

**WATERBURY DEVELOPMENT REVIEW BOARD**  
**General Minutes—September 2, 2020**

**Attending:** Board members present: David Frothingham (Chair), Tom Kinley (co-Vice Chair), David Rogers (co-Vice Chair), Bud Wilson, Alex Tolstoi, Patrick Farrell, and Harry Shepard. Staff present: Steve Lotspeich (Community Planner), Dina Bookmyer-Baker (ZA), and Patti Martin (Secretary).

David Frothingham, Chair, opened the public meeting at 6:30 p.m. Staff members Steve Lotspeich and Dina Bookmyer-Baker were present in the Municipal Center, 28 North Main Street, Waterbury, VT, while all other attendees participated in the meeting via ZOOM. The meeting was video recorded. The agenda was approved and followed as presented.

The following introduction was offered by the David Frothingham: Applicants and consultants will be given the option to be contacted once their hearing is ready to commence. The applicants should try to have one spokesperson. Steve or Dina will give a staff overview on the application. The Applicant or spokesperson will present 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. Attendees were advised that the DRB is a 7-member Board and that any approval will require 4 votes in the affirmative.

- 1) **#080-20: Tekla Van Hoven** (appellant), **Judy Foregger, Trustee for the Russell Foregger Revocable Trust** (appellee)  
Appeal of zoning permit #071-20 issued to Russell Foregger Revocable Trust for a 3-lot subdivision of remaining lands and a boundary-line adjustment of Lot 3 off of Loomis Hill Road. (MDR zoning district) —*Appellant and Appellee respectfully request the Board to continue this Appeal hearing, without review, to 10/7/20, to prepare revisions to the project.*

The hearing was continued, without review, to 10/7/20 at 6:30 p.m.

- 2) **#082-20: John Mutchler** and **Perrin Williams** (applicant), **Felix & Geraldine Callan Revocable Trust** (owner)  
Nine-lot Planned Unit Development of lands on Ripley Road and Sweet Road that will include six residential lots. (MDR/LDR/CNS/RHS zoning and overlay districts)

Present and Sworn in:

Gunner McCain, McCain Consulting Inc., Consultant to applicant  
Jennifer Faillace, Attorney for applicants  
John Muchler & Perrin Williams, Applicant  
Bruce Therrien, Adjoining Landowner  
Eric Longfellow, Adjoining Landowner  
Kristin Kellett, Adjoining Landowner  
Glenn Andersen, Neighbor

Testimony:

- Clearing areas – 50% maximum on all lots proposed. Thirty to 40% would be an acceptable number for pre-development clearing. Board members expressed concern about what happens once the building lots are developed. Controls are in place to make the end result meet the maximum clearing area that is required.
- All of the lots, but one, exceed the double setback requirements.

- The Municipal Impact questionnaire shows access approval by emergency services in Waterbury.
- Once the PUD is developed, there will be no public right-of-way and no public trails. There will be walking trail(s) for the landowners in the development.
- Bruce Therrien, adjoining landowner, expressed that he thinks the project looks good. His concern is with the road access from the Ripley Road side and Sugarhouse Road access. He submitted a written statement, logged as Exhibit J.
- Response from the Consultant was that the owners are willing to accept a condition to widen the road and make sure there is a pullover for passing.
- Steve cautioned that there is a “right-of-way” to be considered on this section where the road needs to be widened. The Callans have reserved a 50-foot right-of-way on the property owned by the Hillers.
- Bruce supports the widening of the road as presented by the Consultant.
- Eric Longfellow, adjoining landowner, pointed out that where his property adjoins the road his buffer zone will be affected, therefore, he wants to see the tree removal plan and make sure that it won’t interfere with that area.
- The final covenants will be revised to limit livestock and poultry to non-commercial and residential uses.
- These covenants would not apply to the agricultural lots, only the residential lots.
- Kristen Kellett, adjoining landowner, supports #5, Bruce Therrien’s letter
- Glenn Andersen, neighbor, expressed concern with the land and how it is going to be used, how it is increasing traffic in an area that supports agriculture and wildlife. The developer stated that the timeline is to get the permitting to start Spring 2021.
- Does the property owner who has the right-of-way have the legal right to protect the roadway? From Ripley to the land to be developed is owned as a right-of-way by the land to be developed. It is on the subdivision from 2009. The proposed improvements did not occur. This approval can include a condition that the conditions are met from the previously-approved subdivision from 2009 conditions. Concern by Gunner that wetland permits would not need to be obtained, but it was suggested that a different plan might need to be submitted.
- One condition will be that Lot 5 will not be developed for any residential use in the future. If Lot 5 is not accepted by the potential buyer, then it will be merged with adjacent Lot 4 or 6.
- The consultant stated that there would not be any undue impact on the roadways caused by the PUD.

