

**DEVELOPMENT REVIEW BOARD
UNAPPROVED MINUTES
Meeting of TUESDAY, FEBRUARY 19, 2008**

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

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

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

Others present: D'Martin Quadros, John Quadros, Maria Quadros and Brian Baker. Paul Irons attended the meeting at approximately 7:45.

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 and requested a variance of the front yard setback. The property is located at 571 US Route 2, Berlin, in the Commercial Zoning District, Tax Map U2-24. D'Martin Quadros and Brian Baker were sworn in to give testimony on this matter. The matter was continued from the January 22, 2008 meeting.

The following documents were submitted and admitted as exhibits: **Exhibit #11:** February 7, 2008 letter from the Vermont Agency of Transportation, Utilities & Permits Unit concerning the Applicants proposed two curb cuts; and **Exhibit #12:** February 7, 2008 statement from the Applicants addressing Zoning Variance criteria.

Brian Baker, with Dufresne & Associates, PC said they received a letter from the Vermont Agency of Transportation (VTrans) Utilities & Permits Unit concerning the proposed curb cuts. He said their proposal for two curb cuts was not acceptable and they are reworking the entrances to meet the State's requirements of one access per property. He said they are discussing options with the State and are considering one 50 foot wide curb cut consisting of two 12 foot wide lanes exiting the property and one entrance lane with a curbed island in the middle. He said there would be one entrance onto Route 302, a wide curb cut with two lanes of exit and one entrance with a curbed island. They would have to reduce the size of the proposed building to make it fit. He said they need to discuss the feasibility of cutting the corner of the building with corporate Dunkin Donuts. He said they would sacrifice some seating inside of the building. The applicants said they could not yet show in detail what is acceptable to the State of Vermont. They need to determine the plans for access, which includes variance approval.

The Board indicated that it could consider the application in two portions, the request for variance and then the site plan review or wait until the applicant was complete. Since the site plan, as proposed, is contingent upon approval of a variance, the applicants asked to have the variance request considered and will return once the site plans are complete.

The applicants said they submitted written statements addressing the variance criteria. They explained the limits of the lot due to its size. It is about 120 feet wide and 92 feet deep, which makes it very limited to put a commercial building on it. The applicants are proposing a 25 foot front yard setback, which was measured from the traveled way (white line) of the highway. They said since it is a paved road, the distance was measured from the white line as the traveled way assuming that beyond that it would be considered shoulder. They said that this is the same site plan presented on January 22nd but noted that the measurement had been taken. It is not yet shown on the plans. They said they assume the two lanes are 12 feet wide but did not measure them. Since the required front yard setback is 50 feet, they are requesting a 25 foot variance.

“The Board may grant a variance and render a decision in favor of the appellant only if all of the following facts are found and the findings are specified in its written decision.”

- A. *“That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of the lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.”*

The Applicants said the hardship is caused by the size of the lot making it difficult to develop. The existing lot is approximately 120 feet wide and 92 feet deep resulting in unusual shallow conditions. With the required setbacks the resulting building envelope is 31 feet deep, limiting the commercial use of the lot. The existing structure would meet the front yard setback if it was measured from the traveled way. It does not meet the side or rear yard setbacks. The proposed new building would meet both the 25 foot side yard and rear setbacks but not the 50 foot front yard setback. The applicants said they are trying to meet the building size requirements set by corporate Dunkin Donuts. They want the drive-through. They stated that the hardship is created due to regulations and/or the physical conditions of property.

Jeff Schulz, Town/Zoning Administrator verified that it is a pre-existing small lot, approximately 12,000 square feet. The minimum lot size is 25,000 square feet for this district. He was unsure if the lot was created prior to zoning, which began in 1973. The applicants were asked to research when the lot was created.

- B. *“That because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of the variance is necessary to enable the reasonable use of the property.”*

The Quadros' currently operate three Dunkin Donut stores and want to relocate the one at Simon's to this lot which they own. The existing location is not large enough for their business. Since the required front yard setback is 50 feet, they are requesting a 25 foot variance. A variance from the front yard setback requirement will be necessary to construct the building, obtain the required parking spaces, promote a pedestrian friendly traffic flow, and allow a drive-through bypass lane. They indicated that the proposed building is close to the smallest building size allowed by corporate. It is much smaller than the Montpelier location. The Montpelier location does not have a drive-through. It was approved for a drive-through but it is under appeal. They said the drive-through makes the business more viable.

The applicants said that the owners of the property operate Dunkin Donut shops which would make the property viable. The only other reasonable use for the property would require selling it. There are no other viable business options for the lot. Rental income on the existing building would be much less than could be achieved with a Dunkin Donuts store at that location.

The applicants said corporate Dunkin Donuts is not specifying the drive-through. The owners want it because it makes the business more viable. They said they looked into achieving a drive-through without going behind the building but could not make it work. If they have a circular area in the front for a drive-through it would take up most of the parking spaces. They are proposing the minimum amount of parking spaces required now thus it would not meet parking requirements if it was changed.

The Applicants said they have attempted to contact abutters to purchase additional land but have been unsuccessful. They noted that if the building were reoriented 90 degrees, it would meet setbacks. They want to allow full menu boards for this location which is one of the problems with the Simon's location. It is too small. The building size could be reduced to adjust the setback but it would eliminate seating (20 people proposed). The proposed building is 30 feet wide.

The applicants said that a good share of the lot is dedicated to the drive-through lanes. The applicants said there is no ideal situation. If the building size were adjusted, the seating, counterspace, equipment layout and production would be at issue. The building must be on one level plane to be in compliance with the American Disabilities Act (ADA). Seating on a second level would require an elevator.

