

**DEVELOPMENT REVIEW BOARD**  
**UNAPPROVED MINUTES**  
**Meeting of TUESDAY, SEPTEMBER 18, 2007**

1. The meeting was called to order at 7:05 PM.

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

Staff present: Jeff Schulz, Zoning Administrator and Carla Preston, Recording Secretary.

Others present: Paul Gillies, Esq., Peter E. Noyes, Heather Burns, Verna Gabaree, Jennifer Conley, Peter Cross, Derek Woolridge, Duane Wilder, John Kerekes, Rusty Newhouse and Shirley Fortier.

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

2. New Business

**07-048 – JKL Limited Partnership** submitted an application for Site Plan Review to demolish a portion of an existing building and to construct a new building (totaling 134,389 square feet) and parking area. The property is located on Ames Drive, in the Highway Commercial (HC) District, Tax Map U3-4. The following persons were sworn in to give testimony on this matter: John Kerekes with McCarthy Kerekes, LLC [The Home Depot]; Peter Cross, P.E. and Dereck Woolridge, P.E. with Cross Consulting Engineers, P.C.; Jennifer Conley, P.E. with Conley Associates, Inc.; Paul Gillies, Esq. for the applicant, Arthur Newhouse, abutter, and Shirley Fortier with the Berlin Bike Path Committee. This matter was recessed from the July 17, 2007 and August 21, 2007 meetings.

The following documents were submitted and admitted as exhibits. **Exhibit #45:** Plans, R-1, Intersection Sketch, prepared by Cross Consulting Engineers, PC, dated September 6, 2007, with revisions September 17, 2007; and **Exhibit #46:** Plans, R-2, Truck Turning Movements, prepared by Cross Consulting Engineers, PC, dated September 6, 2007, with revisions September 17, 2007.

Jennifer Conley reported that they had a meeting with representatives of the Vermont Agency of Transportation (VTrans) this morning. She said that VTrans had no issues with the plan in concept. She said Del Thompson and others were not in favor of the crosswalk at this time for safety reasons. Since there are no sidewalks on the other side of the road to connect to, VTrans wanted them to wait until the bike path was completed. She said VTrans suggested that they put funds aside and add the crosswalk when the bike path is in existence. She said they would show the future location of the crosswalk on the plans.

Ms. Conley again went over her Queue Table for the traffic light with existing, build, no build, and build with mitigation conditions. She said it is the same information from her analysis sheet which was included in her report. She said it outlines the different queue lengths for left turns for those conditions. She said the left turn lanes would allow about 255 feet storage for vehicles to the railroad tracks.

Derek Woolridge said they have enhanced and revised the intersection plans regarding access to Kinney's. He said the solution is between the landlord of the property and tenants. He said it is a verbal agreement now, not in writing. He explained that the only change to the proposed plan would be to extend the island (painted not curbed) past the Kinney's entrance. This means that vehicles would have to come up to further to get into the lane. It would eliminate left turns out of Kinney's. He said proper signage would encourage people to go out the back entrance by Kinney's.

The applicants said they would relocate the existing hydrant to the grassed area. The replacement pylon sign would be placed in the same location. The proposed pavement would be the same. Additional dimensions are provided, but no shoulder dimension. The existing shoulder varies along Route 302, which is shown as the dashed line on the plans. The shoulder is about eight feet near the railroad and three feet at the intersection. They reported that VTrans wants wide shoulders (four to five feet wide) along that Route and they are working out those issues with them. There are site constraints, which include the Right of Way width and the existing guardrail along that Route.

The applicants said the final design will confirm those dimensions. They cannot build without a permit from VTrans. The applicants asked the Board if it could impose conditions subject to approval from VTrans for offsite improvements. They said they are not proposing curbing all the way, some of it currently exists. They said that VTrans had no objections to the 11-foot wide lanes. They are widening the road by two feet for a total of 24 feet and the shoulder would taper back into the pavement edge. There would be no line striping on the access road with the exception of a center line. It would be all the same, two 12-foot wide lanes, with no shoulder, just tapering through the radius for what's existing. The entrance is 2 11-foot wide lanes with no shoulder, which is the narrowest point. The property lines are parallel, so they could make it wider if the Board required it. The applicants said they feel that the 11-foot wide lanes would be acceptable with the speed of traffic.

