

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

**APPROVED MINUTES
Meeting of TUESDAY, April 21, 2015**

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

Members present: Robert J. Wernecke, Chair; Karla Nuisl, Vice-Chair; Henry A. LaGue, Jr.; John Friedrich and Paul Irons, Alternate re 15-018.

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

Others present: Jeffrey Olesky, PE, Monique Denault, Paul Irons, Peggy Irons, Craig Chase, Paula Stafford, Paul Stafford, William 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. Abutters regarding the proposed subdivision, 15-012, were previously granted party status.

2. New business

A. 15-018 – RHTL Partners, LLC (Capitol City AutoMart – Buick – Pontiac - GMC) submitted an application for new illuminated Commercial Signs. The property is located at 1162 US Route 2, Berlin, Vermont, in the Highway Commercial Zoning District. Jeffrey Olesky, P.E. with Wilson Consulting Engineers, PLC and Monique Denault with Twin State Signs, Inc. were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 15-018, dated 04/01/2015; **Exhibit #2:** Site Plan, C.1, showing existing structures, parking, access, and locations for illuminated signs, prepared by Mark G. Stewart Architect; **Exhibit #3:** Sign designs and details for CAPITOL, BUICK - GMC and Certified Service, prepared by Pattison Sign Group, Knoxville, TN, dated 05/21/2012 and revised on 04/21/2014; **Exhibit #4:** Letter dated 03/13/2015 from Abel Toll, Manager, RHTL Partners, LLC authorizing representatives from Twin State Signs, Inc. and Pattison Sign Group, Inc. to apply for sign permits.

Ms. Denault advised that the three illuminated wall signs would consist of *CAPITOL*, *BUICK - GMC* and *Certified Service*. Details for the 18 foot high tower regarding BUICK and GMC are shown on the plans. She indicated that only the black vinyl letters would illuminate and not the silver panel in the back. She explained that the background is part of wall and is black. Ms. Denault advised that they measured the individual words for each sign which totaled around 87 square feet. The linear frontage of the building is 159 feet which would allow them up to the maximum of 300 square feet. She advised that the illumination of the letters would consist of light-emitting diode (LED) and noted that nothing external would be illuminated.

Zoning Administrator Badowski explained that the Applicant had previously applied for and received permits for these signs as non-illuminated. The Applicant now wishes to illuminate the signs, which is why it is before the Development Review Board.

The Board explained that proposed signs must be measured in block style around all the letters and logos if applicable. The square footage of the signs would increase when measured in that format but would not likely exceed the maximum amount allowed based on the formula.

Mr. Badowski confirmed that the total square footage of the three signs is actually 105.56 square feet when measured in block style.

In response to the Board's question concerning the freestanding sign, Mr. Olesky advised that no changes are proposed to that sign. He believed that it was shown on the original site plans. The architectural portal is a feature of that original design.

There being no further testimony, Mr. Friedrich made a motion, seconded by Mr. LaGue, to close the hearing with respect to Application 15-018. 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 which was continued from April 7, 2015. 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, Peggy Irons and abutters Paul Stafford, Paula Stafford, William 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 #5:** Boundary Re-Survey and Subdivision, Paul & Peggy Irons, prepared by Chase & Chase Surveyors & Septic Designers Inc., dated 03/19/2015 and revised on 04/20/2015 to correct abutters' names and add Note #6; **Exhibit #6:** Site Plan, Irons Subdivision, prepared by Chase & Chase Surveyors & Septic Designers Inc., dated 03/19/2015 and revised on 04/20/2015 to add Surveyor's Note #6 re site distance, corrected abutter information, relocated lot #1 tankage; and **Exhibit #7:** Details Sheet, Irons Subdivision, prepared by Chase & Chase Surveyors & Septic Designers Inc., dated 03/19/2015 and revised on 04/20/2015 re relocated Lot #1 tankage in 20 scale plan view/detail; **Exhibit #8:** Letter/email dated 04/17/2015 from abutters Mr. and Mrs. Warren and Mr. and Mrs. Stafford stating nine concerns about the proposed subdivision; **Exhibit #9:** Email response dated 04/21/2015 from Craig Chase, Sr. Survey Technician & Licensed Septic Designer, addressing each concern; **Exhibit #10:** Map, Natural Resource Atlas, Environmental Interest Locator addressing Abutters' concern #7 regarding stream and wetland buffers.

