erosion protection and sediment control measures shall be employed during the development of the lots to ensure that development of the lots will not result in undue adverse impact to water quality or downstream properties.
    - (4) Aesthetics and scenic or natural beauty: Additional clearing has taken place on Lot A beyond what was approved in Permit #91-17 and the associated DRB decision. A plan for Tree Planting Remediation on Lot A, dated 6/25/20, has been submitted to address replanting some of the area that was previously cleared without approval.

(5) Significant natural resources: Significant Natural Resources are defined in the Regulations as: “Areas that include streams; Class I & II wetlands; prime agricultural soils; wildlife resources, including the Natural Heritage sites, as shown on the Waterbury Wildlife Resources Map in the Municipal Plan; and rare, threatened or endangered species.” A Wildlife Resources Map has been submitted into the record (see Exhibit E).

(b) The project is *not* in the RT100 zoning district, and therefore, review and analysis under this Section is not required.

(c) The project is in the RHS overlay district. Review and analysis of the RHS standards can be found in Section 1004, in paragraph 7, below.

(d) The Board may attach reasonable conditions and safeguards with respect to the subdivision attributes identified in Section 1202(d)(1–4). The Applicants’ proposal does not include excessive curb-cuts, as all of the lots will be accessed from a private road. Lot D has an irregular shape. Board finds that there is good cause for this configuration, as the proposed keeps development outside of a wetland or stream buffer. The building envelopes are small relative to the size of the lots, which will allow for the preservation the existing vegetation, thus meeting the minimum setbacks for the districts.

7. Section 1004 RHS Standards of Review: All of the proposed development is located below 1,500 FIE. As per Section 1001, the project is classified as “minor” development. Minor development projects on lands within the RHS overlay district shall be subject to conditional use review.

Section 303 Conditional Use criteria: The proposed project, which includes development within the RHS overlay district complies with the following conditional use review standards:

(a) Section 303(e)(1) Community facilities: See compliance with the capacity of community facilities in paragraph 6(a)(1), above.

(b) Section 303(e)(2)(A–E) Character of the area: The existing uses in the immediate area are residential. Light and noise impacts are anticipated to be typical of standard residential use, which will not cause danger of fire, explosion, or electrical hazard, or in any other way jeopardize the health and safety of the area. The Applicants did not identify any historic sites, or rare or irreplaceable natural areas on the parcel. Resources provided by the State of Vermont did not identify any rare, threatened, or endangered species, or deer wintering areas on the subject parcel (exhibit from previous application). Additional clearing has taken place on Lot A beyond what was approved in Permit #91-17 and the associated DRB decision. A plan for Tree Planting Remediation on Lot A, dated 6/25/20, has been submitted to address replanting some of the area that was previously cleared without approval.

(c) Section 303(e)(3) Municipal bylaws in effect: Residential lots are a permitted use within the LDR and CNS zoning districts and are a conditional use when the lots are located within the RHS overlay district. The proposed project complies with the zoning bylaws.

(d) Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The proposed residential use is not expected create the above-named nuisances, and therefore, no devices or special methods are required to control these impacts.

(e) Section 303(h) Removal of earth or mineral products conditions: The project does not include earth removal activities. Therefore, review and analysis under this section is not required.

**Conclusion:**

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Joseph and Judy Duffy to create a two-lot subdivision on Ripley and Wood Farm Road in the RHS overlay district, as presented in application #050-20 and supporting materials, meets the Conditional Use, Ridgelines/Hillsides/Steep Slopes, and Subdivision criteria as set forth in Sections 303, 1004, and 1202.

**Motion:**

On behalf of the Waterbury Development Review Board, Alex Tolstoi moved and Andrew Strniste seconded the motion to approve application #050-20 with the following conditions:

- (1) The Applicants shall complete the project in accordance with the Board’s findings and conclusions and the approved plans and exhibits;
- (2) The Applicants shall comply with erosion protection and sediment control measures when development commences on the lots. [Section 1202(a)3]
- (3) Except as amended herein, this approval incorporates all Findings of Fact, Conclusions of Law, and Conditions in zoning permit approvals #42-14-T, #05-15-T, #01-16-T, #091-17, and #027-18.
- (4) The Applicants shall submit a copy of the final plat, prepared in accordance with 27 V.S.A. § 1403, to the Zoning Administrator within 150 days of the approval date of this decision for Development Review Board approval.
- (5) 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.

**Vote:** The motion was approved 6 - 0.

  
\_\_\_\_\_  
(Chair) (Vice-Chair) (Acting Chair)

\_\_\_\_\_  
July 15, 2020  
(date)

This decision was approved on July 15, 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.*

**Town & Village of Waterbury  
Development Review Board  
Approved Decision  
Callan Revocable Trust, App. #056-20  
July 1, 2020**

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

**Staff Members:** Steve Lotspeich, Acting Zoning Administrator; Patti Martin, Secretary.

---

Owner/Applicant:	Felix & Geraldine Revocable Trust	
Address/Location:	261 Dundalk Rd., Waterbury Center, VT	
Zones:	Medium Density Residential (MDR), Conservation (CNS) & Ridgeline/Hillside/Steep Slope (RHS) overlay	
Application #	056-20	Tax Map # 14-084.000

---

**Applicant Request**

The Applicants seek to subdivide the existing lot located at 261 Dundalk Rd. into three residential lots in the RHS overlay district.