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

- 3) **#085-20: Hazen Powell** (owner/applicant)  
 Setback waiver request for a new single-family dwelling on an undeveloped lot at 350 Black Bear Hollow. (CNS zoning district)

Present and Sworn in:

Hazen Powell, Owner/Applicant  
 Gunner McCain, McCain Consulting Inc., Consultant to Applicant  
 Beth Gilpin, Adjoining Landowner  
 Linda Gilpin, Adjoining Landowner

Testimony:

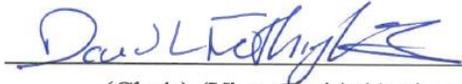
- The waiver request is to move the building site to a more desirable site, to be farther away from the steep slope. When the site development was being contemplated, it was determined that a full walk-out basement would be required, but not usable due to the steep slope. Moving the dwelling up to a flat area is the best option. The cost includes an 8' frost wall, an additional \$6k in cost.
- A boundary-line adjustment could be done. But the adjoining property is currently tied-up in probate court, making a boundary-line adjustment difficult.
- Gunner pointed out that an "undue hardship" is not a standard for a setback waiver.
- Linda Gilpin, executor of the estate that owns the adjoining property, stated that the Estate has no objection to the change but the Estate attorney has advised that the process would be lengthy and expensive.

The Board closed the hearing and will discuss the merits in a private deliberative session to be scheduled. If the Board needs additional information, it will re-open the hearing and request the information.

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

- Public comment / Other business: None.

**Adjournment:** There being no other business, the meeting was adjourned at 9:15 p.m.

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

Approved: September 23, 2020

**Notice of upcoming meetings:** Sept. 23, Oct. 7, and Oct. 21, 2020.

**Town & Village of Waterbury**  
**Development Review Board**  
**Decision #082-20 ▪ September 2, 2020**

**Attending:** Board members: David Frothingham (Chair), Tom Kinley (co-Vice Chair), Dave Rogers (Vice Chair), Bud Wilson, Alex Tolstoi, Patrick Farrell, and Harry Shepard (Alternate). Staff: Dina Bookmyer-Baker (ZA), Steve Lotspeich (Community Planner), and Patti Martin (Secretary).

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Owner/Applicant:	Felix & Geraldine Callan / John Mutchler & Perrin Williams	
Address/Location:	Corner of Sweet Rd. & Ripley Rd., Waterbury Center, VT	
Zones:	Medium Density Residential (MDR), Low Density Residential (LDR), Conservation (CNS)	
Application #	082-20	Tax Map # 10-023.000

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**Applicant Request:**

The applicant seeks approval for a 9-lot Planned Unit Development (PUD) located at the corner of Sweet Rd. and Ripley Rd. in the Medium Density Residential (MDR), Low Density Residential (LDR), and Conservation (CNS) zoning districts. The PUD includes six residential lots, one common land lot, and one agricultural lot.

