

**DEVELOPMENT REVIEW BOARD  
108 Shed Road  
Berlin, Vermont**

**APPROVED MINUTES  
Meeting of TUESDAY, April 17, 2018**

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

Members present: Robert J. Wernecke, Chair; Karla Nuisl, Vice-Chair; John Friedrich; Josh Fitzhugh; and Shane Mispel.

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

Others present: William Warren, Michael Patterson, L.S., Gary Richardson, Ricky Richardson, Paul Irons, Sandra Vitzthum, Richard W. Bell, L.S., John Kerin, James Cultrera, Donna Houghton and Greg Houghton.

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. Gary Richardson, Ricky Richardson and Paul Irons renewed their request for party status regarding application 17-102, which was confirmed.

2. New business

**A. 17-102 – William Warren and Constance Warren** submitted an application for Final Plan Review of a Minor three (3) lot residential subdivision involving a 43-acre parcel. The property is located at 2607 Crosstown Road, Berlin, Vermont, in the Rural Residential (R-40) and Highland Conservation (AR) Districts, Parcel ID: 40-073. William (Bill) Warren and Michael Patterson, L.S. were sworn in to give testimony on this matter. In addition, Abutters Gary Richardson, Ricky Richardson, and Paul Irons were also sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, 17-102, received on 11/30/2017; **Exhibit #2:** Proposed 3-Lot Subdivision, S-1, prepared by Mark C. Bannon, PE, Wastewater/Water System Designer, with Bannon Engineering, dated 11/27/2017; **Exhibit #3:** Soils Data; **Exhibit #4:** Narrative addressing subdivision criteria; **Exhibit #5:** Survey – William and Constance Warren, prepared by Michael J. Patterson, L.S. dated March 2018; and **Exhibit #6:** VT Agency of Natural Resources, Department of Environmental Conservation, Wastewater System and Potable Water supply Permit, WW-5-7633, dated 04/04/2018.

Bill Warren advised that the property has now been surveyed and indicated a few slight changes to interior property lines since Concept Plan review in January. The 43-acre parcel will be subdivided into three lots consisting of Lot #1 with 2.0 acres, Lot #2 with 5.74 acres, and Lot #3 with 35.3 acres. He advised that Lot #1 is in the Rural Residential District and Lots 2 and 3 are in the Highland Conservation District.

The Board confirmed that Concept Plan Review of this proposed three lot subdivision was approved on January 2, 2018. This application is for Final Plan Review of this proposed subdivision. The Board asked about the reduction in the width of the access easement from 50 feet to 20 feet.

Mike Patterson, L.S. advised that the width of the easement had to be reduced to meet setback requirements for the existing buildings. He noted that 20 feet is wide enough for ingress/egress.

The Board advised that 20-foot wide drives are of concern with respect to emergency access, however there is nothing in the regulations regarding minimum widths for drives.

Mr. Patterson indicated that the plans show two easements, a 25-foot easement on Lot #2 in favor of Lot #1 for an onsite wastewater replacement area, and a 20-foot wide easement on Lot #1 in favor of Lot #3 for access to Lot #3. There is also a 10-foot wide waterline easement.

The Board asked the applicants if they had established any maintenance agreements regarding access which was discussed during Concept Plan review. It is best to have such agreements mentioned in the deeds.

Zoning Administrator Badowski confirmed that the town encourages maintenance agreements regarding shared access. It is best to have such agreements spelled out in the deeds to cover future owners. He confirmed that the proposed three lots meet size, frontage and other requirements for the districts in which located.

Mr. Warren acknowledged that maintenance of the shared access should be addressed.

Paul Irons, abutter advised he was concerned about his three springs and wanted to be sure that those water rights were protected. The spring that is about 12 feet deep with a concrete well house provides water to the house and barn. He advised that he obtained an easement for the wells from the Boyer State Forest around 1986.

