

WATERBURY DEVELOPMENT REVIEW BOARD
General Minutes—October 21, 2020

Attending: Board members: Tom Kinley (Acting Chair), Andrew Strniste, Alex Tolstoi, Patrick Farrell, Harry Shepard (Alternate), and George Lester (Alternate). Staff: Dina Bookmyer-Baker (ZA), Steve Lotspeich (Community Planner), and Patti Martin (Secretary).

6:00 p.m.

Tom Kinley, Acting Chair, opened the public meeting at 6:00 p.m. All parties participated in the meeting via ZOOM. The meeting was video recorded. The agenda was approved and followed as presented.

- 1) **#102-20: Mark Frier** (applicant), **Forty Foundry LLC** (owner)
Continued Conditional Use, Site Plan, and Downtown Design review for a change of use from auto parts retail store to brewery with retail and tasting room at 40 Foundry Street. (IND/DDR zoning and overlay districts) —*Review continued from 10/7/20.*

Present and sworn in:

Mark Frier (Applicant/Landowner)
Ryan Miller (prospective tenant/brewery business owner)
Alyssa Johnson (Economic Development Director)

Testimony:

- This review was continued from 10/7/20.
- Applicant would like to increase the capacity to 20 barrels, instead of 7.
- Applicant understands that any space over 2,500 SF and production capacity over 20 barrels would require a revision to the permit.
- The business does not include a restaurant.
- The size of the brew house isn't necessarily the limiting factor but is a calculation of the cellar size. More tanks increase the brew-house size. This will allow growth within the space.

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

6:30 p.m.

Attending: Board members: David Frothingham (Chair), Tom Kinley (Vice Chair), David Rogers (Vice Chair), Andrew Strniste, Alex Tolstoi, Patrick Farrell, Harry Shepard (Alternate). George Lester (Alternate) stayed to observe, but didn't participate. Staff: Dina Bookmyer-Baker (ZA) and Patti Martin (Secretary).

David Frothingham, Chair, re-opened the public meeting at 6:30 p.m. and made the following introductory remarks: Applicants and consultants will be given the option to be contacted once their hearing is ready to commence. Applicants should try to have one spokesperson. Staff will give an overview of the project. The Applicant/Spokesperson will present any new information to the Board. The DRB members will ask questions, followed by staff questions and comments. The hearing will then be opened to the public for comments and questions. Attendees were advised that the DRB is a seven-member Board and that any approval will require four votes in the affirmative.

- 2) **#108-20: Joseph Cavalear** (owner)
Setback waiver request to construct a detached garage in the side setback at 70 North Main Street. (VMR zoning district)

Present and sworn in:

Joseph Cavalear (Owner/Applicant)

Testimony:

- The Applicant has talked with his neighbor about the project, who has no concerns.
- The small shed (8' x 12', 96 SF) was there when he purchased the property.
- Applicant constructed the second small shed without a permit.
- The two existing sheds will be added to the setback waiver request.

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

- 3) **#109-20: Rodney Companion** (applicant), **Superior Development LTD Co./Malone 1 River Rd Properties LLC** (owners)

Setback waiver request to construct two detached metal canopy structures in the setback at 1 River Road. (IND/SFHA zoning and overlay districts)

Present and sworn in:

Theresa Gilman, representing Applicant Rodney Companion

Testimony:

- Structures are held to the ground with pins.
- The 2 canopies are outside of the SFHA, as is the beverage depot. Also, the structures are anchored to the ground with pins and open on the sides.
- The project does not require SFHA review.
- Both canopies are in the rear-yard setback; it is determined that one of the canopies is in the front setback as well, due to the triangular shape of the lot.
- The findings will include the 4' by 16' platform between the canopies. This should be shown on the Site Plan.

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

- 4) **#107-20: Kelley Osgood, Volansky Studio** (applicant), **Ian and Mary Rubiano** (owner)
Setback waiver request for a new single-family dwelling and an attached accessory dwelling on undeveloped Lot 5, Moulton Farm Road. (MDR zoning district)

Present and sworn in:

Mark and Mary Rubiano (Owner)

Andrew Volansky and Kelley Osgood (Applicant/Consultant)

Testimony:

- The structure is designed with an attached accessory dwelling with one-floor living to accommodate aging parents (who don't require specific accommodations at this time, but are planning for the future).
- At 170' across, the lot does not meet the minimum lot width/frontage required for the district.
- The foundation fits within the building zone, the waiver is only requested for the roof overhang, which is designed to protect the proposed wood siding from weather.