Craig Chase advised that the changes to the survey plans included now showing the correct names of the abutters and they added Surveyor's Note #6 which addressed sight distance after removing three large trees. He noted that with the removal of brush the sight distance on Crosstown Road to the northeast would be in excess of 200 feet and sight distance to the southwest would be in excess of 300 feet. He acknowledged that it is an unusual configuration for the two lots which are located in both the Rural Residential (R-40) and Highland Conservation Districts. Lot #1 consists of plus/minus 9.20 acres and is primarily within the Highland Conservation District. Lot #2 consists of plus/minus 0.99 acres and for the most part is located within the Rural Residential District but to meet the size, depth and other requirements a portion of the lot is within the Highland Conservation District. They believe that the designers of the districts anticipated that the lots in the 100 foot strip in the Rural Residential District along Crosstown Road would include land in the Highland Conservation District.

Zoning Administrator Badowski confirmed that Road Foreman Tim Davis reviewed the site and noted that with the tree removal he would approve the location for access as proposed. Mr. Davis advised that sight distance from the proposed drive was acceptable once the trees and brush were removed.

Mr. Irons advised that Mr. Davis was at the site when the trees were removed and that he approved sight distance from the northeast point to the cottage. He advised that they obtained permission from the town to fall the trees in the road due to the power lines. Mr. Irons confirmed that there is a little more brush to remove and that he has hired someone to strip it. He reported that removing the large trees improved sight distance.

The Abutters biggest concerns pertained to the validity of the survey without pins being set, the lots being in two districts, how that was being evaluated, whether setbacks must be met for each district, existing trees, and stream protection. They have reviewed the responses to their written comments.

Mr. Stafford commented about the lack of notice to residences along Crosstown Road that the road would be closed for the removal of the trees. He noted concerns with respect to being able to leave or return to their homes and the impact on emergency services should they be required.

The Board acknowledged that it is of concern but noted that it is not relevant or governed by the DRB. That issue or similar issue must be brought to the attention of the Berlin Select Board. There is no requirement that the DRB be notified in the event of road closure for tree cutting.

Mr. Badowski confirmed that Mr. Davis visited the site shortly after the last meeting and agreed that the trees in question needed to be removed. Mr. Davis noted that the trees were actually in the Town's Right-of-Way.

Mr. Irons indicated that Crosstown Road was not blocked off for very long when the trees were cut down. He explained that the large tree might have required blocking traffic for about an hour and after that vehicles were permitted to pass through. He advised that he spoke with property owners the evening before and gave them written notice.

In response to a question from Mrs. Stafford regarding authority to grant permission, Mr. Irons advised that it was his understanding that the Road Foreman was qualified to grant permission to close the road to cut down the trees. He advised that Mr. Davis was present while some of the work was being done.

Mrs. Warren admitted that she did not know much about the process and wanted clarification about surveys since the subdivision application relied on boundaries which are established by setting pins. She advised that a while back she looked out her window and observed a backhoe digging on their property. She noted that the person digging the holes did not know the boundary. She noted that since the whole project is contingent upon boundaries, without formal surveys on what is it based.

Mr. Chase advised that test pits are required for onsite wastewater and in this situation for a replacement septic area. He noted that they did make an error regarding the property line when digging the test pits. He explained that if an area does not test or perk, it would be pointless to perform a survey. He confirmed that the survey has been performed and that existing pins were found.

The Board confirmed that a survey was conducted after test pits were dug. The survey indicated that existing pins were found and shows pins to be set.

Mr. Chase confirmed that the survey was prepared based on existing deeds and other area surveys of the abutters' properties. He noted it is what he and his firm do for work and complies with the statutes and regulations governing the profession.

Mr. Stafford advised that their questions or concerns were not meant as a competency issue but more to obtain further clarification and a better understanding of the process. He noted that the survey of his property prepared by Greg Dubois was referenced on this survey. He did not see that an iron pin was mentioned as being found on these plans. He explained that the reason for his concern is due to the large cottonwoods and that the pin now shows that those trees are on his property.

Mr. Chase admitted that they did not locate that pin the day it was surveyed due to the snow. The location of the pin will be verified when the pins are set. He noted that their metal detector found some barbed wire. Their survey was based in part on Greg DuBois' work.

Mr. Stafford noted that the Applicants are asking for a non-traditional building lot which is creating a lot of confusion. He noted it was difficult to determine what the rear of the lot would be and what setback it would be required to meet, Rural Residential or Highland Conservation. He asked if based on this configuration would the rear setback for both lots be 75 feet.