Mr. Warren explained that the springs were located in the state forest and deeded to owners in 1904. The water line from Mr. Iron's house is now part of the Boyer State forest. The location of the three springs are shown on the survey as well as the 10-foot wide easement for the existing waterline.

Mr. Irons advised he wanted to be sure that his access to the spring being used would not be impacted by the proposed subdivision. Two of the springs have been abandoned, and the remaining spring provides water to Lot #1 from Lot #3.

Mr. Warren advised that they have received a Wastewater System and Potable Water Supply Permit from the State of Vermont, dated April 4, 2018.

The Board reviewed the criteria for Final Plan Review of a Minor subdivision and concluded that the applicable documents during Concept Plan Review and Final Plan review have been provided.

Based on documents presented and testimony heard, Mr. Fitzhugh made a motion, seconded by Ms. Nuisl, to close the hearing with respect to Application 18-003. The Board again encouraged the applicants to include a shared maintenance agreement in the applicable deeds. The question was called and the motion passed unanimously.

**B. 18-008 – Bartlett Hill Company, LLC (Sandra Vitzthum)** submitted an application for Concept Plan Review, Preliminary Plan Review and Final Plan Review of a Major Three (3) Lot Residential Subdivision involving a 73.40-acre parcel. The property is located on Bartlett Road, Berlin, Vermont, in the Rural Residential (R-40) and Highland Conservation (HC) Districts; Parcel ID: 11-016.1000. Sandra Vitzthum and Richard W. Bell, L.S. were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, 18-008, received on 03/23/2018; **Exhibit #2:** Lot Line Adjustment for Bartlett Hill Co., LLC, prepared by Richard W. Bell Land Surveying Inc., dated December 2017, with revisions on 06/29/2010 and 08/19/2017; **Exhibit #3:** Lot Line Revision for Sandra Vitzthum, prepared by Richard W. Bell Land Surveying Inc., dated August 2017, with revisions on 06/29/2010 and 08/30/2017; **Exhibit #4:** Soils data prepared by Marsh Engineering Services dated 11/12/2008; and **Exhibit #5:** Narrative dated 03/19/2018.

Sandy Vitzthum advised that she now wishes to subdivide Lot #1, with 73.41 acres, into three lots consisting of Lot #6 with 27.02 acres, Lot #7 with 2.03 acres, and the remaining of Lot # 1 with 44.36 acres. She noted she has a potential buyer for the woodlands to the east shown as Lot #6. She described the surrounding lots noting that Lot #1 surrounds her sister's house. She advised that the odd shaped lot, identified as Lot #7 would be a perfect home site. She noted that the property is in current use. She has walked the property with a forester and plans to log it off without going onto her uncle's or sister's property. She advised that onsite wastewater systems have been designed for all three lots (#1, #6 and #7) by Chase & Chase and are waiting to be submitted.

Ms. Vitzthum noted that the existing logging road would serve as access to the three lots. She advised that she has discussed a shared maintenance agreement with her attorney which will be included in the deeds. Lot #1 would be served by the common drive, and Lot #6 and Lot #7 will use that stretch of private drive. She noted which portion of the logging road would be utilized by Lot #6 only. She advised that it is all worked out in the draft deed including easements for power and maintenance of the shared access. Ms. Vitzthum explained that Lots #6 and #7 were designed to have frontage via the easement or Right-of-Way. She added that Lot #6 surrounds the smaller lots along Bartlett Road.

Mr. Badowski confirmed that the proposed lots all meet size and other requirements for the districts in which located. He noted this application was warned as a Major subdivision due to the recent subdivision activity regarding this property. He mentioned that a neighbor came in to review the application and pointed out that the name of an abutting property owner was incorrect. The owner of the parcel in question is Sam Fitzpatrick, not Sandra Vitzthum.

Rick Bell, L.S. and Ms. Vitzthum agreed that that was incorrect and will be sure to make that correction. Ms. Vitzthum noted that the reference was made to Lot 43-3 (Lot #8) that abuts her property which her mother gave to her uncle, Sam Fitzpatrick.