- If the lot were 200' across, then a setback waiver would not be required.
- The architects prepared at least 3-4 different designs for their client, including one that wouldn't require a setback waiver.

Tom Kinley moved and Alex Tolstoi seconded to close the public hearing at 7:46 p.m. and to conduct a private deliberative session at a later time.

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

- Consultation with ZA re: #121-20: Perry Hill Partners c/o Aaron Flint and Jason Wulff, (owner/applicant), change of use from business office to medical office at 28 Stowe Street, in the DC/DDR zoning/overlay districts. Owner requests an exemption from Site Plan review as per Section 301(a)(5), for an internal change of use from one permitted use to another permitted use with no change to the parking requirement.

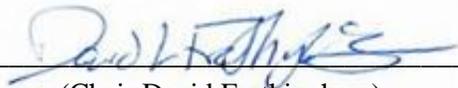
The Board deemed the project to be minor in nature and therefore not subject to Site Plan review.

- Approval of prior meeting minutes and decisions:

Motion: Tom Kinley moved and Harry Shepard seconded the motion to approve the general meeting minutes of October 7, 2020 and decision #102-20 (Frier), as amended.

Vote: The motion was approved 7-0.

- Adjournment: There being no other business, the meeting was adjourned at 9:07 p.m.



(Chair David Frothingham)

Approved: November 4, 2020

Notice of upcoming meetings:

Wednesday, November 4, 2020, 6:30 p.m.

Wednesday, November 18, 2020, 6:30 p.m.

Wednesday, December 2, 2020, 6:30 p.m.

Town of Waterbury
Development Review Board
Decision #108-20 ▪ October 21, 2020

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

Owner/Applicant:	Joseph Cavalear	
Address/Location:	70 North Main Street, Waterbury Center, VT	
Zoning District:	Village Mixed-Residential (VMR)	
Application #	108-20	Tax Map #19-008.000

Applicant Request

The Applicant seeks a setback waiver to construct a 12' by 24' detached garage and for the existing 12' by 24' shed and 8' x 12' toolshed, all of which are within the side-yard setback at 70 North Main Street in the Village Mixed-Residential zoning district.

Present and sworn in:

Joseph Cavalear (Owner/Applicant)

Exhibits:

- A: Application #108-20 (3 pages: zoning, conditional use), submitted 9/23/20.
- B: Site Plan prepared by Joseph Cavalear, submitted 9/23/20.
- C: Parcel map/orthophoto with proposed garage sketched in by Joseph Cavalear, submitted 9/23/20.
- D: Product photo representing the proposed garage size, style, and materials, submitted 7/14/20.
- E: Letter to adjoining landowners, mailed certified on 10/2/20.

Findings of Fact:

1. Existing conditions: Joseph Cavalear owns a 0.19± acre (8,276.4 SF) parcel at 70 North Main Street in the Village Mixed-Residential (VMR) zoning district. The property is developed with a one and one-half story dwelling, built in 1873, and two sheds. The existing sheds are located approximately 2' from the nearest side property line. The lot has frontage on and an access drive to North Main Street (U.S. Route 2) and is served by municipal water and sewer.
2. Project: To install a pre-fabricated detached garage, measuring 12' by 24' by 9' high, on the existing driveway, to the side of the house. The garage will be 2' from the nearest side property line (Exhibit B).
3. VMR Dimensional Requirements, Table 5.2: *Minimum lot area: 10,000 SF; minimum setbacks: 30' front/rear, 10' sides.* The lot does not meet the minimum lot size; The existing sheds are in the side setback. The proposed garage will not meet the minimum setback requirements. (Exhibit B)

