

1 **Village of North Bennington**  
2 **Development Review Board Meeting**  
3 **Tuesday, April 18, 2023**  
4 **North Bennington Train Station**  
5  
6  
7

8 **DRB Members Present:** Chris Damon,(DRB Chair), Tara Lowary, Kim Hall, Hugh Crowl &  
9 James Williams

10  
11 **Absent:** Zoning Administrator, Ron Hachey

12 \*Please see attached letter from Mr. Hachey regarding agenda.  
13

14 **Others Present:**

15 Mary Rogers, North Bennington Planning Commission

16 Sandra Magsamen (Petitioner/573 West Street North Bennington Vermont 05257)

17 Mark Barry. Interested Party

18 Bob Howe. Interested Party

19 Jim Therrain. The Bennington Banner  
20  
21

22 **Recorder:** Heather N. Bullock  
23

---

24 \* **Denotes out of order agenda items**  
25  
26

27 **1) Call Meeting to Order.**  
28

29 Mr. Damon called the meeting to order at 7:00PM.  
30

31 **2) Query for Public Comment: Revise Agenda if Needed.**  
32

33 Mr. Damon stated that the meeting's agenda was in regards to an appeal by the petitioner,  
34 Sandra Magsamen, regarding a property at 573 West Street. He queried meeting attendees as  
35 to their reason for attendance and whether anything on the agenda needed to be amended. All  
36 in attendance were attending the meeting as interested parties in Ms. Magsamen appeal.  
37

38 **3) Review and Approve Previous Meeting Minutes.**  
39

40 Mr. Damon requested a motion to approve the meeting minutes from the November 15, 2022  
41 DRB meeting

1 **Ms. Lowary made a motion to approve the meeting minutes from the November**  
2 **15, 2022 DRB Meeting.**  
3 **(Lowary/Hall/Unanimous/ Abstention/Williams )**  
4  
5

6 **4) Applicant Sandra Magsamen is Appealing the Zoning Administrator’s**  
7 **Determination to Deny for a Short-Term Rental Use on her Property Located at**  
8 **573 West Street.**  
9

10 Mr. Damon explained that the purpose of the meeting was to review an appeal submitted by  
11 Sandra Magsamen regarding her application to use her property at 573 West Street in North  
12 Bennington as a short term rental. Ms. Magsamen had submitted an application for the above  
13 usage which was denied by the current Zoning Administrator, Ron Hachey. Mr. Hachey did  
14 include a letter to Ms. Magsamen as well as a letter to DRB members explaining his reason for  
15 the denial along with the agenda for this meeting.  
16

17 Mr. Damon requested that contact information be obtained so the DRB could send out its  
18 decision which is required within 45 days of this appeal.  
19

20 Mr. Damon explained the purpose of DRB board members in this instance is to determine  
21 whether or not the zoning administrator was in error when he denied Ms. Magsamen’s  
22 application.  
23

24 Ms. Magsamen provided some background history of the project and stated that she initially  
25 worked with then acting zoning administrator, Billy Rogers in 2022 She stated that after he left  
26 she worked with acting zoning administrator, Scott Creedy who granted her an occupancy  
27 permit and advised her to fill out another application to use the property as a short-term rental.  
28 She advised that she did complete that application. However the new zoning administrator, Ron  
29 Hachey, denied her application further adding that there is currently nothing in the by-laws to  
30 support her application for a short-term rental.  
31

32 Ms. Magsamen stated that she had spoken with two members of the North Bennington Planning  
33 Commission, Mary Rogers and Bob Howe, who advised her that the bylaws are currently in the  
34 process of being re-written. Ms. Magsamen stated that she researched the number of AirBNB’s  
35 in the area and that there are already some operating within the Village of North Bennington and  
36 over 1,000 are being operated within the greater North Bennington area. She stated that it has  
37 been her intent to follow the rules and go through the proper channels to legitimately acquire a  
38 permit to run a short-term rental at the address listed. She explained that she resides right next  
39 door to the property. She reported that the house in question was in rough shape and that she  
40 worked with an architect to renovate the house and was hoping to be up and running by now.  
41 She stated that if the new bylaws prohibit residents from operating AirBNB’s in the Village of  
42 North Bennington, she would certainly abide by those new laws. However she respectfully  
43 requested that she be allowed to move forward with operating her property as a short-term

1 rental until such time that the North Bennington bylaws prohibit such usage of a property. She  
2 further added that she has found the entire process very discouraging and that she has only  
3 been trying to follow the current laws.

4  
5 Mr. Hall asked if Ms. Magsamen saw any provisions within the current bylaws that would allow  
6 her to operate a short-term rental.

