

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

Wednesday, May 20, 2020 – 5:30 PM

Meeting will be held remotely online with no physical presence - see information below

1. Call Meeting to Order
2. Additions or Deletions to the Agenda
3. Minutes Approval – Meeting of April 15, 2020
4. Public Hearings as warned:
 - A. Application 2020-12 by Brian Rapanotti for David Chaves requesting Variances from Zoning Bylaw sections 406(B)(2) and 412, regarding fuel tank setbacks and extension of a non-conforming use, respectively, and Conditional Use Review for the installation of fuel storage tanks on Parcel 017010.000, located at 240-242 Chaves Road.
5. Other Business
6. Next regular meeting date – Wednesday, June 17, 2020
7. Adjourn

Meeting may be attended remotely as follows:

Via web: <https://us02web.zoom.us/j/86287852938> (Meeting ID: 862 8785 2938)

Via telephone: (929) 205-6099 (Meeting ID: 862 8785 2938)

It is strongly recommended that potential participants familiarize themselves with Zoom software (<https://zoom.us/>) prior to the meeting as the Board will not dedicate time to educating the public in its use.

Town of Londonderry, Vermont Development Review Board

Regular Meeting Minutes
Wednesday, May 20, 2020

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 Section 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 on June 17, 2020.



Esther Fishman, Co-Chair

Development Review Board – May 20, 2020

- I'd like to call to order the Londonderry Development Review Board meeting of May 20, 2020. This is Board Co-Chair _____.
- In response to the Governor Scott's January 20, 2020 declaration of a State of Emergency due to the spreading COVID-19 pandemic, and his "Stay Home, Stay Safe" executive order restricting and minimizing all unnecessary activities outside of the home, and in accordance with Act 92, signed into law on by the Governor on March 30, 2020, which allows for changes to the Vermont Open Meeting Law to protect the health and welfare of the public, this meeting is being held entirely remotely with no physical presence.
- This meeting is being conducted entirely on Zoom meeting software and the Board members and staff are participating by video except for Commission member(s) _____, who is(are) participating via telephone. Other attendees are permitted to participate via video or telephone. The meeting agenda posted on May 18, 2020 and still available on the Town's website provided information on how the public can participate in this meeting.
- We will mute attendees except for Board members and Town staff and those determined by the Chair to be unmuted, such as permit applicants and abutters. After Board discussion on a specific agenda matter, all participants will be unmuted to ask questions or provide comment, which will be limited to 3 minutes per person.
- All non-unanimous votes by the Board, if any, must be taken by roll call vote, with each member stating their name and vote.
- We will then repeat this process for each agenda item.
- For those of you participating by telephone, you can mute and unmute yourself by dialing star-6.
- For those of you participating by Zoom video, particularly those new to it, here are a few highlights.
- At bottom left is the mute button to turn sound on or off, though the host controls that for this meeting.
- Just to the right of that button is the video button, where you can either turn on or off your video.
- The participants button at the bottom allows you to see who is on the call, and there will be a list that populates with all of the participants.
- There is a raise hand button at the bottom of the participants list for those who want to be recognized. We will hold off on recognizing those raising their hand and wait for the end of the specific agenda discussion so that those on the phone are treated equally.
- While viewing if you want to see all participants being viewed, press the Gallery View button on the top right of the screen.
- Beyond these few pointers, the Board will not take time for educating the public in the use of Zoom software during the meeting, as the posted meeting agenda recommended that those wishing to participate familiarize themselves with the software program ahead of time.

Development Review Board – May 20, 2020

- Before we proceed to the rest of the agenda, I ask all Board members to vocally identify themselves, which is a requirement of the Vermont Open Meeting Law. And throughout the meeting, as appropriate, Board members and other participants are asked to identify themselves when they speak.

- Esther Fishman
- Denis Pinkernell
- Bob Maisey
- Chris Laselle

- Terry Hill
- John Lancaster
- Paul Abraham

- The next order of business is the consideration of additions to or deletions from the agenda.

