

DEVELOPMENT REVIEW BOARD
108 Shed Road
Berlin, Vermont

UNAPPROVED MINUTES
Meeting of TUESDAY, February 2, 2016

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.

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

Others present: Donald Marsh, PE, Elliott Curtin, Jason Merrill, Shawn Isham, Brian Emmons, Helen Bryan, Shawn Bryan, Martin Kelley, Michael Stridsberg and Corinne Stridsberg.

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 and neighbors present were previously granted party status.

2. New business

A. 15-092 – Junction Associates LLC submitted an application to construct a 15,000 square foot commercial building and associated improvements requiring Site Plan, Conditional Use and Flood Hazard review as well as a request for a variance. The property is located at 671 Junction Road, Berlin, Vermont, in the Industrial Zoning District, Parcel ID SA2-021. Donald Marsh, PE, Elliott D. Curtin, and Jason P. Merrill with Junction Associates LLC were sworn in to give testimony on this matter. In addition, abutters and neighbors Shawn Isham, Brian Emmons, Helen Bryan, Shawn Bryan, Martin Kelley, Michael Stridsberg and Corinne Stridsberg were sworn in to give testimony on this matter. This Application was continued from the January 19, 2016 meeting.

The following documents were submitted and admitted as exhibits: **Exhibit #13:** Conceptual Renderings for Office/Warehouse Concept, prepared by TiMic Drafting & Design, dated 01/29/2016; **Exhibit #14:** Memorandum from Don Marsh to Zoning Administrator regarding proposed uses and clarifications about the proposed application; **Exhibit #15:** Applicant's written comments to address Variance Criteria; **Exhibit #16:** Seven Photographs of the site showing existing conditions submitted by Michael and Corrine Stridsberg; **Exhibit #17:** Email dated 01/26/2016 from Michael Stridsberg stating road width measurements taken in the area ranging from 18 feet to 26 feet; and **Exhibit #18:** Email dated 01/26/2016 from Martin Kelley offering clarifications concerning the Cross Vermont Trail and history of the site.

Mr. Marsh advised that there were three outstanding issues from the last meeting. They again looked at potential uses for the proposed commercial building which would include contractor's yard with interior offices but no outside storage of materials, freight terminal for shipping and receiving for a fulfillment company, or manufacturing industries and warehouse to include minor interior assembly work and contractor storage within the building. He referred to Table 2.09 in the regulations noting that all of the proposed uses are permitted uses in the Industrial District.

Mr. Marsh explained that after further review of the potential building tenants and uses they are requesting that the tractor trailer use of the facility be an average of two trucks per day with a maximum of five trucks per day. He advised that the size of the trailers would be up to a 53 foot box which is the size of truck and trailer used when considering turning movements. Truck traffic would be limited to regular business hours, 7:00 AM to 5:30 PM.

Mike Stridsberg advised that he measured the width of the road and does not believe that it is wide enough to support the truck traffic proposed.

Mr. Marsh advised that a road ranging from 22 to 26 feet wide meets the Vermont design standards with an average daily traffic (ADT) of 400 to 1500 vehicles. The standards require a nine foot wide lane with a two foot wide shoulder for a total of 22 feet wide.

Mr. Stridsberg reported he found that standards to accommodate pedestrian and bicycle traffic required an 11 foot wide lane with a three foot wide shoulder for a total road width of 28 feet.

Mr. Marsh advised that he relied upon the Vermont Design Standards established in January of 2007 and shared copies of it with attendees. He also advised that the Cross Vermont Trail does not include this portion of Junction Road. He noted that the western portion of the bike path is part of the Cross Vermont Trail.

Martin Kelley, who works for the Vermont Agency of Transportation, advised that the standards mentioned by Mr. Stridsberg are the current standards applied to a new road. There is no bike path lane on Junction Road and each lane is 11 feet wide including the two foot shoulder.

The Board reminded attendees that any information exchanged via email since the last meeting must be introduced tonight to be admitted as an exhibit.

Mr. Stridsberg acknowledged that the portion of the road in question is not part of the Cross Vermont Trail as he thought but did note that it is heavily used recreationally.

