

**TOWN OF BERLIN
DEVELOPMENT REVIEW BOARD
108 SHED ROAD
BERLIN, VT 05602**

Findings of Facts and Conclusion

A. Background

1. Application Number: **07-056**
2. Property Owner(s): ***Deborah Blanchard***
3. Applicant (If Different):
4. Brief Description of Request: The applicant submitted an Application for Conditional Use Review to replace and expand an existing garage on a non-conforming lot.
5. Date Application Filed: **June 18, 2007**
6. Publication and Posting Information: **Posted: June 29, 2007**

B. Hearings, Witness Testimony, Evidence

1. Hearings, Site Visit and Public Meeting Information: **A hearing was held on July 17, 2007.**
2. List of Persons Present at the Public Hearing(s): **July 17, 2007:** Members present and voting on this matter: Robert J. Wernecke, Chairman, John Hurley, Vice-Chair, Muriel I. Morse, Henry A. LaGue, Jr., and Paul Irons, Alternate.

Others present: Deborah Blanchard, Michael Entrott, Peter Cross, Dereck Woolridge, Jennifer Conley, Rosalyn Holderfield, Paul Gillies, Shirley Fortier, Debra Allen, Burnie Allen, John Kerekes, Fred Budzyn, Bethany Budzyn, Arthur Newhouse and Mel Huff with the Times Argus.

3. List of Witnesses Who Gave Testimony: **July 17, 2007:** Deborah Blanchard and Michael Entrott.
4. List of Documents Presented as Evidence by Any Person:
 - a. Application submitted by the applicant on June 18, 2007.
 - b. Warnings of Public Hearings as follows: Posted, June 29, 2007.
 - c. Appeal Notice to Zoning Administrator: Not applicable.
 - d. List of Plans: Sketches of the property showing existing and proposed structures, setbacks, brook, roads, etc.

The following documents were submitted and admitted as exhibits:

Exhibit #1: Application For Zoning Permit dated June 18, 2007;

Exhibit #2: Sketches of the property showing existing and proposed structures, setbacks, brook, roads, etc.;

Exhibit #3: The Applicants June 17, 2007 statement addressing Conditional Use Review Criteria;

Exhibit #4: Copies of the applicant's letters to the Berlin Volunteer Fire, Police and Highway Departments requesting an impact statement;

- e. Written Comments from Other Municipal Boards:

Exhibit #5: June 26, 2007 letter from the Berlin Volunteer Fire Department stating minimal impact;

Exhibit #6: July 10, 2007 letter from Berlin Highway Department stating minimal impact;

B. Hearings, Witness Testimony, Evidence - continued

- f. Written Comments from State or Federal Agencies: None.
- g. Written Comments of any Other Witness:

Exhibit #7: Zoning Administrator's Report for DRB meeting July 17, 2007.

5. Testimony:

Ms. Morse indicated that she owns property that abuts the applicant's. She said she would recuse if the applicants wished, but believed she could act fairly and impartially on the matter. No one objected to Ms. Morse serving on the Board for this application.

Ms. Blanchard said the existing garage is 18 inches from the brook. She said there are currently erosion problems, which are worsening. They want to tear down the existing porch and one car garage and build a new single story two-car garage located further away from the brook. They would like to move the garage forward so that it is at least six feet from the brook, which would make the front yard setback to the garage at 21 feet. She said the existing garage is in poor condition. The front yard setback for the house is eight feet. Other setbacks are met for the district. She explained that the driveway would become shorter with these proposed changes. She said there would still be ample room for fuel and propane deliveries.

Mr. Noyes said it is a pre-existing non-conforming lot and the setbacks do not meet the current requirements. Since they wish to replace and expand an existing non-complying structure, DRB review is required. He said it is located within a stream protection area, also requiring DRB review. He said impact statements have letters obtained from the Berlin Fire, and Highway Departments. Mr. Noyes took photographs of house and garage. He said the site washed out in 1989, noting that there are culverts below and above this home.

Ms. Blanchard said they had some problems with their driveway washing away because the culverts had not been cleaned out. Mr. Entrott said the Town has since cleaned out the culverts and added ditching further up stream, which took care of the problem. They said they have received a response from the Police Department stating no impact and would provide a copy to the Board/Zoning Office.

The applicants said they have made improvements to the stream with the guidance of Patrick Ross from the Agency of Natural Resources. The excavation improved the flow of the water through the property and helped secure the surrounding land.

The Board noted that according to the regulations, it has the authority to grant up to 50 percent of a setback requirement, which in this case would be 25 feet. The Board noted that the issues concerning this application include, a pre-existing lot, expansion of a non-conforming structure, stream protection and setbacks.

Ms. Blanchard and Mr. Entrott explained that if they move the garage back to meet the 50% setback it would only be two feet from the brook. They said they could not locate it closer to the house due to snowfall off the house roof and interference with the entryway. They said it would also be more costly because they would need frost walls versus a slab on grade. It would be difficult and more costly to connect the rooflines if the garage were moved closer to the house. They said they would move the garage back closer to the brook if it was the only option, but are concerned about the brook. A shed has already been removed, which was falling into the brook.

