

Town of Londonderry, Vermont
Development Review Board
Meeting Agenda

Wednesday, November 18, 2020 at 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 October 21, 2020
4. Public Hearings as warned:
 - A. Application 2020-43 by Myles Moberly, requesting Conditional Use Review and Site Plan Review per Zoning Bylaw sections 503 and 504 for the proposed change of use of a 2-family dwelling to a 3-family multifamily dwelling on Parcel 101025.000, located at 377 Main Street.
5. Other Business
 - A. Review proposed comprehensive Zoning Bylaw Amendment
6. Next regular meeting date – Wednesday, December 16, 2020
7. Adjourn

Meeting may be attended remotely as follows:

Join Zoom Meeting: <https://us02web.zoom.us/j/86992868863>

By Phone: 929-205-6099

Meeting ID: 869 9286 8863

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.

Posted and Distributed on November 12, 2020

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

**Regular Meeting Minutes
Wednesday, November 18, 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 Chair, Denis Pinkernell Co-Chair, John Lancaster, Chris Laselle, Bob Maisey. **Absent:** Paul Abraham, Terry Hill

Others in Attendance: Town Officials: Shane O’Keefe, Zoning Administrator, and Sharon Crossman, Assistant to the Zoning Administrator, Myles Moberly Owner of the Subject Property, Andie Fusco Real Estate Agent for Owner, Heather Stevenson, P. McKechnie, potential buyer of Subject Property and Tom Walsh, observing as property owner with an application in process.

1. **Call the meeting to order.** At 5:35 pm, Development Review Board (the Board) 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.
2. **Additions or deletions to the agenda** (to occur as Other Business). None
3. **Minutes Approval.** Denis Pinkernell made a motion, seconded by John Lancaster, to approve the minutes of the October 21, 2020 DRB meeting. The motion passed unanimously.
4. **Public Hearing.** At 5:38 pm, the Chair opened the public hearing for Application 2020-43 by Myles Moberly requesting Conditional Use Review and Site Plan Review per Bylaw Section 503 & 504 for proposed Change of Use from a 2-family dwelling to a 3-family multifamily dwelling on Parcel 1011025.000 at 377 Main Street. She asked the Applicant to describe the proposed project.

Myles Moberly (Owner) stated that during recent legal preparation to sell his property as a 3-family dwelling, he learned that it was instead considered a 2-family dwelling, although he has known there to be 3 dwelling units since the time his father purchased it in 2003. He said he went to great lengths to establish proof that the property has been “as is” for over 15 years which would constitute “grandfathering,” but found no such acceptable evidence, so chose to request Change of Use approval to avoid further debate and delay with closing on the pending sale as soon as possible.

As to the Board’s further questions, the Owner confirmed that there are 5 existing parking spaces, and the septic system has recently been examined and determined to be in proper working order. He added that the State Fire Marshall has completed and signed off on applicable safety standards for the 3 dwelling units and agreed to submit a copy of the

report to the Town as soon as he receives the original.

Shane O’Keefe stated that he also spent considerable time searching for permit records for the subject property and found no evidence to support the Owner’s assertion that it had been established a 3-family dwelling for 15 years or more, necessitating the application for Change of Use in order to correct the permit deficiency for clear title.

No one else joined the meeting to speak for or against Application 2020-43. Hearing no other comments, the Chair advised the Owner/Applicant that the Board would deliberate in private later in the evening and deliver its written decision within 45 days, as required by State statute. The hearing was closed at 6:04 pm and the Applicant left the meeting.

5. Denis Pinkernell requested that deliberative session occur prior to the review of the Bylaw draft. There being no objection from other Board members, the Chair recessed the meeting at 6:07 pm in order to privately conduct deliberations on Application 2020-43.
6. At 6:19 pm the Board discontinued deliberations and resumed the regular meeting agenda.
7. **Review proposed comprehensive Zoning Bylaw amendment – continued from 10/21/2020.** The Chair announced that Paul Abraham was unable to appear and complete the discussion of his comments and suggested edits to Version .02 of the proposed Bylaw amendments dated June 16, 2020. Starting at item Page 3-77, the Board discussed the remainder of Paul’s list. O’Keefe offered to complete insertion of all potential edits proposed by Abraham and discussed by the Board into the draft Bylaw as a “red-lined” version to eventually be submitted to consultant Brandy Saxton of PlaceSense for consideration and incorporation into the final draft document as appropriate.
8. **Adjourn:** At 7:11 pm, the Chair made a motion to adjourn, seconded by Chris Laselle, which passed unanimously.
9. **Next meeting:** December 16, 2020 at 5:30 PM.

