

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

**Development Review Board
AGENDA
Wednesday, June 19, 2019**

The Londonderry Development Review Board will meet at 5:30 PM on Wednesday, June 19, 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 May 15, 2019
4. **Public Hearings as warned:**
 - A. **Application by Ben and Karalesa DiFabio** for approval of a Variance of front yard setback for construction of an addition to an existing single-family dwelling located on Parcel 049016.001, at 1342 Barker Road per Zoning Bylaw Section 203 District Standards, Section 605 Appeals and Section 606 Variances.
 - B. **Application by David Chaves** for Conditional Use Review to construct a new single-family residence on Parcel 110054.000, located at 6063 VT Route 11, located within the Resource Conservation Overlay District, per Zoning Bylaw Section 503 and Resource Conservation criteria specified in Zoning Bylaw Section 204(A).
 - C. **Appeal of Zoning Administrator's decision to issue a Notice of Violation to Vermont Woodchips Real Estate Holdings LLC**, regarding an opinion of land use violations on Parcel 045004.100, located at 170 Winhall Station Road.
5. **Other Business**
 - A. **Application 2019-26 by Stewart Barker Building LLC for Mark and Julie Haight for review and approval of land development** (construction of new accessory structure – detached garage) located at 566 Windy Rise Lane East on Parcel 004001.000, being a lot without frontage on a public road that requires DRB approval per Zoning Bylaw Section 402(A).
 - B. **Application 2019-28 by Robert Forbes/Forbes Construction Inc. for Michael Lonchar for review and approval of land development** (demolition and rebuild of burn damaged dwelling on an existing foundation/slab) located at 548 Loon Circle on Parcel 065148.000 being a lot without frontage on a public road that requires DRB approval per Zoning Bylaw Section 402(A).
 - C. Continued Review of revised Zoning Permit Application forms with Zoning Administrator
6. Next regular meeting date – Wednesday, July 17, 2019
7. Adjourn.

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

Regular Meeting Minutes

Wednesday, June 19, 2019

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

Board Members Present: Denis Pinkernell, Terry Hill, John Lancaster, Chris Laselle, Bob Maisey and Sven Fedorow.

Board Members Absent: Esther Fishman

Others in Attendance: Town Officials – Town Administrator/Zoning Administrator Shane O’Keefe, Assistant to the Town Administrator, Sharon Crossman. Members of the Public – Pete Cotell, Andrea Conrad, Jennifer Howe and Scott Howe.

1. Call meeting to order

Board Co-Chair Denis Pinkernell] called the meeting to order at 5:37 PM.

2. Additions or deletions to the agenda

Shane O’Keefe requested an addition to the agenda in order to discuss an Appeal of Notice of Violation issued to VT Woodchips Real Estate Holdings LLC. Denis Pinkernell agreed to add this discussion to the agenda after Item 4.

3. Minutes

Motion by Bob Maisey, seconded by Chris Laselle, to approve the minutes of the meeting of May 15, 2019. Motion PASSED unanimously.

4. Request by the Zoning Administrator for the Board’s approval regarding Application 2019-21 by Pete Conrad for John and Rachel Hanselman to construct a new single-family home located at 566 Windy Rise Lane East on Parcel 049016.001, a lot without frontage on a public road, per Zoning Bylaw Section 402(A).

Pete Cotelle appeared with Andrea Boreham Conrad to represent the project and address the issue of insufficient access to a proposed new single-family dwelling as raised by the Zoning Administrator.

O’Keefe cited Section 402 (A) of the Bylaw, referring to state statute that requires that any ‘land development’ on private road with either frontage on a town road or access via a right of way at least 50 feet in width must receive DRB approval. O’Keefe stated that the existing access to the lot is pre-existing, non-conforming via a private road established to serve the original dwelling and garage, which are grandfathered. He said the original dwelling was already demolished and removed at the time of his visit to the site and discovered foundation work for a new home in progress. O’Keefe explained that replacing a home is not a change of use but does constitute ‘land development.’

During discussion, the following information was provided:

- Windy Rise East is private road, continuing off an existing town road of 0.20 miles.
- Currently, the private road appears to access at least 3 lots.
- A 1976 deed describes a 25-foot right of way deeded by Knowlton (former owner of the Hanselman parcel) to Tiff (former abutting landowner), possibly in conformance with the Town's zoning standards of that time.

O'Keefe reminded the Board members that the only issue before them is access via a private road that is less than 50 feet wide which requires DRB approval. He said the Bylaw does not allow the ZA to issue a permit for the proposed land use activity without DRB approval – in this case new construction. He stated there is no change of use – a single family dwelling was removed and a new one is proposed that the ZA can approve, as long as it conforms to all applicable standards.

Sven Federow stated his opinion that the parcel is a pre-existing, grandfathered lot, with existing access since its beginning, and therefore, there are no grounds to deny approval, per Bylaw Section 402, Paragraph 3.

Sven moved to skip deliberative session and vote in open meeting on this case. The motion was seconded by Denis. With no further comments, the motion passed unanimously.

Sven then moved to approve the Hanselman project in accordance with Section 402 with no additional conditions attached by the Development Review Board. John seconded. With no further comments, the motion, passed unanimously.

