

**DEVELOPMENT REVIEW BOARD**  
**UNAPPROVED MINUTES**  
**Meeting of TUESDAY, JANUARY 22, 2008**

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

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

Staff present: Jeffrey Schulz, Town/Zoning Administrator and Carla Preston, Recording Secretary.

Others present: Damartin Quadros, Susan Quadros, Brian Baker, Michael Herring, and William MaGill, Esq.

The Board advised attendees of its Policy and definition of party status and interested persons.

2. New Business

- A. **07-102 – John and Maria Quadros** submitted an application for site plan review to tear down an existing building and build a new building to create restaurant space. The property is located at 571 US Route 2, Berlin, in the Commercial Zoning District, Tax Map U2-24. Damartin Quadros and Brian L. Baker were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Zoning Permit, 07-102, dated December 21, 2007; **Exhibit #2:** Proposed Improvements Site Plan, C1, dated December 20, 2007, prepared by Dufresne & Associates, P.C.; **Exhibit #3:** Proposed Grading Site Plan, C2, dated December 20, 2007, prepared by Dufresne & Associates, P.C.; **Exhibit #4:** Miscellaneous Details, C3, dated December 20, 2007, prepared by Dufresne & Associates, P.C.; **Exhibit #5:** Zoning Permit Narrative, which also addresses site plan review criteria, dated December 20, 2007; **Exhibit #6:** December 13, 2007 letter from Dufresne & Associates, PC, to the Vermont Agency of Transportation (VTrans), Rail Section, Operations Division, regarding the proposed project (demolish Pride Inc. building and build a new Dunkin Donuts shop); **Exhibit #7:** December 13, 2007 letter from Dufresne & Associates, PC, to the Vermont Agency of Transportation (VTrans), Utilities and Permits, regarding the project; **Exhibit #8:** December 12, 2007 letters from Dufresne & Associates, PC to the Berlin Fire and Police Departments, and the December 13<sup>th</sup> letter to the Berlin Sewer Commission describing the proposed project and requesting input on potential the impact on Town services; **Exhibit #9:** December 12, 2007 list of property owners for and around the Pride Inc. site; and **Exhibit #10:** December 15, 2007 Email response from Lawrence Donna at VTrans to Brian Baker regarding the proposed project.

Brian Baker with Dufresne & Associates, PC and Damartin Quadros said the proposal is to relocate the existing Dunkin Donuts shop located at the Simon's gas station to the site currently occupied by Pride, Inc. (formerly VTrans District 6 Office). They propose to demolish the current building and replace it with a new 1600 square foot Dunkin Donuts shop. They indicated that this proposal is a different plan than previously submitted. The proposed building has been repositioned to improve access throughout the site and to develop a drive-through lane around the building.

The applicants said they propose to add a curb cut to allow one-way traffic within the site. The existing curb cut would be used to exit the site. They noted that with the repositioning of the building, the side and rear yard setbacks would now meet the 25 foot requirement. The applicants indicated that the proposed front yard setback might be about 30 feet at best when measured from the traveled portion of the highway. They said they are requesting a variance for the front yard setback.

The Board verified that the applicants are now requesting a variance for the front yard setback and two entrances (curb cuts) instead of one. The applicants were advised that the variance criteria outlined in the statute are very strict and often difficult to meet. Even though this is an existing small lot, they would not qualify for a waiver because it involves commercial, not residential, property.

The applicants verified that they have discussed the proposed project with VTrans and have submitted the permit applications. The Agency of Transportations' Railway and Stormwater divisions are currently reviewing their application(s). They said VTrans is waiting for the Town's recommendation from this meeting. They reported that the Berlin Police Department had expressed no concerns and was in support of the project.

The applicants explained that the proposed building was oriented such that it would allow for better traffic flow and protect pedestrians from the traffic in the drive through lane. They are proposing the required 11 parking spaces based on the formula.

