

DEVELOPMENT REVIEW BOARD
108 Shed Road
Berlin, Vermont

APPROVED MINUTES
Meeting of TUESDAY, April 7, 2015

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

Members present: Robert J. Wernecke, Chair; Karla Nussli, Vice-Chair; Henry A. LaGue, Jr.; John Friedrich and Paul Irons, Alternate (re 15-011).

Staff present: Thomas J. Badowski, Zoning Administrator and Carla Preston, Recording Secretary.

Others present: Patrick Malone, David L. Frothingham, III, P.E., Craig Chase, Paul Stafford, Paula Stafford, Bill Warren and Connie Warren.

The Board explained its Policy and definition of party status and interested persons to attendees. Copies of the Rules and Policies and Procedure were available as handouts. The Staffords and Warrens requested and were granted party status with respect to application 15-012.

2. New business

A. 15-011 – Malone Properties submitted an application for the removal of an existing building and construction of a new 22,881 square foot commercial building with associated parking and utilities requiring Site Plan Review, Permitted Use, Conditional Use Review, and Special Flood Hazard Area. The property is located at 856 Route 302, Berlin, Vermont, in the Highway Commercial Zoning District. Patrick Malone, property owner and David L. Frothingham, III, P.E. with DeWolfe Engineering Associates, Incorporated were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 15-011, dated 03/02/2015; **Exhibit #2:** Site Plans prepared by DeWolfe Engineering Associates, Incorporated: Hooker's Plaza Redevelopment Cover Sheet, C0.01, dated 02/11/2015; Legend and General Notes, C0.02, dated 02/11/2015; **Exhibit #3:** Existing Conditions, C1.01, dated 02/11/2015; Site Plan, C1.02, dated 02/11/2015; Grading Plan, C1.03, dated 02/11/2015; Utility Plan, C1.04, dated 02/11/2015; Erosion Control Plan, C1.05, dated 02/11/2015; Drive, Utility, & Wall Profiles, C2.01, dated 02/11/2015; Utility Profiles, dated 02/11/2015; **Exhibit #4:** Construction Details, C5.01, C5.02 and C5.03, dated 11/13/2014, 02/11/2015; **Exhibit #5:** Landcape Plan, LS.01, dated 02/11/2015; **Exhibit #6:** Lighting Plan dated 02/18/2015; **Exhibit #7:**; **Exhibit #8:** Letter dated 02/23/2015 and revised on 03/02/2015 from David L. Frothingham, III, P.E., with DeWolfe Engineering Associates, Incorporated, to the Town of Berlin describing the project and addressing the review criteria; **Exhibit #9:** Letters dated 02/17/2015 from David L. Frothingham, III, P.E., with DeWolfe Engineering Associates, Incorporated, to the Berlin Police and Berlin Volunteer Fire departments describing the project and requesting an impact statement; **Exhibit #10:** Letter of Intent dated 12/11/2014 from the VT Agency of Transportation, Project Delivery Bureau, Right of Way & Utilities & Survey to the Applicant stating that the application has been reviewed and found to meet the requirements for work within the highway right-of-way; **Exhibit #11:** List of Abutters; **Exhibit #12:** Lighting Cut Sheets; **Exhibit #13:** Email dated 03/31/2015 from Sacha Pealer, Central Vermont Floodplain Manager, Department of Environmental Conservation, Watershed Management Division, concerning the proposed project (fill needed, buried fuel tank, etc.); **Exhibit #14:** Federal Emergency Management Agency, Protecting Building Utilities From Flood Damage document dated 11/1999; and **Exhibit #15:** Memorandum from the Berlin Police Department stating that the proposed application would have no adverse impact on its Department.

Overview: David L. Frothingham, III, P.E. indicated the location of the property along U.S. Route 302 and noted that their proposal includes the demolition of two of the four existing buildings and the construction of a new commercial building with multiple tenants. There is a private road in the back that serves the property. They plan to bring in fill to raise the first floor elevation. He advised that the existing three curb cuts would be reduced to one which is supported by the Vermont Agency of Transportation (VTrans). He advised that VTrans also supports a left turn lane, bike path, new signals, and so forth. There would be new parking areas and access to the back for deliveries. He described onsite pedestrian access with a sidewalk to Barre Electric and Rubber Bubbles and to the center of the proposed new building. He described stormwater management which eventually discharges to the Stevens Branch and noted that a state permit is required. He advised that due to space constraints and the highway right of way there would be grass in the area in the front of the building along U.S. Route 302. They are proposing shrubs and trees in the islands and in other areas.

Zoning Administrator Badowski asked about the orientation of the access point and maintenance of the filters for the drainage system.