Ms. Vitzthum asked the Board about the timeline for the filing of deeds. She noted her prior permit required they be filed within six months, but due to this proposed subdivision the deeds would again change. She has sold a couple of those smaller lots created but questioned whether she could file the deed for Lot #1 since it is now being subdivided.

The Board confirmed that the statute requires a plat or Mylar be recorded with the town within 180 days (6 months). After further discussion, the Board agreed to review the timing for submittal of deeds since property may not sell within a six-month period. There would be no purpose in filing a deed until such time the property is transferred. The Board will look into this further.

Mr. Bell advised that a separate plat showing easements only has been filed for clarification. Boundary adjustments and subdivision plats would be filed first and the deed would call out those references. He advised that additional information could be included in the notes if necessary.

The Board acknowledged that prior Orders or Permits did include language regarding timing to file deeds and will address those outstanding issues. A Major subdivision requires three reviews, Concept Plan, Preliminary Plan and Final Plan, but agreed that separate votes for each step in the review process was not necessary. All required documentation has been provided for each review.

Based on documents presented and testimony heard, Mr. Fitzhugh made a motion, seconded by Mr. Fredrich, to close the hearing with respect to Application 18-008. A Mylar with the corrections noted must be filed within 180 days. The question was called and the motion passed unanimously.

**C. 18-009 – John Roberti (Vermont Flying Service, Inc.)** submitted an application for a newly illuminated sign (*Shell Aviation*) of approximately 25.5 square feet. The property is located at 2137 Airport Road, Berlin, Vermont, in the Light Industrial (LN) District; Parcel ID: SA4-040. John Kerin with Kerin's Sign Service was sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 18-009, received on 03/26/2018; **Exhibit #2:** Sign design and details for Shell logo and *Aviation* (25.5 square feet); **Exhibit #3:** Email from John Roberti authorizing John Kerin with Kerin's Sign Service to install the sign, dated 02/27/2018; and **Exhibit #4:** Aerial view of the property.

John Kerin advised he is here on behalf of the applicant, John Roberti who operates a maintenance building for airplanes. Shell Aviation wants to advertise for those services. He noted the wall sign would consist of light-emitting diode (LED) on the inside and be flush mounted through the wall of the building. He confirmed that the entire face of the logo and wording would be illuminated. He pointed out the location of the building on the aerial map noting it is on the north side facing the terminal. He believed the sign would be visible from Airport Road.

The Board asked who owns the property and believed it to be the State of Vermont. The Board cannot grant approval to a tenant without the landowner's permission.

Mr. Kerin advised it was his understanding that John Roberti owned the property/building thus he agreed to present the application and install the proposed sign.

Mr. Badowski researched ownership and advised that according to the 2016 grand list, the property is owned by State of Vermont Aeronautics Division. He advised that Mr. Roberti may own the building but does not own the land.

The Board indicated it had no concerns regarding the proposed sign as it was well within the size allowed for a 50-foot long building, however the owner of the property must be involved.

Mr. Kerin asked if the application had to be resubmitted and rewarned or if this application could be recessed. He advised he will meet with representatives from the state and return before the Board.

The Board advised that authorization is needed from the state which would be considered a joint application. The matter may be continued and recessed.

Chair Wernecke made a motion, seconded by Mr. Fitzhugh, to recess Application 18-009 to May 1, 2018 subject to clarification as to the property owner and permission to present the application on behalf of the tenant and property owner. The question was called and the motion passed unanimously.