The applicants said that bicycle and pedestrian access, hours of operation, and utilization of renewable energy resources do not apply to this single-family residence. Ms. Blanchard stated that there has been no determination that her residence is located within a flood hazard area, thus is also not applicable.

B. Hearings, Witness Testimony, Evidence - continued

6. Minutes of Meetings/hearings held on July 17, 2007 were prepared and filed with the Town Clerk and Zoning Administrator (copy for file).

C. Applicable Law and Criteria

- a. Applicable ordinances in effect at time of Application are the Town of Berlin Zoning Regulations, latest revision June 21, 2005.
- b. Town/City Plan: Town of Berlin Municipal Plan adopted June 21, 2005.
- c. Criteria that must be met under all applicable Ordinances or Plan. Town of Berlin Zoning Regulations: Article II, Establishment of Zoning Districts, Table 2.03 Rural Residential (R-40) District; Article III. General Regulations, Section 3.05 Existing Small Lots, Section 3.11 Non-Conforming Uses & Structures, and Section 3.14 Stream Protection, and Article V. Development Review Process, Section 5.06 Conditional Use Review and Section 5.08 Waivers.

D. Findings of Fact

1. The property is located at 560 Muzzy Road, in the Rural Residential (R-40) District, Tax Map R10-12.
2. The Applicant submitted an Application for Conditional Use Review to replace and expand an existing garage (24 feet by 24 feet) on a non-conforming lot. The existing 14-foot by 22-foot garage and 8-foot by 20-foot porch would be demolished.
3. This is an existing small lot, which does not meet the 50-foot minimum front yard setback and is located within the Stream Protection Area.
4. The front yard setback to the existing house is eight feet and the existing garage is approximately 18 inches from the brook/stream. The side and rear yard setbacks are currently met, and would be met for the district with the proposed new structure.
5. The proposed front yard setback to the new garage would be 21 feet and six feet from the brook/stream. The proposed front yard setback at 21 feet would be less than 50 percent of the required setback for the district.
6. Improvements to the stream have been made in conjunction with the Agency of Natural Resources.
7. The proposed building (garage) cannot be located elsewhere on the property due to the proximity of the brook/stream, snowfall off the house roof and interference with the entryway.
8. Section 3.14 (B) Stream Protection provides the Board the authority to grant an exception to the 75-foot buffer strip provided that all existing vegetation is retained to the extent feasible and placement of structures will minimize impacts to the riparian buffer. This is an existing small lot, which has had an existing structure or structures located within two feet of the edge of the brook/stream. The applicant has made improvements to the stream, which improved the flow of the water through the property and helped secure the surrounding land. The proposed relocation will reduce the impacts to the riparian buffer.

E. Conclusion of Law

1. Reference applicable ordinance: Town of Berlin Zoning Regulations, latest revision June 21, 2005.
2. Reference applicable sections: Town of Berlin Zoning Regulations: Article II, Establishment of Zoning Districts, Table 2.03 Rural Residential (R-40) District; Article III. General Regulations, Section 3.05 Existing Small Lots, Section 3.11 Non-Conforming Uses & Structures, and Section 3.14 Stream Protection, and Article V. Development Review Process, Section 5.06 Conditional Use Review and Section 5.08 Waivers.
3. Address any interpretations made: The Board found that Title 24, V.S.A, Section 4414(8) and Section 5.08(A)(2), Waivers of the Regulations, authorize it to grant front yard waivers of up to a distance equal to fifty percent of the front yard setback requirement of the district.

The Board concluded that the front yard setback must be a minimum of 25 feet, which is 50% of the required setback for the district (50 feet). The Board recognizes that the proposed structure would then be located only two feet from the brook/stream versus six feet.

F. Decision

1. Apply Findings of Fact and Conclusions of Law: Based upon the evidence presented, the Board concluded that the applicant addressed the requirements under the provisions pertaining to this application.
2. State Decision: Based on evidence presented and testimony heard, the Development Review Board hereby **APPROVES** Application number 07-056 subject to the condition listed below.
 - The front yard setback for the proposed garage must be 25 feet, which is 50% of the minimum requirement for the district.
3. Signatures: See signature page.

Appeal rights:

You have the right to appeal this decision to the Vermont Environmental Court, pursuant to 24 V.S.A. § 4471 and V.R.C.P. 76, in writing, within 30 days of the date this decision is issued. The fee is \$150.00. If you fail to appeal this decision, your right to challenge this decision at some future time may be lost because you waited too long. You will be bound by the decision, pursuant to 24 V.S.A. § 4472 (d) (exclusivity of remedy; finality).

Town of Berlin
Development Review Board
108 Shed Road
Berlin, Vermont

Findings of Facts and Conclusion
In the matter of 07-056
Deborah Blanchard

SIGNATURE PAGE:

Date:

For the Development Review Board

Robert J. Wernecke, Chairman