Respectfully submitted,

Sharon Crossman

Approved on December 16, 2020.



Esther Fishman, Chair

Town of Londonderry, Vermont
Development Review Board

Findings of Fact and Notice of Decision
Application 2020-43
Property of Myles Moberly
Parcel 101025.000 at 377 Main Street
November 30, 2020

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves Application 2020-43 by Myles Moberly (Owner) requesting Change of Use from a 2-family dwelling to a 3-family multifamily dwelling, after-the-fact, requiring Site Plan Review and Conditional Use Review per Zoning Bylaw Sections 503 and 504 for Parcel 101025.000 located at 377 Main Street, within the Village Residential (VR) Zoning District (the “Subject Property”).
2. The application for Site Plan Review and Conditional Use Review was received by the Zoning Administrator on 10/12/2020 and 10/16/2020.
3. On 10/16//2020 the Zoning Administrator deemed the application “Complete” and referred the application for Site Plan Review 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 10/ 28/2020, 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. Main Street at property line of subject parcel.
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 10/28/2020, a copy of the notice of public hearing was mailed to the Applicant/Owner and owners of properties adjoining the Subject Property as listed on the Certificate of Service.
8. On 10/28/2020 a notice of a public hearing was published in the *Vermont Journal*.

9. On 11/12/2020, the agenda for the 11/18/2020 Board meeting was properly posted and distributed via email to the 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 11/18/2020. This hearing was held remotely online as Zoom Meeting ID 869 9286 8863. 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 (Chair), Denis Pinkernell (Vice Chair), John Lancaster, Chris Laselle, and Bob Maisey. Others in attendance during the public hearing were Myles Moberly Owner of the Subject Property, Andie Fusco Real Estate Agent for Owner, Heather Stevenson, P. McKechnie, potential buyer of Subject Property and Tom Walsh, observing as property owner with an application in process.
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 2020-43 and associated attachments received 10/12/2020 and 10/16/2020, including Site Development Plan Checklist, Site Plan Review Application Worksheet, Conditional Use Review Application Worksheet, Site Plan and aerial view of the existing structure as situated on the subject parcel.

Exhibit 2. Land Use Application Review Form dated 10/16/2020, issued to the Applicant by the Zoning Administrator, indicating Zoning Permit Application 2020-43 was complete and referred to the Development Review Board as required in order to proceed with after-the-fact consideration for Change of Use from a 2-family to 3-family multifamily dwelling on the Subject Property.
13. On 11/18/2020 the Board opened a public hearing on Application 2020-43. Myles Moberly, Owner, participated by video to discuss the requested Change of Use from a 2-family dwelling to a 3-family/multifamily dwelling, after-the-fact.
14. In response to questions from the Board, the Owner testified as follows:
 - a. During recent legal preparation to sell the property as a 3-family dwelling, the Owner learned the property was considered a 2-family dwelling, due to lack of proof of the date certain that the third unit was created.
 - b. The subject property was inherited in 2009, from the Owner's father who purchased it in 2003. The Owner said he understood since the beginning (2003) that the dwelling included 2 first-floor apartments, an "in-law" apartment and 3 separate entrances. Regarding parking, he stated there are 2 spaces on left (west) side of structure – one of which is an attached garage - and 3 spaces on the right (east) side – all approximately setback approximately 20 feet from property line.