Mr. Frothingham advised that the curb cut would be directly across from The Computer Barn located across the street. He advised that the stormwater system is subject to annual inspections and would be maintained. Typically such filters are reviewed twice a year, spring and fall, and would be cleaned more often if necessary. If the system failed between inspections standing water would be visible so it would be evident that it needed attention.

Mr. Malone advised that they are asking for retail use at this point which is permitted in this district. He advised that the proposed new building is smaller than the existing building and is further back from the highway to allow for more parking in front. By moving the building back it required less fill to meet flood hazard requirements. The area in the back of the building is designed to accommodate a 53 foot tractor trailer to drive in and back around to the back to the building for deliveries.

The Applicants addressed Conditional Use Review Criteria.

a. Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.

Mr. Frothingham advised that the two easterly curb cuts would be closed and access to the site would be from the existing westerly curb cut. He advised that they have worked with VTrans on this proposal and that VTrans has issued a Letter of Intent (December 11, 2014) regarding the work within the highway right-of-way. A left turn lane is warranted and is shown on the site plans. In response to the Board's comment that the LOI referred to different plans, Mr. Frothingham advised that the difference in the plans pertained to access in the back and did not affect the area along U.S. Route 302. He referred to the private road (Ames Drive) to the rear of the parcel. He advised that connecting to the existing sidewalk did not change however the future easement regarding sidewalks was removed. They are connecting the sidewalk to the existing sidewalk by the bus stop. If the town needs an easement for a sidewalk in the future the matter could be discussed with the property owner. He advised that the building shape and parking have changed but there are no other changes in the right-of-way.

b. Adequacy of circulation, parking, and loading facilities. Mr. Frothingham advised that striped walkways have been provided for pedestrian access to the front of the building. Access at the back of the building is at grade. He advised that parking is in the front of the building versus behind the building to reduce the amount of fill needed. In addition, the building would be within the setback if moved closer to the road. He advised that the existing building did not meet the front yard setback

requirement. They are providing more parking than is required by the regulations based on the size of the building (117) for the benefit of tenants (134 spaces).

- c. *Bicycle and Pedestrian Access.*** Mr. Frothingham advised that sidewalks are provided for pedestrian access from one building to the next and from the existing paved sidewalk along U.S. Route 302 into the site. There is pedestrian access through the site to the private road at the back. He noted that they are not directing pedestrian activity there but it does exist. Mr. Malone advised that he had no problem with a sidewalk in front of the building in theory but at the moment there is no connecting sidewalk. The existing sidewalk owned by the state will remain. Their site plan would not preclude a sidewalk in the future.
- d. *Adequacy of landscaping.*** Mr. Frothingham referred to the landscaping plan provided. He advised there would be grass in the front along the highway because it is too narrow for anything else and is within the right of way. There would be trees along the back with shrubs on the side and islands. He noted that two of the existing trees would be removed due to the fill and slope. After further discussion the Applicants agreed that they would look at replacing the trees to be removed. The area is where the drainage system and pipes are located but agreed to consider whether the trees could be replaced. The existing trees on the eastern and northern sides of the building would remain to the maximum extent possible.

In response to the Board's questions regarding relief and walls, Mr. Frothingham explained that the slope was one on two at about four feet high. He noted that the parking lot is curbed thus collects stormwater. The wall along the side near Kinney's is about seven feet at the highest point. Mr. Malone noted that the wall would consist of a segmented manufactured block wall, not waste blocks. The transformer would be located at the highest point of the wall out of the floodplain. There is an existing split rail fence that runs between Ames Drive and this property which might have been installed by the abutting property owner. They would be removing the gate.

- e. *Hours of Operation.*** The Applicants requested unlimited hours of operation for tenant availability. Those hours are consistent with Price Chopper, the property located behind the project location.
- f. *Setbacks.*** Mr. Frothingham advised that the proposed new building does meet setback requirements however other buildings on the site do not. He confirmed that the correct setbacks are shown on the plans.
- g. *Adequacy of Exterior lighting.*** Mr. Frothingham referred to the lighting plan. He advised there would be seven pole lights consisting of doubles and singles across the front. There would be lights over doors at the front and rear. All fixtures would be downcast and light emitting diode (Led). The timing of the lights would be dependant upon the tenant thus could be on all night. Mr. Malone advised that he may add decorative canopy lights as they finalize the plans and secure tenants. Any change to the lighting plan would require review by the Zoning Administrator.
- h. *Stormwater and Drainage.*** Mr. Frothingham advised that a permit is required from the state due to the new buildings and expanded impervious areas. The application has been submitted to the state. He agreed to provide a copy of that application to the town. He referred to the utility plan, Sheet C1.04, for more information. He advised that the filling of the lot will result in the area around the new building becoming a local high point while the driveway in front of the existing building will remain the local low point. Runoff from the site is collected in a system of pipes and catchbasins and is conveyed to the Stevens Branch. The proposed stormwater system is sized to

also convey the off-site runoff which is currently directed toward the site. He explained that the roof connects to the storm drain. They are the owner of the existing system.