The Board confirmed that the Hanselman permit application can now proceed to be approved and issued by the ZA.

5. Per Item 2, the Board discussed the matter of an Appeal of Notice of Violation issued to VT Woodchips Real Estate Holdings LLC, owned by Scott and Jennifer Howe, who were present for the discussion.

Zoning Administrator O'Keefe explained the issue before the DRB as being the validity of the Property Owners' Appeal on Notice of Decision by ZA, and not the merit of the case. He proceeded to outline the matter as follows:

- 5/30/19 After receiving a complaint, ZA issued Notice of Violation (NOV) to property owners, including the required Notice of Right of Appeal.
- 6/4/19 Jen Howe sent Appeal by email; delivery delayed due to use of non-working ZA.
- 6/7/19 ZA received Appeal letter from Howes addressing some issues raised in NOV.
- 6/12/19 ZA acknowledged in writing that not all violations were cleared up and again issued NOV.

O'Keefe said when the 15-day appeal period expired with no response, he contacted the Howes to inquire if they intended to file Appeal and learned that they believed they had "taken care of everything" in their Appeal dated 6/4/19.

O'Keefe explained that the issue is whether proper appeal was filed within the required 15

days or not - if not, the Appeal is now null and response time has expired or, if the Howes' Appeal is determined by DRB to have properly met official deadlines, the case can then be warned for a public hearing in July.

Sven Fedorow said in his experience, a NOV "crystalizes" the Town's right to impose fines, if not appealed or cured within the designated period. Separately, he advises landowners to apply for Conditional Use review, which gives the Owner the option to correct the violation.

O'Keefe said the current use of the property – stockpiling, processing and storage of gravel – is a change of use and not a permitted use in this zoning district and cannot be approved by the ZA, He added the following:

- There is no town zoning permit for this use by VT Woodchips Real Estate Holdings LLC.
- A state permit issued in 2011 allows 'continued' hauling, processing and storage of gravel 'from elsewhere.'

Scott and Jennifer Howe said they purchased the property in 2005 for the woodchip business and have used it since 2008 for processing and stockpiling gravel as well. They said in 2007 the state required an amendment to the original land use permit which was recorded in 2011. The Howes said they have never been notified that a local permit was needed, even though the Town received notification of the 2011 state permit. They said that since the Town had full knowledge of their industrial land use activities for almost 15 years and said nothing, the use was grandfathered. They said they understood that the ZA needed to officially respond to the complaint and make an effort to remedy, and believed their Appeal was sufficient and timely as submitted.

O'Keefe stated that this information is relevant to the merits of the violation which must be warned for a public hearing and restated that the matter the table is solely whether the Howes' Appeal was submitted on time, or as submitted, has met the required terms – this must be determined by the DRB.

Sven questioned whether this is SB matter. O'Keefe cited 4465 (c) which grants power to the DRB on appeal of the Zoning Administrator's decision. He further verified that the DRB can decide to accept that the appeal is valid and then have a hearing on the appeal in July. Alternatively, if not timely, the violation continues, and SB may choose to hire Town attorney to proceed with enforcement.

The DRB decided to deliberate the matter later in the evening and the Howes left the meeting.

6. Other Business

Zoning Permit Application Form

O'Keefe presented new Permit Application forms for the Boards review and consideration. He said they are designed to be consistent with other new forms already approved, clear for all applicants and sufficient information for the ZA to make a decision as well as 'fillable' online in due time. 'Keefe indicated there is no fee change proposed at this time though he

believes fees should be raised to better cover actual costs. By consensus, the Board agreed to accept the new forms, as well as the “Frequently Asked Questions” handout. for approval at the next DRB meeting. All agreed that getting property owners and/or their contractors to apply for permits prior to starting work is a challenge that needs attention.

At 6:24 pm the Board entered private deliberative session. At 6:34 the Board discontinued deliberative session and made the following announcements:

Motion by Terry Hill seconded by Chris Laselle: The appeal of the Zoning Administrator’s decision by VT Woodchips Real Estate Holdings LLC is determined to be timely and complete, subject to the required form and fee. The Motion passed unanimously.

7. New Business

Denis mentioned that the previously approved Kleiman application for land development in the Resource Conservation District with state-identified resource values, is showing signs of activity in the field. He stated that this project needs ZA attention perhaps in the form of site visits to ensure compliance with the zoning permit condition for a Certificate of Compliance prior to occupancy. O’Keefe said there is a long list of land use activity that needs monitoring, with limited time for enforcement.

Chris asked if the Eisenhaur motorcycle shop on VT Route 11 is still operating in the Village Residential zone without a permit. Sharon Crossman said that in the last conversation with Steve Eisenhaur after notice of violation last year, Owner stated said all tools were removed from that location to his residence on Melendy Hill and all machines would remain in the barn on VT Route 11 as his private collection with no commercial business.

8. Next regular meeting date – Wednesday, July 17, 2019 at 5:30 PM.

9. The meeting was adjourned at 6:42 PM.

Respectfully submitted,

Sharon Crossman, Administrative Assistant to Town Administrator and Zoning Administrator

Approved on July 17, 2019



Esther Fishman, Co-Chair