

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

**Development Review Board
AGENDA
Wednesday, December 18, 2019**

The Londonderry Development Review Board will meet at **5:30 PM on Wednesday, December 18, 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 November 20, 2019
4. Public Hearings as warned:

Application 2019-48 by Marie and Roger Sheehan – Request for a Variance on Appeal of Zoning Administrator’s decision to deny construction of new 29’ by 49’ garage as accessory to an existing single-family dwelling, located on parcel 066034.000 at 115 Brophy Lane.

Application 2019-43 by Judith and Thomas Platt- Appeal of Zoning Administrator’s decision to deny the replacement of an attached greenhouse with a wood frame addition of the same dimensions, on Parcel 102023.000 located a 2136 North Main Street.

Application materials are available for inspection at the Town Office or by email from the Zoning Administrator at townadmin@londonderryvt.org . Pursuant to 24 V.S.A. Sections 4464(a)(1)(C) and 4471(a), participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

5. Other Business
6. Next regular meeting date – Wednesday, January 15, 2020
7. Adjourn.

Posted and distributed December 14, 2019

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

Regular Meeting Minutes

Wednesday, December 18, 2019

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

Board Members Present: Esther Fishman Co-Chair, Denis Pinkernell Co-Chair, Sven Federow, Terry Hill, John Lancaster, Chris Laselle, Bob Maisey.

Board Members Absent: None

Others in Attendance: Town Officials – Shane O’Keefe, Zoning Administrator, Sharon Crossman, Assistant to the Zoning Administrator. Members of the Public – Roger and Marie Sheehan, Thomas and Judith Platt.

1. **Call the meeting to order.** DRB Co-Chair Denis Pinkernell called the meeting to order at 5:36 PM.
2. **Additions or deletions to the agenda** (to occur as ‘Other Business.’) None.
3. **Minutes Approval.** Motion by Denis Pinkernell to approve the minutes of November 20, 2019 as drafted. Motion passed unanimously.
4. **Public Hearings as warned.**

Application 2019-48 by Marie and Roger Sheehan – Request for a Variance on Appeal of Zoning Administrator’s decision to deny construction of new garage as accessory to an existing single-family dwelling, located on Parcel 066034.000 at 114 Brophy Lane.

Marie and Roger Sheehan described their proposal to tear down an existing pole barn and construct a new building measuring 29’ wide by 40’ long with overhangs along two sides, in order to house a camper on their home property in Sherwood Forest. They stated that the issue of complying with lot coverage and setbacks is due to their lot now being located in a 3- acre zoning district with different standards than when it was originally developed as 1-acre lots.

The Board discussed potential alternatives with the property owners, including deleting the overhangs on the proposed new structure, or re-locating the new structure elsewhere on the site. Roger Sheehan said without overhangs his equipment would be exposed and emphasized that much of the lot is undevelopable due to being steep, ledge or wet.

Esther Fishman, Co-Chair, closed the hearing and said the Board would deliberate in private later in the evening.

Application 2019-43 by Judith and Thomas Platt – Appeal of Zoning Administrator’s decision to deny the replacement of an attached greenhouse with a wood frame addition of the same dimensions, on Parcel 102023.000 located at 2136 North Main St.

The Platts described their permit application associated with a FEMA approved flood mitigation project designed for the Garden Restaurant building, which includes applying a concrete membrane 4 feet above the flood level of Tropical Storm Irene in 2011. They referred to a Memo provided by Beck Engineering, detailing the plan to replace an existing, non-conforming glass greenhouse with one that will be wood-framed, allowing proper adherence of the protective membrane.

Shane O’Keefe stated that development in the flood plain is specifically prohibited, unless the state certifies that the proposed project will not increase the base flood level per Section 205 (m) (7) of the Town’s current Bylaw, and suggested this be added as a condition if the Board decides to grant the appeal. He said the application was submitted to the state as required for comments within 30 days, with no response as of this hearing date.

After some discussion, Esther Fishman, Co-Chair, closed the hearing and the Board agreed to deliberate in private later in the evening.

