

**Town of Londonderry, Vermont
100 Old School Street
South Londonderry, VT 05155**

Development Review Board

**AGENDA
January 16, 2019**

The Londonderry Development Review Board will meet at 5:30 PM on Wednesday, January 16, 2019 at the Twitchell Building Town Office, 100 Old School Street, South Londonderry.

1. Additions or Changes to the Agenda

2. Public Hearings as warned:

Application by Ralph Michael PE, LI, for Owner Elizabeth Dugan Trustee for Conditional Use Review to construct a barn and paddle tennis court, and regrade site and driveway on Parcel 007012.000 located at 3133 Winhall Hollow Road located in R-1 zoning district and Flood Hazard Overlay Area.

Application by Joshua and Nicole Wengerd for Change of Use to Mixed Use including fabrication/workshop and storage for tools and materials within existing dwelling and detached garage on Parcel 102053.000 located in Village Commercial zoning district and Flood Hazard Overlay Area at 2454 VT Route 11.

3. Other Business

Update – potential purchase and change of use of Swiss Inn by Stratton Mountain Resort for employee housing.

4. Adjourn

Town of Londonderry, Vermont
Development Review Board

Meeting Minutes for January 16, 2019

Present: DRB members Esther Fishman, Terry Hill, Dwight Johnson, John Lancaster, Bob Maisey, Chris Laselle and Denis Pinkernell; **Staff:** Shane O’Keefe, Zoning Administrator/Town Administrator and Sharon Crossman, Assistant to the Town Administrator. **Guests:** Ralph Michael, Douglas Stevens, Raymond Smith, Jeff Cavagnino, Joshua Wengerd and Sven Fedorow.

1. The meeting was called to order at 5:33 PM.
2. Changes or Additions to the Agenda – None.
3. Public Hearings as warned.

Application No. 2019-01, 3133 Winhall Hollow Road. Ralph Michael appeared to represent the application of Owner Elizabeth Dugan Trustee for new construction of an agricultural barn, a private paddle tennis court and excavation/driveway improvements on a 6.6 acre parcel located at 3133 Winhall Hollow Road. Mr. Michael presented a site plan and various attachments to the application prepared by Michael Engineering, including a narrative relevant to zoning standards for Conditional Use review and Flood Hazard Overlay Area.

Mr. Michael and the Board discussed the following topics in consideration of the application: the size of the new barn and its intended use, the unique construction and features of a private paddle tennis court including size, lighting specs and hours of operation, the standards for state exemption for ‘agricultural’ buildings and the possible need for a town Access Permit for the driveway improvements.

The hearing was closed at 6:25

Application No. 044-18, 2454 VT Route 11. Joshua Wengerd appeared to present an application for Change of Use to Mixed Use of an existing dwelling and detached garage located at 2454 VT Route 11 within the Village Commercial District and Flood Hazard Overlay Area. He stated that he and his wife Nicole purchased the property – abutting their residence at the time - in 2015, with no specific plan then for its reuse. Joshua said that they have since sold their place next door (the church-house) and now conduct most of his Re-Design Construction business at their new residence in Landgrove. He described general plans for 2454 VT 11 as above-ground exterior improvements to make the property and structures more attractive and potential reuse of the structures for fabrication/woodworking and short-term storage for tools and extra building materials.

The Board and Mr. Wengerd discussed the Permitted/Conditional Uses listed in the VC zoning district with the Zoning Administrator. Zoning Administrator Shane O’Keefe explained that the potential uses discussed seemed to best fit the Bylaw definition of ‘warehouse’ but that use is not listed in the Bylaw Table of Uses and is therefore prohibited, unless the Board allowed by the DRB as a ‘Use Not Provided For’ per Bylaw Section 203 (D).

It was agreed that the Applicant will confirm the intended new use(s) and then submit a revised application for a Change of Use which requires Conditional Use Review and public hearing by the DRB to be scheduled in accordance with the necessary time to legally warn once deemed complete.

This hearing was closed at 6:50 pm.

4. Other business:

Jeff Cavagnino presented a permit application for Stratton Mountain Resort proposing the change of use of the Swiss Inn and Restaurant located along the northerly side of VT Route 11. Mr. Cavagnino stated that Stratton has signed a purchase and sale agreement contingent on the ability to use the former Swiss Inn as employee housing for seasonal workers at Stratton Mountain Resort. Jeff previously met with the DRB and with the ZA for preliminary discussion of the proposed change of use and the local permit process. He says Stratton is now anxious to move ahead to meet the contractual obligations for the purchase and confirm a closing date.

