

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

**Findings of Facts and Conclusion**

**A. Background**

1. Application Number: **07-078**
2. Property Owner(s): **James A. Stacey**
3. Applicant (If Different):
4. Brief Description of Request: The applicant submitted an Application for Conditional Use Review to replace and enlarge a non-conforming structure.
5. Date Application Filed: **August 13, 2007**
6. Publication and Posting Information: **Posted: August 20, 2007**

**B. Hearings, Witness Testimony, Evidence**

1. Hearings, Site Visit and Public Meeting Information: **A hearing was held on September 4, 2007.**
2. List of Persons Present at the Public Hearing(s): **September 4, 2007:** Members present and voting on this matter: Robert J. Wernecke, Chairman, John Hurley, Vice-Chair, Muriel I. Morse, and Robert G. Manley.

Others present: James Stacey and Margaret Stacey.

3. List of Witnesses Who Gave Testimony: **September 4, 2007:** James Stacey and Margaret Stacey.
4. List of Documents Presented as Evidence by Any Person:
  - a. Application submitted by the applicant on August 13, 2007.
  - b. Warnings of Public Hearings as follows: Posted, August 20, 2007.
  - c. Appeal Notice to Zoning Administrator: Not applicable.
  - d. List of Plans: Sketches of the property showing the location of the existing and proposed mobile homes, access, stream, well, onsite wastewater system, setbacks, etc.

The following documents were submitted and admitted as exhibits:

**Exhibit #1:** Application For Zoning Permit dated August 13, 2007;

**Exhibit #2:** Sketches of lot showing the location of the existing and proposed mobile homes, access, stream, well, onsite wastewater system, setbacks, etc.;

**Exhibit #3:** Floor Plan of proposed modular home;

**Exhibit #4:** Applicant's statement with regard to Sewage Disposal Approval;

**Exhibit #5:** Applicant's statement addressing Conditional Use Review Criteria;

**Exhibit #6:** List of abutting property owners;

**Exhibit #7:** August 10, 2007 letter from the applicant "To any and all concerned parties" requesting a municipal impact statement;

- e. Written Comments from Other Municipal Boards:

**Exhibit #8:** August 21, 2007 letter from the Berlin Volunteer Fire Department stating minimal impact;

**B. Hearings, Witness Testimony, Evidence** - continued

**Exhibit #9:** August 15, 2007 letter from Berlin Highway Department stating minimal impact;  
**Exhibit #10:** August 14, 2007 letter from the Berlin Police Department stating no adverse impact;

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

**Exhibit #11:** Zoning Administrator's Report for DRB meeting September 4, 2007.

5. Testimony:

Ms. Morse stated that her sister is related to the applicants (Her sister is married to the applicant's brother.). No one expressed any objections to Ms. Morse serving on the Board.

James Stacey said he is the owner of the property, on which two mobile homes currently exist. There are two separate residences on this property, which have been there for 30 plus years. He said he wants to demolish one singlewide 12 foot by 60-foot mobile home and replace it with a three-bedroom ranch style structure (modular home) with a full basement. He said there would be no changes in water or sewer. The total number of bedrooms would not change. The existing sewage disposal system has been inspected by an engineer and approved by the State. Both homes are now and would be 75 feet or greater from the stream.

Mr. Schultz, ZA said he visited the property and noted that it is accurately portrayed on the plans/sketches. He said it must be approved by the DRB because the replacement home would be larger than the existing residence. He explained that the nonconformity is based on two existing homes on one lot. Currently, the front yard setback is not met, but it would be met for the proposed replacement home.

Margaret Stacey said they applied for and received a waiver for the porch, which made the front yard setback 42 feet. The new mobile home would meet all setbacks. The lot size is 1.5 acres. She verified that there have been two mobile homes on that site for approximately 35 years. She said she now lives in the 14 foot by 52-foot mobile home, which replaced an older home and her son James, lives in the other one.

Ms. Stacey said the common septic system and water supply were installed with plans for two dwellings. She said it was done above standard and based on seven people living in them at the time. She said they have had no problems with water supply or with the septic system.

