

**Town of Londonderry, Vermont  
Development Review Board**

**Regular Meeting Minutes**

**Wednesday, July 17, 2019**

**Twitchell Building - 100 Old School Street, South Londonderry, VT**

**Board Members Present:** Denis Pinkernell, Esther Fishman, Sven Federow, Terry Hill, John Lancaster and Bob Maisey.

**Board Members Absent:** Chris Laselle

**Others in Attendance:** Town Officials – Town Administrator/Zoning Administrator Shane O’Keefe, Assistant to the Town Administrator, Sharon Crossman. Members of the Public – Karalesa Greer DiFabio, Joshua Wengerd, David Chaves, Brian Rapanotti,, Jennifer Howe, Scott Howe, Stewart Barker, Robert Forbes, Janice Pugliese and Shawna Pugliese.

**1. Call meeting to order**

Board Co-Chair Esther Fishman called the meeting to order at 5:30 PM.

**2. Additions or deletions to the agenda** – There were no additions or deletions.

**3. Minutes**

Motion by Denis Pinkernell, seconded by Robert Maisey, to approve the minutes of the meeting of June 15, 2019 as written. Motion passed unanimously.

**4. Public Hearings as warned:**

- a. Application 2019-23 by Ben and Karalesa (Greer) DiFabio** for approval of a Variance of front yard setback for construction of an addition to an existing single-family dwelling located on Parcel 049016.001, at 1342 Barker Road per Zoning Bylaw Section 203 District Standards, Section 605 Appeals and Section 606 Variances.

Owner Karalesa Greer DiFabio appeared with her builder Joshua Wengerd (applicant) to discuss the basis for request for a variance. The Board reviewed the 5 criteria under Zoning Bylaw Section 606(A) to be met in order to qualify for a variance. The applicant outlined the plan to correct recent interior flood damage and associated moisture to a portion of the existing dwelling with interior renovation plus construction of a new 3’ x 17’ “bump-out” addition along one side of the front with a 10’ front yard setback. He said the proposed addition is designed to match the existing grade and topography as well as the setback of the existing dwelling along Barker Road. The owner provided photographs of the circa 1800s dwelling and site conditions showing flood damage that led to the decision to add to the front rather than the rear of the existing dwelling. The Board noted that the property is not in the official mapped flood area.

No one else appeared or spoke on this matter. The Board decided to close the hearing and to deliberate in private later in the evening. The owner and applicant left the meeting.

- b. Application 2019-22 by David Chaves** for Conditional Use Review to construct a new single-family residence on Parcel 110054.000, located at 6063 VT Route 11, located within the Resource Conservation Overlay District, per Zoning Bylaw Section 503 and Resource Conservation criteria specified in Zoning Bylaw Section 204 (A).

David Chaves appeared with surveyor Brian Rapanotti, L.S., to discuss the proposed project, located in both the R1 and R3 districts, and entirely in the Resource Conservation Overlay district. Chaves stated that the property shares access off VT Route 11 with an existing easement, that splits into 2 separate driveways serving adjacent parcels owned by him – the subject parcel and the other with an existing single-family home. Rapanotti stated that the driveway is at 20% grade while most of property is ‘super steep’ at 40 % grade which has been stabilized with riprap and grassed over. He said the site roughed-in for the 1.5 story “rustic-style” cabin is one of the few flat areas at 10-15% grade that is screened from view by a 20- foot high ledge outcrop. The Board verified that the Bylaws have no specific standard for steep slopes. Rapanotti said the overall height of the structure from lowest natural grade will be 37 feet maximum and exterior lighting fixtures will be downlit per Bylaw standards. Chaves confirmed that no additional clearing or blasting is planned.

No one else appeared or spoke to the application. The Board decided to close the hearing and deliberate in private later in the meeting. David Chaves and Brian Rapanotti left the meeting.

- c. Application 2019-24 Appeal of Zoning Administrator’s decision to issue a Notice of Violation to Vermont Woodchips Real Estate Holdings LLC**, regarding an opinion of land use violations on Parcel 045004.100, located at 170 Winhall Station Road.

Jennifer and Scott Howe appeared to present their Appeal of the Zoning Administrator’s Notice of Violation issued on May 30, 2019, decision regarding land use violations associated with their business known as VT Woodchips that is located on a parcel of land purchased from Jamaica Cottage Shop and formerly part of the Smith’s Mill property on Winhall Station Road.

The Howes argued that State Act 250 permits exist that allow for the current property use since they purchased it in May 2005, now in its 15<sup>th</sup> year of processing materials, which includes crushing,

O’Keefe confirmed that 15 continuous years of the same operation would be considered a grandfathered use per state law. However, he stated that a local permit exists for the woodchip business, but not for the current activity of gravel storage, screening and processing, which prompted his determination of a land use violation. Scott said the Town “obviously overlooked” and did not respond to the need for a local permit in 2011 when the state provided required official notification of Act 250 approval for “continued” gravel processing activity in the present location.

As to the Board’s question of when the gravel operation began on this site, Scott Howe

said the property has a long history of use including grinding bark in the days of the mill operation, then screening topsoil and since processing gravel material.

