

**WATERBURY DEVELOPMENT REVIEW BOARD**  
**General Minutes—April 7, 2021**

**Attending:** Board members: Tom Kinley (Acting Chair), Bud Wilson, Alex Tolstoi, Patrick Farrell, Harry Shepard, and George Lester. Staff: Dina Bookmyer-Baker (ZA), Steve Lotspeich (Community Planner), and Patti Martin (Secretary). Also: Joseph Wurtzbacher observed.

Tom Kinley, Acting Chair, 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 when their hearing is ready to commence. Applicants should 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. Note that the DRB is a seven-member Board, six members are present; an approval requires at least four votes in the affirmative.

1) **#012-21: Tyler and Amber Austin** (owner/applicant)

Setback waiver request, after-the-fact, for a deck addition at 1387 Ripley Road. (LDR/RHS)

Present and sworn in:

Tyler Austin, applicant

Testimony:

The original application for a garage addition to the house with an accessory apartment was approved in 2017. The deck was built at that time; however, the deck was not included on the prior approved plan. A waiver is required because the house is angled toward the side property line and the corner of the deck is closer to the property line than setbacks allow, by 9 feet.

The public hearing was closed at 6:45 p.m. The Board approved the project with conditions and will issue a written decision within 45 days.

2) **#009-21: Phyllis Simon** (owner), **Lane Simon** (applicant)

Setback waiver, Variance, and Special Flood Hazard Area review to construct an attached garage/deck in the setback that exceeds the maximum lot coverage at 143 South Main Street. (VMR/SFHA zoning and overlay districts)

Present and sworn in:

Phyllis Simon, owner

Lane Simon, applicant

Testimony:

The project is the removal of the existing attached shed and replacement of the shed with a garage with storage and a small deck on top of the structure that will be accessed from the upstairs residence. The property is located entirely in the mapped 100-year floodplain.

The footprint of the new garage, when added to the main building, exceeds the allowed lot coverage for the Village Mixed Residential zoning district and that is why a variance is being requested. The Board asked if there were precedence for requesting or issuing this kind of variance for lot coverage. In this proposal, the Applicant is not looking to change, expand, or intensify the use. The only other request for a Variance for lot coverage (in the last 5 years) was for a residential expansion of first-floor living space, smaller in scale, much smaller square feet request to infill an off-set corner, that would not come closer to any property line, and the project

was to accommodate accessibility for the owner of the residence.

The project was discussed further. The Board requested additional information and answers to the following questions, to be submitted one week prior to the continuation of the review:

1. What are the existing conditions on this property? All existing features of the lot are requested.
2. What is drainage going to be on the lot? Address the drainage and show the proposed contours on how the drainage will be handled.
3. How will the existing historic structure and the new structure work together to be compatible on the property? How will the 2nd-story deck be made safe? Will there be a railing or enclosure? What materials will be used for the garage (and deck railing)? The applicant testified that the last renovation in 2011 used materials that are still available for the garage.
4. How will the new structure address the flood hazard standards? Will any fill be required? If fill is needed, what materials will be used?
5. How will the parking be improved while providing access to a garage of this size?
6. What will the finished floor elevation of the slab be and how does that relate to the base flood elevation?
7. Address the flood-proof construction (the wall cross-section should show the BFE and the use of flood-proof/flood-resistant materials to a specified height). The application should state/demonstrate that all mechanicals and utilities will be elevated to a specified height; the plan should include an engineer's certification.
8. The Site Plan should show the existing contours labeled and address how the grade will be re-worked to accommodate the garage and site drainage away from neighboring properties.

The hearing was continued to Wednesday, May 5, 2021 at 6:30 p.m.

- 3) **#003-21: Arnot Development Group, Inc., c/o Paul Arnot** (owner/applicant)  
Setback waiver request to construct a new single-family dwelling that was previously approved on undeveloped Lot 17B on W. Pinnacle Ridge Rd. and Pinnacle Point. (CNS zoning district)  
—*This review was continued from 3/3/21 when no actual review took place.*

Present and sworn in:

Paul Arnot, Arnot Development Group Inc.