The public meeting was closed at 6:34 pm. The Board reopened the public meeting at 7:15 pm and made the following announcement:

After deliberations, the Board announced that their findings and decisions regarding the matters of Sheehan, Platt and VT Woodchips Real Estate LLC will be individually delivered within the requisite 45- day time period per 24 VSA 4464 (b)."

5. Other business: None.
6. Next regular meeting - Wednesday, January 15, 2020 at 5:30pm
7. Adjourn. The meeting was adjourned at 7:30 pm.

Approved on February 19, 2020.



Esther Fishman, Co-Chair

Town of Londonderry, Vermont
Development Review Board

Findings of Fact and Notice of Decision
Application 2019-43
Property of Thomas and Judith Platt
Parcel 102013.000 at 2136 North Main Street

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves an Appeal of the Zoning Administrator's Decision to deny the replacement of an attached greenhouse with a wood frame addition of the same dimension, submitted by Thomas and Judith Platt, Appellants/ Owners of Parcel 102013.000 located at 2136 North Main Street, within the Village Commercial district and Flood Hazard Overlay district.
2. The application requesting approval to replace the greenhouse with a wood frame addition was received by the Zoning Administrator on 10/8/2019.

On 10/31/2019, the Zoning Administrator deemed the application to be "Complete" and denied the application, noting that the structure is noncomplying with regard to side yard setback and as such the portion within the setback may not be restored or reconstructed per Zoning Bylaw Section 412 (A), as provided on the Land Use Application Review Form.

On 11/13/2019, the Appellants submitted a Notice of Appeal of the Zoning Administrator Decision to deny the application.

On 11/18/2019, the Zoning Administrator sent notice of receipt of the Appeal and referred the application to the Londonderry Development Review Board (the Board, or DRB) for a public hearing.

Copies of all documents referenced above are available at the Londonderry Town Office.

3. On 11/20/2019, 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. 2136 North Main Street, which is within view of the public-right-of-way most nearly adjacent to the property
4. On 11/27/2019, a copy of the notice of public hearing was mailed to the Appellants and the owners of properties adjoining the property subject to the appeal as listed on the Certificate of Service attached hereto.
5. On 11/27/2019, a notice of a public hearing was published in the *Vermont Journal*.
6. The application was considered by the DRB at a public hearing opened on 12/18//2019.

7. Present over the course of the proceedings were the following members of the Board: Esther Fishman (Co-Chair), Denis Pinkernell (Co-Chair), Sven Federow, Terry Hill, John Lancaster, Chris Laselle and Bob Maisey. On 12/18/2019 the public hearing was closed.
8. During the course of the hearing, the following exhibits (available at the Town Office) were submitted and/or referenced for the record:
 - A. Zoning Permit Application Form 2019-43 with 3 associated attachments: Drawing No SK-13A entitled “Garden Café, Greenhouse Setbacks,” by Beck Engineering, PC, dated 10-2-2019; Drawing No. SK-2 entitled “Derry Down Town Foundation Modification for Dry Flood Proofing Detail,” by Beck Engineering, PC., dated 2-17-2014; and a hand-drawn sketch entitled “Greenhouse Replacement Structure Plan.”
 - B. Land Use Application Review Form dated 10/31/2019, addressed to Judith and Thomas Platt, from Zoning Administrator, Shane O’Keefe, re: Application No. 2019-43, rendering his decision to deny the issuance of a zoning permit.
 - C. Notice of Appeal of Zoning Administrator’s Decision re: Application No. 2019-43 with attached narrative entitled “Appeal to Londonderry Town Zoning Committee,” submitted by Thomas and Judith Platt on 11/13/2019.
 - D. A narrative received from Beck Engineering, dated December 16, 2019, addressed to the Town of Londonderry- Design Review Board, Subject: The Garden Café, containing comments “in support of Derry Downtown’s Application to reconstruct the attached greenhouse.”
9. Appellants Thomas and Judith Platt appeared at the public hearing and described their project associated with a FEMA and State-approved flood mitigation project designed for the Garden Restaurant building, which includes applying a concrete membrane to a height of 4 feet above the flood level of Tropical Storm Irene in 2011. They referred to a narrative provided by Beck Engineering (Exhibit D), detailing the need to replace the glass siding on the existing greenhouse with wood siding, so that the protective membrane will properly adhere to the structure. The Platts said the replacement will be of the exact same dimension as the existing greenhouse and will not increase the east side set back, which has always been less than the minimum required by local zoning.
10. Zoning Administrator Shane O’Keefe stated that the entire parcel is located in the flood hazard area and the proposed addition is in the floodway, and as such is subject to Zoning Bylaw Section 205(M)(7), which provides that “development within the floodway is prohibited unless a registered professional engineer certifies that the proposed development will not result in any in flood levels during the occupancy of the base flood.” He added that this Bylaw standard should be included as a condition, if the Board decides to grant the requested appeal. O’Keefe confirmed that the application was submitted to the State for comments as required by law, with 30 days from date of request to respond, but no reply received as of this hearing date.
11. No one else appeared, or spoke for or against, the request the proposed project.