The Board noted its concerns about no shoulder with 11-foot wide lanes.

The applicants said they chose 11-feet because it currently exists. Their survey findings show that 10-foot wide lanes without a shoulder are acceptable. They said that since JKL owns both properties they are not constrained by it and could provide a two-foot shoulder that wraps around Kinney Drugs. They agreed to change to, two 11-foot lanes with a two-foot wide shoulder. They reported that truck access to Kinney's is infrequent and is adequate. They use smaller tractor trailer trucks with shorter boxes for deliveries.

The applicants walked through turning movements for trucks, size B57 with a 53-foot trailer, which is the largest truck and trailer permitted on state roads. They said the left turn exit is not an issue for trucks as it sweeps over existing island. It is a painted island, not a curbed island. The right-turn exit sweeps out into intersection and pulls back in and lines up. They said they showed it to VTrans and they had no issues regarding truck movements. They have not changed the site driveway so there is no issue. They reported that VTrans indicated it would be an improvement. The stop bar could be moved back further if necessary. They will have to provide a four-foot wide shoulder as required by VTrans. They indicated that Del Thompson with VTrans could give them a letter of intent. Currently, they believe they have received preliminary verbal approval. They indicated that VTrans will be looking for more shoulder than is shown on plans and will not allow the crosswalks at this time. They will make the timed controller work for pedestrian crosswalk. The applicants said the final plans would address right turn on red out of the mall area. They said they are also considering signage including overhead signs to help direct traffic through the intersection. They are not proposing any changes on the other side of railroad tracks from the computer place and Harry's Discount Pharmacy.

The group discussed the right turn entrance into Kinney's before the intersection. The Board felt that that entrance should be eliminated because it is too close to a major road intersection and would exacerbate the traffic problems.

The applicants believe that left turns out of Kinney's is more of a problem. They noted that the queue would be longer and could worsen the problem if it is not there. They also noted that extending the island is resolving a problem. The landlord is bound by tenants and leases and cannot make it work. Additional signage would work from the Barre direction prior to the intersection, such as Kinney Drugs next two rights, etc.

Mr. Cross said he has not seen the leases, thus does not know what they say. He said they cannot completely close the driveway but tenants agreed to extending the island. He said they would try to obtain copies of the leases for Board review.

The applicants said they learned that the lights at the loading docks would be on all the time. They turn on with all other exterior lighting. They are looking for something better and would work improvements into their design, motion detector or switch to provide what the Board wants.

Arthur Newhouse said he has met with the applicants but they have not yet resolved the issue. He said he is not yet satisfied with the proposal because his customers would have to cross three lanes of traffic to go east. The next meeting should be with VTrans, the developer and himself. He said the issue needs further discussion.

Mr. Cross said he is optimistic that it can be worked out and is willing to work with Mr. Newhouse and involve VTrans. John Kerekes said that VTrans is looking for one of the three accesses to be closed, not the developer and not Mr. Newhouse. He said VTrans needs to remedy it.

The Board asked for clarification as to who has access to the two gates behind Mr. Newhouse's business. Access through the gate(s) would solve some traffic problems.

Mr. Newhouse said he was unsure if the Deed addressed who has access to the gates. He believes that JKL controls the gate and that he has no legal right to enter off JKL property. He said it should only be used as an exit from his property. He agreed to research the Deeds.

Mr. Cross said he spoke with Mr. Cyr, with the Berlin Volunteer Fire Department concerning backup water sources. He said Mr. Cyr is concerned about the large amount of flammable material stored in The Home Depot and feared that there might not be sufficient water pressure at the hydrant since the sprinkler system would be on. The Berlin Volunteer Fire Department wanted an alternate source of water. He said they will forward a copy of the water supply report to Mr. Cyr, which was provided to the Board. The conclusion of the report indicated considerable pressures and flows. He said the available public water yield exceeds the minimum required for sprinkler protection. The applicants said that although they believe water supply is adequate and that a dry hydrant would not be necessary, they would be willing to install one if the town would approve a location. He said JKL does not have control of property near the river, but would pay for a dry hydrant if the town found land or an easement allowing it.

