

Town of Londonderry, Vermont Development Review Board

Regular Meeting Minutes
Wednesday, May 20, 2020

DRAFT 2

Note: This meeting was held remotely online with no physical presence – all attendees participated by video or phone, per the instructions provided in the public hearing notice and in the agenda posted in advance of this meeting, as indicated within these meeting minutes.

Board Members Present: Esther Fishman Co-Chair, Denis Pinkernell Co-Chair, Paul Abraham, Terry Hill, John Lancaster, Bob Maisey.

Board Members Absent: Chris Laselle (leave of absence)

Others in Attendance: Town Officials: Shane O’Keefe, Zoning Administrator (video), and Sharon Crossman, Assistant to the Zoning Administrator (video). Members of the Public: David Chaves (video), Brian Rapanotti (video).

1. **Call the meeting to order.** At 5:36 pm, Development Review Board (DRB) Co-Chair Esther Fishman (the Chair) called the online meeting to order and read a prepared script describing the authority to hold an entirely online meeting and the procedures to be followed by Board members and others in attendance, depending on their mode of participation (script attached).
2. **Additions or deletions to the agenda** (to occur as Other Business). None.
3. **Minutes Approval.** A motion to approve the minutes of DRB meeting of April 15, 2020 was made by Denis Pinkernell and seconded by Terry Hill. The motion passed unanimously.
4. **Public Hearings as warned.**
Application 2020-12 by Brian Rapanotti, for David Chaves, requesting Variances from Bylaw Section 406 (b)(2) and Section 412, regarding fuel storage tank setbacks and extension of a non-conforming use, respectively, and Conditional Use Review for installation of fuel storage tanks on Parcel 017010.000, located at 240-242 Chaves Road.

At 5:36 pm, the Chair opened the public hearing and asked Brian Rapanotti (Applicant) to describe the Chaves application, with attention to Section 412 that addresses Non-Conforming Uses.

The Applicant stated that David Chaves, Owner of Chaves Excavating, seeks a 12’ addition to an existing structure in order to use it as covered storage for several fuel tanks. Regarding non-conforming use, he said the Chaves Excavating shop building has existed and been used as is for over 50 years, pre-dating local zoning, which does not permit the storage of fuel. He added that the site will be improved by locating all fuel tanks within the extended existing storage shed and by having greater fuel storage capacity requiring larger loads and less frequent fuel delivery, resulting in less large truck traffic.

The Owner described the proposed project as a minimal addition to an existing structure in order to accommodate 2 new diesel fuel tanks (capacity 10,000 gallon and 8,000 gallon) for trucks and equipment, which will replace 2 existing tanks - capacity 2,000 gallon and 1,000 gallon. He said a third existing tank which stores gasoline (capacity 1,000 gallons) will remain. He confirmed that the

new concrete retaining pit will be designed to hold 27,000 gallons of fuel, which is 1.5 times the capacity of the tanks per State regulations, and be positioned to allow sufficient access for filling the fuel tanks, while minimizing their visibility. He added that another goal is to restore the existing storage shed before further deterioration.

Paul Abraham noted that proposed construction will occur on the side of the existing structure that is 155 feet from the property line. The Owner stated that he sent notice of his project to all 3 abutters and received replies from all indicating no objection to the project.

The Chair asked the Applicant to speak to the request for a setback variance per Section 606. The Applicant stated that with a variance for reduced setbacks, the project could be done by minimally adding on to the existing building, rather than constructing a new building. He added that neither existing building meets the 150-foot setback required for the addition of the new tanks.

The Chair then referenced Bylaw Section 406 Flammable Liquids and Outdoor Storage and called attention to paragraph (B) (1) indicating the required minimum setback for 10,000 gallons, or less, of fuel storage is 80 feet. She asked if reducing the amount of fuel is a possibility. Owner said due to the need for both on-road and off-road fuels, which must be separated, all the proposed tanks are necessary.

The Applicant pointed out that if the allowable amount of fuel is meant to be calculated by individual tank, the project would meet the standard, whereas if the calculation is based on combined tank capacities, it would not comply. He also stated that the listed capacity of a tank is always less than it might actually hold, considering various factors (interior capacity, expansion, contraction) which results in a tank that could be "full" with fewer gallons than it's supposed "capacity."

Zoning Administrator Shane O'Keefe agreed that the Bylaw standard is rather unclear and stated his opinion that the reference to "each unit" should be read to mean "individual tank." With this clarification, and quick calculation, it was determined that the actual capacity of a 10,000-gallon tank that is 27 feet by 8 feet in dimension is roughly 9,500 gallons. It was then generally accepted that a 10,000-gallon tank will be less than "full," considering typical known factors impacting capacity. With that, all agreed that the requirements of Section 406(B) were met by the project as proposed and a setback variance would not be necessary.

Per Section 406 (A), Zoning Administrator Shane O'Keefe said the application was sent to the local Fire Chief for comments as required. He added that to date no comments had been received.

The Chair then read aloud Section 412 (A) regarding continuation of a non-conforming use or structure and asked the Applicant to address the standard in the context of the proposed project.

The Applicant said the variance request is to be able to enlarge the non-conforming storage structure. He stated that adding a 12-foot extension to the existing overhang - a total of 324 square feet - is the least amount of change necessary to accommodate the larger tanks and make the project doable. He said tearing down the existing structure and building a new one is not desirable or practical.

O'Keefe stressed that 412(A) allows the indefinite continuation of a non-conforming structure, and

requires that it "...shall not be moved, enlarged, altered, extended, reconstructed or restored,...nor shall any external evidence of a non-conforming use be increased by any means whatsoever." He said that the project includes: the extension of the shed roof; the extension constitutes a structure by definition; and there-in lies the "external evidence" of the non-conforming use being increased.

The Board discussed with the Applicant the five requirements for a Variance specified under Section 606. The Applicant responded to each as follows:

1. Unnecessary hardship created by unique physical circumstances or conditions peculiar to the property: There is physical space for the proposed 12' overhang extension, but not enough to retain the existing structure with required setbacks.
2. No possibility of strict conformance with bylaw to attain reasonable use of the property: The proposed extension is minimal change necessary with the least amount of impact to the property and 50-year old business of Chaves Excavating. The project is designed to create space to accommodate new larger tanks and adequate containment – all of which will bring the on-site fuel storage into full compliance with current codes, for the first time.
3. Unnecessary Hardship not created by the Applicant: The current bylaws, not in effect when the existing structure was built, now 'tie the hands' of the Owner, who proposes minimal extension and considerable improvement of a grandfathered, pre-existing, non-conforming structure.
4. Character of the Neighborhood: No change
5. Variance requested is minimum that would afford relief and least deviation from zoning regulation: Project is designed for greatest compliance possible with local and state regulations.

Those present acknowledged that there appears to be no practical solution for the project as presented to meet the 5 criteria for a Variance.

Hearing no other comments, the Chair called for a motion to close the Chaves public hearing at 6:23 pm. Denis Pinkernell made that motion, seconded by Paul Abraham, which passed unanimously. The Chair advised the Applicant and Owner that the Board would deliberate in private after the meeting is closed and deliver its written decision within 45 days, as required by State statute.

Brian Raponatti and David Chaves left the meeting.

Denis Pinkernell made a motion to adjourn the meeting, Esther Fishman seconded, and the motion passed unanimously.

5. **Next regular meeting** - Wednesday, June 17, 2020, at 5:30 pm.
6. **Adjourn.** The meeting was adjourned at 6:32 pm.

Approved by DRB:

_____ (Chair)

_____ Date