12. On 12/18/2019, the Board adjourned the public hearing and announced that it would deliberate in private later the same evening.
13. On the same date, the Board re-opened the public meeting and announced that deliberations were complete as to the Platt's Appeal 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 2.72-acre parcel located at 2136 Main Street in the town of Londonderry, Parcel 102013.000, described in a Deed dated 7/12/1971, and recorded in at Book 31, Page 341 of the Londonderry Land Records.
2. The property is situated in the Village Commercial district and Flood Hazard Overlay 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 includes two commercial structures located on the same parcel, owned and operated by the Platts since the early 1970s. The entire parcel was flooded by the West River, with extensive damage and loss during Tropical Storm Irene in 2011. The Town secured FEMA grant funding to assist the Platts with improving flood resiliency with the installation of dry flood proofing to be wrapped around the buildings, as designed by Beck Engineering Inc. and approved by FEMA.
4. This project involves structural change to one of two commercial structures located on the subject property that is known as the Garden Restaurant.
5. The Zoning Administrator denied, then referred, Application 2019-43 to the DRB, citing the following standards: "*Structure is non-complying with regard to side-yard setback...and as such, the portion of the structure within the required minimum setback may not be reconstructed or restored per Zoning Bylaw Section 412 (A).*"
6. The Appellants assert that their Appeal of the Zoning Administrator's Decision is to obtain approval for minor changes to the existing non-conforming structure, with no change to the side set back, in preparation for future flood proofing, as pre-approved by FEMA with cost-sharing by the Town and the Owners.
7. Matthew Beck, PE, attests in his letter of 12/16/2019, that the proposed work to change the siding of the greenhouse from glass to wood is essential to proper adherence and successful performance of planned "dry flood proofing," that will result in no change to the non-conforming side set-back.

DECISION

Based on the findings above, the Board makes the following decision regarding the Appeal of the Zoning Administrator's decision to deny Application 2019-43 by Thomas and Judith Platt:

The appeal of the Zoning Administrator's decision to deny the issuance of a zoning permit to allow the proposed replacement of the glass greenhouse with a wood structure of the same dimension, is hereby granted with the following conditions:

1. That the existing non-conforming side set back shall not be increased in non-conformance by the reconstruction of the greenhouse as proposed, and
2. That prior to issuance of a Zoning Permit, the applicant shall submit to the Zoning Administrator certification from a registered professional that the proposed development will not result in any increase in flood levels during the occupancy of the base flood, in keeping with Zoning Bylaw Section 205 (M)(7).

Dated at Londonderry, Vermont, this 28th day of January 2020.



_____, Co-Chair
Esther Fishman, Co-Chair

NOTICE 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.