**Present and sworn in:**

Gunner McCain, McCain Consulting Inc. (Consultant)  
John Mutchler & Perrin Williams (Applicant)  
Jenny Faillace (Attorney for applicants)  
Bruce Therrien (adjoining landowner)  
Eric Longfellow (adjoining landowner)  
Kristin Kellett (adjoining landowner)  
Glenn Andersen

**Exhibits:**

- A: Application #082-20 (11 pp: Zoning, Subdivision/PUD, Narrative), submitted 8/5/20.
- B: Cover letter from McCain Consulting dated 8/4/20.
- C: Site Plans (9 pp.) for overall PUD & specific lots prepared by McCain Consulting dated 7/22/20.
- D: Aerial maps (3 pp) generated from the ANR Natural Resources Atlas for wildlife & steep slopes, submitted 8/5/20.
- E: Draft Grant of Conservation submitted 8/5/20
- F: Draft Bylaws for Honeysuckle Hill Homeowners Association, Inc., submitted 8/5/20
- G: Draft Declaration of Protective Covenants and Restrictions for Honeysuckle Hill Subdivision submitted 8/5/20
- H: Letter to adjoining landowners, mailed certified on 8/17/20.
- I: Prior DRB Decision for zoning permit #075-19, Callan 2-lot subdivision 8/7/19.
- J: Written testimony from Bruce Therrien, an adjacent landowner, submitted 9/2/20.

## **Findings of Fact:**

1. Existing conditions: Felix & Geraldine Callan own an undeveloped 109.4-acre parcel, Lot #1 located at the corner of Sweet Rd. and Ripley Rd. in the Medium Density Residential (MDR), Low Density Residential (LDR), and Conservation (CNS) zoning districts. The parcel is a mix of open land along Sweet Rd. and Ripley Rd. and wooded hillside that rises to the base of the Worcester Mountain Range. There are scenic views of the property and the surrounding landscape from both Sweet Rd. and Ripley Rd. with the backdrop of the mountainside. The parcel includes areas of natural resources that include agricultural soils of statewide significance, forestry soils, wetlands, steep slopes, and forested areas as shown on Exhibits C and D. The parcel is currently in open space and forestry use and is accessed by a woods road off Sweet Rd. that traverses the parcel and connects to the existing Sugarhouse Rd. at the southern boundary of the parcel.
2. Proposal: John Mutchler & Perrin Williams are applying for a 9-lot Planned Unit Development (PUD). The development will consist of six residential lots that will each have one dwelling as shown on Exhibit C, the Site Plans. Lot 1 is a 74.63-acre parcel that will be conserved common land as shown on Exhibit C2. This parcel will be conserved as described in Exhibit E, the Draft Grant of Conservation. Lot 1 shall be owned by the Honeysuckle Hill Homeowners Association as established by Exhibit F, Draft Bylaws for Honeysuckle Hill Homeowners Association, Inc. Lot 1 is 68% of the total overall parcel which exceeds the requirement that a minimum of 50% of the overall parcel be in conserved common or undeveloped land. Exhibit A8 states: "Lot 2 is proposed as a 13-acre agricultural lot, and while that lot will not be included in the common land it will, for all practical purposes, be conserved." The only structures that will be allowed in the future will be for agricultural use. Lot 5 is a proposed 0.64-acre undeveloped parcel that may be conveyed to the adjacent property owners, Paul and Magali Welch. If this parcel is not conveyed to Paul and Magali Welch, then it shall be merged with an adjacent lot. Lot #5 is not developable as a separate parcel.

The proposed building Lots 3, 4, 6, and 7 will be accessed by the existing woods road off Sweet Rd. (a Town road) that will be upgraded to become Honeysuckle Hill Rd., a private road. Lots 8 and 9 will be accessed by an extension of Sugarhouse Rd. that is also a private road that connects to Ripley Rd., a Town road. A requirement of Permit #27-09-T for a four-lot subdivision of the Callan property is that Sugarhouse Rd. we widened to a roadway width of 14'. The written testimony provided by Bruce Therrien, as adjacent landowner, states that the first 850' of Sugarhouse that accesses four existing houses and the proposed Lots #8 and #9 was not widened to the full 14' as required in Permit #27-09-T. All the building lots will be served by on-site wastewater and water supply systems.