4. Waiver Request, Section 309: The setback waiver request is to encroach on the side yard setbacks by 8-feet (10' minus 2').
5. Conditional Use/Waiver criteria: The project is for existing sheds and a proposed detached garage. As set forth in Section 309, the DRB may grant a waiver of building setbacks as a conditional use review in accordance with Section 303, provided that the encroachment does not have an undue adverse impact on the use and enjoyment of adjoining properties. The Board considered the following general and specific standards:
 - (a) Section 303(e)(1) Community facilities: The project will not change the residential use of the property or increase the occupancy; it will not unduly increase traffic, burden the school capacity, or increase the demand for fire protection. The Board concludes that the proposal will not have an undue adverse impact on the capacity of existing or planned community facilities.
 - (b) Section 303(e)(2)(A–E) Character of the area: The use of the property will remain residential. The garage size and style (Exhibit D) is compatible with the structures in the district. The Board concludes that the project is appropriate in scale and design in relation to existing uses and structures on-site and in the surrounding neighborhood and will not have an undue adverse impact on the character of the area.
 - (c) Section 303(e)(3) Municipal bylaws in effect: The project makes no change to the current residential use and this application is presented to comply with the conditional use criteria. The Board concludes that the proposal will not violate any municipal bylaws and ordinances.
 - (d) Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: No change to the residential use is proposed. The addition is for residential parking and will not create the above-named nuisances. 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 does not include earth-removal activities (the structure is prefabricated and will not be fixed to the ground). This provision does not apply.

Conclusion:

Based upon these findings, and subject to the conditions set forth below, the Board concludes that the project proposed by Joseph Cavalear for an existing 12' by 24' shed and 8' by 12' toolshed, and the proposed 12' by 24' garage that will not come closer than 2' from the side property line, as presented in application #108-20 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, Dave Rogers moved and Alex Tolstoi seconded the motion to approve application #108-20 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.



(Chair David Frothingham)

Approved: November 4, 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 what permits must be obtained.

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

Town of Waterbury
Development Review Board
Decision #109-20 ▪ October 21, 2020

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

Applicant/Owner:	Rodney Companion (applicant) / Superior Development LTD Co. (owner)	
Address/Location:	1 River Road, Waterbury, VT	
Zoning Districts:	Industrial (IND) zoning district, Special Flood Hazard Area (SFHA) overlay district.	
Application #	109-20	Tax Map # 19-475.000

Applicant Request:

The Applicant seeks approval to install two 20' by 24' by 15' tall metal canopy structures and construct a 4' by 16' wooden platform/catwalk within the setback for the business Rodney's Waste Transfer and Recycling Depot, located at 1 River Road.

Present and sworn in:

Theresa Gilman, Consultant/Applicant Representative

Exhibits:

- A: Application #102-20 (7 pages: zoning, conditional use, variance, overlay district), submitted 9/30/20.
- B: (B1) Site plan, prepared by Theresa Gilman, dated 9/18/20, using Keller and Lowe survey for reference; (B2) Survey for R.R. LaFayette, Inc., prepared by Keller & Lowe, Inc. dated 10/1989.
- C: Pictures and specifications for Classic Carport and canopy on-site, submitted 9/30/20.
- D: Orthophotos of parcel with tax map boundaries, SFHA, & canopy locations. (Applicant & Staff)
- E: Letter to adjoining landowners, mailed certified on: 10/3/20.

Findings of Fact:

1. Existing conditions: Superior Development, LTD Co. owns a 1.4-acre parcel located at 1 River Road. The property is developed with the existing businesses: Rodney's Transfer Station and the Maplewood Gas Station and Convenience Store. The Transfer Station is accessed by two existing one-way driveways off of River Road, as shown on Exhibit B. The property is served by the municipal water and wastewater systems. The parcel is located in the Industrial (IND) zoning district and the Special Flood Hazard Area (SFHA) overlay district. The existing building does not meet the IND zoning district rear setback requirements, as shown on Exhibit B1, Site Plan.

Prior approval:

The transfer station and bottle redemption center were originally permitted in 1993 in application #003-93-V for Residential Rubbish Service, Inc. The facility has been in constant operation under that use since it was originally permitted.

