

Town of Danville Development Review Board Hearing Minutes

7/1/2020

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Attendance:

Present DRB Members: Brian Henderson (Chair), Rob Balivet (Vice Chair/Secretary), John McClung, Theresa Pelletier

Interim Zoning Administrator: Audrey DeProspero

Public: Richard Francis, Steven Towsley, Randy Phelps

The hearing was called to order by Chair Brian Henderson at 7:00 pm. A quorum is 50% plus one of seven positions on the DRB as defined by the Select Board. A quorum of four was established.

Permit Hearings:

Permit #2020-14

Applicant: Randolph C. Phelps

Site: 3665 McDowell Road, North Danville; TH 026-022.000, Bk 130, pages 601-601. Zoning: LDR

Project: Applicant proposes an AirBnB use for a two bedroom, 1.75 bath, two-story home.

Applicant further proposes a commercial use of massage and yoga therapy serving a maximum of four guests.

Relevant Bylaws (adopted 5/3/18):

Intent (Government regulations), Section 102.2, page 3.

Low Density Residential (LDR), Section 205.6, page 19.

Conditional Use, Section 207.1, page 21.

Existing Small Lot, Section 301, page 22.

Home Occupation, Section 303, pages 22-23.

Off-Street Parking, Section 311, page 24.

Signs, Section 314.5, page 29.

Definitions, Section 702, pages 35-43.

Permitted and Conditional Use, Section 807, page 48.

Bylaw Application: Sections 207 and 807 require a hearing.

Discussion:

1. Applicant provided site plan and floor plan drawings locating 24'x36' house, driveway, parking area and proposed sign. Lower floor has one bedroom, living room, kitchenette, 0.75 bathroom and storage room. Upper floor has one bedroom, living room, kitchen, full bathroom and "massage" room.
2. Applicant provided drawing of proposed 3'x5' sign.
3. A letter was received from abutting landowners at 3592 McDowell Road, Matthew and Kathleen Richard. They request that the permit application be denied on the basis of increased traffic, potential vandalism and affect on property values due to tenants where the owner does not occupy the property during the tenants' use. They add that the lot is less than the 3-acre minimum for LDR.
4. Verbal in-person testimony was presented by abutting landowner at 3681 McDowell, Richard Francis and his friend Steven Towsley. They spoke of a history of disruption and safety concerns from tenants on the subject property, problems with Mr. Phelps' dogs, and maintenance of a Class IV road which both properties abut.
5. Brian Henderson presented a January 15, 2020 letter from Richard A. Wilson, Regional Engineer with Vermont Department of Environmental Conservation/Drinking Water &

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Groundwater Protection Division noting that Mr. Phelps has “restructured the 2-bedroom single-family dwelling into a multi-family dwelling”. Mr. Richard states that the dwelling appears to lack a state water and wastewater permit, is in violation of state ground water rules and that Mr. Phelps is subject to enforcement action. He stipulates a January 27, 2020 deadline for follow-up response by Mr. Phelps. Mr. Phelps indicated that he has not followed up on Mr. Richard’s letter.

6. Applicant characterizes property as a “duplex”. However, no substantiating evidence is presented which changes it from a two-bedroom single family dwelling unit.
7. Mr. Phelps indicated he has rented out the property in the past, that there have been problems, and that he now wishes to establish the AirBnB with a massage/yoga business to ameliorate those problems.
8. There is a Bed and Breakfast on McDowell Road about a mile from this property with limited impact from traffic.
9. There was discussion about requiring full-time owner occupancy during those times when the property would be used for an AirBnB and massage/yoga therapy business. Mr. Phelps suggested it could be “managed” if he were absent from the property. It was pointed out that there is a significant difference in control and responsibility between “managed” property and owner-occupied property.
10. Mr. Phelps and Mr. Francis discussed mitigating disruption by animals and encouraging privacy by the erection of a fence or planted cedar trees along the Class IV road on Mr. Phelps’ property. Animal Control may also provide assistance if there are on-going disturbances from applicant’s dog(s).
11. Asked about the frequency of rentals and massage/yoga therapy clients, applicant noted that it would depend on market for same.
12. Applicant proposes placing a 3’x5’ sign in the right-of-way of McDowell Road and another sign on house.

Findings:

1. The subject property consists of 0.7 acres which is less than the minimum 3 acres required by LDR zoning according to Section 205.6. It also has road frontage of 144’ which less than the minimum of 150’. However, the land was subdivided to produce the 0.7-acre lot before Zoning Bylaws dictating 3 acres were adopted by the Town of Danville. This property, therefore, falls under Section 301.1 Existing Small Lots which allows development for lots not meeting minimums if in existence before adoption of the Zoning Bylaws.
2. The facility is a two-bedroom single family home, not a duplex.
3. Due to lack of response and written approval from the Vermont DEC/DW&GPD, the property is in violation of State requirements.
4. Approximately 4 parking spaces are required. Applicant shows parking for 5-6 cars will be provided.
5. Proposed sign does not comply with maximum 10sf size and location must comply with setbacks and quantity. Applicant agreed to one complying sign at road and a directional sign, if needed, at parking area.

Conditions:

Rob Balivet proposed two conditions:

1. Property must be owner-occupied when used for AirBnB and/or massage/yoga therapy business.
2. Applicant must provide documented approval for water and wastewater system and any

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other compliance requirements from governmental agencies in accordance with Section 102.2.

3. There is a 30-day appeal period for this permit. An approved permit is issued once the appeal period has expired and any appeals have been concluded. Applicant shall not begin providing proposed services until an approved permit is issued.

Decision:

Rob Balivet moved; Theresa Pelletier seconded motion to approve permit application. John McClung expressed concerns about size of lot and use of property, but agreed to vote for approval. Motion passed.

Approval of Minutes: Theresa Pelletier moved; Brian Henderson seconded motion for approval of minutes from the DRB hearing of 6/3/20 as presented. Motion passed.

Other Business:

1. Audrey DeProspero shared an email from VLCT's Garrett Baxter regarding suspension of hearing on applications with subsequent result in application requests becoming effective after 45-day period per Rules of Procedure based on 24 VSA §4464(b) for a Reasonable Project approved by the DRB on 8/7/19. There continues to be confusion regarding Mr. Baxter's earlier advice last year and his current email. Further clarification will be requested from VLCT.
2. Brian Henderson stressed the importance of all four DRB members attending every hearing in order to have a quorum.

The hearing was adjourned at 8:15.

Respectfully Submitted,
Rob Balivet