**D. 18-011 – Nancy Carpenter (Karen Grace)** submitted an application for Concept Plan Review and Final Plan Review of a Minor Three (3) Lot Residential Subdivision involving a 45.87-acre parcel. The property is located at 4642 VT Route 12, Berlin, Vermont, in the Rural Residential (R-40) District; Parcel ID: VT12-037. James E. Cultrera, POA for the owners, and Richard W. Bell, L.S. were sworn in to give testimony on this matter. In addition, Donna Houghton and Greg Houghton, abutters, were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, 18-011, received on 03/26/2018; **Exhibit #2:** Property Subdivision for Michael, Sally and Sarah Herring, prepared by Wayne Lawrence, L.S., dated October 2014, revised October 2016; **Exhibit #3:** Septic System Design (Lots 1 & 2) for Michael, Sally and Sarah Herring, prepared by Wayne Lawrence, P.E., dated October 2014, revised October 2016; **Exhibit #4:** Subdivision of Lands of Carpenter and Grace, prepared by Richard W. Bell Land Surveying, Inc., dated 04/04/2018; and **Exhibit #5:** Narrative re Subdivision Application, dated 03/26/2018.

James Cultrera advised that he and his partner purchased the land and wish to subdivide the 45.87-acre parcel into three lots consisting of Lot #1 with 2.05 acres which includes the existing house, Lot #2 with 19.0 acres which includes the existing barn, and the remaining property Lot #3 with 24.82 acres which includes the greenhouse.

Mr. Badowski advised that the property is located in the Rural Residential District and confirmed that the three lots meet the minimum size of 40,000 square feet and other requirements. The majority of the property is in the flood plain.

In response to questions from the Board, Mr. Cultrera advised that they are separating the house and barn because that is what was proposed by the Herrings. Mr. Bell added that a secondary septic system had been previously approved for the garage. They decided to do away with it so it ended up being three lots with the plan to sell Lots #1 and #2 together as a farm. They are not proposing onsite wastewater systems for Lots #2 or #3 and will request deferments. He noted that Lot #3 could be residential or agricultural.

Mr. Cultrera advised they were looking to get some of their investment back which is why the lots are proposed as presented. They could sell Lot #1 with the house. Lot #1 has a right-of-way in favor of Lot #2. Lot #3 has access off VT Route 12 although difficult. They have not requested a curb cut from the state but believe it is possible.

Mr. Cultrera advised that before the subdivision it was all one contiguous property down to the point where the river meets. Lots #2 and #3 have property on each side of the river. He was unsure why the Herring's proposed the division of the lands as they did but noted that the flat area would allow cattle to travel through there. Most all of the property is within the 100-year flood plain which is shown on the plans. He noted that Lot #2 is not really buildable although Mr. Herring did have septic approval for that area as he was planning on living space over the garage.

Donna Houghton advised they reside across from the greenhouse and were present to get a better understanding of what was being proposed. She could not image selling Lot #1 without Lot #2 or selling Lot #2 without Lot #1.

The Board reviewed the criteria for Concept Plan Review and Final Plan Review. No onsite wastewater is being proposed for Lots #2 or #3. A replacement area for Lot #1 has been submitted which is located on Lot #1 thus no easement is required. The plans submitted have the required information.

Mr. Badowski advised that no concerns were reported from the Berlin Fire or Police Departments. The Vermont Agency of Transportation must approve access off VT Route 12.

Based on documents presented and testimony heard, Mr. Friedrich made a motion, seconded by Mr. Fitzhugh, to close the hearing with respect to Application 18-011. The question was called and the motion passed unanimously.

3. Review and approval of the Minutes.

The Chair called for approval of the Minutes of the April 3, 2018 meeting.

Mr. Friedrich made a motion, seconded by Mr. Fitzhugh, to approve the Minutes of the April 3, 2018 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

Chair Wernecke mentioned the upcoming Spring Planning & Zoning Forum presented by the Vermont League of Cities & Towns which will be held on May 23, 2018 in Rutland. He referred to the topics covered and encouraged members to attend.

Mr. Badowski noted that he would like to attend this seminar but it was also the same date as the public hearing for the proposed new town plan, thus would not be able to attend.

6. Status of Findings.

The Board voted to go into deliberative session at 8:28 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, May 1, 2018.**

8. There being no further business, the meeting was adjourned at 8:46 P.M.

Respectfully submitted,

*Carla Preston*

Carla Preston  
Recording Secretary  
Town of Berlin