Adjoining Landowners: Jenny & Todd Davidson, 21 Pinnacle Point; John Fagan, 71 Pinnacle Point; Carrie Phillips, 84 West Pinnacle Ridge Road; Gregg Stuessi, 35 N. Pinnacle Ridge Road; and Bob Dillon.

Various aspects of the project were discussed including access to the proposed dwelling, the setback waivers requested, existing clearing that has already been done, proposed screening planting, the house elevations, and how the site will be graded to accommodate the proposed dwelling. The neighboring property owners raised various issues including landscape screening for the proposed house and drainage issues, especially along Pinnacle Point. Additional information was requested regarding the proposed grading for the lot to accommodate the proposed dwelling, layout of the proposed retaining wall, and how the proposed drainage on the site will be handled.

The hearing was continued to Wednesday, May 19, 2021 at 6:30 p.m.

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

- Final plat review: #135-20, William Lintilhac (applicant), Lintilhac LLC, Philip & Crea

Lintilhac (owner), boundary-agreement, two-lot subdivision, and new single-family dwelling on undeveloped lands on Barnes Hill Road, Waterbury Center, VT. (LDR/CNS/RHS). DRB hearing: 1/6/21; decision approved: 1/20/21; final plat due (180 days): 7/19/21.

Motion: Harry Shepard moved and Alex Tolstoi seconded the motion to approve the final plat for application #135-20.

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

- Review prior meeting minutes and decisions:

Motion: Harry Shepard moved and Bud Wilson seconded the motion to approve the DRB general meeting minutes for March 17, 2021, as amended.

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

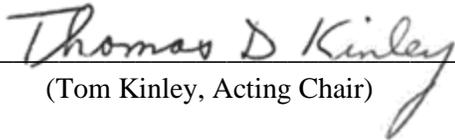
Motion: Harry Shepard moved and Alex Tolstoi seconded the motion to approve the decisions for applications #007-21 (Shaws), #005-21 (Lackey), and #006-21 (Reiss), as presented.

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

- Public comment /Other business:

There was none.

**Adjournment:** There being no other business, the meeting was adjourned at 9:00 p.m.

  
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(Tom Kinley, Acting Chair)

Approved: April 21, 2021

**Notice of upcoming meetings:**

Wednesday, April 21, 2021, 6:30 p.m.

Wednesday, May 5, 2021, 6:30 p.m.

Wednesday, May 19, 2021, 6:30 p.m.

**Town of Waterbury**  
**Development Review Board**  
**Decision #012-21 ■ April 7, 2021**

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

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Owner/ Applicant:	Tyler & Amber Austin	
Address/Location:	1387 Ripley Road, Waterbury Center, VT	
Zoning District(s):	Low-Density Residential (LDR), Ridgelines/Hillsides/Steep Slopes (RHS) overlay	
Application #	012-21	Tax Map #10-128.000

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**Applicant Request:**

The applicant seeks approval for an existing deck within the side setback at 1387 Ripley Road.

**Present and sworn in:**

Tyler Austin, applicant

**Exhibits:**

- A: Application #012-21 (3 pages: zoning permit, conditional use), submitted 3/9/21.
- B: (B1) Site Plan (Grenier Engineering base-map), annotated by Applicant, submitted 3/9/21.  
(B2) Site Plan annotated by Applicant to show stairs to deck, submitted 4/6/21  
(B3) Excerpt of revised Site Plan showing deck & stairs.
- C: Photos (3) of the existing deck, prepared by applicant, submitted 4/5/21.
- D: (D1) Orthophoto of parcel dated 1/13/21.  
(D2) Parcels in the neighborhood with the 75' LDR setback overlaid.
- E: Letter to adjoining landowners, mailed certified on 3/22/21.