**Present and sworn in:**

Gunner McCain, Consultant  
Felix & Geraldine Callan, Owners/Applicants

**Exhibits**

- A: Application #056-20 (8 pp: Zoning, Conditional Use, Subdivision, Overlay District), submitted 6/5/20.
- B: Project submittal letter from McCain Consulting, dated 6/3/20.
- C: Narrative response to Conditional Use & RHS criteria.
- D: Survey and Subdivision Plan for Callan Revocable Trust prepared by McCain Consulting, dated 6/1/20.
- E: Callan Revocable Trust Property Overview Plan w/Imagery, dated 6/1/20
- F: Parcel Maps with tax map boundaries and zoning districts (submitted by Staff).
- G: Waterbury Wildlife Resources Map from 2018 Municipal Plan
- H: Letter to adjoining landowners, mailed certified: June 12, 2020 .

**Findings of Fact:**

1. Existing conditions: The Felix & Geraldine Revocable Trust owns a 164± acre parcel located at 261 Dundalk Road off of Sweet Road. The parcel is currently developed with a single-family house owned by John and Gina Callan. The subject parcel includes frontage on Sweet Road. Dundalk Road and Tamarack Lane, which are both private roads, transect the parcel to provide access (via an approved 50' rights-of-way) to neighboring properties. The parcel is located in both the Medium Density Residential

(MDR) and Conservation (CNS) zoning districts, and the entire parcel is within the Ridgelines/Hillsides/Steep Slopes (RHS) overlay district (Exhibit D).

2. Current proposal: The Applicants seek to subdivide the existing 164± acre parcel into three lots as follows:

- Lot 8 will be 11.70± acres, lies mostly in the CNS zoning district, has access to Sweet Road via Tamarack Lane and Dundalk Rd., and will be served by private well and septic for an anticipated future dwelling. The lot width at the building front line is greater than 300'. The parcel is transected by an existing woods road that is centered within a 50' wide right-of-way providing access to the balance of the land. The parcel includes two strips of land: one that connects to Dundalk Road and includes the travel way for Tamarack Lane; and another that extends to Sweet Road and follows the existing stream on the northerly border of the parcel.
- Lot 9 will be 13.04± acres; contains land in both MDR and CNS zoning districts; and has access to Sweet Road via Dundalk Road, which is located on a strip of land that is part of this lot and has approximately 120' of frontage on the right of way for Sweet Road. Lot 9 includes the existing single-family dwelling owned by John and Gina Callan. The lot is served by private well and septic for the existing four-bedroom single-family dwelling. Lastly, the lot width at the building front line is greater than 300'.

Both proposed lots are entirely within the Ridgelines/Hillsides/Steep Slopes (RHS) overlay district and are between 1,200 and 1,500 feet in elevation (FIE). The remaining balance of the land is primarily above 1500 FIE (Exhibit E). No development is proposed at this time on either Lot 8 or the balance of the land. This application only pertains to the subdivision of land, and not for the review of development, as no additional dwelling units are proposed at this time.

3. Section 504 General Dimension Requirements: Any subdivision of land must conform to the relevant criteria in Section 504. See the table below relating to the subdivision's compliance with the LDR and CNS zoning districts.

	Zoning District Minimum Lot Size	Proposed Lot Size	LDR/CNS Minimum Frontage	Proposed Access
Lot 8	MDR: 2 acres CNS: 10 acres	11.70± acres	300'	Via Tamarack Lane and Dundalk Road
Lot 9	MDR: 2 acres CNS: 10 acres	11.4± acres	300'	Via Dundalk Road
Balance of Land	CNS: 10 acres	139± acres	300'	Via 50' wide ROW on Lot 8 and Dundalk Rd.

(definition) LOT FRONTAGE: Distance measured across the width of the lot at the building front line, or proposed building front line.

(definition) BUILDING FRONT LINE: Line parallel to the front lot line transecting the point in the building face that is closest to the front lot line....

In the CNS zoning district, the minimum setbacks are: 100' for the front, sides, and rear. The existing single-family dwelling on Lot 9 meets the setback requirements. As proposed, each lot meets the

minimum lot size requirements and will have access to Sweet Road, a Town road. (Exhibit D).

4. Section 1201 Authority and Review of Subdivisions: All subdivision applications shall be reviewed by the DRB under Section 1202, unless exempt under Section 1203. This application is not exempt from Board review, as the project involves lands within the RHS overlay district.

5. Section 1202 Subdivision Review Criteria: The Board must find that the proposed subdivision conforms to the standards in Section 1202 (a)–(d).

