

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

**Findings of Facts and Conclusion**

**A. Background**

1. Application Number: **07-068**
2. Property Owner(s): **Bradley Tubbs d/b/a The Source/Foreign Car Specialists**
3. Applicant (If Different):
4. Brief Description of Request: The applicant submitted an Application for Site Plan Review to pave the front lawn for vehicle parking.
5. Date Application Filed: **July 16, 2007.**
6. Publication and Posting Information: Posted: **July 30, 2007.**

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

1. Hearings, Site Visit and Public Meeting Information: **A hearing was held on August 14, 2007.**
2. List of Persons Present at the Public Hearing(s): **August 14, 2007:** Members present and voting: John Hurley, Vice-Chair; Muriel Morse; Robert G. Manley; and Henry A. LaGue, Jr.

Staff present: Peter E. Noyes, Interim Zoning Administrator, and Carla Preston, Recording Secretary.

Others present: Bradley Tubbs, Debbie Wolf, Paul Irons, Peggy Irons, and Henry A. LaGue, Jr.

3. List of Witnesses Who Gave Testimony: **August 14, 2007:** Bradley Tubbs and Debbie Wolf
4. List of Documents Presented as Evidence by Any Person:
  - a. Application submitted by the applicant on July 16, 2007.
  - b. Warnings of Public Hearings as follows: Posted July 30, 2007.
  - c. Appeal Notice to Zoning Administrator: Not applicable.
  - d. List of Plans: Site Plans showing parking lot expansion and details, etc.

The following Exhibits were submitted and admitted as evidence:

**Exhibit #1:** Application For Zoning Permit dated July 16, 2007;

**Exhibit #2:** Site Plan showing parking lot expansion and details, prepared by Dufresne & Associates, P.C., dated July 11, 2007;

**Exhibit #3:** The Applicant's June, 2007 Narrative addressing Site Plan Review Criteria;

**Exhibit #4:** November 2006 copy of original permit issued by VTrans;

**Exhibit #7:** Several photographs of the site were presented;

- e. Written Comments from Other Municipal Boards:

**Exhibit #5:** August 29, 2006 letter from the Berlin Volunteer Fire Department stating minimal impact;

**Exhibit #6:** September 22, 2006 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 #8:** Zoning Administrator's Report for DRB meeting August 14, 2007.

5. Testimony:

Mr. Tubbs said he sells used cars at this location, which are placed on the lawn, shown in the shaded areas on the plans. He said he wants to convert their front lawn into a paved parking lot. He indicated that this would better display the cars they have for sale and would minimize the development of mud on the lot in the spring. It would create an aesthetically pleasing and professional looking appearance for the business. He said the setback from the center of road and the area where the cars are parked is 50 feet.

The project would involve making the driveway four feet wider than it is currently, in order to meet the Vermont Agency of Transportation's (VTrans) requirements (B71). It would also include re-grading the yard and laying down a parking lot made of reclaimed asphalt and stone. The proposed project does not exceed state standards that would require a stormwater runoff permit.

Mr. Noyes said letters from the Berlin Police and Fire Departments have been received. He said he has not seen a letter from VTrans regarding performing work in the State's Right-of-Way, but understands it is being considered. He said the applicant has a permit for the sign and for the change in use to auto sales.

Mr. Tubbs said the matter has been discussed with Del Thompson, of VTrans who indicated that the project would be approved. He believes a copy of the updated Permit is already on its way to him. He provided a copy of his original permit issued in November of 2006. He said he would provide the Board with a copy of the updated permit as soon as he receives it.

The Board asked the applicants to address the Site Plan Review Criteria.

- a. ***Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.*** Mr. Tubbs said there would be no significant increase in traffic based on the development of a parking lot at this site. The current access would be improved to meet the State's requirements of B71, by widening it by four feet with the proper angles, etc. He said sight distance was not measured, but would also be part of the State's permit. Ms. Wolf said they believe the sight distance in both directions is fine and noted that it was considered by the State.
- b. ***Adequacy of circulation, parking, and loading facilities.*** Mr. Tubbs said there would be no increase in the amount of vehicle parking associated with this project. The parking would remain in front of the building to display the vehicles for sale. He said there are two employees at this location and the maximum number of vehicles allowed for sale at this site is 25 vehicles. There would be no change in the adequacy of parking for people with disabilities. He said there is no loading or delivery that takes place at this location. He explained that cars coming in for sale are delivered to their repair shop in Montpelier and then driven individually to this Route 2 location. There would be no anticipated change for refuse storage and disposal, snow removal, and emergency access. He said there are plenty of places for snow storage.
- c. ***Bicycle and Pedestrian Access.*** Mr. Tubbs said there is adequate space in the breakdown lane off U.S. Route 2 for bicycle and pedestrian traffic. This project should not create any change in the current access for bicycles and pedestrians.