The Board noted that although stormwater and drainage is a criterion that must be addressed by the town it will rely on the State of Vermont's stormwater management manual. The Board requested a copy of the permit once issued as well.

- i. Utilization of renewable energy resources.* The Applicants advised that they are not proposing any solar cells. The building would be constructed of steel frame, masonry and likely metal siding but not yet determined. 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.* Mr. Frothingham advised that letters requesting an impact statement were sent to the Berlin Fire and Police departments on or about February 17th but they have not received responses. Mr. Malone advised the building would have a sprinkler system.

Mr. Badowski advised that the Berlin Police Department indicated that the project would have no adverse impact on its department. He advised that the Fire Chief sent an email to him stating that he had no concerns with respect to the proposed project. He agreed to forward that email to the Applicants.

The Board advised that it needs a copy of the traffic study performed by RSG to address the traffic impact. The study addressed the need for a left turn lane and other issues.

The Applicants advised that the traffic study was submitted to the state. They do not require an ACT 250 permit. There would be a municipal connection for water and sewer but they have not yet applied for that allocation. The existing building has a six inch line and is sprinkled.

- k. Flood Hazard Review.* Mr. Frothingham advised that the project is entirely within the 100-year floodplain with a small portion in the floodway. The proposed structure is to be constructed with the first floor at one foot above the base flood elevation which will require approximately 9,250 cubic yards of fill material to be placed in the floodplain. The drives and parking lots have been sloped to minimize the volume of fill necessary. No fill is proposed within the floodway. At grade accesses are provided at the front and rear for customers and deliveries; no loading docks are proposed. There is access to the rear of the building for deliveries which would typically be via smaller trucks. They are proposing a raised walkway with stairs for access to the building. They have not yet determined the source material for the fill. Mr. Frothingham referred to the email from Sacha Pealer regarding the proposed project. He noted the changes in elevations in the surrounding area. The proposed fuel tank(s) would be buried and anchored to prevent flotation.

The Board asked the Applicants to address the specific criteria under Section 5.09 (G) of the regulations. The Applicant is proposing to replace and relocate a nonconforming structure within a flood hazard area. The structure must be reasonably safe from flooding, constructed with materials resistant to flood damage, adequately drained to reduce exposure to flood hazards and so forth.

The Applicants advised that the first floor of the proposed building has been raised to one foot above the base flood elevation and has no basement. It would be constructed of masonry and steel

with a four to five foot concrete base. Fuel tanks would be buried and anchored, sewer lines are buried and the manhole would have a watertight lid. It would back up from other areas and fill the pipe. They are not proposing any fill within the floodway. There would be no fill in the areas of the existing buildings to remain. They have relocated the transformer to top of the concrete wall. All heating and ventilating would be located on the roof of the structure.

l. Character of the area affected; neighboring uses. There would be no change in the current retail use. The surrounding area consists of a variety of businesses.

m. Bylaws then in effect. Not applicable.

The Applicants advised that they would provide copies of their stormwater management application, traffic study prepared by RSG, wastewater allocation, and tank location calculations. In addition they will certify the elevations as required by FEMA. Copies of permits once issued will also be provided.

Ms. Nussl made a motion, seconded by Mr. Freidrich, to close the hearing with respect to Application 15-011 subject to receipt of the documents mentioned above. The question was called and the motion passed unanimously.

B. 15-012 – Paul Irons and Margaret Irons submitted an application for Concept Plan and Minor Subdivision Final Review for a two lot subdivision. The property is located at 2736 Crosstown Road, Berlin, Vermont, in the Rural Residential and Highland Conservation Districts, Parcel ID 40-075. Craig Chase, Paul Irons and abutters Paul Stafford, Paula Stafford, Bill Warren and Connie Warren were sworn in to give testimony on this matter. (Mr. Irons recused himself as part of the hearing panel since he is the Applicant regarding this matter.)