3. Prior Approvals:  
The 109.4-acre parcel that is the subject of this application was created in Application #075-19. Exhibit I, Prior DRB Decision for App. #075-19, Callan 2-lot subdivision, was reviewed on August 7, 2019 and approved by the DRB on August 21, 2019. The previous Permit #27-09-T was for a 4-lot subdivision that created remaining lands of approximately 360-acres. The 109.4-acre parcel that is the subject of this application was subdivided from that original 360+/- acres in Permit #075-19.
4. Section 504 General Dimension Requirements: Any subdivision of land must conform to the relevant criteria in Section 504. See the table below for the underlying MDR, LDR and CNS zoning districts and

the double setback requirement for lots in a PUD in those districts. Note that the minimum lot sizes and frontage requirements for a given zoning district do not apply in the case of a PUD. The density of six lots (3, 4, 6, 7, 8 & 9) for residential dwelling units is far less than the density that could mathematically be calculated for the overall parcel.

	Zoning District	Proposed Lot Size	MDR/LDR/CNS Double Setback	Proposed Setback to exterior of PUD where applicable
Lot 1	MDR/LDR/CNS	74.63 acres	N/A (common land)	
Lot 2	MDR/LDR	13.09 acres	N/A (agricultural use)	
Lot 3	MDR	2.49 acres	Front: 120' Side: 100	Front: 120' min. Side: 100' min.
Lot 4	MDR/CNS	1.29 acres	Side: 100'	Side: 100' min
Lot 5	MDR/CNS	0.64 acres	N/A (to be conveyed to Welch)	
Lot 6	CNS	2.05 acres	200'	100'
Lot 7	CNS	8.21 acres	200'	Exceeds 200'
Lot 8	CNS	4.17 acres	200'	Exceeds 200'
Lot 9	CNs	2.85 acres	200'	Exceeds 200'

5. Setbacks and request for reduction in the double setback: Lot 6 is the CNS zoning district. The double setback requirement along the northern boundary of the lot is 200'. The owners/applicants are requesting a reduction in this double setback of 100' for a rear setback of 100' (200' – 100' = 100'). There are no other interior setback requirements for this lot therefore the other setback requirements are met.

The following criteria apply to the requested reduction to the double setback for the exterior boundary of Lot #6 in the Honeysuckle Hill PUD:

Section 700      General Purpose

*(a) The purpose of planned unit development (PUD) is to enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate and efficient use of land, to facilitate the adequate and economical provision of streets and utilities, and to preserve the natural and scenic qualities of open lands in conformance with the Municipal Plan and this bylaw. PUDs may include any mix of residential and nonresidential uses that are allowed in a district.*

This is a residential Planned Unit Development.

*(b) Accordingly, the Development Review Board is hereby authorized to modify the area and dimensional requirements of this bylaw simultaneously with the approval of the subdivision plat for a PUD. However, such modifications shall be limited as provided in 24 V.S.A. §4417 and as set forth below.*

*(b) Along the outside boundary of the PUD project, setbacks shall be twice the dimensions established for the district in which the project, or applicable portion of the project, is located. The Development Review Board may, in accordance with the review process contained in Section 704(g), reduce this double setback for a portion of the entire outside boundary, provided the following criteria are met: 1) The setback is not less than the required setback for the district in which the affected portion of the project is located; 2) the applicant shall demonstrate that a lot configuration which utilizes the double setback exclusively does not yield practical building sites and does not meet the general purpose of these PUD bylaws; and 3) adequate screening and landscaping exist or are proposed as required in Sections 301(f)(3) and 705(k). Other than this setback, no other setbacks apply to PUDs.*

Exhibit A8 addresses these criteria as follows:

“To allow for the most practical building sites the application requests a reduction in the PUD double setback down to the standard 100’ Conservation zoning setback for Lot #6 only.” The lot is constrained by the existing woods road that will become Honeysuckle Hill Road and will provide access to the lot along its southwest border, and forestry soils to the east that are to be left undisturbed. The northern section of the lot is a dense evergreen forest along both sides of the existing brook as shown on Exhibit D1, that will be left undisturbed and will provide an effective natural screen for the adjacent Welch lot to the north. The Welch lot is currently undeveloped.