- c. The Owner was notified by the Zoning Administrator that with evidence that the property was in use as a 3-family dwelling for at least 15 years, the property could be considered “grandfathered” and in compliance with local zoning bylaws. After considerable effort, the Owner found no information or physical evidence to confirm that the 3-family dwelling was ever permitted for this use, or that it could be considered “grandfathered,” despite it being “as is, as long as he’s known it,” which is at least 16 years. He added that if he had known that permits were missing, he would have willingly applied for them.
 - d. Rather than continuing to debate or appeal the Zoning Administrator’s decision that “grandfathering” cannot be applied in this case, the Owner requests approval for Change of Use to rectify the permit deficiency so he may proceed with the sale of the property as soon as possible.
 - e. In closing, he added that the VT Fire Marshall has approved occupancy to all 3 units and signed off regarding all State requirements. He agreed to submit a copy of the report to the Town as soon as he receives the original. He also confirmed that the septic system, located between the dwelling and Main Street, has recently been examined and determined to be in proper working order by Uncle Bob’s Septic.
15. In response to the Owner’s testimony, Zoning Administrator Shane O’Keefe stated the following:
- a. He received a standard request for a “Bianchi Letter” verifying zoning compliance prior to sale of the subject property and conducted an exhaustive research to determine local zoning conformance, however, he found no evidence or permit of record, internally or externally, indicating that the dwelling had ever been permitted to expand from a 2-family to a 3-family dwelling.
 - b. O’Keefe stated that the 2009 Bylaw in effect defines multi-family dwellings explicitly, noting that 2- family dwellings are Permitted (P) in the VR zone, but multi-family dwellings require Conditional Use (CU) review by DRB per Section 503 Conditional Use requirements.
 - c. O’Keefe said he had no doubt the Owner is being truthful, but he had no way to determine the use occurred more than 15 years ago which would, by State law, constitute “grandfathering” of the current use of the subject property. Accordingly, he recommended that the Owner request site plan and conditional use review for the Change of Use as allowed in the Bylaw.
 - d. In response to the Owner’s testimony regarding the septic system, O’Keefe stated that he attempted to find State permits for the septic system and found none. With no record, he presumes no permit was issued or required, so the system, known to be modified prior to 2007, is therefore grandfathered by the State.

16. The Board discussed the applicable standards of Sections 503 and 504 regarding traffic safety and character of the neighborhood. Regarding the potential safety risk of tenants backing out into Main Street, Board member Denis Pinkernell stated he travels past the Subject Property in both directions every day and notes ample visibility in both directions. Board member John Lancaster, who is an abutter to the Subject Property, stated that he has seen no change in the neighborhood in the last 16 years, other than more traffic overall on Main Street and most vehicles moving too fast despite speed limits.
17. No one else responded, appeared or spoke, for or against the application.
18. On 11/18/2020, 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 0.5 +/- acre parcel located at 377 Main Street, referred to as Parcel 101025.000, and described in a deed recorded in Book 60, Page 104 of the Londonderry Land Records (Exhibit 1 above).
2. The Subject Property is situated in the Village Residential (VR) 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 Owner requests after-the-fact approval for Change of Use of an existing 2-family dwelling to a 3-family multi-family dwelling on the Subject Property.
4. The proposed Change of Use is subject to Zoning Bylaw Section 503 Conditional Use Review and Section 504 Site Plan Review (including Site Plan Review) as determined by the Town of Londonderry Zoning Administrator (Exhibit 2 above).
5. Based on the testimony of the Owner, the Zoning Administrator and relevant comments of two individual Board members, the Board finds no issue or conflict with specific conditions of the applicable standards for the Change of Use as requested.
6. The Board finds that, as presented by Application 2020-43 and all associated materials provided and the testimony presented at the public hearing, the change of use from a 2-family to 3-family dwelling on the Subject Property, after-the-fact, can meet the applicable standards specified in Zoning Bylaw Sections 503 and 504, subject to certain conditions.

DECISION AND CONDITIONS

Based on the findings above, the Board makes the following decision in consideration of its Conditional Use and Site Plan Review authority as provided under Zoning Bylaw Sections 503 and 504 for Application 2020-43 and the Subject Property:

To approve the request for a Change of Use from an existing 2-family dwelling to a 3-family multifamily dwelling, after-the-fact, subject to the following:

- a. Receipt and acceptance by the Zoning Administrator of a copy of the 2020 VT State Fire Marshall 2020 inspection and report for the subject property.
- b. Receipt and acceptance by the Zoning Administrator of a revised sketch plan of the subject property to specifically include the dimensions of the parking area to the west, the parking shed attached to the dwelling and the parking area to the east.

Dated at Londonderry, Vermont, this 30th day of November 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.