

**Berlin Development Review Board**  
**Unapproved Minutes**  
**Meeting of Tuesday, August 2, 2011**

1. The meeting was called to order at 7:00 P.M.

Members present: Muriel I. Morse, Vice-Chair; Henry A. LaGue, Jr.; and Kyle Faye Mooney; Alida VanDenBerg. Absent: Robert J. Wernecke, Chairman.

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

Others present: L. Brooke Dingledine, Paul S. Gillies, Jason Webb, Christine Webb, Margaret (Peggy) Bowen, Craig Fraiser, Rodney Fowler, Sandra Fowler, Thomas Lauzon, Karen Lauzon, Brian Lane-Karnas, Brad McAvoy, John Miller, Steve Avery, and Valerie Webster.

The Board's Policy and definition of party status and interested persons was explained to attendees. Copies of the Rules and Policies and Procedure were available as handouts.

2. New Business,

**Christine Webb** – (Permit 09-092) – Appeal. The Board considered Christine Webb's appeal of the Zoning Administrator's notice of violation. The property is located at 1636 Hill Street Extension, Berlin, VT, in the Rural Residential District, Tax Map R7, Lot 40A. L. Brooke Dingledine, Paul S. Gillies, Jason Webb, Christine Webb, Margaret (Peggy) Bowen, Craig Fraiser, Rodney Fowler, and Sandra Fowler were sworn in to give testimony on this matter. Copies of the Permit issued on February 22, 2010 that approved the Boundary Line Adjustment, final Mylar, and the May 31, 2011 Notice of Violation were provided. In addition, copies of a prior permit issued to an abutter and photographs were submitted.

Attorney L. Brooke Dingledine with Valsangiacomo, Detora & McQuesten, PC represents the Webbs. Attorney Paul S. Gillies with Tarrant, Marks & Gillies represents Lyn Morris. Pursuant to Section 1.03 of the Regulations, the Zoning Administrator issued a Notice of Violation to Christine Webb on or about May 30, 2011. The violation pertains to a single family residence located on the Webbs' property that does not meet the 25 foot side yard setback (Section 2.03). Ms. Webb is appealing the Zoning Administrator's decision.

Attorney Dingledine indicated that the structure does not conform to 25 foot side yard setback. The issue was resolved by a boundary line adjustment which was approved by the Development Review Board on February 22, 2010. Lyn and Roy Morris were co-applicants on the boundary adjustment and have requested that the violation be issued. She noted that the Morris' are related to the primary applicant. After the appeal period ran out the Morris' decided not to grant the boundary line adjustment. The Findings (09-092) set forth conditions which included that a Mylar had to be filed within six months and that deeds needed to be filed (no due date stated). The Morris' refused to provide the deed so they will have to go before the Washington County Superior Court for resolution. She confirmed that her clients intend to file a law suit to obtain the deed. She said they have two requests of the Board; one would be to dismiss the alleged violation as there is no violation or to grant an extension to allow the matter to be resolved in court. She said there is no violation of the Findings yet since there was no due date mentioned about the issuance of the deeds. The Mylar was filed within six months as required. After issuance of a permit, an applicant has two years to commence a project. The Webbs would like to be granted an extension of time for the opportunity to obtain the deed. She said no deadline has been exceeded or any event has occurred that caused a violation; there is no difference today after permit was issued.

Attorney Dingledine said that in her legal opinion, her clients should be given the two year timeframe to act. She again asked that the violation be dismissed, but if not dismissed, to grant a stay until they can file with Superior Court. The Mylar has been filed and was recorded on April 12, 2010. She said the Morris' did not appear at the closing scheduled to sign the deed and indicated about a month later that they had no intention of signing any deeds. The Morris' are requesting permission to allow cattle to graze on the lot. The Webbs' did not agree to that when it was previously discussed due to their well protection area. Their only option is to sue the Morris' and obtain the deed. Attorney Dingledine said it is important for the Board to know that the Morris' signed the application, participated at the Board hearing, and did nothing to appeal the decision. They are asking for injunctive relief hoping for quick response.

Attorney Paul Gillies was present and said he represents the Morris'. He said the Morris' have a different point of view. They argue that the Webbs failed to keep their promises of the deed. Due to a setback violation the resolution was to provide an exchange in equal amounts of property between the parties along with provisions for cows to graze on that parcel. He said from the Morris' perspective they were wronged. He said there is a setback violation which is hard to ignore.