Janice Pugliese and her daughter Shawna, adjacent property owners, argued that the Howes' use of the property since May 2005 adds up to only 14 years of continued operation. They also stated that the impacts from the current processing operation is noticeably different than the original sawmill and current Jamaica Cottage Shop– with extended hours of operation and persistent, intolerable noise from processing and trucking. The Puglieses stated they did not participate in the 2011 Act 250 permit application proceedings because they never received official notice as abutters, due to their first and last names being listed incorrectly and their address being incomplete on the Certificate of Service. O'Keefe advised that such complaints are a separate issue -and if a violation is found, then complaints can be offered in court.

O'Keefe added that in this 2011 State Act 250 permit application, the Howes checked 'local permit not needed,' reminding the Board that this matter is solely about whether VT Woodchips current activity is a grandfathered use or requires application for a local land use permit.

The Board agreed that the correct term of operation is 14 years, rather than 15 years. The Board also concluded that the underlying use of the Howes/VT Woodchips property when purchased had long been for processing and producing wood products, initially as Smith's Mill which operated for many years and also since 2004 when a local permit was granted Jamaica Cottage Shop - as new owners of the Smiths Mill property - to re-establish the non-conforming use in the R3 district.

Federow noted that there is a pending VT Supreme court case in Burlington (207 North Avenue) re: statute of limitations on uses that originally commenced when there was no applicable zoning requirement - the issue being challenged being the "continuous" operation for the full 15-year period. He suggested the outcome of this case could have a bearing on the matter of the Howes' appeal, but a decision is not expected until October.

The Board decided to close the hearing and deliberate in private session later in the evening. The Howes and the Puglieses left the meeting.

## 5. Other Business

**Application 2019-26 by Stewart Barker Building LLC for Mark and Julie Haight for review and approval of land development** (construction of new accessory structure – detached garage) located at 566 Windy Rise Lane East on Parcel 004001.000, being a lot without frontage on a public road that requires DRB approval per Zoning Bylaw Section 402(A).

Stewart Barker appeared for owners Mark and Julie Haight who want to build a detached garage on their property located on Snow Drift Lane, a private road that continues off Magic Circle Road, also a private road.

O'Keefe cited Section 402 (A) of the Bylaw, referring to State statute that requires that any

‘land development’ on a private road with either frontage on a town road or access via a right of way at least 50 feet in width must receive DRB approval. O’Keefe stated that the existing access to the lot is pre-existing, non-conforming via a private road that serves the Hights’ existing dwelling, which is grandfathered. He stated the pending application for construction of a garage triggers this Bylaw standard requiring DRB approval before a permit can be issued by the Zoning Administrator.

*After some discussion, a motion was made by Denis Pinkernell to authorize the Zoning Administrator to issue a zoning permit to the Hights pursuant to Section 402(A) of the Bylaw. The motion was seconded by John Lancaster and approved unanimously.*

**Application 2019-28 by Robert Forbes/Forbes Construction Inc. for Michael Lonchar for review and approval of land development** (demolition and rebuild of burn damaged dwelling on an existing foundation/slab) located at 548 Loon Circle on Parcel 065148.000 being a lot without frontage on a public road that requires DRB approval per Zoning Bylaw Section 402(A).

Robert Forbes appeared on behalf of owner Michael Lonchar who proposes to rebuild a single-family dwelling located at 548 Loon Circle, a private road. Forbes explained that the original house was substantially damaged by fire and demolished, and the proposed new one will be constructed on the same foundation. He said he understands that since the original house was built prior to current town road specifications, the current Bylaw requires that the DRB approve the pre-existing non-conforming access off a private road before the ZA can issue a permit for the proposed construction.

O’Keefe confirmed that the property is not located within the Resource Conservation Overlay district and noted that otherwise it presents the same situation as the previous matter.

*A motion was made by Denis Pinkernell to authorize the Zoning Administrator to issue a zoning permit to Michael Lochnar pursuant to Section 402(A) of the Bylaw. The motion was seconded by John Lancaster and approved unanimously.*

## **6. Continued Review of revised Zoning Permit Application forms.**

O’Keefe presented a draft revision of Zoning Permit Application forms for the Board’s review and approval. After a brief discussion, the Board approved by consensus the Zoning Permit Application forms as revised and agreed to their immediate use. O’Keefe then left the meeting.

At 7:17 PM the Board entered private deliberative session. At 7:48 PM the Board came out of deliberative session and made the following announcements:

*A motion made by Denis Pinkernell, seconded by Sven Federow to deny the request for a front setback variance by Karalesa DiFabio, passed unanimously.*

*A motion made by Sven Federow, seconded by Denis Pinkernell, to deny the Appeal of the Zoning Administrator’s Notice of Violation by VT Woodchips Real Estate LLC, passed with 5 yes votes and 1 no vote.*

*A motion made by Sven Federow, seconded by Terry Hill to approve the permit application of David Chaves to construct a single-family dwelling on Parcel 110054.000 located in the Resource Conservation Overlay district, with the condition that the Owner follow The Low Risk Site Handbook for Erosion Prevention and Sediment Control published by the Vermont Department of Environmental Conservation in any and all land use activity on this parcel, passed unanimously.*

7. **New Business – None**

8. **Next regular meeting date – Wednesday, August 21, 2019 at 5:30 PM.**

9. The meeting was adjourned at 8:04 PM.

Respectfully submitted,

Sharon Crossman, Administrative Assistant to Town Administrator and Zoning Administrator

*Approved on August 21, 2019*

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Esther Fishman, Co-Chair