

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

**APPROVED MINUTES  
Meeting of TUESDAY, December 6, 2016**

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, Alternate. Absent: Henry A. LaGue, Jr.

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

Others present: John Miller, Anastasia Kanishcheva, William Butler, Raymond Carnelli, Barbara Menard, Roger Menard, Michael Baginski, Sue Christiansen, Charles Christiansen, and Josh Walker.

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. William Butler requested party status since his property is the subject of the Appeal. The Board confirmed that Mr. Butler had party status.

2. Old business

**A. 16-056 – Christina Castegren** submitted an application for Site plan and Conditional Use review of a rural enterprise which engages in agri-tourism and direct marketing of locally produced, value added farm products. The property is located at 4373 VT Route 12, Berlin, Vermont, in the Rural Residential Zoning District, Parcel ID VT12-038.

Zoning Administrator Badowski advised that Christina Castegren had withdrawn her application.

3. New business

**A. 16-074 – Monro Muffler Brake, Inc.** submitted an application to add a newly illuminated wall sign. The property is located at 1063 US Route 302, Berlin, Vermont, in the Highway Commercial Zoning District, Parcel ID US302-035. John Miller with Sign Design, LLC was sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Zoning Permit, 16-074, received on 11/10/2016; **Exhibit #2:** Sign Design and Details for a 30-square foot illuminated wall sign (**Tire Warehouse**); and **Exhibit #3:** Memorandum from Monro Muffler Brake Inc. authorizing John Miller with Sign Design LLC to present the application.

John Miller advised that the Applicant wanted to add an illuminated sign for further recognition. He explained that the business is located in the back lot thus is less visible. The business shares a drive with Portland Glass off U.S. Route 302. He indicated that the banner shown in the picture is no longer there. He confirmed that this is the only sign being proposed and noted that the freestanding sign is existing. The building measures 65 feet long including the overhang where tire services take place. The proposed wall sign is 20 inches high by 18 feet long. The painted red stripe on the front of the building is not part of the proposed sign. The painted red stripe defines the top of the windows of the sales room.

Mr. Miller advised the sign would be internally illuminated with light-emitting diode (LED) channel letters.

Zoning Administrator Badowski advised that the overhang area is somewhat angled but should be considered part of structure since it has a concrete foundation. Since the sign is only 30 square feet there is sufficient frontage of the building even without the overhang area.

Mr. Miller confirmed that the existing freestanding sign (*Tire Warehouse – Tires for Less*) has space for messages where it says "8 inch change letters." He explained that the owner has the ability to manually change the message via the eight inch letters but expected that messages were not changed very often.

Based on documents presented and testimony heard, Mr. Fitzhugh made a motion, seconded by Mr. Friedrich, to close the hearing with respect to Application 16-074. The question was called and the motion passed unanimously.

**B. 16-071 – Anastasia Kanishcheva** submitted an appeal of a permit issued to **William Butler** for an accessory dwelling. The properties are located at 487 Rowell Hill Road (Appellant), and at 497 Rowell Hill Road (Butler), Berlin, Vermont, in the Highland Conservation District. Anastasia Kanishcheva, William Butler, Michael Baginski and Raymond Carnelli were sworn in to give testimony on this matter.

Karla Nuisl disclosed a long term personal relationship with the ex-husband of Mrs. Butler. No one expressed any objections to Ms. Nuisl serving on the hearing panel.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Appeal by Anastasia Kanishcheva of Permit issued to William Butler by Zoning Administrator, dated on or before 11/18/2016; **Exhibit #2:** Copy of Permit (16-071) issued to William Butler on 11/03/2016; **Exhibit #3:** Copy of Application for Zoning Permit submitted by William Butler, dated 11/03/2016; and **Exhibit #4:** Copy of Wastewater System and Potable Water Supply Permit (WW-5-7303) issued to William and Linda Butler by the Vermont Agency of Natural Resources, Department of Environmental Conservation, dated 11/04/2016.