6. Section 705 Standards of Review

Exhibit C8 – C11, PUD Narrative and Supporting Information addresses the applicable criteria in this Section. The following applicable review criteria are met:

*(a) The project must conform to the density and dimensional requirements set forth in Section 702.*

*(c) The project is an effective and unified treatment of the development possibilities of the site and makes appropriate provision for preservation of streams and stream banks, steep slopes, wetlands, soils unsuitable for development, agricultural and open lands, unique natural and man-made features, watersheds, wildlife habitat, floodplains, and scenic features.*

*(f) If a project is not served by a public water supply system and a public sewer system, approval of the water supply and sewage disposal systems by all state authorities shall be required.*

*(g) The proposed PUD shall not unduly burden the school system. The applicant may be required to obtain a letter from the Superintendent of Schools regarding the impact of the project on the school system.*

*(h) The proposed PUD shall not unduly burden municipal roads, including intersections and access roads immediately burdened by the project.*

*(i) Development access roads shall be of a width, surface, and design adequate for handling proposed traffic, including accessibility for emergency vehicles, school buses, and public transit, if appropriate.*

*(j) Adequate pedestrian circulation, which may include sidewalks, maintained trails, or other pathways, shall be provided.*

*(k) Adequate landscaping and screening of both buildings and parking areas shall be required in order to protect scenic vistas and the site's natural aesthetic features.*

*(l) The proposed PUD must be consistent with the Municipal Plan.*

*(m) Land that is not included in building lots, streets, rights-of-way, or utility easements shall be reserved as undeveloped land for recreation, conservation, agriculture, and the enhancement of the natural environment for living. Such undeveloped land shall not be less than 50 percent of the total project area. Further, the undeveloped land shall:*

*(1) Take the fullest advantage of all natural features, such as natural watercourses and drainages, topography, existing trees, outlook, agricultural land, forests, and other features;*

*(2) Be in a location, and of a character, size, extent, and shape suitable for the land's intended use;*

*(3) Contain no building or development, except one primarily devoted to a purpose for which the undeveloped land is intended, including swimming pool, tennis courts, and similar recreational facilities, and minor incidental buildings connected therewith; and*

*(4) Be conveyed to:*

*(B) An association of homeowners or tenants, which adopts and imposes covenants and restrictions on the undeveloped land that adequately provide for its continuing maintenance; See Exhibit E, Grant of Conservation, and Exhibit F, Draft Bylaws for Honeysuckle Hill Homeowners Association, Inc., and Exhibit G, Draft Declaration of Protective Covenants and Restrictions for Honeysuckle Hill Subdivision*

7. Section 1004 RHS Standards of Review:

Exhibit C8 – C11, PUD Narrative and Supporting Information addresses the applicable criteria in this Section. The following applicable review criteria are met:

All of the proposed development is located below 1,499 FIE as shown on Exhibit C2. 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.

8. Section 303 Conditional Use criteria: Development of lands within the RHS overlay district shall comply with the following conditional use review standards:

a. Section 303(e)(1) Community facilities: These criteria parallel the PUD standards of review in Sections 705 (f) through (i) as addressed 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 will 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 application materials did not specify any historic sites, or rare or irreplaceable natural areas on the parcel. The State of Vermont does not identify any rare, threatened, or endangered species, or deer wintering areas on the parcel. Clearing of the lots shall be as shown on Exhibit C-13 and is consistent with other recently approved development in the RHS overlay district for minor development.

- c. Section 303(e)(3) Municipal bylaws in effect: Residential lots are a permitted use within the MDR, LDR and CNS zoning districts and are a conditional use when they are located within the RHS overlay district. The application represents compliance with the zoning bylaws.
- 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 required to 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.

9. Section 1202 Review Criteria

Exhibit C8 – C11, PUD Narrative and Supporting Information addresses the applicable criteria in this Section. The following applicable review criteria are met:

*Prior to granting approval for any subdivision of land into four (4) or more parcels, including the original parcel, within a continuous five (5) year period, the Board must find that the proposed subdivision conforms to the following standards, in addition to the relevant criteria in Section 401, Dimensional Requirements, and Section 504, General Dimension, Location, and Height Requirements:*

