

A VIDEO RECORDING OF THE MEETING IN ITS ENTIRETY IS AVAILABLE THROUGH VERMONTCAM.ORG. THE WRITTEN MINUTES ARE A SYNOPSIS OF DISCUSSION AT THE MEETING. MOTIONS ARE AS STATED BY THE MOTION MAKER. MINUTES SUBJECT TO CORRECTION BY THE SHELBURNE DEVELOPMENT REVIEW BOARD. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE BOARD.

**TOWN OF SHELBURNE
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING
May 24, 2023**

MEMBERS PRESENT: Allyson Myers, David Hillman, Mike Major, Anne Bentley, Steve Kredell. (Mark Sammut and Bob Glover were absent.)

STAFF PRESENT: Kit Luster, DRB Coordinator; Aaron DeNamur, Planning Coordinator & Zoning Administrative Officer.

OTHERS PRESENT: Adele Gravitz, John Franco, Lee Krohn, Gail Albert, Ken Albert, Media Factory.

AGENDA:

1. Call to Order and Agenda
2. Public Comment
3. Minutes (4/29/23)
4. Disclosure of Conflicts of Interest
5. Applications:
 - Appeal, Notice of Violation, Unpermitted Accessory Apartment, 5166 Shelburne Road, Adele Gravitz (A23-02)
6. Update on Bylaw Rewrite Project by Planning Coordinator
7. Other Business
8. Adjournment

1. CALL TO ORDER and AGENDA

In the absence of Chair, Mark Sammut, Allyson Myers facilitated the meeting and called to order at 7 PM.

2. PUBLIC COMMENTS

None.

3. MINUTES

April 29, 2023

MOTION by Mike Major, SECOND by Anne Bentley, to approve the minutes of 4/29/23 as presented. VOTING: unanimous (5-0); motion carried.

4. DISCLOSURE OF CONFLICTS OF INTEREST

None.

5. APPLICATIONS

A23-02: Appeal of Notice of Violation for an unpermitted accessory apartment at 5166 Shelburne Road in the Village Center Mixed Use District, Village Design Review Overlay District, and Stormwater Overlay District by Adele Gravitz

Adele Gravitz and John Franco, attorney, appeared on behalf of the appeal.

APPELLANT TESTIMONY

The appellant, Adele Gravitz, provided the following testimony:

- Letter to the former owner of the property at 5166 Shelburne Road (Wooden) for a conditional use permit and requirement for parking was reviewed.
- The required parking per the conditional use permit issued to Mr. Wooden was never built and there is no evidence of the parking being built documented in the town file.
- The permit issued to Mr. Wooden expired in 1984.
- The permit was for the conditional use (office) and states that any changes make the permit “null and void”. There was no change for the office which was the use under the permit.
- The house had a studio apartment when purchased by Adele Gravitz who replaced the appliances in the kitchen of the existing apartment. The plumbing for the kitchen was in place, but the space was not in use.
- Internal renovations do not require a permit.
- There was no land development so there is no need for a certificate of occupancy.
- There is space for four parking spaces on the site so there is adequate parking for the apartment tenant.
- The apartment was existing in the house from 1935 to 1983 when Mr. Wooden purchased the property.
- Initially the Planning & Zoning Office felt there was no need for a permit, but this position appears to have changed.
- The “trigger” for the permit in this case was not the kitchen, but whether Mr. Wooden made changes to anything in the space.

Attorney for the appellant, John Franco, pointed out per the permit issued to Mr. Wooden three parking spaces were required for the office. The permit expired after one year if the parking was not built. The parking was not built. There was a pre-existing, pre-zoning apartment in the house and this never changed because Mr. Wooden never effected the conditional use permit in 1983. The residential use of the space was never changed legally and was grandfathered as a pre-zoning apartment.