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Town of Londonderry, Vermont
Development Review Board

Findings of Fact and Notice of Decision
Application 2020-12
Property of David Chaves / Chaves Excavating
Parcel 017010.000 240-242 Chaves Road
June 24, 2020

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves an application by Brian Rapanotti (the Applicant) for David Chaves (the Owner), requesting Variances from Zoning Bylaw sections 406(B)(2) and 412, regarding fuel tank setbacks and extension of a non-conforming use, respectively, and Conditional Use Review for the installation of fuel storage tanks on Parcel 017010.000, located at 240-242 Chaves Road within the Residential (R1) district.
2. The application for Variances and Conditional Use Review was received by the Zoning Administrator on 4/14/2020.
3. On 4/26/2020 the Zoning Administrator deemed the application “Complete” and referred the application for Variances and Conditional Use Review to the Development Review Board (the Board).
4. Copies of all documents referenced above are available at the Londonderry Town Office.
5. On 4/29/2020, notice of a public hearing to be held on 5/20/2020 by the Board was posted at the following places:
 - a. The Londonderry Town Clerk’s office.
 - b. The Londonderry Post Office
 - c. The South Londonderry Post Office
 - d. Hell’s Peak Road, within view of the public-right-of-way most nearly adjacent to the property.
6. The Notice of Public Hearing included information regarding the possibility for a change in the venue of the meeting to a means of remote electronic access as allowed by 1 V.S.A. Section 312(a)(2) due to the ongoing COVID-19 health emergency, and advised that the most current information on remote meeting participation could be obtained within at least 48 hours of the meeting by contacting the Town Office or checking the Town website www.londonderryvt.org
7. On 4/29/2020, a copy of the notice of public hearing was mailed to the Applicant, the Owner and owners of properties adjoining the subject parcel as listed on the Certificate of Service.
8. On 4/29/2020, a notice of a public hearing was published in the *Vermont Journal*.
9. On 5/18/2020, the agenda for the 5/20/2020 Board meeting was properly posted and distributed via email to Board members and the applicants, and the agenda included information on how the public could participate electronically or by phone.
10. The application was considered by the Board at a public hearing opened on 5/20/2020. This hearing was held remotely online as Zoom Meeting ID: 862 8785 2938164607400. All attendees participated by video or phone, per the instructions provided in the public hearing notice.

11. Present over the course of the proceedings were the following members of the Board: Esther Fishman (Co-Chair), Denis Pinkernell (Co-Chair), Paul Abraham, Terry Hill, John Lancaster, Bob Maisey. On 5/20/2020 the public hearing was closed.
12. During the course of the hearing, the following exhibits (available at the Town Office) were submitted and/or referenced for the record:

Exhibit 1. Zoning Permit Application Form 2020-12, dated 4/14/2020, with associated attachments including: Site Development Plan Checklist; Rapanotti Septic Design, Sheet 1 of 1, entitled "Fuel Tank Installation, David Chaves, dated April 14, 2020," depicting Overall Site Plan and Tank Construction Views and Notes; Conditional Use Review Application Worksheet with attached "General Standards;" Request for Variance of Bylaw Section 406; photos of existing shop and VT Agency of Natural Resources Map of aerial parcel location.

Exhibit 2. Zoning Administrator's decision issued via email on 4/24/2020 to Brian Rapanotti and David Chaves Applicant, that the application must include a request for a variance from Bylaw Section 412, or a Notice of Appeal of the decision pertaining to extension of a non-conforming use.

Exhibit 3. Notice of Appeal of Zoning Administrator's Decision re: Application 2020-12 received 4/26/2020 with attached narrative response prepared by Rapanotti Septic Design in response to email from Zoning Administrator as described in Exhibit 2.

Exhibit 4. Individual form letters, prepared and solicited by the Applicant/Owner, signed by each abutting property owner, indicating "no objection" to Application 2020-12 as submitted.