The Board explained that the application being considered is to create a two lot subdivision. It is not for approval of a building, onsite wastewater, etc. The house site location must be approved by the Zoning Administrator at a later date. The Board must follow the general standards under Section 800 of the Subdivision Regulations as well as ensuring compliance with the zoning regulations. The Board noted that showing setbacks presumes a structure is being considered as part of this application. The Board confirmed that it is not approving the house site; it is simply verifying that the property can be used for a house site provided that both lots being created meet the criteria with respect to access, size, depth, and so on.

Mr. Warren mentioned setbacks required compared to what was listed on the survey. He noted that Rural Residential requires a 50 foot front yard setback but the drawing shows only 25 feet. Highland Conservation requires a 75 foot rear yard setback but yet again it is unclear based on the shape of the lots which line is considered at the rear of the lot. He asked for further clarification about the 100 foot zone and what it means regarding subdivisions.

The Board confirmed that front yard setbacks must be measured from the traveled portion of the highway and referred to the definitions regarding lot frontage.

Mr. Chase acknowledged that it was a bit unclear how the front yard setback was determined for lots that do not have road frontage. He advised that with respect to the 75 foot rear yard setback for Lot #1, they used the sideline.

The Board explained that it does not address which line refers to which setback when considering subdivisions because setbacks pertain to the location of structures. The Board must ensure that the lots being created meet the requirements for the districts.

Mr. Stafford advised that the idea of using a portion of the Highland Conservation District being added to the Rural Residential District to create a lot seems to violate the concept of having different zoning. He asked if not, then why have different zones. He noted that he mentioned the issue of split zones to a new Planning Commission member. He asked if the proposed lots could be redesigned to meet the requirements of both districts.

The Board advised that the 100 feet is measured from the center line of the road. One side of Crosstown Road is zoned at 100 feet and the other side of the road is zoned at 200 feet. Whether it was

meant to keep all in one zone is for the DRB to interpret. It is clear that the original intent was to allow more dense residential on that stretch of road but it is unclear why it differs from one side of the road to the other.

In response to other comments from Abutters about taking portions of other districts to make a lot, the Board explained that districts were not created based on lots. The Board is aware of many lots consisting of 40,000 square feet that are located within two districts, quite often Rural Residential and Highway Conservation. The Board believes that the lot lines were indiscriminately drawn at the time and noted that some districts (e.g., Highland Conservation) are based on elevation. The Board opined that this area was arbitrary resulting in 100 feet on one side and 200 feet on the other. The Board noted that it understands the issue that has been raised and will make a determination based on its interpretation of the regulations.

Mr. Chase asked for clarification about accessory buildings without a primary building noting that once the lots are created, the barn would be the only structure on Lot #1. He elaborated further with respect to pins and noted that Pin K defines the trees. The property line would determine who is responsible or authorized to cut down the trees.

The Board advised that the existence of accessory structures without a primary structure is of no concern. There are many examples of this occurring in town.

Mr. Warren referred to the different pins and wanted to ascertain where those pins would be placed. He noted that he may hire someone to survey his property.

Mr. Stafford noted that he has a survey prepared by Greg DuBois but feels he just lost about 2000 square feet of his property.

The Board advised that it has received a completed survey prepared by a licensed land surveyor, William Chase, which is required. Chair Wernecke noted that some prior surveys have included the road as part of the property based on references in deeds in an effort to meet lot size requirements. The Board acknowledged the issues raised by the Abutters which pertained to sight distance and whether Lot #2 meets the requirements because it crosses two zoning districts.

Based on documents presented and testimony heard, Mr. LaGue made a motion, seconded by Ms. Nuisl, to close the hearing with respect to Application 15-012. 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 7, 2015 meeting. On page 4, under "j", the reference regarding the lack of water for fire suppression was deleted because there is ample water supply at that location. On page 5 under 2 (B) it was noted that since Mr. Irons was the applicant he recused from participation on the hearing panel. On page 8, the 4th sentence in the 3rd paragraph was amended to read: It was noted that for a 25 mph speed limit a minimum of 150 feet is needed for stopping distance.

Chair Wernecke made a motion, seconded by Mr. Friedrich, to approve the Minutes of the April 7, 2015 meeting as corrected. 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 8:04 P.M. and out at 9:00 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 5, 2015.**

8. There being no further business, the meeting was adjourned at 9:03 P.M.

Respectfully submitted,

Carla Preston

Carla Preston
Recording Secretary
Town of Berlin