

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

Wednesday, June 16, 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. Interim election of Board Chair and Vice Chair
4. Minutes Approval – Meeting of May 20, 2020
5. Public Hearings as warned:
 - A. Application 2020-13 by Keith and Irina Konzelmann requesting Variances from Zoning Bylaw sections 203(F), 411(B) and 412, regarding setbacks and extension of a non-complying structure, and authorization of land development on a private road per section 402(A), to construct an addition to the existing single-family dwelling, on Parcel 041021.000, located at 150 Hilltop Road.
6. Other Business
7. Next regular meeting date – Wednesday, July 15, 2020
8. Adjourn

Meeting may be attended remotely as follows:

Via web: <https://us02web.zoom.us/j/89930457967>

Via telephone: (929) 205-6099 (Meeting ID: 899 3045 7967)

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, June 17, 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, John Lancaster, Bob Maisey.

Board Members Absent: Terry Hill, Chris Laselle (leave of absence)

Others in Attendance: Town Officials: Shane O’Keefe, Zoning Administrator, and Sharon Crossman, Assistant to the Zoning Administrator. Members of the Public: Keith Konzelmann.

1. **Call the meeting to order.** At 5:32 pm, Development Review Board (DRB) Co-Chair Esther Fishman 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. **Interim election of a DRB Chair and Vice Chair.** Co-Chair Denis Pinkernell nominated Esther Fishman. Paul Abraham seconded the motion which passed unanimously. Chair Fishman called for nominations for Vice Chair. John Lancaster nominated Denis Pinkernell, Esther Fishman seconded, and the motion passed unanimously.
4. **Minutes Approval.** Denis Pinkernell moved to approve the minutes of the May meeting of the DRB. A motion to approve the minutes of May 20, 2020, made by Denis Pinkernell and seconded by Esther Fishman, passed unanimously.
5. **Public Hearing as warned.** Application 2020-13 by Keith and Irina Konzelmann requesting Variances from Zoning Bylaw sections 203(F), 411(B) and 412, regarding setbacks and extension of a non-complying structure, and authorization of land development on a private road per section 402(A), to construct an addition to the existing single-family dwelling, on Parcel 041021.000, located at 150 Hilltop Road.

At 5:38 pm, the Chair opened the public hearing and asked Keith Konzelmann (Applicant) to describe his application and request for Variances. The Applicant stated that he and his wife own a 2-story 1960’s ski chalet, measuring 24’ x 30’ on 0.63 +/- acres off Hill Top Road, purchased in 2018. They propose a 24’ wide by 28’ long, 2-story addition with unheated, unfinished garage /storage space on the ground level and 672 square feet of living space above, with no bedrooms, that will connect to the second floor of the existing dwelling. The

Applicant said the basis for the addition is in anticipation of retiring and moving his family to VT full-time in 7-8 years. He added that the project will provide work for local contractors and add value to the neighborhood.

The Board noted the Konzelmann lot and structure predate zoning regulations in Londonderry and constitute a legal, pre-existing, non-conforming lot and non-complying structure located in the R3 district, according to the 2009 Bylaw in effect. The Applicant said he realizes his project plan doesn't meet the current Bylaw setbacks but would conform to the "new" Bylaw which he understands will consider "lot coverage" instead of "setbacks".

The Chair noted that the DRB constrained by the current bylaw, with no guarantee of draft Bylaw revisions being approved, and asked if the Applicant had considered a plan that would meet the currently applicable standards. The Applicant stated that the 3-acre zoning district requires 50 feet setbacks from the side and rear of the property, and he is requesting a setback variance of 1.5 feet roadside and 18 feet opposite that, to construct the proposed addition in consideration of the lot constraints and the R3 standards. He said there is no other configuration that makes sense from the perspective of cost and his personal objectives, since conformance with the bylaw would allow the garage addition to be only 10 feet wide, which is essentially useless and the reason for his appeal.

The Board referred to the specific criteria of Section 606 Variances on appeal (A). In discussion, the Board agreed the subject lot as described appears to have "unique physical circumstances" creating the "unnecessary hardship" (1) and that there is no possibility for development in "strict conformity" with current zoning regulation for "reasonable use" of the property (2).

No one else joined the meeting to speak for or against the application. Hearing no other comments, the Chair called for a motion to close the Konzelmann public hearing at 6:07 pm. Denis Pinkernell made that motion, seconded by Paul Abraham, which passed unanimously. The Chair advised the Applicant/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.

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

6. **Next regular meeting** - Wednesday, July 15, 2020, at 5:30 pm.

7. **Adjourn.** The meeting was adjourned at 6:51 pm.

Approved on July 15, 2020.



Esther Fishman, Chair

Development Review Board – June 17, 2020

- I'd like to call to order the Londonderry Development Review Board meeting of June 17, 2020. This is Board Co-Chair _____.
- In response 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 June 15, 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 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 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.

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- 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.
- 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 2020-13
Property of Keith and Irina Konzelmann
Parcel 041021.000 at 150 Hilltop Road
July 20, 2020

INTRODUCTION AND PROCEDURAL HISTORY

This proceeding involves a request for Variances from Zoning Bylaw sections 203(F), 411(B) and 412, regarding setbacks and extension of a non-complying structure, and authorization of land development on a private road per section 402(A), to construct an addition to the existing single-family dwelling, as submitted by Keith and Irina Konzelmann, Applicant/Owner of Parcel 041021.000 located at 150 Hilltop Road within the Residential (R3) district.