(a) The Board must find that the proposal will not have an undue adverse impact on the following:

- (1) The capacity of community facilities: The existing dwelling and anticipated future dwelling will not be connected to municipal water or sewer systems. The two residential lots and balance of land will not exceed the school system capacity, cause an undue adverse impact to traffic volumes, or create an unmanageable burden on fire protection services.
- (2) The character of the area: The use of the proposed lots will be residential. The existing uses in the immediate area are residential.
- (3) Water quality: The Applicants might be required to obtain a VT stormwater discharge permit. Erosion protection and sediment control measures shall be employed during the development of the lots to ensure that the development of the lots will not result in undue adverse impact to water quality or downstream properties.
- (4) Aesthetics and scenic or natural beauty: At this time, besides what currently exists for the dwelling on Lot 9, no additional clearing is proposed on any of the three lots.
- (5) Significant natural resources: Significant Natural Resources are defined in the Regulations as: “Areas that include streams; Class I & II wetlands; prime agricultural soils; wildlife resources, including the Natural Heritage sites, as shown on the Waterbury Wildlife Resources Map in the Municipal Plan; and rare, threatened or endangered species.” A Wildlife Resources Map was submitted to be part of the record (see Exhibit G). Exhibit C2, Narrative response to Conditional Use & RHS criteria, states “The State of Vermont ANR Atlas does not identify any rare, threatened, or endangered species or deer wintering areas on the subject property.

(b) The project is *not* in the RT100 zoning district, and therefore, review under this section is not required.

(c) The project location is in the RHS overlay district. Review and analysis of the RHS standards can be found in Section 1004, in paragraph 7, below.

(d) The Board may attach reasonable conditions and safeguards with respect to the subdivision attributes identified in Section 1202(d)(1–4). The Applicants’ proposal does not include excessive curb-cuts, as all of the lots will be accessed by private roads. Lots 8 and 9 have irregular shapes due to the strips of land that connect to Dundalk and Sweet Roads that pre-exist the creation of this three-lot subdivision. The DRB finds that there is good cause for this configuration, as the proposal provides access via

existing private roads or protect a stream buffer.

6. Section 1004 RHS Standards of Review: All of the existing development is located below 1,500 FIE. However, the majority of the balance of the land is equal to or above 1,500 FIE. Per Section 1001, the project is classified as “major” development. See Exhibit C: Narrative response to Conditional Use & RHS criteria regarding more information relating to the criteria in Section 1004. Major development projects on lands within the RHS overlay district shall be subject to the Conditional Use review criteria as provided below:

Section 303 Conditional Use criteria: The proposed project, which includes existing development within the RHS overlay district, complies with the following conditional use review standards:

- (a) Section 303(e)(1) Community facilities: See compliance with the capacity of community facilities in paragraph 5(a)(1), above.
- (b) Section 303(e)(2)(A–E) Character of the area: The existing uses in the immediate area are residential. Light and noise impacts are anticipated to be typical of standard residential use, which will not cause danger of fire, explosion, or electrical hazard, or in any other way jeopardize the health and safety of the area. The Applicants did not identify any historic sites, or rare or irreplaceable natural areas on the subject parcel. Resources provided by the State of Vermont did not identify any rare, threatened, or endangered species on the subject parcel as well. No additional clearing is proposed.
- (c) Section 303(e)(3) Municipal bylaws in effect: Residential lots are a permitted use within the LDR and CNS zoning districts and are a conditional use when the lots are located within the RHS overlay district. The proposed project complies with the zoning bylaws.
- (d) Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The proposed residential use is not expected to create the above-named nuisances, and therefore, no devices or special methods are required to control these impacts.
- (e) Section 303(h) Removal of earth or mineral products conditions: The proposed project does not include earth removal activities. Therefore, review and analysis under this section is not required.

As noted above, the proposed project does not include any new development at this time. The anticipated future dwelling unit (development) will require additional review by this Board.

**Conclusion:**

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Felix & Geraldine Revocable Trust to create a three-lot subdivision located at 261 Dundalk Road in the RHS overlay district, as presented in application #056-20 and supporting materials, meets the Conditional Use, Ridgelines/Hillsides/Steep Slopes, and Subdivision criteria as set forth in Sections 303,

1004, and 1202.

**Motion:**

On behalf of the Waterbury Development Review Board, Alex Tolstoi moved and Harry Shepard seconded the motion to approve application #056-20 with the following conditions:

- (1) The Applicants shall complete the project in accordance with the Board’s findings and conclusions and the approved plans and exhibits;
- (2) The Applicants shall comply with erosion protection and sediment control measures when development commences on the lots. [Section 1202(a)3]
- (3) The Applicants shall submit a copy of the final plat, prepared in accordance with 27 V.S.A. § 1403, to the Zoning Administrator within 150 days of the approval date of this decision for Development Review Board approval.
- (4) 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.

Vote: The motion was approved 6 – 0.



\_\_\_\_\_  
 (Chair)

\_\_\_\_\_  
 July 15, 2002  
 (date)

This decision was approved on July 15, 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.*