TOWN OF LONDONDERRY
100 Old School Street
South Londonderry, VT 05155
www.londonderryvt.org

CERTIFICATE OF SERVICE

I hereby certify that on 11/27/2019, I sent a copy of the following document(s):

Notice of a Public Hearing to be held on December 18, 2019

a copy of which is attached hereto, by U.S. Mail, via [x] first class mail [] certified mail, return receipt requested, to the following individuals:

Owner – Thomas & Judith Platt, POB 59, Londonderry, VT 05148

Abutting Property Owners - Londonderry

Parcel 102011.000 Clarence and Beverly Jelly, POB 336, Londonderry, VT 05148

Parcel 102002.000 Mtn Valley Auto c/o Jack Carmody, 538 Mill Point, Colchester, VT 05446

Parcel 028007.000 Scott & Rachel Febbie, 6135 VT 100, Londonderry, VT 05148

Parcel 102017.000 DJs Market, POB 3, Londonderry, VT 05148

Parcel 102014.000 Arapaho Partners, POB 250, Weston, VT 05161

Parcel 102015.000 Apache Asset Management LLC, POB 250, Weston, VT 05161

Dated at Londonderry, VT, this 27th day of November, 2019.

By: Sharon Crossman

Name: Sharon Crossman

Title: Assistant to Zoning Administrator

* * *

Town of Londonderry, Vermont
Development Review Board

Findings of Fact and Notice of Decision
Application 2019-48
Property of Marie and Roger Sheehan
Parcel 066034.000 114 Brophy Lane

INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involves a Request for Variance on Appeal of the Zoning Administrator's Decision to deny construction of new garage as accessory to an existing single-family dwelling, submitted by Marie and Roger Sheehan, Jr., Appellants/Owners of Parcel 066034.000, located at 114 Brophy Lane, within the R3 zoning district.
2. The application requesting approval to construct a new garage was received by the Zoning Administrator on 10/23/2019.

On 10/29/2019, the Zoning Administrator deemed the application "Complete" and denied the application, noting that the proposed structure would be within required setback per Zoning Bylaw Sections 203 (F), and would increase lot coverage, already exceeding allowable 10%, per Section 412, as provided on the Land Use Application Review Form.

On 11/12/2019, the Appellants submitted a Notice of Appeal of the Zoning Administrator decision to deny the application.

On 11/12/2019, the Zoning Administrator sent notice of receipt of the Appeal and referred the application to the Londonderry Development Review Board (the Board) for a public hearing.

Copies of all documents referenced above are available at the Londonderry Town Office.

3. On 11/20/2019, 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. 2136 North Main Street, which is within view of the public-right-of-way most nearly adjacent to the property
4. On 11/20/2019, a copy of the notice of public hearing was mailed to the Appellants and the owners of properties adjoining the property subject to the appeal as listed on the Certificate of Service attached hereto.
5. On 11/27/2019, a notice of a public hearing was published in the *Vermont Journal*.
6. The application was considered by the DRB at a public hearing opened on 12/18//2019.

7. Present over the course of the proceedings were the following members of the Board: Esther Fishman (Co-Chair), Denis Pinkernell (Co-Chair), Sven Federow, Terry Hill, John Lancaster, Chris Laselle and Bob Maisey. On 12/18/2019 the public hearing was closed.
8. During the course of the hearing, the following exhibits (available at the Town Office) were submitted and/or referenced for the record:
 - a. Zoning Permit Application Form 2019-48 with two associated attachments: a hand-drawn site map and a hand-drawn sketch of the proposed new garage.
 - b. Land Use Application Review Form, dated 10/29/2019, addressed to Marie and Roger Sheehan, from Zoning Administrator, Shane O’Keefe, re: Application No. 2019-48.
 - c. Notice of Appeal of Zoning Administrator’s Decision and Request for Variance: Application No.2019-48, with attached narrative dated 11/8/2019, submitted by Marie and Roger Sheehan, Jr., on 11/12/2019.
 - d. Land Use Application Review Form, dated 11/12/2019, addressed to Marie and Roger Sheehan, from Zoning Administrator Shane O’Keefe, re: referral of Application 2019-48 to the Board for consideration.
9. Appellants Marie and Roger Sheehan, Jr. appeared at the public hearing to discuss their request for a variance to build a new 2-bay garage. They said their camper and another vehicle are being stored off-site because their existing garage is too small, and they propose to tear down an existing pole barn to make space for the new garage.