7 Ms. Magsamen stated that she has reviewed them and that there is currently nothing in the  
8 bylaws that either allow or prohibit short-term rentals which is why she is hopeful that she be  
9 allowed to move forward especially since there are no laws currently prohibiting such an  
10 operation. She added that the town of Shaftsbury has recently added short-term rentals to their  
11 bylaws and that the Town of Bennington has approximately 800 short-term rentals yet has  
12 nothing in their bylaws regarding short-term rentals.

13  
14 Mr. Hall stated that this issue would be better brought before the North Bennington Planning  
15 Commission as the current bylaws have no provisions on the subject.

16  
17 Ms. Magsamen stated that many towns in the area have no provisions in their bylaws but the  
18 towns allow short-term rentals through non-enforcement. She stated it is a conundrum.

19  
20 Mr. Damon stated that what the DRB needed to address at this meeting is whether or not the  
21 Zoning Administrator made an error in his decision to deny Ms. Magsamen's application. He  
22 further added that the Village of North Bennington does allow Bed and Breakfasts as they have  
23 institutions within the current bylaws. Regarding AirBNB's, he stated that if they are being run  
24 within the village, then the DRB is not aware of them and that they would be asked to stop if it  
25 was brought to the board's attention. He stated that if anyone could tell them who was running  
26 them without a permit, they would be issued a violation.

27  
28 Ms. Magsamen stated that she was not going to turn anyone in. She further stated that she  
29 approached the Town of Bennington who advised that although it is not in their bylaws, they still  
30 allow it.

31  
32 Ms. Lowary asked what Ms. Magsamen's timeline was for opening her short-term rental to  
33 which Ms. Magsamen replied it was last December of 2022. She further added that she lives  
34 right next door and that the house had been falling down. She stated that she and her partner,  
35 Mark Barry, along with George and Gail Bershoor have formed an LLC called "Be Here Awhile".  
36 She stated that they are focused on promoting wellness and that the location of the property is  
37 located right across from the 'Mile Around Wood" trails and conveniently located to a number of  
38 area businesses. She again respectfully requested that she be allowed to open the property up  
39 for short-term rentals whilst the bylaws are being re-written. Ms. Magsamen added that for  
40 those who know her, she is very involved in the welfare of the Village through her myriad of  
41 projects including the garden project she runs as well as her work with the local library. She  
42 stated that her intentions are to enhance opportunities within North Bennington.

43

1 Mr. Damon stated that it is a bit of a “cart before the horse” situation and given that there is  
2 nothing in the bylaws addressing short-term rentals, it would not be allowed.  
3  
4 Ms. Lowary queried who is currently in charge of the Planning Commission to which Ms. Rogers  
5 replied that both she and Mr. Hall are. Ms. Lowary asked if the next step might be an appeal to  
6 the Planning Commission. Mr. Damon stated that the Planning Commission cannot make a  
7 decision on this matter. He explained that the Planning Commission’s role was to write the  
8 bylaws but that only the DRB could rule on existing bylaws.  
9  
10 Ms. Lowary referred to an application she had made several years back regarding her business  
11 and stated that she needed to go before another committee besides the DRB. Ms. Bullock  
12 interjected that it had been the North Bennington Board of Trustees. Mr. Damon stated that the  
13 system for approving applications had changed since that time.  
14  
15 Ms. Rogers asked if the Board of Trustees could trump any decision made by other North  
16 Bennington boards. She wondered if Janet from the BCRC would know the answer.  
17  
18 Mr. Howe stated that he is on the Planning Commission and asked if there is nothing in the  
19 current bylaws regarding AirBNB’s or short-term rentals to which Mr. Damon stated that there is  
20 not.  
21  
22 Mr. Crowl referred to current Village bylaws, Section 4.2.4, and clarified information regarding  
23 Bed and Breakfast properties and the guidelines that would need to be followed which included  
24 the operator of the property to reside within the property.  
25  
26 Mr. Williams asked who had the power to amend the bylaws to which Mr. Damon replied “the  
27 Planning Commission”.  
28  
29 Ms. Rogers added that when revisions to the bylaws were made by the Planning Commission,  
30 they were then sent before the Village Trustees, then to the general public and then back to the  
31 Village Trustees before being officially adopted.  
32  
33 Mr. Hall stated that the current bylaws are applicable by district and asked for confirmation that  
34 Ms. Magsamen is within the VR120 district.  
35  
36 Mr. Damon posed the question, “if I buy a house, can I rent it out?” Mr. Williams asked if there  
37 is a specific term required for renter occupancy.  
38  
39 Mr. Crowl asked if the property in question is a one or two family dwelling. Ms. Magsamen  
40 explained that it is a one family dwelling and that it only had two bedrooms.  
41  
42 Mr. Hall stated that he thinks the term would need to be longer than thirty days.  
43

1 Mr. Williams stated that guidelines are needed as he could not find anything relevant to short-  
2 term rentals.

3  
4 Mr. Damon added that when the Village of North Bennington bylaws were written, there was no  
5 AirBNB. He did state that the State of Vermont does have regulations regarding AirBNB rentals.  
6 Mr. Hall added that a license is required as well as a business tax account and a 9% tax to be  
7 imposed. He stated that rental health and safety regulations needed to be adhered to as well as  
8 fire safety including two egress from every bedroom.