Shane O’Keefe stated the proposed new use best meets the definition of ‘Boarding House ‘ as defined in the 2009 Zoning Bylaw and is permitted in the R-3 district within which the property is located. The DRB will warn the Stratton Mountain Resort proposal/project for a public hearing on Wednesday, February 20th, 2019 and deem it complete at the commencement of the proceeding.

Esther Fishman Co-Chair, introduced Sven Fedorow, Londonderry resident, who is an attorney, now working as Zoning Administrator for the Town of Weathersfield. Sven has submitted a letter of interest and resume indicating his wish to be appointed to the DRB as an alternate. Alternates are permitted by statute and the DRB, and after discussing the matter it was the consensus of the Board to recommend Sven be appointed by the Select Board at their regular meeting next Monday, January 21st.

Esther also distributed copies of an informational handout related to local standards and procedures for land use and development. This document, known as ‘Frequently Asked Questions,’ came about as a result of the Summit held in October, 2018, when participants agreed that compliance with zoning regulations could be improved with clear and concise guidance for property owners, real estate agents, contractors and others involved in matters of land and land use in Londonderry.

At 7:05 the Board entered private deliberative session. At 7:25 the Board discontinued deliberative session and made the following announcements:

Application No. 2019-01, 3133 Winhall Hollow Road. Motion by Esther Fishman, seconded by Terry Hill, to grant Conditional Use approval for excavation within the flood hazard area [Section 205(H)] and a lighting installation of up to 20 feet in height for a proposed paddle tennis court [Sec. 410(E)(4)], in conformance with all documents submitted by the applicant in support of the project, with the following conditions:

- 1. that complete manufacturer specifications for the proposed lighting installation are submitted in a form acceptable to the Zoning Administrator prior to issuance of the required zoning permit for the proposed paddle tennis court;***
- 2. that the lights from the lighting installation shall not be used or otherwise illuminated after 9:00 p.m. on any night of the year.***
- 3. that the new barn indicated in the plans submitted in support of the application, and reviewed by the Board, shall be used for “required agricultural practices” as such practices are defined by the Vermont Department of Agriculture, Food [24 V.S.A. 4413(d)(1)], to be supported by a written determination by the Secretary of Agriculture submitted to the ZA prior to start of construction. Any other proposed use of said barn shall require the issuance of a zoning permit prior to the change of use.***

Motion passed unanimously.

The meeting was adjourned at 8:23 PM.

Respectfully submitted,

Sharon Crossman
Assistant to Zoning Administrator

Approved on February 20, 2019



Esther Fishman, Co-Chair

**TOWN OF LONDONDERRY, VERMONT
Development Review Board**

**FINDINGS AND DECISION
Construction and Excavation**

Elizabeth S. Dugan, Trustee of the Revocable Trust

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves review of an application submitted by Ralph J. Michael, PE, LS for Owner Elizabeth S. Dugan, Trustee for approval for construction of a barn, paddle tennis court and excavation for site-grading and driveway improvements on Parcel 007012.000 consisting of 6.6 acres located along the northerly side of Winhall Hollow Road.
2. This application, which supersedes permit application 44-18, was received by the Zoning Administrator for the Town of Londonderry on 1/4/2019. A copy of the application is available at the Town Offices in Londonderry.
3. On 1/4/2019, notice of a public hearing for review of the application was published in the Vermont Journal.
4. A notice of a public hearing for review of the proposed subdivision was posted at the following places:
 - the Londonderry Town Clerk's office.
 - the Londonderry Post Office
 - the South Londonderry Post Office
5. A copy of the notice of a public hearing was mailed to the Applicant, the Owner and the following owners of properties adjoining the property proposed to be subdivided:

Kathleen Cornell and Jennifer Howe, Trustees
Michael and Carol Dannenburg
Jennifer Howe
Michael Reynolds
Lucille Prouty, Linda Derby et al
Douglas Rawson
6. The application was considered by the Board at a public hearing opened on 1/16/2019. Present over the course of the proceedings were the following members of the Board:

Esther Fishman (Co-Chair), Dwight Johnson, John Lancaster, Chris Laselle, Bob Maisey, Denis Pinkernell and Terry Rawson.
7. On 1/16/2019 the Public Hearing was closed.

8. During the hearing the following exhibits were submitted to the Board:

Exhibit 1: Site Development Plan and Conditional Use Plan 18-34 by Michael Engineering Company, P.C. dated 12/13/2018, revised 1/3/2019 (hereafter 'the Plan'). This single-page Plan replaces a sketch plan submitted permit application 44-18 submitted on 10/18/2018.

Exhibit 2. A 10-page narrative prepared by Ralph J. Michael, PE, LS, entitled "Application Narrative for Elizabeth S. Dugan, Trustee of the Revocable Trust UAD, dated September 4, 2001 (hereafter 'the Narrative').