Margaret (Peggy) Bowen said she was one of the first owners. She said everyone followed through on the original survey. They discovered that the boundary was not where it should be when a new survey was prepared.

Attorney Dingledine explained that the architect and contractor relied on the boundary description provided by Ms. Morris in that the fence line was the boundary line which caused the confusion. The construction went on for a year and no issue was raised. There was no indication that the building was on her property. The problem became known when surveyors (Chase) found the encroachment. The Morris' did not know of the encroachment until Mr. Chase found it. The addition to the existing house was built on July 29, 2009.

Attorney Dingledine said cattle were previously permitted to graze on the 1.9 acres parcel but not currently. The Webbs learned of the problem when obtaining permits for onsite wastewater and water supply. They are not obligated to allow the cattle to graze and verbal permission was revoked when they learned of the problem. The Morris' have no proof that allowing the cattle to graze was part of the agreement. The house has existed for 15 years. To accommodate an elderly relative they added the apartment in 2009. The Morris' property surrounds the house; it is carved out of the larger parcel.

Craig Fraiser indicated that his wife is the daughter of the Morris' and that they are abutters to the Morris'. He submitted pictures of the pool which required a variance and provided copies of the September 11, 2002 Findings from the DRB regarding the pool. He said the boundary was clearly an issue in the past. He said the survey pin by the driveway could not be found.

Zoning Administrator Schulz indicated that the goal of the Town is to figure it out and ensure compliance. The ZA represents the Select Board to a degree. He said he would be concerned about simply dismissing the Notice of Violation from the ZA and asked that the Board not dismiss it. Granting a continuance or recessing the matter to allow people to work things out is the preferred option.

Attorney Dingledine argued whether there had been a violation or just the potential for one as they have two years once the permit is issued. She said there is no condition specifying when the deeds had to be provided.

Based on testimony heard and documents provided, Ms. Mooney made a motion, seconded by Ms. VanDenBerg, to close the hearing regarding review of the Appeal (09-092) of the Zoning Administrator's decision. The question was called and the motion passed unanimously.

**B. 11-042 – Edgewood Development, LLC** submitted an application for Amended Site Plan Review to renovate an existing 20,000 square foot building, add and improve parking, erect a new storage building, and other improvements. The property is located at 2178 Airport Road, Berlin, VT in the Light Industrial District, Tax Map R2-63. Thomas Lauzon, Karen Lauzon, Brian Lane-Karnas and Brad McAvoy were sworn in to give testimony on this matter.

Mr. LaGue disclosed that he is a stockholder in a corporation that abuts this property and would recuse himself if preferred. No one expressed any objections to Mr. LaGue serving on the hearing panel regarding this application.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Zoning Permit dated June 28, 2011; **Exhibit #2:** Site Plan, C0.01, prepared by DeWolfe Engineering Associates, Inc., dated 20 July 2011; **Exhibit #3:** Site Plan, Legend and General Notes, C0.02, prepared by DeWolfe Engineering Associates, Inc., dated 20 July 2011; **Exhibit #4:** Site Plan, C0.01, prepared by DeWolfe Engineering Associates, Inc., dated 20 July 2011; **Exhibit #5:** Site Plan, C1.01, prepared by DeWolfe Engineering Associates, Inc., dated 20 July 2011; **Exhibit #6:** Site Plan, C1.02, prepared by DeWolfe Engineering Associates, Inc., dated 20 July 2011; **Exhibit #7:** Site Plan, Construction Details, C5.01, prepared by DeWolfe Engineering Associates, Inc., dated 20 July 2011; **Exhibit #8:** Site Plan, Electrical Photometric Plan, E1.0, prepared by DeWolfe Engineering Associates, Inc., dated 20 July 2011; **Exhibit #9:** Copy of Federal Emergency Management Agency Flood Insurance Rate Map dated August 15, 1984; **Exhibit #10:** Lighting Specifications; **Exhibit #11:** Letter from DeWolfe Engineering Associates, Inc. dated July 20, 2011 addressing Site Plan Review Criteria; **Exhibit #12:** List of Abutters; **Exhibit #13:** July 20, 2011 letter from the Applicant to the Berlin Police Department describing the project and requesting an impact statement; **Exhibit #14:** July 20, 2011 letter from the Applicant to the Berlin Volunteer Fire Department describing the project and requesting an impact statement; **Exhibit #15:** July 20, 2011 letter from the Applicant to the Berlin Highway Department describing the project and requesting an impact statement; **Exhibit #16:** July 25, 2011 Memorandum from the Berlin Police Department stating that the proposed application would have no adverse impact on its department; and **Exhibit #17:** July 26, 2011 letter from the Berlin Highway Department stating that the proposed application would have no adverse impact on that department.

