

DEVELOPMENT REVIEW BOARD
UNAPPROVED MINUTES
Meeting of TUESDAY, OCTOBER 16, 2007

1. The meeting was called to order at 7:00 p.m.

Members present: Robert J. Wernecke, Chairman; John Hurley, Vice-Chair; Muriel Morse; and Robert G. Manley. Absent: Henry A. LaGue, Jr.

Staff present: Jeffrey Schultz, Zoning Administrator and Carla Preston, Recording Secretary.

Others present: Heather Burns, Verna Gabaree, Duane Wilder, Craig Guthrie and Tonya Guthrie (and a student working on an assigned project).

The Board explained its Policy and definition of party status and interested persons to attendees. Attendees, and Zoning Administrator Schultz, offering testimony on applications before the Board were sworn in.

2. New Business

- A. **07-073 – Heather Burns** submitted an application for Final Review of a Minor subdivision. The property is located at 497 Browns Mill Road, Berlin, in the Rural Residential and Highland Conservation Districts, Tax Map R7 Lot 92B. Heather Burns, Verna Gabaree and Duane Wilder were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits. **Exhibit #1:** Subdivision Application, 07-073, dated September 28, 2007; and **Exhibit #2:** Subdivision Survey, prepared by Robert A. Townsend, L.S., with American Survey Company (received on September 26, 2007).

Heather Burns proposes to subdivide her 10.1 acres lot by subdividing out 2 acres and selling it to Verna Gabaree and Duane Wilder. Lot 1 would consist of 8.1 acres and Lot 2 would consist of 2 acres. Concept Plan Review of this proposed subdivision was approved on September 18, 2007.

The applicants said that Mr. Townsend, their surveyor and engineer, verified that Lot 2 is approximately 60,000 square feet in size in the Rural Residential District with the 50-foot buffer “borrowed” from the Highland Conservation District. They said the plans show the “building envelope,” which means that the house could be located anywhere within that box and would meet all setback and other requirements.

The applicants stated that existing access to Ms. Burns’ residence and other residences along Browns Mill Road is via a 30-foot Right-of-Way. That access was recently approved by the Select Board as a private road since it serves multiple residences. That private road is maintained by the residents, not the Town of Berlin. Access to Lot 2 is provided via a 50-foot Right-of-Way from Ms. Burns’ property and would only serve one residence (Gabaree and Wilder). The applicants indicated that the Mylar/Plat is being prepared.

The Board reviewed the criteria for Final Plan Review of a subdivision and noted that state statute governing plat requirements has been amended since the effective date of the town’s subdivision regulations. The applicants have presented soils data, site location, sketch map, natural features, and other data required for Final Plan Review.

Mr. Schulz reminded the applicants that a permit would be needed to begin construction on the house. The applicants plan to build next year.

Based on the documents presented and testimony heard, Ms. Morse made a motion, seconded by Mr. Manley, to close the hearing in the matter of Application 07-073. The Board reminded the applicant that a recordable Plat/Mylar had to be submitted within six months. The question was called and the motion passed unanimously.

- B. 07-087 - Craig and Tonya Guthrie** submitted an application for a waiver of the front yard setback to build a garage. The property is located at 69 Penny Lane, Berlin, in the Rural Residential District, Tax Map R10-9C. Craig Guthrie and Tonya Guthrie were sworn in to give testimony on this matter.

Ms. Morse noted that she owns a house on Muzzy Road, which is across the road. She said she did not receive a notice as an abutter and does not have a conflict of interest. No one expressed any objections.

The following documents were submitted and admitted as exhibits. **Exhibit #1:** Application for Zoning Permit, 07-087, dated September 12, 2007; **Exhibit #2:** Aerial view photograph showing lot, roads, grade of property, etc.; **Exhibit #3:** Two photographs of existing house and lot; and **Exhibit #4:** Map showing roads, setbacks to property lines, abutting properties, existing and proposed structures, etc.