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, 15-012, received 03/11/2015; **Exhibit #2:** Boundary Re-Survey and Subdivision, Paul & Peggy Irons, prepared by Chase & Chase Surveyors & Septic Designers Inc., dated 03/19/2015; **Exhibit #3:** Site Plan, Irons Subdivision, prepared by Chase & Chase Surveyors & Septic Designers Inc., dated 03/19/2015; and **Exhibit #4:** Details Sheet, Irons Subdivision, prepared by Chase & Chase Surveyors & Septic Designers Inc., dated 03/19/2015.

The Board noted that the Applicants are seeking approval for both Concept and Final Plan Review at this hearing. Concept Plan is considered first to determine whether there are any issues. The Board confirmed that abutters, Paul Stafford, Paula Stafford, Bill Warren and Connie Warren were granted party status.

Craig Chase with Chase & Chase Surveyors & Septic Designers Inc. advised that Paul and Peggy Irons want to subdivide their 10.2 acres parcel into two lots. The intent of the subdivision is to separate the existing house and create a new lot for development that includes the existing barn. In addition, the lot is located within two districts, Rural Residential and Highland Conservation which have differing size, depth, and other requirements. He advised that there are many easements to allow for access, alternate wastewater sites, and so on.

Mr. Irons advised that his current tenant in the cottage wants to purchase the home but cannot afford the excess acreage. They attempted to create a lot that meets the requirements but it is uniquely shaped. They intend to keep the barn located on the larger lot, Lot #1 consisting of 9.20 acres. The existing house would be located on Lot #2 consisting of .99 acres. He noted that the best view from Lot #1 is closer to the road than the bulk of the property which is why the proposed unique shaped lot.

Mr. Chase advised that they are proposing five new easements and explained the purpose of each one. Easement #1 is to provide access for Lot #1 and access to the existing barn. Easement #2 is for access to a designated replacement area and for a future force main. Easement #3 is a septic easement for a possible future replacement wastewater system to serve Lot #2 onto Lot #1. Easement #4 is for access and utilities easement in favor of Lot #1 regarding the new building site. Easement #5 is a blanket easement for a wastewater system to serve Lot #1 partially onto Lot #2. Easement #6 is a water easement recorded waterline. Easement #7 pertains to an overhead utility line. Mr. Chase advised that the easements are necessary because Lot #2 has all of the road frontage, thus Lot #1 would be served via an easement to get the road frontage needed which is located below the sharp curve on Crosstown Road.

Mr. Chase advised that with respect to the names of abutters, he relied on the town's records. Karl Strassberger is shown on the plans, which has been owned by the Staffords since 2008. The Staffords abut on the easterly side of the lot and the Warrens abut on the westerly side of the lot.

Zoning Administrator Badowski noted that the lots are uniquely shaped to accommodate the two zoning districts. There is a 100 foot section along the road that is within the Rural Residential district. He mentioned that when two districts abut the Board can allow 50 feet of movement in one district or another in an effort to meet the lot size, depth and other requirements. He advised that the other side of the road is 200 feet in the Rural Residential District whereas this side is 100 feet.

Mr. Chase advised that Lot #2 consists of about one acre and includes Easements #1, #4 and #5. Easement #6 is an existing spring that serves the house to cross Lot #1. The existing barn will go with Lot #1. There is no house on Lot #1 at this time however page 3 of the plans showed a proposed new house site. The septic system for Lot #1 will be on the narrow area and is 75 feet away from the well. He pointed out the location for the drilled well which would serve the proposed house on Lot #1. The lot was configured due to the best building site with a view of Camel's Hump. Water supply for Lot #2 is the existing shallow well with the dedicated easement (#6). Access to Lot #1 is via a 50 foot easement shown as Easement #4.

Mr. Chase advised that he did not measure the sight distance from the driveway to the east but admitted that it was not great due to the sharp corner. Due to the length and steepness of the driveway they did not consider a common easement using the same drive. There is also an existing power pole and culvert there too. He advised that they hope to not alter the discharge from the culvert. There is an existing swale that brings runoff to the east in front and across the driveway of the proposed new house.

The Board asked for comments from the abutters, interested parties.

Bill Warren advised that they abut on the west side. He asked about the requirements concerning frontage and how the easement addressed that issue. He noted that the Staffords also have 300 feet of frontage in the Highland Conservation District.

The Board explained that the regulations do allow for access via rights of way or easements if a lot does not have frontage but may only serve two lots. Reference was made to Section 920 (E) of the subdivision regulations. Lot #2 has 491 feet of frontage with an existing house. Chair Wernecke explained the definition and how access is granted to back lots when there is not enough road frontage. He noted that the required easement is being applied for as part of this application.