Brian Lane-Karnas an Engineer Intern with DeWolfe Engineering Associates Incorporated said the application pertains to renovations at the old Capital City Press building located on Airport Road. The property owners are Thomas and Karen Lauzon. The State of Vermont needs to relocate its laboratory facilities due to flooding at its US Route 302 location. They plan to renovate the existing 20,000 square foot building, pave an existing parking area that is currently gravel and add a new 20 space parking area that would be paved (shown in gray). In addition they plan to build a new building (67 foot by 60 foot) to be used for cold storage. The proposed new parking area would be located to the east which was switched from the other side of the driveway for better access. They are also adding more exterior lighting, and making improvements for stormwater.

Zoning Administrator Schulz noted that there are other tenants who use the warehouse. There would be a maximum of 20 employees regarding the warehouse. There would be 60 employees for the State making the overall total 80 employees. The proposed uses, research laboratory, office space and warehouse/storage are permitted uses in this district.

- a. **Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.** The Applicants said vehicles would access the site from Airport Road via the existing driveway. Traffic to the warehouse would park in specific areas. Laboratory employees would park in the front areas. All parking areas are designed with 22 foot aisles for two way circulation. Trucks accessing the depressed loading dock are provided an aisle to the east of the main parking area for maneuvering. The parking spaces are 9 foot by 18 foot in size. A sidewalk is proposed for access from the new parking area to the main entrance of the laboratory.
- b. **Adequacy of circulation, parking, and loading facilities.** The Applicants said they are proposing 94 parking spaces. There are no specifics in the regulations for laboratories or warehouses so they used the one space for every 200 square foot. This covers 80 employees and visitors. They have provided for snow storage and waste storage areas.

In response to the number of State-owned vehicles that would be parked on site, Brad McAvoy with the State of Vermont, Agency of Transportation, said there might be a few vehicles parked there but most of the time they would be in the field. He said 60 employees is the maximum number which would include temporary employees. He said there would be about 40 full time employees on site. He said the trailers have been removed.

In response to the Board's question or concerns of it becoming a state parking lot, Mr. Lauzon said it is his intention that it would look more like an office than an industrial storage yard.

- c. **Bicycle and Pedestrian Access.** The Applicants said walks have been provided from the new parking area to the building entrance. There are no existing pedestrian or bicycle facilities on Airport Road.
- d. **Adequacy of landscaping.** The Applicants said the site has existing landscaping along Airport Road including a row of mature pine trees and landscaped areas to the north of the drive which provides screening for the development. The proposed new areas on the site are to the rear so they are not proposing any additional landscaping. The grading plan shows that the hill would be cut out which will also serve to screen the area. The surrounding uses are commercial, institutional and industrial.
- e. **Hours of Operation.** The Applicants said their proposed hours of operation would be from 6:00 AM to 5:00 PM. The other tenants operate on standard business hours. Their neighbors are commercial or industrial.
- f. **Setbacks.** All setbacks would be met and are shown on the plans.
- g. **Adequacy of Exterior lighting.** The Applicants said exterior lighting would be provided through pole mounted LEDs and cutoff wall mounted lights. Some pole lights that are not downcast will be removed. They are proposing to add a small amount of exterior lighting and have provided the cut sheets regarding the fixtures proposed. There would be two new pole mounted LED lights at the new parking lot. There would be three new fixtures over the overhead door and the man-door. There are several wall mounted fixtures that would remain but be improved to downcast fixtures. All fixtures would be downcast and fixture optics have been selected to minimize off-site illumination.