2. Proposal: The proposal is to install two 20' by 24' by 15'-tall metal, open-sided, canopy structures for Rodney's Transfer Station and construct a 4' by 16' wooden platform/catwalk inside the easterly canopy, as shown on Exhibits B & C. Exterior lighting will remain unchanged.
3. IND Dimensional Requirements, Table 5.2: Minimum lot area: 20,000 SF; no minimum frontage requirement; minimum setbacks: 50' front, 25' sides/rear. The lot meets the minimum lot size. The existing buildings for the transfer station and convenience store do not meet the front and rear setback requirements.
4. Waiver Request: The setback waiver request is to encroach on the rear yard setback by 19' (25' minus 6') for the canopy adjacent to the building and by 24' (25' minus 1') on the rear setback and 17' (50' minus 33') on the front setback for the northeasterly canopy and wooden platform that is freestanding.
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. In this case, the adjacent property that is impacted is owned by the New England Central Railroad. The Board considered the following general and specific standards:
 - a. Section 303(e)(1) Community facilities: No change in the commercial/industrial use of the property is proposed. The new canopies 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. The application states: "The proposed use and addition of the structures are ancillary to the current business and its function. No additional expansion of service and traffic will result from their installation; they are to provide additional protection to workers and waste transfer trailers currently used in the day-to-day operations." The Board concludes that the proposal will not have an undue adverse impact on the capacity of existing or planned community facilities.
 - b. Section 303(e)(2)(A-E) Character of the area: The use of the property will remain industrial and commercial. The new canopies will be similar in scale to the existing building and other industrial buildings in the neighborhood, including those north of the railroad tracks. The application states: "A waste transfer station and bottle redemption center has been in operation at this site for several years and aligns with the current zoning designation. The addition of the structures will provide additional protection and cover of equipment and structures currently on-site." The Board concludes that the project is appropriate in scale and design in relation to existing uses and structures on-site and in the district and will not have an undue adverse impact on the character of the area.
 - c. Section 303(e)(3) Municipal bylaws in effect: The use of the property will remain industrial. The application states: "The addition of the structures is ancillary to the current business operation and its function which has been permitted by the town." The Board concludes that the project will not violate any municipal bylaws and ordinances.
 - d. Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The project is a continuation and enhancement of the existing business. The canopies will keep the trailers for

refuse and recyclable materials dry, which will help mitigate the above-named nuisances. No additional controls are proposed. The Board concludes that no devices or special methods are necessary to prevent or control these impacts.

- e. Section 303(h) Removal of earth or mineral products conditions: The project does not include earth-removal activities. The proposed structures will be freestanding or anchored to the ground using stakes only; therefore, this provision does not apply.
6. Site Plan Review and Approval, Section 301: To ensure adequate and appropriate traffic and pedestrian access, circulation, parking, landscaping, and screening, the Board considered the following:
 - a. Section 301(f)(1) (A-D) Traffic access and pedestrian safety: The proposed canopies will not interfere with the existing driveways or pedestrian safety. No change to the approved vehicular access to and from River Street is proposed.
 - b. Section 301(f)(2) (A-G) Circulation and parking, loading, refuse, and service areas: The proposed canopies will not interfere with the vehicular circulation and on-site parking. No change to the existing vehicular access, circulation, or parking is proposed. See the parking requirements in paragraph 7, below.
 - c. Section 301(f)(3) (A-F) Landscaping, screening, and lighting: The property is developed. Screening and landscaping exist along the NW side of the building. The proposed canopies will provide additional screening of the recycling operation and materials. No other changes are proposed to the existing lighting, landscaping, or screening.
 7. Parking Regulations, Section 414: The property includes on-site parking, as shown on Exhibit B-1, that is adjacent to the building and accommodates approximately six vehicles for staff parking. The drop-off area shown on Exhibit B-1 accommodates the short-term parking that is utilized by customers to drop off refuse, recyclable materials, and bottles and cans for redemption. The proposed canopies will not interfere with the parking or vehicular access and circulation.
 8. Article VII, Flood Hazard Area Regulations and Overlay District: Exhibit D-2, Orthophotos of parcel with tax map boundaries, SFHA, & canopy locations, shows that the two canopies and platform are located entirely outside the Special Flood Hazard Area. Therefore, the review criteria in Article VII do not apply to the proposed structures.

Conclusion:

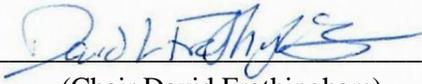
Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Rodney Companion (Applicant) and Superior Development LTD Co. (Owner) to install two 20' by 24' by 15' tall metal canopy structures and construct a 4' by 16' wooden platform/catwalk, with the canopy structures being 19' and 24' respectively within the rear setback, and 17' within the front setback for the northeasterly canopy, at 1 River Road, as presented in application #109-20 and supporting materials, meets the Site Plan, Waivers, and Conditional Use criteria set forth in Sections 301, 309, and 303.

Motion:

On behalf of the Waterbury Development Review Board, David Rogers moved and Alex Tolstoi seconded the motion to approve application #109-20 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.
- (3) Except as amended herein, this approval incorporates all Findings of Fact, Conclusions of Law, and Conditions in prior zoning permit approval #003-93-V.

Vote: The motion was approved 7–0.



(Chair David Frothingham)

Approved: November 4, 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 what permits must be obtained.