9  
10 Ms. Magsamen stated that she worked carefully with her architect to include all safety  
11 provisions and that they even built the bathroom to be handicap accessible.

12  
13 Mr. Hall asked if there would be any food preparation within the property. Ms. Magsamen  
14 replied that there is a kitchen within the house. She added that there are only two bedrooms  
15 and that the property would only be able to host a single group at a time. Mr. Hall stated that  
16 license lodging would need to be based on state requirements.

17  
18 Mr. Damon stated that the DRB had 45 days to make their decision and that if no one had more  
19 to add, that he would entertain a motion for the DRB to enter into deliberative session.

20  
21 Ms. Magsamen thanked the DRB members for their time and consideration regarding this  
22 matter. Mr. Damon stated that her input would be greatly appreciated as the Planning  
23 Commission moves forward with their work of re-writing the bylaws.

24  
25 ***Mr. Damon made a motion for the DRB to enter into a deliberative session.***  
26 ***(CD/TL/Unanimous) No further discussion.***  
27 ***Deliberative Session entered at 7:35PM***

28  
29  
30  
31 **Deliberative Session Results.**

32  
33 **The foregoing Findings, Conclusion, and Decision have been agreed to by the**  
34 **North Bennington Development Review Board.**

35 ***After a discussion, a motion was made to uphold the opinion expressed in the***  
36 ***Zoning Administrator's opinion letter of January 2,2023 to deny the application.***

37  
38 ***The vote was 5 to 0***

39  
40

**NOTICE OF PUBLIC HEARING**  
**VILLAGE OF NORTH BENNINGTON**  
**DEVELOPMENT REVIEW BOARD**

The Development Review Board will hold a public hearing on **Tuesday, April 18, 2023 at 7:00 PM** at the Village Depot Meeting Room, North Bennington, VT.

A zoom link is not included for this meeting – so please join us in person in Room 1 of the Depot.

**AGENDA**

- 1) Call the Meeting to Order.
- 2) Query for public comment: revise agenda if needed.
- 3) Review and approve previous meeting minutes.
- 4) Applicant Sandra Megsamen is appealing the Zoning Administrator's determination to deny for a Short-Term Rental Use on her property located at 573 West Street.
- 5) Adjournment.

This hearing is warned in accordance with Section 4464 of the Vermont Planning and Development Act (24 V.S.A. Chapter 117). Please be advised that participation in this proceeding is a prerequisite for the right to make any subsequent appeal. All Village Zoning Bylaws may be viewed at [villagenorthbennington.org](http://villagenorthbennington.org).

To be posted and published on Tuesday, April 4, 2023, by Ron Hachey – Zoning Administrator.

**Village of North Bennington  
Office of the Zoning Administrator  
P. O.Box 323  
North Bennington, VT 05257  
802-442-5547**

January 2, 2023

Sandra Magsamen  
Be Here A While LLC  
P.O. Box 21  
North Bennington, VT 05257

Re: Short Term Rental Use of Tax Map I.D. # 01-01-17

Dear Ms. Magsamen,

I received your application on December 28, 2022 requesting to use your property at 573 West Street here in North Bennington for short term rentals.

I have reviewed your application and the proposed use for adherence to the Village of North Bennington's Zoning By-laws and offer the following response:

**Zoning District**

Your property is zoned Village Residential 120 (VR120). The VR section of the Village's Zoning By-laws does not allow for property to be used for short term rentals.

**General Regulations**

As per Section 3.1.1 of the Village's By-laws, uses not listed in the By-laws are not allowed in the Village of North Bennington and as specifically worded, states:

"Except as otherwise provided herein, any uses not specifically permitted shall be deemed to be prohibited."

**Decision on your Application**

Therefore, I must deny your request to use your property for short term rental purposes.

**Appeal of Zoning Administrator's Action**

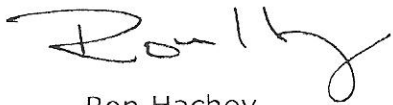
As per Section 13.6 of the Village's Zoning By-laws, an appeal to a decision made by the Zoning Administrator can be appealed to the Village's Development Review Board within 15 days of the Zoning Administrator's decision.

### **Application Review Fee**

The Application Review fee for a determination for a change in use is \$35.00. Since you submitted a check in the amount of \$375.00, I will request that the Village's Treasurer refund you the amount of \$340.00.

Please let me know if you need any further clarification on any of the points mentioned above.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Hachey". The signature is written in a cursive style with a large, looping "R" and "H".