- h. Stormwater and Drainage.** The Applicants said the project is designed to meet the requirements of the 2002 Vermont Stormwater Management Manual. The application was submitted on or about August 1, 2011. There would be a dry retention pond which holds water only when it rains. The detention pond is designed so that the post development discharge rate from the site is less than the pre-development rate in the 10-year storm. The pond for fire protection will remain. They are not proposing any site work on the north side where the pond is located.
- i. Utilization of renewable energy resources.** The project will not interfere with the sustainable use of renewable energy resources by diminishing the future availability of such resources or eliminating nearby property owners' access to such resources.
- j. Municipal Services Impact Evaluation.** The Applicants sent out letters on or about July 20, 2011 to the Berlin Fire, Police and Highway departments requesting an impact statement. The Berlin Police Department stated that the proposed application would have no adverse impact on that department. The Berlin Highway Department stated that the proposed application would have no adverse impact on that department. No response was received from the Berlin Volunteer Fire Department.
- k. Flood Hazard Review.** This criterion is not applicable.

Neither the Applicants nor members of the audience had any further comments concerning this application.

Based on documents presented and testimony heard, Ms. Mooney made a motion, seconded by Mr. LaGue, to close the hearing in the matter of Application 11-042. The question was called and the motion passed unanimously.

- C. 11-046 – Vermont State Employees Credit Union** submitted an application for an illuminated commercial sign. The property is located at 1028 U.S. Route 302, Berlin in the Highway Commercial Zoning District, Tax Map U3, Lot 2. Steven Avery with the VSECU and John Miller with Sign Design were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Zoning Permit dated July 8, 2011; **Exhibit #2:** Photograph of proposed sign; **Exhibit #3:** Sign dimensions and other specifications.

The Applicants indicated that this sign pertains to the US Route 302 location where the Tower Restaurant used to be located. The VSECU is rebranding to focus more on the acronym VSECU versus its full name. This application is very similar to the VSECU's request for illuminated sign at the Paine Turnpike Branch location a year ago. They want to install an internally illuminated sign to replace the existing non-illuminated pylon type of sign (20 square feet). The bottom panel on this proposed sign would be illuminated. It is slightly larger but still well within the maximum size allowed (64 square foot). The proposed sign is approximately 28 square feet in area. The proposed sign would be 11 feet high, 12 feet at grade, and the maximum allowed is 25 feet and complies with all dimensional requirements of the regulations. The sign is located 10 feet beyond the property line or Right-of-Way.

The green square is illuminated and the lettering is semi illuminated. The sign is florescent, not LED. It has a green background with a white V logo and VSECU will be illuminated in the gray area. There would be no blinking lights and it would not blind oncoming traffic.

Based on documents presented and testimony heard, Ms. Mooney made a motion, seconded by Ms. VanDenBerg to close the hearing regarding Application 11-046. Motion passed unanimously.

**D. 11-047 – Valerie Webster** submitted an application for a Waiver of the front yard setback to add a deck, 20 feet by 8 feet. The property is located at 90 Pine Hill Drive, Berlin, in the Rural Residential (R-40) Zoning District, Tax Map R5-Lot 61I. Valerie Webster and her brother Tom were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Zoning Permit dated July 8, 2011; **Exhibit #2:** Sketch of building with addition, garage and deck; **Exhibit #3:** July 8, 2011 letter from Valerie Webster describing her request for a waiver.

Ms. Webster said she is requesting a waiver to put an eight foot wide by 20 foot long deck on to her house. She said the addition of the deck would make the setback 45 feet versus the 50 feet required. She said there are two steps located there now which encroach three feet into the setback. The steps would be located to the side by the double door once the deck is constructed. She said the steps would still not be 50 feet from the edge of the road, probably about 48 feet from the road. The deck would be about two feet off the ground with a standard 30 inch railing on top of that. The door is about six feet wide. The steps would come off toward the blacktop which is about four feet from the house. She said the steps could be located into the corner so they would be in compliance. She explained that the distance was 61 feet but the Town changed it with the grader.

The regulations stated that 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.

Based on documents presented and testimony heard, Ms. Mooney made a motion, seconded by Ms. VanDenBerg, to close the hearing in the matter of Application 11-047. Motion passed unanimously.

### 3. Public Comment

Persons present participated in the meeting as noted above.

### 4. Other Business

5. The acting Chairperson called for approval of the Minutes of the June 21, 2011 meeting. Ms VanDenBerg made a motion, seconded by Ms. Mooney, to approve the Minutes of the June 21, 2011 meeting as presented. Motion passed unanimously.

### 6. Status of Findings.

The Board voted to go into deliberative session at 8:25 P.M. and out at 8:41 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, August 16, 2011.**

8. There being no further business, the meeting was adjourned at 8:42 P.M.

Respectfully submitted,

Carla Preston  
Recording Secretary  
Town of Berlin