In response to Mr. Warren's comment that Easement #3 just stops, Mr. Chase explained that it is cut off and becomes the building setback line and referred to the dash line on the plans. He further explained that the septic easement allows for work there if needed, such as a mound system. He elaborated further on the easements and their purpose. Easement #2 allows for a replacement septic system and easement #1 is for access to the barn from Lot #2. He noted that access could continue as it does now. Since Lot #2 contains all of the road frontage with the views, they had to configure it that way for enough acreage for each lot. They want to keep the barn with Lot #1.

Paul Stafford advised that the proposed driveway is of concern due to sight distance and the sharp corner. He noted that others have had to relocate their driveway for that reason. He noted that he was required to be 200 feet away from the apex of the corner. Although he felt it was not an issue, he had to comply with the town. He also noted that there is a forcemain there and that the setback looks very close to the trees.

Mr. Irons advised that he would remove the large tree (triple trunk) that is on the corner which would improve sight distance.

Mr. Chase admitted that there is not 200 feet to the corner. Mr. Chase advised that the only reason to do that was to avoid going under the driveway. He agreed that relocating the forcemain and removing the Cottonwood trees would improve the situation.

The Board agreed that the location of the driveway was of concern and wondered if it were possible to come in lower and away from the corner. Removing trees would improve sight distance. No comment had been received from the road foreman.

Mr. Stafford asked whether the property could again be subdivided noting that Lot #1 would be 9.2 acres.

The Board advised that minimum lot sizes for both districts would have to be met and noted that the Highland Conservation District requires a five acre minimum. The regulations in effect at the time would have to be considered. The Board indicated that it needed to review the latitude regarding the 50 feet in the zoning regulations, Section 2.02 (B). The Board was uncertain if the ZA's interpretation was correct in that it could change the district. Chair Wernecke indicated that he interpreted it to mean purpose or uses on the lot with respect to setbacks versus referring to the district. Members noted that the provision discusses moving the boundary but it is unclear for what purpose. Further research was needed regarding that provision.

Mr. Chase advised that he may not have a total of 40,000 square feet within the Rural Residential District. He advised that he has never run into this situation before. He explained that although referenced on the survey, no pins have been set and would not be set until approved. Lot #2 was designed to have room around the house. Although Lot #1 is larger, the portion of Lot #1 where the proposed new house would be located is smaller than one acre.

The Board confirmed that it has two concerns about the proposed subdivision, 1) the issue regarding the size of Lot #2 at only one acre, and 2) proposed access with respect to sight distance. Those issues need further consideration and review.

Mr. and Mrs. Warren commented on the amount of development in the area which is of concern. Ms. Warren advised that she often walks on that road and is concerned about more traffic, particularly on

that sharp corner. They noted that the town required the Staffords and others to relocate their driveways based on the town's denial of where they wanted it.

Chair Wernecke explained that there is overlapping responsibility with respect to driveway locations. He noted that the DRB considers access and curb cuts under the criteria. However the Berlin Select Board has the authority to approve the curb cut. Both boards rely upon the road foreman based on sight distance, drainage and other criteria for that approval.

The Staffords reiterated their concerns about the driveway and making it safe. It is a sharp corner and very dangerous. They noted that people miss the corner and go into the trees. They also expressed concerns about future development regarding the back lot.

The Board noted that the regulations were designed to allow multiple houses in the Rural Residential District and have been in effect for a while. Concerns about the access point have been expressed. The Board recommends review and comment from the road foreman regarding sight distance and safety. It was noted that for a 25 mph speed limit a minimum of 150 feet is needed for stopping distance. Members will review the regulations in more detail. The Board recommends recessing to a date certain, April 21st.

Mr. Chase agreed that he needed to meet with the road foreman to address this issue. He noted that contours are shown on the plans which reflects about a 12% grade, thus it is a steep drive. He agreed to share any correspondence with the abutters.

Chair Wernecke made a motion, seconded by Ms. Nuisl, to recess the hearing with respect to Application 15-012 to the April 21, 2015 meeting. The question was called and the motion passed unanimously.

3. Review and approval of the Minutes.

The Chairman called for approval of the Minutes of the March 17, 2015 meeting.

Mr. Friedrich made a motion, seconded by Ms. Nuisl, to approve the Minutes of the March 17, 2015 meeting as submitted. The question was called and the motion passed unanimously.

4. Public Comment

Persons present participated in the meeting as noted above.

5. Other Business

6. Status of Findings.

The Board voted to go into deliberative session at 9:07 P.M. and out at 9:22 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, April 21, 2015.**

8. There being no further business, the meeting was adjourned at 9:23 P.M.

Respectfully submitted,

Carla Preston

Carla Preston
Recording Secretary
Town of Berlin