ZONING ADMINISTRATIVE OFFICER TESTIMONY

Aaron DeNamur, Shelburne Zoning Administrative Officer, testified:

- It was made clear to the appellant that a zoning permit would be needed for the apartment. The Town Attorney agreed that a permit was needed.
- Staff is advising that allowing an accessory apartment without a permit would be setting a precedent.
- Three parking spaces were never listed as a condition of approval.

- The statute of limitation on the permit is 15 years. The former property owner was using the space as an office, not an apartment. The town never pursued the parking requirements. The use became an existing nonconformity.
- There was no kitchen in the office so the space could not be considered an apartment. Until the changes made by the appellant, the space would not qualify as a dwelling unit because it did not contain what is needed for occupancy.
- Until the last year and a half, the town required a zoning permit for internal renovations.
- The apartment does not have a certificate of occupancy at this point in time. The use of the property presently is as a single family residence.

Lee Krohn, former Shelburne Town Manager and Zoning Administrative Officer, concurred with the statements regarding the need for a permit, pointing out that per land use law when a new permit is issued, prior uses go away. Permits from prior uses are not carried forward. There was not an apartment in the house when the property was purchased by the appellant. The space that is said to be an apartment did not have a bedroom, bathroom, or kitchen. The apartment by the appellant is a change of use (from an office to a dwelling unit) and needs a zoning permit.

Allyson Myers asked how frequently Notice of Violation letters are issued by the town. Lee Krohn said the notices are not issued frequently. Staff tries to get voluntary compliance first.

Mike Major asked about in-home office use needing a permit. Aaron DeNamur said there are requirements for running a public office out of the home versus a home occupation or working remotely from home.

PUBLIC COMMENT

Gail Albert asked about people with an office in their house that goes back and forth between being an office or part of the residence. Lee Krohn noted a home occupation as part of a residence is different than a separately permitted conditional use as an office which would be a second use of the property. Per the land use law an accessory apartment in a house or as a separate structure or above the garage is permissible. In the present case, the apartment is permissible, but needs a permit.

Ken Albert commented the situation appears to be an issue about former and present staff. Lee Krohn assured the issue is about the practicality of a zoning permit being needed for a use, and it is not relevant that past and present staff are involved.

DELIBERATION/DECISION

Appeal, Notice of Violation, Unpermitted Accessory Apartment, 5166 Shelburne Road, Gravitz (A23-02)

MOTION by Mike Major, SECOND by Steve Kredell, to go into deliberative session. VOTING: unanimous (5-0); motion carried.

MOTION by Anne Bentley, SECOND by David Hillman, to adjourn deliberative session. VOTING: unanimous (5-0); motion carried.

MOTION by David Hillman, SECOND by Steve Kredell, to close the hearing and uphold the Zoning Administrative Officer's decision. VOTING: unanimous (5-0); motion carried.

6. UPDATE ON BYLAW REWRITE PROJECT BY PLANNING COORDINATOR

Planning Coordinator, Aaron DeNamur, reported the audit report on the bylaws by the consultants was given to the Planning Commission for review. Meetings will be scheduled with town boards and committees including the DRB to discuss the bylaws with the consultants. There will be a booth at the farmers market for public information and input on the bylaw rewrite. Next steps by the consultants include drafting new language. Any bylaw not in compliance with state statute must be changed. S.100 legislation will require changes to the bylaws as will any conflicts with the town plan. There is discussion of creating a neighborhood development area in the village with new bylaws to give incentives for development where the town wants the development. Certain projects will not be subject to appeal.

7. OTHER BUSINESS

DRB Meeting Schedule

June 7, 2023 – application(s) and presentation from consultants on bylaw rewrite

June 21, 2023 – application(s)

July 5, 2023 – No meeting

July 19, 2023 – application(s)

8. ADJOURNMENT

MOTION by Anne Bentley, SECOND by Mike Major, to adjourn the meeting. VOTING: unanimous (5-0); motion carried.

The meeting was adjourned at 78:20 PM.