The Board indicated that this matter must be re-warned to include the applicant's request for a variance. The request for variance can be concurrent with the site plan review. The applicants were advised to review the variance criteria on page 56 of the regulations and be prepared to address all applicable criteria. The Board also noted that it would need a statement (letter of intent) from VTrans regarding the approvability of the proposal.

Ms. Morse made a motion, seconded by Mr. Manley, to recess Application 07-102 to be re-warned to include a request for a variance. Ms. Morse amended her motion to include the need for a response or letter of intent from VTrans. Mr. Manley seconded the amended motion. The question was called and the motions passed unanimously.

- B. 07-103 – Michael, Sally, Sarah, and Muriel G. Herring** submitted an application to rebuild an existing barn positioned in the flood plain. The property is located at 4642 VT Route 12, Berlin, in the Rural Residential Zoning District, Tax Map R9-012. Michael Herring and his Attorney, William MaGill, were sworn in to give testimony on this matter.

Ms. Morse recused herself from this matter. Mr. Hurley noted that he had had a brief discussion with Mr. Herring about this issue and advised him to apply. No one expressed any objections to Mr. Hurley serving on the Board for this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Zoning Permit, 07-103, dated October 22, 2007; **Exhibit #2:** December 10, 2007 Narrative from Attorney William M. MaGill, addressing applicable criteria; and **Exhibit #3:** May 2, 2007 letter from Zoning Administrator, Andrea Silbermann, to Michael Herring concerning Accepted Agricultural Practice (AAP) regulations and construction activity in the flood way.

Mr. MaGill said he discussed the matter with former Zoning Administrator Andrea Silbermann but nothing was in writing. Reference was made to Ms. Silbermann's May 2, 2007 letter concerning Accepted Agricultural Practice (AAP) regulations and construction activity in the flood way. Mr. MaGill said there are currently three different buildings on this property, four including the house, which have existed since the 1960s. He described the structures in question as one barn and a couple of sheds. He said the barn is used for agriculture purposes and they are not proposing any change in use. He said the buildings are in poor shape and will fall down if not replaced. Mr. MaGill said Ms. Silbermann found that this matter did not qualify under the Accepted Agricultural Practice regulations. The applicants noted that Ms. Silbermann had visited the site.

The applicants said the new buildings would have the exact same footprints. They are not enlarging any of the buildings. Mr. Herring said the sheds have no foundation. He said he would like permission for a concrete foundation for the sheds should he decide to do it. He said the barn has a concrete floor and indicated that that foundation would remain. The barn is offset but is just one building. The replacement of that building would no longer protrude where the milkhouse was located, thus it would be smaller than the existing building. Mr. Herring said one building near the edge of property line is owned by Paul Irons.

The Board noted that according to the regulations, the Town is obligated to notify the State, Agency of Natural Resources, about an application located within a flood hazard district. There is no evidence that that was accomplished. The Town is obligated to give the Agency of Natural Resources, 30 days notice and ask for comment.

The Board decided to hear the applicant and to notify the State allowing 30 days in which to provide comment. It was acknowledged that the State was notified in the sense that the applicants were going to file an application but they did not file one.

The Board asked the applicants to address the Flood Hazard Review criteria and reviewed the written responses that addressed them. The Board asked if the structures were located within the floodway or within the floodplain. Structures located within a floodway have the potential of impacting others, thus are held to a higher standard of care.

The applicants said they do not know the elevations at the site as no survey was prepared. There was mention of a previous water impact study.

Jeff Schulz indicated that the flood way and flood boundary maps show the property as being located within the 100-year flood plain. The applicants have a copy of an aerial photo and approximate location of the road and river.

Mr. Herring said his mother is 91 and reported that she has never seen the barn flooded. The location of the shed is on higher ground than the barn. He said there is about a 30 foot drop to the river near the barn. He said the field does flood, but it does not flood by the barn. He said he and his mother lived there in 1973 and indicated that the barn did not flood.