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

Town of Waterbury
Development Review Board
Decision #107-20 ▪ October 21, 2020

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

Owner/Applicant:	Kelley Osgood, Volansky Studio (applicant), Ian and Mary Rubiano (owners)	
Address/Location:	Lot 5 Moulton Farm Road, Waterbury Center, VT	
Zoning District:	Medium-Density Residential (MDR)	
Application #	107-20	Tax Map # 09-206.010

Applicant Request

The Applicant seeks a setback waiver for a new single-family dwelling and an attached accessory dwelling on undeveloped Lot 5 along Moulton Farm Road in the Medium-Density Residential zoning district.

Present and sworn in:

Ian and Mary Rubiano (Owners)

Kelley Osgood and Andrew Volansky, Volansky Studio (Consultants)

Exhibits

- A: Application #107-20 (3 pages: zoning, conditional use), submitted 9/23/20.
- B: Site Plan (Sheet A1.0) for Rubiano Residence, Lot 5 The Knolls, prepared by Volansky Studio, dated 9/30/20.
- C: Elevations (Sheets A3.1, A3.2) for Rubiano Residence, prepared by Volansky Studio, dated 10/1/20.
- D: Prior DRB decision and zoning permit #016-19 issued to Aaron Flint, Winter Woods LLC on 7/19/19 for a 7-lot subdivision of the remaining lands in the Winter Woods project off Guptil Road;
(D3) Final plat for zoning permit #016-19, recorded on 5/2/19: Survey and Subdivision of the Lands of Winter Woods LLC, prepared by McCain Consulting, dated 4/24/19.
- E: Prior zoning permit #116-20 issued to Ian & Mary Rubiano on 10/16/20 for a new single-family dwelling with an attached accessory dwelling on undeveloped Lot 5 Moulton Farm Road.
- F: Parcel map with orthophoto. (Staff)
- G: State Wastewater System & Potable Water Supply permit ww-5-6405-3 for a 5-bedroom single-family residence on Lot 5 and Site Plan Sheet S-4, prepared by McCain Consulting, dated 10/8/14, revised 8/5/20.
- H: Letter to adjoining landowners, mailed certified on 10/2/20.

Findings of Fact

1. Existing conditions: Ian and Mary Rubiano own a 3.3± acre parcel known as Lot 5 Moulton Farm Road in the Medium-Density Residential (MDR) zoning district. The property is undeveloped. The lot width is approximately 169 ft., with some frontage on, and an access drive to, Moulton Farm Road, a private road. A right-of-way easement for Lot 6 crosses the north corner of Lot 5. The parcel will be served by

municipal water and a septic system located on Lot 4. (ww-5-6405-1, -2, & -3).

2. Background: Prior relevant zoning permits include:

- #016-19 for a 7-lot subdivision of remaining lands in the Winter Woods project, creating six building lots, which include Lot 5. The final plat for the subdivision was recorded on 5/2/19. (Exhibit D)
- #116-20 for a new single-family dwelling with an attached accessory dwelling on undeveloped Lot 5 Moulton Farm Road issued to Ian & Mary Rubiano on 10/16/20. The Applicants proposed a layout where the structure was located entirely within the building zone and meets the MDR setback requirements. (Exhibit E)

3. Project: The Applicants are seeking a zoning permit that would allow for a more desired building design, thereby allowing them to supersede zoning permit #116-20, which was issued a few days prior to October 21, 2020. The Applicants are proposing to construct a single-family dwelling with an attached accessory dwelling where the footprint of the building will be entirely within the building envelope (depicted in Exhibit B); however, the roof overhang will extend 3' into the side yard setbacks on both the north & south sides of the envelope, also depicted in Exhibit B.

4. Accessory Dwelling Unit, Section 503(d): The Applicants are proposing to construct an attached accessory dwelling unit (definition below). The application materials demonstrate compliance with the accessory dwelling criteria as follows:

- The dwelling unit will contain one bedroom. (Applicant's Exhibit B)
- The landowners will occupy the primary dwelling. (Applicant testimony)
- The property has sufficient wastewater capacity. See ww-5-6405-3 (Exhibit G).
- The accessory dwelling will be approximately 1,074 SF, which is \leq 1,400 SF.
- Four parking spaces (2 in garage and 2 outdoor) are provided for the primary and accessory dwellings combined (Exhibit B).