**Findings of Fact:**

1. Existing conditions: Tyler and Amber Austin own a 2.2± acre parcel located at 1387 Ripley Road in the Low-Density Residential (LDR) and the Ridgelines/Hillsides/Steep Slopes (RHS) zoning and overlay districts (Exhibit E2). The parcel is currently developed with a one-story single-family dwelling and attached garage plus an addition with a second garage on the lower level and an accessory apartment on the main level, that was approved and constructed in 2017. The original house was built in 1979 (Zoning Regulations were adopted in 1980). The parcel includes >300 feet of frontage on and has access to Ripley Road and a driveway access/right-of-way along its southerly property line. The property is served by private on-site well and septic.
2. Project: The proposal is to approve an existing 480 sq. ft. attached deck that was added to the rear of the house in conjunction with removing the pre-existing deck and constructing in its place an attached garage /accessory dwelling in 2017. The existing deck is located 66' from the side property line to the south.

3. LDR Dimensional Requirements, Table 5.2: Minimum lot area: is 5 acres; minimum frontage: 300'; minimum setbacks: 70' front; 75' sides/rear. At 2.2 acres, the lot is undersized by 2.8 acres (more than half).
4. Waiver Request: The setback waiver request is to encroach into the side yard setback by 9' (75' minus 66').
5. Conditional Use/Waiver criteria: As set forth in Section 309, the DRB may grant a waiver of building setbacks as a conditional use reviewed in accordance with Section 303; provided that the encroachment does not have an undue adverse impact on the use and enjoyment of adjoining properties from which the setback waiver is sought. The Board considered the following general and specific standards:
  - a. Section 303(e)(1) Community facilities: No change in the residential use of the property is proposed. The property is served by private well and septic. The addition of a deck does not unduly increase the traffic, does not require addition municipal water or sewer allocation, does not burden the school capacity, and does not increase the demand for fire protection. The Board concludes that the as-built project 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. No additional exterior lighting was added. The deck was constructed to match the style of the existing dwelling. The application states that: "The deck is screened from view at the rear of the site, square to the building. The character of the area is lots smaller than the 5-acre minimum in the LDR district; many nearby properties have at least one setback encroachment. Therefore, the small waiver of setback request will have no undue adverse impact to the character of the area."
  - c. Section 303(e)(3) Municipal bylaws in effect: The deck is for residential use. The project application presents compliance 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: The proposed residential use will not typically create the above-named nuisances and therefore no devices or special methods are proposed to control these impacts. The Board concludes that no devices or methods are necessary to prevent or control these impacts.
  - e. Section 303(h) Removal of earth or mineral products conditions: The project does not involve earth-removal activities. This provision does not apply.
6. Section 1001 RHS Applicability: Note that although the property is in the RHS overlay district, it is not subject to RHS review because the proposed deck is  $\leq$  800 square-feet, as per Section 1001(d)(1).

**Conclusion:**

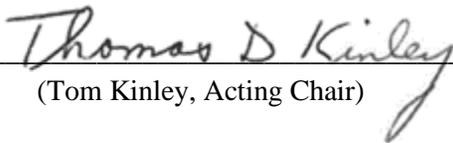
Based upon these findings, and subject to the conditions set forth below, the Board concludes that the proposal by Tyler and Amber Austin to approve an existing deck 9' within the side yard setback at 1387 Ripley Road, as presented in application #012-21 and supporting materials, meets the Waivers and Conditional Use criteria set forth in Sections 309 and 303.

**Decision:**

On behalf of the Waterbury Development Review Board, Patrick Farrell moved and Alex Tolstoi seconded to approve application #012-21 with the following condition:

- (1) The Applicant shall complete the project in accordance with the Board's findings and conclusions and the approved plans and exhibits.

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

  
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(Tom Kinley, Acting Chair)

Approved: April 21, 2021

Additional state permits may be required for this project. The landowner/applicant is advised to contact Peter Kopsco, DEC Permit Specialist, at 802-505-5367 or [pete.kopsco@vermont.gov](mailto:pete.kopsco@vermont.gov), and the appropriate state agencies to determine what permits must be obtained.

**NOTICE:** *This decision may be appealed to the Environmental Division of the Vermont Superior 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.*