Mr. Stacey said he would be increasing the size of the home by about 400 square feet. He said there are no other impacts.

The Board clarified that the applicants are asking for Conditional Use Review under Section 3.11 Non-Conforming Uses & Structures and not for a permitted use under Section 3.09, Lot and Yard Requirements regarding accessory dwellings. The lot is non-complying based on the fact that two dwellings exist on one lot.

The applicants addressed the Conditional Use Review Criteria most of which was not applicable to this application.

- a. ***Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.*** Mr. Stacey indicated that no modification to the existing driveway and walkways are being proposed.

**B. Hearings, Witness Testimony, Evidence** - continued

- b. *Adequacy of circulation, parking, and loading facilities.* Not applicable for this residential lot.
  - c. *Bicycle and Pedestrian Access.* Not applicable for this residential site.
  - d. *Adequacy of landscaping.* Not applicable for this residential lot.
  - e. *Hours of Operation.* Not applicable for this residential lot.
  - f. *Setbacks.* The applicant indicated that setbacks would be improved and all met based on this proposal. The mobile home with the existing porch that created the 42-foot front yard setback would be demolished. The new modular home would be located so that all setback requirements are met. Both mobile homes would be at a distance of 75 feet or greater from the stream.
  - g. *Adequacy of Exterior lighting.* Not applicable for this residential lot.
  - h. *Stormwater and Drainage.* Not applicable for this residential lot.
  - i. *Utilization of renewable energy resources.* Not applicable for this residential lot.
  - j. *Municipal services Impact Evaluation.* The applicant has received letters from the Berlin Fire, Police and Highway Departments, all of which stated no adverse impacts.
  - k. *Flood Hazard Review.* Not applicable.
  - l. *The Character of the Area Affected; Neighboring Uses.* The applicant indicated that the character of the area and neighboring uses are all of a residential nature.
  - m. *Bylaws Then in Effect.* The lot is non-complying due to the fact that two dwellings exist on one lot. This condition predates the Bylaws.
6. Minutes of Meetings/hearings held on September 4, 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 3.11 Non-Conforming Uses & Structures, and Section 3.14 Stream Protection, and Article V. Development Review Process, Section 5.06 Conditional Use Review.

**D. Findings of Fact**

- 1. The property is located at 1601 Jones Brook Road, Berlin, in the Rural Residential (R-40) District, Tax Map R8, Lot 45.

**D. Findings of Fact** - continued

2. The Applicant submitted an Application for Conditional Use Review to replace one singlewide 12 foot by 60-foot mobile home, and enlarge the non-conforming structure by 400 square feet with a three-bedroom ranch style structure (modular home) with a full basement.
3. The approximate 1.5 acres lot is located within two towns, one acre within the Town of Berlin, and the remaining acreage within the Town of Moretown. Both of the existing mobile homes are located within the Town of Berlin.
4. Two separate residences have existed on this lot for approximately 35 years.
5. The Lot size (1.5 acres) is not large enough to allow two homes under the current zoning regulations. The lot is non-complying due to the fact that two dwellings exist on one lot. This condition predates the Bylaws.
6. The proposed replacement modular home would meet all setback requirements, which is an improvement to current conditions. The porch and mobile home to be replaced does not currently meet the 50-foot minimum front yard setback.
7. Both residences would meet the 75-foot riparian buffer strip for the protection of the stream.
8. There are no changes to access, water, or onsite wastewater.
9. The total number of bedrooms would not change.

**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 3.11 Non-Conforming Uses & Structures, and Section 3.14 Stream Protection, and Article V. Development Review Process, Section 5.06 Conditional Use Review.
3. Address any interpretations made: The Board clarified that the applicants are asking for Conditional Use Review under Section 3.11 Non-Conforming Uses & Structures and not for a permitted use under Section 3.09, Lot and Yard Requirements regarding accessory dwellings. The lot is non-complying based on the fact that two dwellings exist on one lot.

**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 07-078 as submitted.
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 07-078**  
*James A. Stacey*

**SIGNATURE PAGE:**

Date:

**For the Development Review Board**

---

Robert J. Wernecke, Chairman