The Board noted that it would have been beneficial to have had the elevations about sea level. Using the State map, which is based on the USGS maps, is not reliable and could easily be off by 30 feet or more. The Board noted that the applicant's testimony is that the area has never been flooded. The Board indicated that the 1973 flood was close to the 100-year flood of 1927. The buildings pre-existed zoning and there is no change in the footprint of the structures.

Mr. MaGill said he did not believe elevations were required since the buildings were pre-existing. He noted the definition of what constitutes flood plain substantial improvement, agriculture and forest exclusive of structures. The applicants were unsure of the market value but indicated that the barns to be replaced were ready to fall down, thus it would exceed 50% of the market value. Mr. MaGill said they did not need a permit from the Department of Agriculture because the buildings existed prior to any regulations. He said state approval was not explored according to his conversation with Ms. Silbermann.

Mr. Herring said he is also reducing the height of the barn from about 45 feet tall existing to 28 feet tall proposed. He is constructing the barn himself, and estimates the cost at about \$75,000. He said he was not aware of the flood plain delineation before. He said he is not interested in obtaining flood insurance because he has never been flooded. He said the existing barns have power and noted that the new barns will also have electricity.

In an effort to determine which criteria were applicable, the group again reviewed the applicant's proposal. Mr. Schulz noted that the applicant proposes to remove existing structures and replace them utilizing the same foundation (section 501B) or footprint. The replacement structure for the barn would be reduced in size and in height. It appeared that replacing the same size or smaller structures only needed a permit since it falls within the floodplain.

The Board concluded that the ordinance was not clear. One section indicated that DRB approval was required and another indicated that a permit was not needed if replacing exact or less. The regulations state that improvement of buildings must be approved by the DRB. The Board again noted that it would have been helpful to have an elevation on the building.

The group reviewed new mapping presented by Chariman Wernecke which has not yet been adopted. It appeared that the benchmark was on the ridge, near his neighbors, the Bennetts. It appeared from the new maps that two structures were located in the floodway at about 549.5 feet in elevation.

The Board stated that Mr. Herring's neighbors, the Bennett's had the area surveyed and noted that Land Surveyor, Greg DuBois prepared that survey. The Board suggested that the applicants contact Mr. DuBois, another land surveyor, or a professional engineer, to obtain the elevation. It would be best to demonstrate that the buildings are above the 100 year flood plain elevation.

Mr. MaGill indicated that they would also obtain an Affidavit from Mr. Herring's mother, Muriel Gladys Herring and neighbors regarding flooding in the area.

Mr. Herring said he does have a gas fuel tank located at/near the barn. He said he has not used it in 20 years and does not plan to move it around. He said if he receives a permit he will secure the gas tank (250 gal).

The Board referred to Section 508 regarding floodproofing. The Board is charged with minimizing damages, thus structures must be above the 100 year flood plain in elevation and reasonable efforts must have been made to become flood-proofed. The Board will notify the State to meet its obligation and give them an opportunity to comment.

Mr. LaGue made a motion, seconded by Mr. Hurley, to recess Application 07-103 to March 18, 2008. Based on the testimony heard, the Board indicated that it was not necessary for the applicants to contact or obtain approval from the Vermont Department of Agriculture. The question was called and the motion passed unanimously.

3. Pubic Comment.

4. The Chairman called for approval of the Minutes of the November 5, 2007 meeting. The Minutes were corrected to show that Attorney David Sunshine was present for his client, Brad Slayton. Mr. Hurley made a motion, seconded by Mr. Manley, to approve Minutes of the November 5, 2007 meeting as corrected. Motion passed unanimously.

5. Other Business

Mr. Schulz informed the Board of an upcoming seminar sponsored by the Vermont League of Cities and Towns on the topic of writing effective Findings of Facts and Conclusions. Members of the Board and Ms. Preston were encouraged to attend.

6. 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, February 5, 2008.**

8. There being no further business, the meeting was adjourned at 8:51 P.M.

Respectfully submitted,

Carla Preston  
Recording Secretary  
Town of Berlin