These exhibits are available at the Town Office.

9. On 12/19/18 Ralph Michaels, PE, LS, attended the public hearing as representative of the Owner, to present the proposed project. Mr. Michaels described the components of the proposed project represented in the Plan and described in the Narrative as:

- improvements to the existing driveway and regrading to reduce the height of land for future construction at existing grade, and to refinish areas previously disturbed;
- future construction of a standard 60'x30' lighted paddle tennis court for non-public use;
- and future construction of a 60'x25' foot two-story barn for agricultural use.

He stated that the project proposes no change to the existing single-family dwelling served by an existing well, or to the existing septic and leach field, for which he stated that he found no permits.

10. Regarding setbacks, Mr. Michaels explained that the Plan is drawn from an old survey that was never 'closed,' but the Plan as submitted 'closes' the survey with the southerly boundary following an unnamed brook. He noted that the Plan depicts a Class 2 wetland with a State-designated buffer, four Class 3 wetlands, a 50-foot river corridor buffer along the westerly side of the West River and a 50-foot stream buffer along the above-mentioned unnamed brook.

He also stated that that all proposed uses - Excavation (regarding), Accessory Use (non-public paddle tennis court) and Agriculture (future barn, pasture) - are Permitted Uses and all setbacks exceed the local minimum required. Mr. Michaels described the paddle tennis construction as 'standard,' meaning a 60 x 30 aluminum deck, lighting poles 25 feet high and lighting fixtures every 15 feet of the deck perimeter. He said the paddle tennis court will be at new height of land after grading with an estimated elevation of 1088-1089 feet.

11. Doug Stevens, property manager for the Dugan property, responded to the Board's questions about the construction and use of the proposed agricultural barn as follows: 2-story, 3 box stalls, concrete floor, 50% free-stall with a hayloft above for seasonal use by cattle and horses. Mr. Michaels stated the owner's expectation is that the future barn would qualify for a state Agricultural exemption.

12. The Board closed the hearing on 1/16/2019. After deliberative session that evening, the Board made a decision on the application.

FINDINGS

Based on the application, testimony, exhibits, and other evidence presented by the Applicant and participants in the hearing, the Board makes the following findings:

1. The permit application proposes construction and excavation of Parcel 007012.000 which included 6.6 acres with an existing single-family dwelling owned by Elizabeth S. Dugan Trustee.
2. The entire property is situated in the Rural Residential R-1 District with some areas located within the Flood Hazard Overlay (FHO) District as depicted on the Town of Londonderry Zoning Map on record at the Town Office, and Section 201 of the Bylaws. Any and all land development proposed within the Town's FHO is subject to Conditional Use Review according to the standards of Section 205 and Section 503.
3. The Applicant provided a thorough discussion of the project's compliance status relative to the standards of Bylaw Sections 205, 502, 503 and 504 at the public hearing and in the Narrative attached to the application.
4. The lighting plan for the proposed non-public paddle tennis court exceeds the Town's standards for height of poles and type of fixture.
5. There is insufficient evidence to support the approval of a state Agricultural Exemption for the future barn.
6. A Town Access Permit is required due to the nature and extent of the driveway regrading.

DECISION AND CONDITIONS

Based upon the Findings above and any Conditions set forth below, the Board grants approval of the application for construction and excavation based on the testimony of Applicant Ralph Michael PE, LS, and in conformance with all documents submitted by the Applicant in support of the project, with the following conditions:

1. Complete manufacturer specifications for the proposed lighting installation shall be submitted in a form acceptable to the Zoning Administrator prior to issuance of a zoning permit for construction of a non-public paddle tennis court.
2. Lighting for the non-public paddle tennis court shall be installed at a maximum height of 20 feet. [Bylaw Sec. 410(E)(4)].

3. Lighting installed for the paddle tennis court shall not be used or otherwise illuminated after 9:00 p.m. on any night of the year, and only when the paddle tennis court is in use.
4. A local zoning permit application shall be submitted prior to the construction of the barn depicted on the Plan referenced above, unless it is to be used for "required agricultural practices" as such practices are defined by the Vermont Department of Agriculture, Food [24 V.S.A. 4413(d)(1)], which shall be supported by a written determination by the Secretary of Agriculture submitted to the Zoning Administrator prior to start of construction. Any other proposed use of said barn shall require submittal of a zoning permit application.
5. A local Access Permit Application shall be submitted and approved by the Town prior to issuance of a zoning permit.

Dated at Londonderry, Vermont, this 5th day of March 2019



Denis Pinkernell, Co-Chair

NOTICE OF RIGHT OF APPEAL: 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.