The applicants noted that they are aware that the Board still has concerns with regard to the intersection, but does not know what else they could provide at this time. They said they would not even have the final design for Act 250 review and consideration. They explained that VTrans wants to be last, which is when final design plans would be completed. They will be doing a survey shortly and ironing out those details, but it could be two months or more. They said VTrans would issue a letter of intent, but not a permit until after other permits are in place. They plan to resolve access management issues favorable to the applicant and abutter, Mr. Newhouse. They would like a condition on its Town approval from the DRB for VTrans permit, adding shoulder on the site drive, etc. which they can easily accommodate. They expect to see a letter of intent from VTrans within three weeks or so. The applicants believe the issue with Mr. Newhouse is in the hands of VTrans, not with the applicant as it is beyond their control.

Mr. Newhouse said the only issue he needs to resolve is his ability to exit customers from his property. He would be in favor of having customers exit from the back of his property and queue up with the developer's traffic at the traffic signal. He said he would negotiate with VTrans in terms of closing a curb cut, but that is not as much of a concern for him. He said he is willing to consider closing some of his access but it needs to be wide enough for trucks.

Mr. Cross said they have no more to offer regarding the access to Kinney's. He said he will provide copies of the leases if available. He said he is not sure if trucks entering at the rear of Mr. Newhouse's property through the gate would be practical. He noted it would be creating more daytime truck traffic. He believes making it an exit only, where it is already paved would be doable. He noted that trucks could enter that way once they learned it was an option.

Based on testimony heard and documents presented, Mr. LaGue made a motion to close the hearing regarding Application 07-048 subject to receipt of the following documents: copies of the tenant's (Kinney's, Bond Auto, etc.) lease agreements concerning accesses, copies of the Deeds and constraints pertaining to access and control of the two gates between Mr. Newhouse's and JKL Limited Partnership's property, a Letter of Intent from VTrans, and an updated impact statement from the Berlin Volunteer Fire Department Inc. once it has had an opportunity to review the water supply report. Ms. Morse seconded the motion. The hearing would be closed upon receipt of the above mentioned documents. The Board's written findings must be issued within 45 days of that date. The question was called and the motion passed unanimously.

- B. 07-066** – John and Marcia Quadros submitted an application to expand an existing building to create a restaurant and office space. The property is located at 571 Us Route 302, Berlin, in the Highway Commercial (HC) District, Tax Map U2-24.

Mr. Schulz reported that the applicants have not submitted the requested information. They were not present for tonight's meeting. Mr. LaGue made a motion, seconded by Mr. Hurley, to recess Application 07-066 to a future date (not a date certain). This would require the application to be re-warned but not require the applicants to reapply. Motion passed unanimously.

- C. 07-073 – Heather Burns** submitted an application for Concept Plan Review of a one lot subdivision. The property is located at 497 Browns Mills Road, Berlin, in the Rural Residential and Highland Conservation Districts, Tax Map R7-92B. Heather Burns, Verna Gabaree, and Duane Wilder were sworn in to give testimony on this matter. This matter was recessed from the August 21, 2007 meeting.

The following document was submitted and admitted as an exhibit. **Exhibit #8:** Copy of the Minutes of the Berlin Select Board's September 5, 2007 meeting, which showed approval of the private road (Browns Mill Road) to be maintained by residents.

Heather Burns said she 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. She indicated that they obtained approval from the Select Board at its September 5<sup>th</sup> meeting, to authorize additional development on their private road. She confirmed that the road is maintained by the residents.

Jeff Schulz, Zoning Administrator, indicated that the application for concept review of this subdivision was tabled from the August 21<sup>st</sup> meeting due to more than two lots being served by the private road/Right of Way. Verification of existing approval or obtaining Select Board approval for additional development off a private road was required. He confirmed that the Select Board approved additional development off that private road.

Section 920 of the Subdivision Regulations refers to Section 900 for easements on two lots. The second lot would have an easement through the first lot. The ordinance requires Select Board approval since more than two residences are and would be served. The Select Board stated that the Town of Berlin would not maintain and/or take over the Road.

The amount of land in each district was discussed. The applicants explained that the line showing the 600 foot elevation for the Highland Conservation District, waivers and they wanted to square it up versus having an odd shaped lot. The applicants said that less than half of the two acre lot being created would be located within the Rural Residential district. To square up the lot they plan to borrow 50 feet in the next zone, Highland Conservation, which is shown on the survey by the purple line.