5. **Witness Testimony, Evidence** - continued

- d. ***Adequacy of landscaping.*** Mr. Tubbs referred to the site plan for the location of proposed green spaces between the road and the lot, directly in front of the building, to the sides of the building, and in the backyard. He said it would include a combination of shrubs, plants, grass, and ground cover. The intent of this project is to create an aesthetically pleasing and professional looking appearance for the business.
  - e. ***Hours of Operation.*** Mr. Tubbs said the hours of operation would not change based on this proposed project, 9:00 AM to 5:00 PM.
  - f. ***Setbacks.*** Mr. Tubbs said all setbacks are met for the district.
  - g. ***Adequacy of Exterior lighting.*** Mr. Tubbs said no additional exterior lighting is being proposed at this time.
  - h. ***Stormwater and Drainage.*** Mr. Tubbs said that the project does not exceed the State's requirement with regard to stormwater runoff therefore a permit is not required. He said the water would sheet flow to an existing swale, catch basins with culverts and pointed out their location on the map. He said there is a small stream nearby, which is not listed as an official stream on applicable maps. He was uncertain if there was water in the stream year around. He said there would be water in it after it rains. He said the distance to the stream is approximately 20 to 25 feet.
  - i. ***Utilization of renewable energy resources.*** Mr. Tubbs said this criterion is not applicable.
  - j. ***Municipal services Impact Evaluation.*** Mr. Tubbs said he has received impact statements from the Berlin Police and Fire Departments, both of which stated no adverse impacts. He said they have submitted the necessary information to VTrans and expect an updated permit very soon.
  - k. ***Flood Hazard Review.*** Mr. Tubbs said this site is not located within the flood hazard area.
6. Minutes of Meetings/hearings held on August 14, 2007 were prepared and filed with the Town Clerk and Zoning Administrator (copy for file).

**C. Applicable Law and Criteria**

- 1. Applicable ordinances in effect at time of Application are the Town of Berlin Zoning Regulations, latest revision June 21, 2005.
- 1. Town/City Plan: Town of Berlin Municipal Plan adopted June 21, 2005.
- 2. Criteria that must be met under all applicable Ordinances or Plan. Town of Berlin Zoning Regulations: Article II, Establishment of Zoning Districts, Table 2.07 Highway Commercial (HC) District; Article III, General Regulations, Section 3.02 Access, Driveways & Frontage Requirements; Section 3:08 Landscaping Requirements; Section 3.17 Outdoor Lighting; and Article V, Development Review Process, Section 5.05, Site Plan Review – Permitted Uses.

**D. Findings of Fact**

- 1. The property is located at 605 U.S. Route 2, Berlin, in the Highway Commercial (HC) District, Tax Map U7-12.
- 2. The applicant submitted an application for Site Plan Review to pave the front lawn for vehicle parking.

**D. Findings of Fact** - continued

3. The current uses, automobile sales and service, for this site are permitted in this district. No change in use is proposed.
4. The existing access off U.S. Route 2 would be improved to meet State of Vermont standards (B71).
5. The proposed project would not have an adverse impact on the adjacent street network, adequacy of circulation, parking, loading facilities, or bicycle and pedestrian access.
6. The increase in impervious area does not exceed the State of Vermont's requirement with regard to stormwater runoff, therefore a permit from the State (Vermont Stormwater Management Manual) is not required.
7. The applicant has demonstrated that the proposed landscaping would meet the minimum zoning requirements.
8. All setbacks would be met for the district.
9. This project would not adversely impact state or municipal services.

**F. Conclusion of Law**

1. Reference applicable ordinance: The 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, Article II, Establishment of Zoning Districts, Table 2.07 Highway Commercial (HC) District; Article III, General Regulations, Section 3.02 Access, Driveways & Frontage Requirements; Section 3:08 Landscaping Requirements; Section 3.17 Outdoor Lighting; and Article V, Development Review Process, Section 5.05, Site Plan Review – Permitted Uses.
3. Address any interpretations made: None

**F. Decision**

1. Apply Findings of Fact and Conclusions of Law: Based upon the evidence presented, the Board concluded that the applicant has met 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 07-068 subject to the condition listed below.
  - Provide a copy of the updated Permit from the Vermont Agency of Transportation, Utilities & Permits Unit, with regard to working in the State's highway Right-of-Way.
3. Signatures:

***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).*

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Development Review Board  
108 Shed Road  
Berlin, Vermont

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In the matter of 07-068  
Bradley Tubbs d/b/a  
The Source/Foreign Car Specialists**

**SIGNATURE PAGE:**

Date:

**For the Development Review Board**

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John Hurley, Vice-Chairman