- a. *The proposed subdivision will not have an undue adverse impact on the capacity of existing or planned community facilities to accommodate it including public roads and highways, municipal water or sewer systems, public schools, and municipal fire protection services.*
  - i. *The Board may seek or require advisory input from the Municipal Manager, Fire Department, Police Department, School Board, or other municipal officials regarding relevant facilities.*
- b. *The proposed subdivision will not have an undue adverse impact on the character of the area affected as defined by the Municipal Plan and the zoning district in which the proposed project is located.*
- c. *The proposed subdivision will not result in undue adverse impact to water quality or downstream properties, and will not cause undue adverse impacts to soil through erosion or reduction in the capacity of the land to hold water.*
- d. *Will not have an undue adverse impact on aesthetics, the scenic or natural beauty of the area, identified scenic resources, or historic sites.*
- e. *Will not have an undue adverse impact on significant natural resources.*

**Conclusion:**

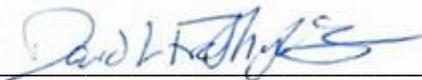
Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Felix & Geraldine Callan, and John Mutchler & Perrin Williams to create a nine-lot PUD on Ripley and Sweet Road in the MDR, LDR, CNS, and RHS zoning and overlay districts, as presented in application #082-20 and supporting materials, meets the Conditional Use, Ridgelines/Hillsides/Steep Slopes, Subdivision, and PUD criteria as set forth in Sections 303, 705, 1004, and 1202.

**Motion:**

On behalf of the Waterbury Development Review Board, Dave Rogers moved and Harry Shepard seconded the motion to approve application #082-20 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) The applicant shall comply with erosion protection and sediment control measures when development commences on the lots. [Section 1202(a)3]
- (3) Lot #2 shall be reserved for agricultural use and shall not include any residential dwellings, in perpetuity. Agricultural structures may be allowed as defined by the State of Vermont, Agency of Agriculture, Food and Markets.
- (4) Exhibit G: The Draft Declaration of Protective Covenants and Restrictions for Honeysuckle Hill Subdivision shall be amended to state that the raising of livestock is restricted for personal use only and not for sale. Lot #2 that is for agricultural use shall not be limited by these restrictions.
- (5) The approved final plat, signed by the DRB Chair (or his designee), shall be duly filed and 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.
- (6) The clearcutting/thinning on the land shall be limited to 35% at this stage of development and shall be limited to those areas shown on Exhibit C13.
- (7) Lot 5 shall not be developed for any residential use.
- (8) Sugarhouse Lane shall be widened to the proposed 14' width in accordance the prior permit and Zoning Board of Adjustment approval in Application #27-09-T.

**Vote:** The motion was approved 7-0.



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(Chair)

Approved: September 23, 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 of Waterbury**  
**Development Review Board**  
**Decision #085-20 ▪ September 2, 2020**

**Attending:** Board members: David Frothingham (Chair), Tom Kinley (co-Vice Chair), David Rogers (co-Vice Chair), Bud Wilson, Alex Tolstoi, Patrick Farrell, and Harry Shepard. Staff: Steve Lotspeich (Community Planner), Dina Bookmyer-Baker (ZA), and Patti Martin (Secretary).

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Owner/Applicant:	Hazen Powell	
Address/Location:	350 Black Bear Hollow, Waterbury, VT	
Zone:	Conservation (CNS)	
Application #	085-20	Tax Map # 16-002.000

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**Applicant Request**

The Applicant seeks a setback waiver for a new single-family dwelling on an undeveloped lot at 350 Black Bear Hollow in the Conservation zoning district.

**Present and sworn in:**

Hazen Powell (Owner/Applicant)  
Gunner McCain, McCain Consulting Inc. (Consultant)  
Beth Gilpin and Mark Powell (Adjoining Landowner)  
Linda Gilpin (Adjoining Landowner)

**Exhibits**

- A: Application #085-20 (3 pages: zoning, conditional use), submitted 8/7/20.
- B: Project introduction prepared by McCain Consulting, dated 8/6/20.
- C: Site Plan for Hazen Powell, Setback Waiver for Proposed Structure, prepared by McCain Consulting, dated 8/4/20.
- D: Prior zoning permit #110-19 for a 2-lot subdivision of 480 Black Bear Hollow, issued to Hazen Powell, Mark Powell, & Beth Gilpin on 12/2/19;  
(D4) Final plat for zoning permit #110-19, recorded on 3/24/20.
- E: Prior zoning permit #052-20 for a new single-family dwelling on undeveloped Lot 2 issued to Hazen Powell on 6/8/20.
- F: Parcel map with orthophoto. (Staff)
- G: Letter to adjoining landowners, mailed certified on 8/17/20. \*

