

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

Development Review Board

AGENDA

Wednesday, May 15, 2019

The Londonderry Development Review Board will meet at 5:30 PM on Wednesday, May 15, 2019 at the Twitchell Building Town Office, 100 Old School Street, South Londonderry.

1. Call Meeting to Order
2. Additions or Deletions to the Agenda
3. Minutes Approval – Meeting of April 17, 2019

4. Public Hearings as warned:

Application by Town of Londonderry for Site Plan Review per Section 504 of the Londonderry Zoning Bylaw for land disturbance to improve grading and drainage on Parcel 101015.000 located at 100 Old School Street.

Application by West River Montessori School for Site Plan Review per Section 504 of the Londonderry Zoning Bylaw for change of use (Section 404) on Parcel 104012.000 located at 3650 VT Route 100.

5. Preliminary Reviews:

Application by David and Nadine Van Houten for a detached accessory dwelling which must meet the requirements of Londonderry Bylaw Section 301 Accessory Dwellings and Section 503 Conditional Use Review.

6. Other business

Big Rock Gravel – update on recent sale of business

Review of Zoning and DRB application forms

7. Next regular meeting date – Wednesday, June 19, 2019

8. Adjourn

Posted and distributed on May 13, 2019

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

Regular Meeting Minutes

Wednesday, August 21, 2019

Twitchell Building - 100 Old School Street, South Londonderry, VT

Board Members Present: Esther Fishman Denis Pinkernell, Terry Hill, Chris Laselle and Bob Maisey.

Board Members Absent: Sven Fedorow, John Lancaster

Others in Attendance: Town Officials – Town Administrator/Zoning Administrator Shane O’Keefe, Assistant to the Town Administrator/Zoning Administrator, Sharon Crossman. Members of the Public – Hiland Clough, Mildred C. Dunn, Donald H. Clough, Dorothy Clough, Malcolm L. Clough, Pamela J. Spaulding, James Young, Matthew and Tamy Mosher, Julie Lowe, Chris Lowe and Greg Burnes.

1. **Call the meeting to order.** DRB Co-Chair Esther Fishman called the meeting to order at 5:34 PM.
2. **Additions or deletions to the agenda.** There were no additions or deletions.
3. **Minutes Approval.** Motion by Denis Pinkernell, seconded by Robert Maisey, to approve the minutes of the meeting of July 17, 2019 as written. Motion passed unanimously.
4. **Public Hearings as warned.**

Application #2019-29 - Appeal of Notice of Violation for land development without the issuance of a zoning permit, and Zoning Administrator’s decision regarding the applicability of the Zoning Bylaw with regard to storage trailers, by Ruth H. Clough, et al, c/o Hiland Clough, related to placement of a storage trailer on Parcel 007032.000 located at 1888 Winhall Hollow Road.

Co- Chair Esther Fishman opened the hearing and announced that the discussion of the Appeal of the Zoning Administrator’s decision filed by Hiland Clough would be limited to the description posted in the legal notice and the meeting Agenda (as above). She read the definition of ‘structure’ from 2009 Zoning Bylaw currently in effect. Appellant Hiland Clough, agreed that the ‘storage trailer’ in question meets the Bylaw definition of a ‘structure’ and stated that it is used to store “equipment.”

Zoning Administrator Shane O’Keefe confirmed the definition of an ‘interested person’ and qualified interested persons in attendance were offered copies of the information packet containing correspondence between the Appellant and the Zoning Administrator and relevant attachments. O’Keefe gave a summary of the case and timeline to date including initial notification that the Clough trailer required a zoning permit, the Notice of Violation issued due to the delayed response in applying for a zoning permit and the receipt of a permit application after the due date, which has not yet been processed. O’Keefe stated that the permit application submitted will cure the violation,

if the DRB decides that a permit is required; and if the DRB determines that no permit is required, the one submitted can be destroyed and the fee will be refunded to the applicant.

Matthew Mosher, adjacent property owner, described his complaint with the Clough storage trailer as a “visual issue” with potential impact for loss of property value. Malcom Clough stated that he read the Bylaw prior to purchasing the 28’ trailer for storage and believed the size would be compliant. He said he found the Bylaw language confusing and that there appear to be similar violations in town that are not being addressed. O’Keefe explained that there are some exemptions to the zoning standards and permit enforcement in Londonderry is most often a response to complaints from neighbors.

No one else asked to speak regarding this matter and Esther Fishman closed the hearing, stating that the DRB would deliberate later in evening.

5. Other Business

Preliminary Review regarding possible re-use and landscaping options for property of (former) Sigda Lumber Company, Parcel 105007.000, located at 2046 VT Route 100.