Ron Hachey  
Zoning Administrator



**Village of North Bennington  
Office of the Zoning Administrator  
P. O.Box 323  
North Bennington, VT 05257  
802-430-3168**

To: DRB Members

From: Ron Hachey, Zoning Administrator 

Date: 4/7/23

Re: DRB Meeting on 4/18/23

**The Case**

I just wanted to provide some follow-up information about the Sandra Magsamen case coming up at the DRB meeting on April 18th. Since my denial letter dated January 2, 2023, Ms. Magsamen and I have exchanged a few emails pertaining to her requested use.

She did some research about other localities allowing Short Term Rentals either as a Use by Right or with a Conditional Use Permit. She requested that I approve a Conditional Use Permit to allow her to have her rental. I informed her that I did not have the authority to approve a Conditional Use Permit for a use that wasn't allowed in the Village Zoning Bylaws.

The reason that I thought you should know this is that you may need to emphasize to her that the purpose of the public hearing is to review my zoning denial determination and not whether the Village should add Short Term Rentals as a use in the Zoning Bylaws.

**My Attendance**

As some of you know, I serve on the Town of Bennington's DRB. During my interview/hiring for the Village's Zoning Administrator's position, we discussed the fact that I would need to attend the Town's DRB meeting if both localities had DRB meetings on the same night. Since this is the case this month, I will need to attend the Town's DRB meeting on 4/18.

I know that the Village's DRB meeting on 4/18 will be in good hands with your review.

- ii. The Development Review Board may grant an extension of a zoning permit for a period of one year from the date of expiration. Applications for permit extensions shall be made in writing, including a description of the specific reasons and circumstances justifying the extension, to the Administrative Officer prior to the expiration date of the permit. The request will be submitted to the Development Review Board for consideration at the next available regular meeting as an agenda item.

#### **13.4 Certificate of Occupancy**

It shall be unlawful to use or permit the use of any building or other structure or part thereof, hereafter, erected, changed, converted, or altered, in its use or structure, until a certificate of occupancy shall have been issued therefore by the Administrative Officer. Such certificate shall show that such building or structure and the proposed use thereof are in conformity with the provisions of this Bylaw or an order of the Administrative Officer or Development Review Board.

#### **13.5 Permits Applied for During Bylaw Amendment Period**

If a public notice for a first public hearing pursuant to 24 V.S.A. Section 4442(a) is issued by the Village Trustees with respect to amendment of this Bylaw, the Administrative Officer, for a period of 150 days following that notice, shall review any new application filed after the date of the notice under the proposed amendment and applicable existing bylaws and ordinances. If the new amendment has not been adopted by the conclusion of the 150 day period or if it is rejected, the permit shall be reviewed under existing bylaws and ordinances. An application that has been denied under a proposed amendment that has been rejected or that has not been adopted within the 150 day period shall be reviewed again, at no cost, under the existing bylaws and ordinances, upon request of the applicant.

#### **✕ 13.6 Appeals**

##### **✕ a. Decisions of the Administrative Officer**

Any applicant or other interested person (as defined in 24 V.S.A. Section 4465) may appeal a decision or act of the Administrative Officer by filing a notice of appeal with the Secretary of the Development Review Board, or the Town Clerk if no Secretary has been elected, within 15 days of the date of such decision or act.

- i. The Development Review Board shall hold a public hearing on a notice of appeal within 60 days of its filing. The Board shall give public notice of the hearing under, and shall mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
- ii. A decision on appeal, to include written findings of fact, shall be rendered within 45 days after hearing completion. The Development Review Board may

reject an appeal without hearing, and render a decision within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal, or are based on substantially or materially the same facts, by or on behalf of the appellant. Copies of the decision shall be mailed to the appellant and hearing participants, and filed with the Administrative Officer and Town Clerk.

b. Decisions of the Development Review Board

Any interested person who has participated in a regulatory proceeding before the Development Review Board may appeal the decision of the Development Review Board within 30 days of such decision to the Vermont Environmental Court, as provided for in 24 V.S.A. Section 4471.

c. Notice of Appeal

A notice of appeal shall be in writing and include:

- i. the name and address of the appellant;
- ii. a brief description of the property with respect to which the appeal is taken;
- iii. a reference to applicable bylaw provisions;
- iv. the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations; and
- v. the alleged grounds why such relief is believed proper under the circumstances;

### 13.7 Enforcement

Any person who violates the provisions of this Bylaw shall be subject to the penalties and remedies prescribed in 24 V.S.A. Section 4451 to 4454.

### 13.8 Variances

- a. The Development Review Board shall hear and decide upon requests for variances. The Board may grant a variance, and render a decision in favor of the appellant, only if *all* of the following facts are found, and the findings are specified in its written decision:
  - i. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located;