1. The application for Variances was received by the Zoning Administrator on 4/23/2020.
2. On 5/27/2020 the Zoning Administrator deemed the application “Complete” and referred the application for Variances to the Development Review Board (the Board).
3. Copies of all documents referenced above are available at the Londonderry Town Office.
4. On 5/27/2020, notice of a public hearing to be held 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. 150 Hilltop Road, within view of the public-right-of-way most nearly adjacent to the property.
5. 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
6. On 5/27/2020, a copy of the notice of public hearing was mailed to the Applicant/Owner and owners of properties adjoining the parcel to be subdivided as listed on the Certificate of Service.
7. On 5/27/2020 a notice of a public hearing was published in the *Vermont Journal*.

8. On 6/15/2020, the agenda for the 6/17/2020 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.
9. The application was considered by the Board at a public hearing opened on 6/17/2020. This hearing was held remotely online as Zoom Meeting ID 899 30457967. All attendees participated by video or phone, per the instructions provided in the public hearing notice.
10. Present over the course of the proceedings were the following members of the Board: Esther Fishman (Chair), Denis Pinkernell (Vice Chair), Paul Abraham, John Lancaster, Bob Maisey. On 6/17/2020 the public hearing was closed.
11. During the course of the hearing, the following exhibits (available at the Town Office) were submitted and/or referenced for the record:
 - a. Exhibit 1. Zoning Permit Application 2020-13 with associated attachments received 4/23/2020 and deemed complete by the Zoning Administrator on 5/27/2020.
 - b. Exhibit 2. Land Use Application Review Form dated 5/14/2020, issued to the Applicant indicating Application 2020-13 was denied by the Zoning Administrator and referred to the Development Review Board due to variances required in order to proceed with the proposed land development on Parcel 041021.000.
 - c. Exhibit 3. Notice of Appeal and Request for Variance submitted by the Applicant on 5/27/2020.
12. Applicant/Owner Keith Konzelmann participated by video to discuss the request for Variances, required for the construction of a 2-story addition to an existing, non-conforming single-family dwelling. In response to questions from the Board, he offered the following testimony:
 - a. The Konzelmans have owned their existing 2-story 1960's ski chalet, a second home measuring 24' x 30' on 0.63 +/- acres located off Hill Top Road, since 2018.
 - b. They propose construction of a 24' wide by 28' long, 2-story addition to include unheated, unfinished garage /storage space on the ground level and 672 square feet of living space above, with no bedrooms, that will connect to the second floor of the existing dwelling.
 - c. The basis for the proposed addition is in anticipation of retirement and moving the entire family to Vermont full-time in 7-8 years.
13. Zoning Administrator Shane O'Keefe stated that the Konzelmann lot and structure predate zoning regulations in Londonderry and constitute a legal, pre-existing, non-conforming lot and non-complying structure in the R3 district, according to the 2009 Bylaw in effect.
14. The Board asked if the Applicant had considered a plan that would meet the currently applicable standards and not require a Variance. The Applicant stated that the R-3 zoning

district requires 50 feet setbacks from the side and rear of the property, and the application as submitted represents the shortest possible setbacks and only sensible plan from his perspective of cost and personal needs. He added that strict conformance with the bylaw would allow the proposed addition to be only 10 feet wide, which is essentially useless and the reason for his appeal.

15. No one else responded, appeared or spoke, for or against the application.
16. On 6/17/2020, 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 is a 0.63 +/- acre parcel located at 150 Hilltop Road on Parcel 041021.000 described in a deed dated 4/30/2018 and recorded in Book 81, Page 604 of the Londonderry Land Records.
2. The subject property is situated in the Rural Residential 3 (R-3) 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.
3. The subject property predates zoning regulations in Londonderry, and as it stands constitutes a legal, pre-existing, non-conforming lot, with a non-complying structure, according to the 2009 Bylaw in effect.
4. Application 2020-13 proposes construction of an addition to the pre-existing single-family dwelling situated on Parcel 041021.000 and accessed by Hill Top Road, a private road. (Exhibit 1 above).
5. The proposed land development is subject to 2009 Bylaw Section 203 (F) Dimensional Standards, Section 411 (B) Lot Setbacks, Section 412A Non-Complying Structures (continuation of) and Section 402 (A) Access as determined by the Town of Londonderry Zoning Administrator (Exhibit 2 above).
6. The Applicant has appealed the Zoning Administrator's Decision and is seeking setback variances for construction in a configuration deemed the only possible option on Parcel 041021.000, due to existing development, objectives for future use and limiting features of the lot (Exhibit 3 above).
7. As to the specific criteria of Section 606 Variances on appeal (A), and as presented by the Applicant/Appellant in Application 2020-13 and submittals for Variances :

- (1) the subject lot as described appears to have “unique physical circumstances” creating the “unnecessary hardship;”
- (2) there appears to be no possibility for development “in strict conformity” with current zoning regulation for “reasonable use” of the property.
- (3) the unnecessary hardship does not appear to be “created by the appellant;”
- (4) if granted, the variances requested would not “alter the essential character of the neighborhood or noticeably impact adjacent property;” and
- (5) if granted, the variances would “represent the minimum to afford relief with the least possible deviation from the Bylaw.”

DECISION AND CONDITIONS

Based on the findings above, the Board approves the request for Variances for parcel 041021.000, located at 150 Hilltop Road, from Zoning Bylaw sections 203(F), 411(B) and 412, regarding setbacks and extension of a non-complying structure, and thereby authorizes land development on a private road per section 402(A), in order to permit the construction of an addition to the existing single-family dwelling.

Dated at Londonderry, Vermont, this 20th day of July 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.