Greg Burnes, new owner of the former Sigda property, Julie Lowe (broker) and Chris Lowe (caretaker) described potential plans to establish indoor/ outdoor, temperature-controlled storage for large items (including boats, vehicles etc.) within the former 8800 square-foot retail store with a high ceiling. O’Keefe said that the proposed Change of Use as described could be addressed as a ‘Use Not Provided For’ with Conditional Use Review/ Site Plan Review by the DRB and would likely require state review and permitting as well. Esther Fishman instructed Mr. Burnes to work with the Zoning Administrator to prepare a complete local permit application to be scheduled for a required public hearing in October.

Other Business: O’Keefe briefly described a permit application for a 2-lot subdivision of land located along Edge Hill Road submitted by Scott and Rachel Febbie. He said the application is complete and will be warned for Site Plan Review at the regular meeting of the DRB in September.

Esther Fishman closed the public meeting and the DRB entered deliberation session. After deliberation, the public meeting was reopened. **A motion was made by Bob Maisey, seconded by Terry Hill, as follows: “to accept the Zoning Administrator’s decision regarding the applicability of the Zoning Bylaw with regard to placement of a storage trailer on Parcel 007032.000 located at 1888 Winhall Hollow Road, pursuant to Zoning Bylaw Section 412(B) which states that “(a)ny trailer used for storage or other accessory use for a period exceeding thirty (30) days shall be considered a structure subject to all the terms and conditions of this bylaw.” Therefore, the Appeal of Notice of Violation for land development without the issuance of a zoning permit is denied, and a zoning permit shall be required for the subject structure.”** The motion passed unanimously.

6. Next regular meeting date - Wednesday, September 18, 2019

7. Adjourn. The meeting was adjourned at 6:40 PM.

Approved by DRB: _____



Esther Fishman

(CoChair) on September 18, 2019.

TOWN OF LONDONDERRY, VERMONT
Development Review Board

Findings of Fact and Notice of Decision

**Appeal of Zoning Administrator's Decision to issue
a Notice of Violation regarding property of
Ruth H. Clough et al, c/o Hiland Clough
Parcel 007032.000 at 1888 Winhall Hollow Road**

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a Notice of Appeal submitted by Hiland Clough, Appellant/Co-Owner to appeal the Town of Londonderry Zoning Administrator's decision to issue a Notice of Violation of the Town of Londonderry Zoning Bylaw for property located at 1888 Winhall Hollow Road (Parcel 007032.000).
2. The Notice of Appeal of Zoning Administrator's decision was received by the Zoning Administrator on 7/15/2019. A copy of the appeal is available at the Town Offices in Londonderry.
3. On 7/29/2019, notice of a public hearing to be held by the Londonderry Development Review Board (DRB) 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. 1888 Winhall Hollow Road, which is within view of the public-right-of-way most nearly adjacent to the property for which the appeal was made.
4. On 7/29/2019, a copy of the notice of public hearing was mailed to the Appellant/Co-Owners and Co-Owner and the owners of properties adjoining the property subject to the appeal as listed on the attached **Certificate of Service**.
5. On 7/28/2019, a notice of a public hearing was published in the *Vermont Journal*.
6. The appeal was considered by the DRB at a public hearing on 8/21/2019, which was held within 60 days of the filing of the Notice of Appeal, as required. The Board reviewed the appeal under the Town of Londonderry Zoning Bylaw, as adopted 2009 (the Bylaw).
7. Present over the course of the proceedings were the following members of the Board: Esther Fishman (Co-Chair), Denis Pinkernell (Co-Chair), Terry Hill, Chris Laselle and Bob Maisey. On 8/21/2019 the public hearing was closed.
8. During the course of the hearing, the following exhibits were submitted and/or referenced for the record:

Exhibit 1: Correspondence re: Zoning Violations, Notice of Violation & Notice of Right of Appeal and Appeal of Notice of Violation and Zoning Administrator's Decision

Exhibit 2. Zoning Permit Application 2019-29, received 8/5/2019

These exhibits are available at the Town Office.