Ms. Kanishcheva advised that she appealed the Zoning Administrator's decision to issue a permit to her neighbor, Mr. Butler, because she believes that it was issued in error and that construction began without communicating with anyone. She objects to the development and construction of another residence at 497 Rowell Hill Road because she and her husband own the driveway which construction vehicles are destroying. The driveway is shared and the Butlers have a Right-of-Way from it to their lot. Mr. Butler has been logging and clearing the area which has increased construction equipment and truck traffic. She advised that she has no objection to the garage but the proposed size increased from 28 feet by 36 feet to 28 feet to 40 feet and the use changed to add a residence. She and her husband became aware of it when they were notified by the State of Vermont on a wastewater and potable water supply permit issued to Mr. Butler. She contacted that State about the permit and then contacted the well drilling company when she noticed their truck at the Butler's site who confirmed that a well had been drilled on the Butler property. She was advised by the Zoning Administrator that a permit is not needed to drill a well.

Ms. Kanishcheva advised that she researched the regulations about accessory dwellings and uses. The size of the garage or accessory dwelling was increased which she believes exceeds the percentage allowed for accessory dwellings. According to zillow.com the total floor area for the

Butler's main house is 1992 square feet which would make the accessory structure over 50 percent of the main structure. She asserted that the permit for a garage was then changed to a single-family dwelling. She believed that a permit from the Berlin Sewer Commission was also required. Before submitting an application for a permit, Mr. Butler hired surveyors and engineers to apply for the wastewater permit.

Ms. Kanishcheva believes that the application to change the use of the accessory structure was incomplete because it did not include the total square footage of the existing structures. The size of the structure had been increased to 28 by 40 and much of the information required on the application was left blank. She noted that the Wastewater System and Potable Water Supply Permit states approval for a detached accessory 2-bedroom residence. She asked how many houses could be put on that lot. She asked if the 10-acre lot had to be subdivided with two residences. Ms. Kanishcheva was concerned about the potential for additional truck traffic and its impact on safety and the driveway for which they were responsible. She advised that there is no maintenance agreement in place regarding the shared driveway.

Zoning Administrator Badowski confirmed that Mr. Butler did receive a permit for the garage. He advised that the first he heard about the wastewater permit was when the town was copied on the application to the state. He reviewed the drawings and called Chase and Chase who confirmed that their client needed a permit. He then called Mr. Butler about it and explained that a proposed single-family dwelling is different than the permitted use previously issued to him for a garage. The Highland Conservation District has a minimum five-acre zoning thus it would be possible to subdivide if desired.

Mr. Badowski advised that he met with the Appellant and her husband after they saw a shower unit being delivered to the Butler's. They also discussed concerns about the damage to their driveway due to the construction equipment and truck traffic. His site visit revealed that the top floor of the garage was being created for living space but it was not habitable at that point as there was no plumbing. The shower unit was there but it was not installed at the time of his site visit. Mr. Butler then applied for an accessory dwelling. Mr. Badowski spoke with Carl Fuller, PE at the State regarding the wastewater permit issued to Mr. Butler. The permit was issued to Mr. Butler based on what he learned from Mr. Fuller. Mr. Badowski believed that the criteria were met when he issued the permit.

The Board asked for verification of the square footage of the existing structure (house) in an effort to determine whether the new structure was greater than 30 percent. The Board referred to Section 3.09 Lot & Yard Requirements under (A) regarding Accessory Dwellings and to the definitions. The accessory dwelling must have wastewater, meet setbacks and must not exceed 30 percent of the total habitable floor area of the single-family dwelling. Accessory Dwelling Unit is defined as "an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation."

Mr. Butler advised that the living space only pertains to the second floor of the 28 foot by 40-foot structure. The walls are not angled, it is full height. He did not know the square footage of his buildings. He advised that he has three different buildings. He believed that he followed the rules based on information he received from the town and his surveyors and engineers. He asked if the information about the size of his home would be in the tax records.

Ms. Kanishcheva reiterated that according to Zillow.com the living space of Mr. Butler's home is 1992 square feet. The proposed living space above the garage would equate to over 50 percent of the existing home. In addition, the wastewater permit issued by the State indicates two-bedroom, not one bedroom.

Mr. Badowski searched the files but found no indication of the total square footages for the existing structures on the property in question. He advised that the town is not copied on all permits issued by the State.