Ms. Guthrie explained that they want to build a 28-foot by 26-foot garage and need a 15-foot waiver of the front yard setback. The proposed garage would be located immediately left of the driveway, angled slightly, and would result in a 35 foot front yard setback. She said their builder suggested positioning the garage at an angle for easier access. She explained that due to the shape of their lot and its steep slope (approximately two acres), that this would be the best place to locate the garage.

Ms. Guthrie said they live on Penny Lane, a private road, which is off Muzzy Road. She said they own down to Muzzy Road, which is quite steep and not practical for building. She said to locate the garage in the back would be downhill and could impact abutting neighbors and their septic system. The applicants said the distance was measured from the edge of the traveled portion of the road/highway. The private road is commonly owned by residences along it. The applicants said they belong to a homeowners association that pays to maintain Penny Lane.

The Board confirmed that the matter could be considered as a waiver (Section 5.08) versus a variance (Section 5.07), since it pertains to a single family dwelling on an existing lot. Section 5.08 (A) (2) states, "A structure may encroach into a required front setback up to a distance equal to 50% of the front setback requirement of the district. In no event shall a structure have a front setback of less than twenty feet from a property line and twenty feet from a street line and in no case shall it be within ten feet of a right of way." The Board noted that it must question whether there is any reasonable opportunity to meet the requirements.

The applicants indicated that if the garage was pushed back 10 feet it would be at the steep slope and could interfere with the septic system. They said the bank drops off severely and the photos showed it; the area was not mowed. If the angle of the garage were rotated it would still not meet the 50-foot front yard setback requirement and would block the view from their picture window. The applicants said that locating the garage anywhere on that side of the house would require a waiver. The other side of the property has a steep slope and would require removing a large pine tree. They were unsure of the exact location of the waterlines coming from the common well, which is shared among the six owners. They said their neighbors were notified of their proposed structure as it was mentioned at their last homeowner's association meeting. They said no one expressed any objections.

Although the plans presented were not to scale, it was assumed that the road width of Penny Lane was not greater than 20 feet. The traveled portion of Muzzy Road is probably 20 feet, and it is wider than Penny Lane. According to their calculations, the location of the garage would be about 20 feet from the Right-of-Way. It was determined that the proposed location of the garage would be greater than 10 feet from the Right-of-Way.

Mr. Schulz said letters were sent to the Berlin Police, Fire, and Highway departments. No concerns were raised by any of the departments. The applicants were advised that the information with regard to location of waterlines, etc. would be on file with the Town.

The Board noted that consideration of requests for waivers under Section 5.08 required review of Conditional Use Criteria. The only criteria that applied to this application were setback requirements and municipal services impact evaluations, which were addressed above. All other criteria are not applicable to this application pertaining to a residence.

Based on the documents presented and testimony heard, Ms. Morse made a motion, seconded by Mr. Manley, to close the hearing in the matter of Application 07-087. The question was called and the motion passed unanimously.

3. Pubic Comment.

4. The Chairman called for approval of the Minutes of the September 18th meeting. On page one, it was clarified that Ms. Fortier was present but was not sworn in nor did she offer testimony. The wording in the parenthesis (painted not curbed) was deleted in the last paragraph. The 2nd to the last sentence in the last paragraph was deleted. On page 2, the 6th sentence in the 2nd paragraph was amended to read: They are widening the access road by two feet for a total of 24 feet and the shoulder would taper back into the pavement edge.

Ms. Morse made a motion, seconded by Mr. Hurley, to approve the Minutes of the September 18, 2007 meeting as corrected. Motion passed unanimously.

5. Other Business

6. Status of Findings.

The Board voted to go into deliberative session at 7:58 p.m. and out at 8:54 p.m. to discuss the status of Findings. The Board's decision with regard to (closed) adjourned applications will be reported in its Findings.

7. The next meeting of the Development Review Board is scheduled for **Tuesday, November 6, 2007**. The following meeting is scheduled for **November 20, 2007**.

8. There being no further business, the meeting was adjourned at 8:56 P.M.

Respectfully submitted,

Carla Preston
Recording Secretary
Town of Berlin