FINDINGS

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

1. The subject property is an 84- acre +/- parcel located at 1888 Winhall Hollow Road in the town of Londonderry and more fully described in a Deed recorded at Book 56, Page 376, of the Londonderry Land Records.
2. The property is located in the R3 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. On 6/19/2019, the Town of Londonderry Zoning Administrator (ZA) sent an advisory letter to Hiland Clough, Co-Owner of Parcel 007032.000 located at 1888 Winhall Hollow Road, indicating that a storage trailer observed on the property on June 13, 2019, appeared to have no zoning permit on record and thus could be in violation of the Londonderry Zoning Bylaw per the following standards:
 - a. **Section 601(A)**, which provides that *"No 'land development' as such term is defined herein may be commenced, nor shall any land or **structure** be used differently or in any way extended in the Town until a zoning permit has been issued therefore by the Administrative Officer."* [*Land Development is defined in Section 701 as "The division of a parcel of land into two (2) or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance, and any use or extension of the use of land. Land Development shall not include customary property maintenance activities".*]
 - b. **Section 701 Definitions:** *"Structure: Anything constructed or erected for occupancy or use, including but not limited to a building, mobile home or trailer,[etc],"* and *"Trailer: [T]railer shall also include any vehicle that may be towed or used for carrying goods, equipment, [etc]."*
 - c. **Section 419(B) Temporary Uses**, which provides that *"Any trailer used for storage or other accessory use for a period exceeding thirty (30) days shall be considered a structure subject to all the terms and conditions of this bylaw."*
4. In a letter dated July 12, 2019, and delivered to the Zoning Administrator (ZA) on July 15, 2019,

Hiland Clough, Co-Owner of the subject parcel stated that he disputed the ZA's determination that the trailer in question constituted a "structure" by definition in the Bylaw, and therefore, also disputed that the trailer in use as storage for tools and woodworking equipment, required a zoning permit.

5. On July 18, 2019, the ZA issued a written Notice of Violation (NOV) to Ruth H. Clough et al, c/o Hiland Clough, with a conclusion that the trailer constitutes an accessory structure, which "requires a zoning permit prior to its placement on a property for more than 30 days." The NOV included direction and timeframe for curing the violation by removing the trailer from the property or applying for a zoning permit to locate the trailer in an acceptable location with required setbacks.

The NOV also included the following:

- a. Information about potential applicable fines, filing a Notice of Right of Appeal and a copy of the Town's Notice of Appeal of Zoning Administrator's Decision.
- b. Consideration of the 7/12/2019 letter from Hiland Clough as an Appeal of the NOV issued on July 18, 2019, as well as an Appeal of the Notice of Zoning Administrator's Decision, if so desired by the property owners. This option was accepted by Hiland Clough as represented in a letter received by the Zoning Administrator on 7/27/2019.

[Items 1-5 are represented in Exhibit 1 Correspondence.]

6. On 8/5/2019, a Zoning Permit Application was received from Hiland Clough for placement of an Accessory Structure, more particularly a tractor trailer for storage, on the subject property (Exhibit 2).
7. At the public hearing of the DRB, the discussion proceeded as follows:

Esther Fishman, DRB Co-Chair, announced that while the property owner appealed both the Notice of Zoning Administrator's Decision and Notice of Violation, the hearing discussion would be limited to the Appeal of the Zoning Administrator's Decision as written in the agenda for the public hearing, i.e. that the trailer found on Parcel 007032.000 constituted a structure that required a zoning permit.

After a reading of the definition of "Structure" and "Trailer" from Section 701 of the Bylaws, Appellant Hiland Clough stated his agreement that his trailer met the Bylaw definition of "trailer" and confirmed that it is used to store equipment.

The ZA outlined the administrative procedures following his site inspection subsequent to an initial complaint regarding land use activity at 1888 Winhall Hollow Road. (Exhibit 1) and verified the current status of the case including Zoning Permit Application 2019-29. He stressed that the permit application had not been processed, due to the pending DRB hearing and the possibility of a DRB decision to accept the Appeal of the Zoning Administrator's Decision that a permit was not required, in which case the application could be voided and the applicable fees returned to the Owner.

Matthew and Tammy Mosher, direct neighbors of the subject property, stated that their issue with the Clough trailer is ‘visual’ in that it is located along a joint property boundary in full view from their home. They said they are also concerned about potential loss of their property value, due to the negative visual impact of the storage trailer.

8. No one else asked to speak regarding this matter, and the hearing was closed the hearing for deliberation. After deliberation, the DRB reopened the public meeting and issued a decision.

DECISION

Based upon the Findings above, the Board made the following decision:

To accept the Zoning Administrator’s decision regarding the applicability of the Zoning Bylaw with regard to placement of a storage trailer on Parcel 007032.000 located at 1888 Winhall Hollow Road, pursuant to Zoning Bylaw Section 412(B) which states that “(a)ny trailer used for storage or other accessory use for a period exceeding thirty (30) days shall be considered a structure subject to all the terms and conditions of this bylaw.” Therefore, the Appeal of Notice of Violation for land development without the issuance of a zoning permit is denied, and a zoning permit shall be required for the subject structure. “

Dated at Londonderry, Vermont, this 5th day of September 2019.



_____, Co-Chair
Esther Fishman, Co-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.