The Board discussed its ability to approve a two-acre lot that is located within two districts with differing lot area minimums (HC requires five acres minimum and R-40 requires 40,000 square feet). The Board noted that they must have a minimum of 40,000 square feet within the Rural Residential District.

The applicants said that the house would be located within the Rural Residential District, which is at least 40,000 square feet. They said they had 40,000 square feet before borrowing the 50 feet from the Highland Conservation District. They said the perk tests were performed within the Highland Conservation District, but the house would be located within the Rural Residential District. They said the surveyor found out exactly where the line was after the perk tests were performed. They said representatives from the State observed the perk tests.

Mr. Schultz mentioned setback requirements, noting that they differ for each district. He believes that the DRB could approve the proposed two-acre lot provided that the majority of it is located within the Rural Residential District. He said the DRB has the authority to approve the extension to 50 feet beyond the contour line in the Highland Conservation District under conditional use review criteria.

Ms. Gabaree said her surveyor told her that an alternative site for wastewater would not be required according to a proposed amended state requirement soon to be in effect. An alternate site is not shown on the plans. The applicants verified that the deeds would reflect the subdivision. They pointed out the proposed location of the house in relationship to the boundary lines. They indicated that setbacks from property lines and frontage requirements would be met.

The Board indicated that the applicants need to demonstrate that they have 40,000 square feet within the Rural Residential District. The Board assumes that what they are proposing covers it, but it must be shown on the Final survey plans.

Ms. Burns said that the boundary lines for her property are correct as shown on the plans. She said no deed has been filed yet so changes could be made if necessary. She said she plans to retain 8.1 acres of her 10.1 acres lot. She said she understands that the remaining issue is that in Final Plan Review she must demonstrate that with the 50 feet, Lot 2 would have 40,000 square feet in the Rural Residential District. They can change the shape of lot to make it work.

The Board noted that in concept it looks doable, but Final Plans must show that Lot 2 would consist of not less than 40,000 square feet in deeded land located within the Rural Residential District and that the location of the house is within it. The Board noted that the shape of the lot may vary, and that it is willing to consider the 50 foot extension into another district.

Based on the documents presented and testimony heard, Ms. Morse made a motion, seconded by Mr. Manley, to approve Concept Plan Review of the subdivision in the matter of Application 07-073. The Board indicated that to be warned for the October 16<sup>th</sup> meeting, the application for Final Plan Review and supporting documentation had to be submitted to the Zoning Office by September 24<sup>th</sup>. The question was called and the motion passed unanimously, 5-0.

3. Public Comment.

4. The Chairman called for approval of the Minutes of the August 21<sup>st</sup> and September 4<sup>th</sup> meetings. On page 4 of the August 21<sup>st</sup> minutes under Application 07-048, the 8<sup>th</sup> paragraph was amended by deleting the 6<sup>th</sup> sentence because the bus does not pull into Hooker's Furniture. Chairman Wernecke mentioned other corrections which were incorporated into the latest revision of the minutes. Ms. Morse made a motion, seconded by Mr. LaGue, to approve the Minutes of the August 21, 2007 meeting as corrected. Motion passed unanimously.

With regard to the Minutes of the September 4, 2007 meeting, Ms. Morse said that concerning Application 07-078, her relationship to the applicant was incorrectly stated. She said her brother is married to the applicant's sister. Mr. Morse made a motion, seconded by Mr. Manley, to approve the Minutes of the September 4, 2007 meeting as revised. Motion passed unanimously.

5. Other Business

The Board discussed approval of private roads, the procedure for it, and whether roads should meet current standards. The Select Board may hold public hearings to approve a road. The Planning Commission is in the process of updating its subdivision regulations which includes roads.

In the above mentioned matter, the Select Board was asked to approve a private road for additional development after the fact. Perhaps the Select Board should have required the applicants to meet certain standards, but it was being asked to approve a road that already exists, and that has served more than two residences for several years. It made it clear that the applicants/residents along the road must maintain it.

6. Status of Findings.

The Board voted to go into deliberative session at 9:08 PM and out at 9:17 PM. 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, October 16, 2007**. The following meeting is scheduled for **November 5, 2007**.

8. There being no further business, the meeting was adjourned at 9:30 PM.

Respectfully submitted,

Carla Preston  
Recording Secretary  
Town of Berlin