C. That the unnecessary hardship has not been created by the appellant;

The Applicants said the lot has not been modified in any way. It is a pre-existing small lot. The site is served by town/public water and sewer.

D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and”

The Applicants estimated that the traffic count at the current location (Simon’s) was about 3500 per week (500 a day). They anticipate the number of vehicles to the site increasing but not necessarily on US Route 302 in general. They have not done that calculation but will get it. The hours of operation would be 6:00 a.m. to 9:00 p.m. with peak hours from 7:00 a.m. to 11:00 a.m. This is approximately 80% of the traffic (33 cars per hour at peak) assuming one vehicle per customer. Dunkin Donuts brings in more business than the gas station alone at Simon’s. Traffic concerns off Vine Street were expressed noting that sight distance is limited. Abutting uses are primarily commercial.

E. That the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The applicants stated that they are only requesting a variance to reduce the front yard setback to 25 feet instead of 50 feet. The side and rear setbacks will be maintained in accordance with the zoning regulations. They need approval from corporate Dunkin Donuts to reduce the size of the building and from the Agency of Transportation regarding access. The two lanes behind the building could not be relocated because the building is located at the end of envelope. They have looked at traffic flow patterns but alternatives would not allow for a drive-through or parking.

The applicants presented renderings for review. The possibility of a second story was again discussed but not feasible. The colonial style design is for aesthetic purposes to be more appealing. There is no overhead storage.

The deck/porch shown would not be used as such, façade only. It is where the heating, ventilating, and air conditioning systems would be located. It is not used space on the second floor. The windows/dormers are only for aesthetics. They also showed a rendering with the color scheme. Although not specifically required, the applicants agreed to submit the renderings.

Paul Irons attended the meeting at approximately 7:45 p.m. as an interested citizen. He owns abutting property. The Board mentioned its definition of party status.

The applicants were advised that they will need to come back for site plan review with the curb cut issue and with completed site plans to show that it would work.

The applicants said they have submitted a letter to the State concerning the Railroad and have a verbal commitment from Larry Donna that there is no impact on the Railroad. With regard to the hydraulic study, they would need to upgrade culvert size (from 8 inches to 24 inches) due to more impervious area and

additional stormwater. The Applicants said they must hire a qualified contractor to ensure that the culverts are installed properly. The State owns the property and the railroad leases it. They need a permit to work in the Right of Way. VTrans' Utilities and Permits Unit needs more information with regard to access.

The Board indicated that there are two issues, the variance request and site plan review. The Applicants have not resolved access and egress, setbacks, or access onto highway. Currently they can not show the Board what they are going to do regarding the front yard access. Their proposal is contingent upon VTrans' findings and how those decisions would impact their site plan.

The Board indicated that it could rule on the Applicants' request for a variance separately or it could recess both matters and have the applicants return. Since the issues were warned separately, the Board could rule on the variance and save them further steps if not approved.

The Applicants said that they need VTrans to sign off on the project thus there was not much more they could present to the Board tonight. They asked the Board to rule on the variance.

Based on the documents presented and testimony heard, Ms. Morse made a motion, seconded by Mr. Manley, to close the hearing portion with regard to the variance request in the matter of Application 07-102. The remaining portion of the Application regarding Site Plan Review is still open. The matter was discussed further to determine whether VTrans' decision would have an impact on the variance concerning public welfare (traffic). The variance request pertains only to the front yard setback. It does not impact traffic control or safety and should be reviewed under site plan review criteria. The question was called and the motion passed unanimously.

Ms. Morse made a motion to recess the hearing with regard to Site Plan Review in the matter of Application 07-102 but not to a date certain. Mr. Manley seconded the motion. Recessing to a date certain was discussed but could not be resolved due to scheduling conflicts. The applicants must resolve the outstanding issues and submit an updated plan for consideration. In addition, a decision must be rendered in the matter of the Applicant's variance request. The Applicants must notify the Zoning Office when they are ready and the matter would be re-warned. The question was called and the motion passed unanimously.

3. Pubic Comment.

4. The Chairman called for approval of the Minutes of the January 22nd and February 6th meetings. Mr. Manley made a motion, seconded by Mr. Hurley, to approve the Minutes of the January 22, 2008 meeting as revised. Motion passed, 3-0. Ms. Morse recused herself from one of the applications heard on January 22nd, thus did not participate in the vote.

February 6, 2008 Minutes: The Minutes were amended to reflect that the engineering and utility drawings were prepared and sealed by Bernie Chenette, P.E. of Chase & Chase Engineers. The lights over the entrances to the Units would be recessed, not shielded. Under Criteria g, the wording will be clarified to show which lights would be recessed and which would be shielded. The motion was to recess the matter pending receipt of the road foreman's impact statement, revised plans showing amended driveway configuration, and additional lighting cut sheets. Ms. Morse made a motion, seconded by Mr. Hurley, to approve the Minutes of the February 5, 2008 meeting as corrected. Motion passed 3-0. Mr. Manley was not present for this meeting, thus did not participate in the vote.

5. Other Business

6. Status of Findings.

The Board voted to go into deliberative session at 8:23 p.m. and out at 8:53 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, March 18, 2008**. The following meeting is tentatively scheduled for **April 1, 2008**.

8. There being no further business, the meeting was adjourned at 8:55 P.M.

Respectfully submitted,

Carla Preston
Recording Secretary
Town of Berlin