Mr. Butler advised that the accessory dwelling will not be a two-bedroom home. It is intended for personal use for relatives and will not be for rent. He has no intention to subdivide his lot. He introduced his contractor, Mike Baginski. He advised that the overshadowing mentioned by the state is not on the abutter's property and is not relevant regarding the well. He is upset about the accusations and believed he did what he was required to do and then it was appealed.

The Board advised that the conversation would be restricted to the permit issued and whether the regulations were followed. The Board is not adjudicating other issues.

Mr. Baginski advised that the wastewater permit was issued but the septic system has not been constructed. He also confirmed that a permit is not required to drill a well. The wastewater permit from the State was required in order to be issued a permit from the town. Mr. Butler waited for the permits to be issued.

The Board asked for the square footage of the habitable space in the accessory dwelling. The provision pertains to habitable space, thus sheds and other buildings could not be considered. The size of the structure is not necessarily out of compliance, only the area of the habitable space. The finished square footage of the accessory structure would have to be 30 percent or less than the primary residence.

Ms. Kanishcheva advised that since they share a driveway, they would like to have been notified of the construction project. She asked if there were any requirements to post signs for safety purposes.

Mr. Badowski advised that the regulations do not require signage during construction of a project such as this one. Neither the State nor town licenses contractors, thus no proof of insurance is required.

Mr. Carnelli provided some history about this property which was previously owned by Michael Domingue. He mentioned access via the common Right-of-Way and maintenance of the driveways.

The Board advised that neither the Town nor the Development Review Board has authority with respect to private drives. If the property were to be subdivided, access and roads are part of the criteria that must be addressed. The Board is encouraging people to have a written agreement which would follow the property when owners change. The Board recommended that the parties work together and come up with an agreement to maintain the driveway.

In response to further questions from the Board, Mr. Butler advised that the proposed living quarters in the garage is approximately 200 yards from his existing house. He noted that there are

many pine trees between them. The garage is not visible to neighbors. He is confident that the Right-of-Way is legal based on deeds and real estate paperwork.

The Board advised that to move forward, it needed to know the habitable space of the primary structure and the design plans for the garage. Is the proposed habitable space of the new garage the entire top level or less. An exact square footage area is needed.

Mr. Baginski asked whether they could move forward with the construction of the septic system. He noted he is worried about the climate.

The Board advised that doing so would be risky since the application has been appealed. Additional information is needed before the Board can make a decision. The next meeting would be December 20<sup>th</sup> but discussed earlier dates. The Board pointed out that the primary residence would have to be at least 3360 square feet in order for the entire second floor of the garage to meet the regulations. The options are to subdivide or reduce the size of the finished area of the accessory dwelling. The Board must act on the Appeal of a permit issued by the Zoning Administrator and whether it was issued appropriately. Since the application is scarce with measurements, a new application may be needed. If the habitable space is greater than 30 percent of the primary structure, the application would be denied.

Based on documents presented and testimony heard, Mr. Fitzhugh made a motion, seconded by Mr. Friedrich, to find on behalf of the Appellant and overturn the Zoning Administrator's decision with respect to Permit 16-071. The Board will issue Findings of Facts and Conclusion regarding this Appeal. The question was called and the motion passed unanimously.

#### 4. Review and approval of the Minutes.

The Chair called for approval of the Minutes of the November 15, 2016 meeting. On page 2, the first sentence in the second paragraph under "a" was amended by removing the reference to totaling 230 employees in parenthesis.

Chair Wernecke made a motion, seconded by Mr. Friedrich, to approve the Minutes of the November 15, 2016 meeting as amended. The question was called and the motion passed unanimously.

#### 5. Public Comment

Persons present participated in the meeting as noted above.

#### 6. Other Business

#### 7. Status of Findings.

The Board voted to go into deliberative session at 8:08 P.M. and out at 8:12 P.M. to discuss the status of Findings. The Board's decision with regard to (closed) adjourned applications will be reported in its Findings.

#### 8. The next meeting of the Development Review Board is scheduled for **Tuesday, January 3, 2017.**

9. There being no further business, the meeting was adjourned at 8:20 P.M.

Respectfully submitted,

Carla Preston, Recording Secretary, Town of Berlin