The Sheehans described the conditions of their lot as being long and narrow, with steep slopes, ledge, wet areas, one level spot already taken up by their home and about 25% undevelopable. They acknowledged the non-conformities of setbacks and lot coverage on their property and stated their opinion that the root cause is that their 1- acre parcel predates the zoning change to R3 with standards that cannot be met.

Zoning Administrator Shane O’Keefe acknowledged that the Sheehan parcel is a small lot with unique characteristics, located in the R3 zoning district, with existing non-conforming setbacks. He added that the various existing structures on the Sheehan’s parcel add up to 30-40% lot coverage, without the proposed changes, while the maximum lot coverage allowed is 10%, whether the lot minimum is 1 acre or 3 acres.

The Board explored with the Appellants various potential alternatives to their proposed plan that might work to meet current district standards or decrease non-conformities, such as : retain and enlarge the existing pole barn or expand the existing garage attached to the house by one bay once pole barn is gone, or remove the overhangs proposed on the proposed new garage. The Sheehans said enlarging existing buildings won’t work due to the location of the leach field and the turning radius needed for the interior access to the accessory structures on the lot. They added that eliminating the “overhangs” is also not preferable either since their tractor implements and equipment would then be stored outside and unprotected from weather.

The Sheehans added their opinion that the root problem is they own a 1- acre lot that was originally zoned R1, then later rezoned to R3, making compliance with the bylaw standards difficult or impossible.

10. Of the abutting landowners notified of the public hearing for the Sheehans' project, only one indicated in writing having no objection. No one else responded, appeared or spoke, for or against the project.
11. On 12/18/2019, the Board adjourned the public hearing and announced that it would deliberate in private later the same evening.
12. On the same date, the Board re-opened the public meeting and announced that deliberations were complete as to the Sheehan's Appeal 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 1.0-acre parcel located at 114 Brophy Lane, Parcel 066034.000, described in a Deed dated 4/1/1988, and recorded in Book 55, Page 231 of the Londonderry Land Records.
2. The property is situated 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. The subject property includes an existing single-family dwelling with attached single bay garage as well as a detached pole barn and woodshed/sugarhouse. Collectively, these structures create existing non-conformities related to insufficient setbacks and excessive lot coverage.
4. The Sheehans proposed project involves adding a new accessory structure to their property which has existing non-conformities. The Appellants propose to tear down an existing pole barn and to locate a new garage in a location on the lot that lacks minimum side and rear setbacks for the R3 district.
5. The Zoning Administrator denied, then referred, Application 2019-43 to the DRB, citing the following standards: "*Structure is non-complying with regard to side-yard setback...and as such, the portion of the structure within the required minimum setback may not be reconstructed or restored per Zoning Bylaw Section 412 (A).*"
6. The Appellants assert that conformance with the current Bylaw is difficult or impossible because the zoning district was changed from R1 to R3, since they originally purchased and developed their lot. They contend that their existing and proposed structures could otherwise

comply with the original setback and coverage standards for their lot of one acre.

7. The Board finds that, notwithstanding the natural features that constrain typical residential use and development on the Sheehan's parcel, the reasonable use of the property is additionally limited by a revision to 2009 Londonderry Zoning Bylaws that changed the zoning district and associated standards from R-1 to R-3. While the Board understands that the adoption of this change effecting Brophy Lane and Sherwood Forest was made with the best of intentions, the Planning Commission should consider the rezoning of this area as it proceeds with the 2020 Bylaw Rewrite.

DECISION

Based on the findings above, the Board makes the following decision regarding the Appeal of the Zoning Administrator's decision to deny Application 2019-48 by Marie and Roger Sheehan, Jr:

To allow the construction of a new, single-story, 2-bay garage, measuring 40 feet long and 29 feet wide, and the tear down of an existing pole barn, with the following conditions:

1. That the two 'overhangs' depicted on the hand-drawn site plan be eliminated from the proposed new garage, and
2. That the proposed new garage be situated on the site in such a way that the rear set back and the side setbacks are each at least 35 feet minimum.

Dated at Londonderry, Vermont, this 30th day of January 2020.



_____, 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.