13. The Board Co-Chair Esther Fishman opened the public hearing and briefly described Application 2020-12, as **Request for 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.** She asked the Applicant to speak separately to the individual requests made on behalf of David Chaves, Owner of David Chaves Excavating.

Brian Rapanotti, Rapanotti Septic Design, (Applicant) participated in the remote-access public hearing to discuss the Chaves Excavating application and related variance requests. He began with the request for variance of setbacks for fuel tank storage per Bylaw Section 406 (b) which requires a minimum setback of 200 feet for tanks of more than 10,000-gallon capacity, and a minimum setback of 80 feet for tanks of 10,000 gallons or less. (See Exhibit 1, Paragraph 12)

The Applicant stated that the Bylaw is not clear on whether the allowable amount of fuel is calculated by individual tank capacity, or by combined total capacity of all fuel storage tanks. He testified that Individual fuel tanks are known to hold less than "full" capacity, due to typical known factors such interior liner, expansion, contraction, etc.

Zoning Administrator Shane O'Keefe offered his opinion that the Bylaw reference to "each unit" should be read to mean "individual tank." With this clarification, and general consensus that the actual capacity of a 10,000-gallon fuel storage tank that is 27 feet by 8 feet in dimension is roughly 9,500 gallons, it was agreed that the applicable standards are Section 406(b)(1 and (3) only.

Regarding the request for a variance from Bylaw Section 412 Non-Conforming Use and Non-Conforming structure, the Applicant testified that the Chaves application proposes continuation of fuel tank storage within the existing 50-year old shop which predates local zoning, and constitutes a “non-conforming use” and “non-conforming structure.” (See Exhibit 3, Paragraph 12 above.) 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 store multiple fuel tanks and a containment pit undercover, and to bring the operation into compliance with current codes. (See Exhibit 3, Paragraph 12 above.) He added that the only other option - tearing down the existing structure and building a new one - for this purpose is not a desirable or practical alternative to the Owner because any new structure would have to be situated between the 2 existing shops of Chaves Excavating, which would negatively impact the existing on-site activity of Chaves Excavating trucks and equipment and also be more costly.

The Applicant also addressed the applicable General and Specific Standards of Conditional Use per Bylaw Section 503, stating that there will be no change to the character of the neighborhood with reuse and repair of the existing structure. He said that there will be less truck traffic with larger storage tanks that will be filled less frequently with larger trucks. He noted that the property complies with current bylaws, as “grandfathered with pre-existing non-conforming use and non-complying structures, since the lot development pre-dates local zoning. (See Exhibit 1 Paragraph 12)

14. The Owner testified that the three (3) abutting property owners responded individually, in writing, that none has any objection to the proposed project, as described to them in correspondence from the Owner. (See Exhibit 4, Paragraph 12.)
15. No one else responded, appeared or spoke, for or against the application as proposed.
16. On 5/20/2020 , the Board closed the public hearing and announced that deliberations would occur in private later in the evening and that their Findings and Decision would be delivered within the requisite 45 days from the close of the hearing on this date, per 24 VSA 4464 (b).

FINDINGS

Based on the application, testimony, exhibits and other evidence, the Board makes the following findings:

1. The subject property, Parcel 017010.000, is a 10.5-acre +/-parcel located along the southerly side of Chaves Road and described in a 1970s deed and recorded in Book 56, Page 062 of the Londonderry Land Records.
2. The property is situated in the Rural Residential 1 (R-1) zoning district as described on the Town of Londonderry Zoning Map on record at the Londonderry Town Clerk’s Office and Section 201 of the Bylaw, and is known to contain various existing structures, fuel storage tanks and a working contractor’s yard for the business of Chaves Excavating, in continuous operation for nearly 50 years. Because the established uses and structures pre-date local zoning, they are considered pre-existing non-conforming and non-complying, also known as “grandfathered.”
3. The permit application includes a site plan prepared by Rapanotti Septic Design for David Chaves, Sheet 1 of 1, entitled “Fuel Tank Installation, David Chaves, dated April 14, 2020, showing the proposed 342 square-foot extension of an existing structure intended to provide

undercover storage for one existing and 2 new fuel storage tanks, plus a new concrete containment pit within the extended structure.