(definition) **DWELLING UNIT, ACCESSORY**: *An efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following: the owner occupies either the primary dwelling or accessory dwelling; the property has sufficient wastewater capacity; the unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling, or the unit does not exceed 1,400 sq. ft. of habitable floor area, whichever is greater; applicable setback, coverage, and parking requirements specified in this bylaw are met.*

5. MDR Dimensional Requirements, Table 5.2: *Minimum lot area: 2 acres; minimum frontage: 200'; minimum setbacks: 60' front, 50' sides/rear.* The Board finds that the property meets the minimum lot size; however, the Board acknowledges that it erred in approving the lot during the review of the recent subdivision application (#016-19), as the lot fails to satisfy the minimum frontage requirement. The lot width is approximately 169 ft. (see Exhibit B), failing to meet the 200 ft. minimum.

6. Waiver Request, Section 309: The setback waiver request is to allow for the structure to encroach upon the side yard setbacks by 3-feet.

7. 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 Applicants are proposing to construct a new single-family dwelling with an attached accessory dwelling that will be served by municipal water and a private septic system. The project will not unduly increase traffic, burden the school capacity, or 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 – a single-family dwelling with an attached accessory dwelling. The setback waiver is requested to allow for a more desirable roof design, which involves an overhang of 3' on the north and south sides of the building, thus providing more protection to the building's exterior. The application notes that the Winter Woods project requires no-cut zones between the properties (ww-5-6405-1 Sheet S-4), thereby implying that the no-cut zones will shield neighbors from any resulting adverse impact.

The Board finds that the setback waiver would be adverse to the neighborhood, as other properties within the subdivision have presented building designs that comply with the approved building envelope. Notably, the landowner on Lot 4, whose building envelope is smaller and more constrained, proposed a building designed that satisfied the confines of the originally approved building envelope. Approval of a setback waiver would be out of character for the area – a subdivision that was recently approved.

- (c) Section 303(e)(3) Municipal bylaws in effect: The Applicant asserts in Exhibit A3 that, other than the setback waiver request, should it be approved, all other dimensional requirements have been met. The Board notes that the Applicants have submitted a building design, which was approved by the Zoning Administrator (Exhibit E) that stays within the confines of the existing building envelope.
- (d) Section 303(f)(2) Methods to control fumes, gas, dust, smoke, odor, noise, or vibration: The application states that this provision does not apply. The Board agrees.
- (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 Ian and Mary Rubiano to construct a single-family dwelling with an attached accessory dwelling 3' within the side yard setbacks to the north and south on Lot 5 Moulton Farm Road, as presented in application #107-20 and supporting materials, *does not* satisfy the criteria warranting a setback waiver under the Waivers and Conditional Use criteria set forth in Sections 309 and 303.

While each setback waiver request application differs from another, the Board strives to be consistent in the review of, analysis of, and granting of setback waivers. One of the more important factors the Board considers when reviewing setback waiver request is whether there are unique characteristics and/or unique and extenuating circumstances necessitating the waiver. In this case, the Board did not find unique and extenuating circumstances, which is supported by the fact that the Applicant has already obtained a zoning permit for a conforming structure located entirely within the building envelope – roofline included.

Additionally, the Board is mindful that granting waivers from the setback requirements should be applied equally. Were the Board to grant the setback waiver requested in this situation, it will have granted a setback waiver for a project on an undeveloped lot in a recent subdivision (the final plat was approved in May 2019), with adequate lot area (3.3 acres). While the Board may have erred in approving the lot, the opportunity to resolve the issue has passed, as the appeal period expired in the first half of 2019. Moreover, the building envelope, although derived from the parameters of the lot’s width (~169 ft.), it is of adequate size and even larger than building envelopes associated with other lots within the subdivision – some of which already have complying structures that have been constructed or are under construction at present.

Lastly, should the Board approve this application, it would represent for the first time, the approval of a setback waiver for an Applicant who has acknowledged the ability to conform with the setback requirements (zoning permit #116-20 was issued October 2020 for a complying dwelling). Over the past few years, the Board has denied applications for setback waivers with the sole rationale of a more desirable building design. In two instances, the Board denied applications that also illustrated the means to place complying structures entirely within the building envelope.

Decision Motion:

On behalf of the Waterbury Development Review Board, Tom Kinley moved and Harry Shepard seconded the motion, to approve application #107-20, for a setback waiver request as shown in Applicant’s Exhibit B.

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



(Chair David Frothingham)

Approved: November 4, 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.*