**Findings**

1. Existing conditions: Hazen Powell owns a 10.6± acre parcel located at 350 Black Bear Hollow in the Conservation (CNS) zoning district. The property is undeveloped. The lot does not have frontage, but has access to Black Bear Hollow, a private road, via a 100' right-of-way across lands belonging to Jean Gilpin (Exhibit C). The parcel will be served by a private well and an on-site septic system (ww-5-8141).

2. Background: Prior relevant zoning permits include:
  - #110-19 for a 2-lot subdivision of 480 Black Bear Hollow. Issued to Hazen Powell, Mark Powell, & Beth Gilpin on 12/2/19. The final plat for the subdivision was duly filed and recorded on 3/24/20.
  - #052-20 for a new single-family dwelling on undeveloped Lot 2 issued to Hazen Powell on 6/8/20. The proposed location of the dwelling meets the CNS setbacks of 100-feet.
  
3. Project: To construct a single-family dwelling, the front line of which will be in the front yard setback, 80' from the front property line (Exhibit C).
  
4. CNS Dimensional Requirements, Table 5.2: Minimum lot size: 10 acres; minimum frontage: 300'; minimum setbacks: 100' (front, sides, & rear). The lot meets the minimum lot size.
  
5. Waiver Request: The setback waiver request is to encroach on the front yard setback by 20' (100'–80').
  
6. 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 is to construct a single-family dwelling that will be served by a private well and an on-site septic system. The project will not increase traffic, burden the school capacity, or 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 be residential. The setback waiver is requested to take advantage of the site topography; the application asserts that the structure will be adequately separated and screened from adjoining properties. The Board does not agree with the Applicant's assertion that the proposed setback waiver will not detract from the low-density single-family residences that characterize the existing land-use pattern.

The Board finds that the proposed project does not conform to the character of the CNS zoning district. All of the development on the neighboring lots meets the CNS front setback requirement of 100-feet. No setback waiver has ever been granted by this Board to a recently subdivided lot. As a result, the Board finds that a reduced setback for the proposed project would have an undue adverse impact on the character of the area for the reasons stated herein.

- (c) Section 303(e)(3) Municipal bylaws in effect: The Applicant asserts in Exhibit A3 that, other than the setback waiver request, all other dimensional requirements have been met. Should the Board grant the setback waiver, the project would conform with the municipal bylaws and ordinances; however, for the reasons stated above, under Section 303(e)(2), the Board finds that the proposed project does not comply with the CNS dimensional requirements and conditional use and criteria. Therefore, the Board concludes that the proposal would violate the municipal bylaws and ordinances.

- (d) Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The application states that no fumes, gas, dust, smoke, odor, noise, or vibration will be present, except during construction of the dwelling. The Board concludes that no devices or special methods would be necessary to prevent or control these impacts.
- (e) Section 303(h) Removal of earth or mineral products conditions: The project will not include earth-removal activities other than excavation and grading incidental to constructing the dwelling.

**Conclusion:**

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the project proposed by Hazen Powell to construct a single-family dwelling 20' within the front yard setback at 350 Black Bear Hollow, as presented in application #085-20 and supporting materials, *does not* meet the Waivers and Conditional Use criteria set forth in Sections 309 and 303. 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 be applied equally. Were the Board to grant a setback waiver in this situation, it finds that it will have granted a setback waiver for a project on an undeveloped lot from a modern subdivision (final plat approved March 2020) and, for the first time, to an Applicant who has acknowledged the ability to conform with the setbacks (zoning permit #052-20 was issued in June 2020 for a complying dwelling).

**Decision Motion:**

On behalf of the Waterbury Development Review Board, Tom Kinley moved and David Rogers seconded the motion, to approve the front yard setback waiver for the dwelling as presented in application #085-20, Exhibit C.

**Vote:** In favor: 0; Opposed: 7. The motion did not carry.



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(Chair David Frothingham)

October 7, 2020

**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.*