4. Outdoor storage of flammable liquids is subject to Section 406 of the 2009 Londonderry Zoning Bylaw in effect which requires: (B) (1) tanks up to and including 10,000-gallon capacity placed at least 80 feet from all property and street lines, and (B)(3) a containment structure which is at least 1.5 times the capacity of the tanks.

Bylaw Section 406 (B) also requires Conditional Use Review under Section 503 (B) which includes conformance with General and Specific Standards related to ensure the project will have no adverse effects.

5. Application 2020-12 includes a Request for a Variance from Bylaw Section 406(B)(1) regarding setbacks as cited in Paragraph 4 above.
6. Application 2020-12 includes a response to the applicable General and Specific Standards of Section 503(B) cited in Paragraph 4 above, which is embedded in Section 406. Section 503 (C) allows the Board to require a Certificate of Compliance in accordance with Section 602 of the Bylaw. The Applicant addresses General Standards 2, 3 and 4 as “compliant,” and suggests that the operation currently conforms, will continue to conform and operate “as is and has long been” and will likely be improved if the project is approved.
7. In email correspondence to the Applicant and Owner on 4/24/2020, the Zoning Administrator stated his opinion that the existing non-residential structures housing the operations of Chaves Excavating constitute a pre-existing non-conforming use with non-complying structures, subject to Bylaw Section 412, which allows such use and structures to be continued indefinitely, but not to be “...moved, enlarged, altered, extended...nor shall any external evidence of a non-conforming use be increased by any means whatsoever.” (See Exhibit 2, Paragraph 12.)
8. Application 2020-12 was amended with a Request for a Variance and Appeal of the Zoning Administrator’s Decision cited in Paragraph 5 above, regarding the proposed continuation of a non-conforming use and non-complying structure as evidenced by the proposed 342 square-foot extension of an existing structure to accommodate more fuel storage and containment.
9. As to the Variance requests cited in Paragraphs 5 and 8 above, the Board finds that the application, on its merit, could be considered to comply with applicable standards of both Section 406 regarding fuel storage tank setbacks, and the General and Specific standards of Section 503.
10. As to Bylaw Section 606 Variances, the Board finds that the project as proposed does not meet all five criteria required for a favorable decision by the Board.
11. As to Bylaw Section 412, the Board finds that Application 2020-12, proposing to extend, a non-complying structure and non-conforming use, is expressly prohibited in Bylaw Section 412.
12. The Board concludes that Application 2020-12, as submitted, does not, and cannot, comply with the specific applicable standards of the 2009 Londonderry Zoning Bylaw in effect.

DECISION AND CONDITIONS

Based on the findings above, the Board makes the following decisions regarding Application 2020-12 as proposed in the documents, material and testimony provided:

1. To deny the Appeal of the Zoning Administrator's Decision and request for Variance from Zoning Bylaw Section 412 pertaining to the 342 square foot extension of a non-complying structure and non-conforming use, as requested by the Applicant.
2. To approve the request for Conditional Use review, pursuant to Bylaw Section 406, to allow for Outdoor Storage of Flammable Liquids in two fuel storage tanks, one of 8,000 gallons and one of 10,000 gallons, for on-site use by the existing pre-existing contractor's yard with the following condition:
 - a. Fuels to be stored in units (tanks) with up to 10,000- gallon capacity, together with any and all related appurtenances, to be contained within the pre-existing non-complying structure for on-site use by the property owner.

Dated at Londonderry, Vermont, this 24th day of June 2020.



Esther Fishman, Chair

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding before the Development Review Board. Such 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.