Mr. Kelley advised that the bike path actually begins at the Dog River field where there is parking. He advised that Junction Road was not intended as a bike path route. He confirmed that the Regional Planning Commission indicated that the ADT for this section of road is 430 vehicles.

Mr. Marsh referred to their rendering for the proposed design of the commercial building with landscaping. He noted that it is not the steel box like the Capital Steel building but it is a warehouse. The proposed finished color has not yet been selected but would be earth tones. He advised that the façade is metal exterior finish with accent tones for colors. The proposed design shows the windows, overhead doors on the east elevation and man doors. There would be a darker panel of a different color for a sense of façade. He noted that there might be a mezzanine on one end or elevated storage since the height to the roof top is 24 feet. They are proposing birch trees (2 to 2.5 inch caliper) located as shown on the plans.

Helen Bryan advised that in her view the proposed building still looks a like steel box with windows. She believes that the building is not in character with the neighborhood.

Mr. Marsh offered for the record that the Zoning Administrator found that this area has been zoned industrial since 1975. It has been zoned industrial for a long time and predates some of the dates mentioned by neighbors as to how it had been zoned in the past.

Mr. Marsh advised that they believe they meet the definition regarding special flood hazard areas (Section 5.09). He advised that certain provisions contradict each other with respect to allowing grading and fill but restrict new development. He referred to the table in the regulations noting that

the regulations are ambiguous. He also advised that the warning for the proposed application included a variance which the Applicants are prepared to address.

- A. Unique physical conditions of Lot. Mr. Marsh advised that it is a relatively narrow site. There is bedrock and steep slopes in the rear. The portion of the land in the floodplain is in the front, nearly all of the flat area, about 1.2 acres of the 4.1 acre parcel. In addition, they must maintain a buffer to the stream along the east side of the lot. They believe that these are all unique physical characters of the lot and would justify a variance.
- B. Due to physical conditions no possibility to develop in strict conformity for reasonable use of the property. Mr. Marsh advised this is an industrial zoning district and if a commercial building were constructed to stay outside of the floodplain it could only be 7,000 square feet which is too small for an industrial use of the site. They did reduce the size of the building and pushed it back toward the bedrock to minimize impact.
- C. Hardship not created by Applicant. The Applicant did not create the lot; they are just trying to develop an existing lot in an industrial district.
- D. If authorized, not alter the essential character of the neighborhood or impair adjacent uses. Mr. Marsh advised that the proposed commercial building is consistent with an Industrial Zoning District. The setback to the proposed building is 140 feet from Junction Road. The proposed project would not impact potential development of adjoining lots. There is available space in the front for potential solar use.
- E. If authorized, will represent minimum that will afford relief with least deviation of regulations. Mr. Marsh advised that they pushed the building back as far as can be reasonable based on the lot. They have reduced the size of the building by 25 percent to the smallest size that could be developed for a commercial business in this industrial site. The Applicants believe that they have addressed and met the five variance criteria.

Shawn Bryan mentioned the letter (email) from Rebecca Pfeiffer with the Agency of Natural Resources, Watershed Management Division who indicated that because the project includes fill and locates a portion of the building within the floodplain that it would violate the Town's regulations which do not allow new non-residential structures in the Special Flood Hazard Area except within the Highway Commercial District. He asked how the Zoning Administrator and Board felt about that statement. He believed that the Board would want authority from the state or at least a legal opinion to support granting it.

Zoning Administrator Badowski advised that he has not asked for legal opinion.

The Board's position is that it is up to the Board for interpretation. There is contradictory language in the ordinance and the Board must weigh it out. Obtaining a legal opinion may not be beneficial and is likely to result in differing opinions from lawyers.

Ms. Bryan advised that she strongly believes that this project will change the character of the neighborhood by being the only large commercial building in this area. She thought it could have been a residence. She also asked for further clarification about the use of solar energy there.

Mr. Marsh advised that a commercial building in an industrial district is allowed. He interpreted the regulations to prohibit a new single family residence in this district. He explained that they are not proposing solar use at this time but not precluding it from the future. It was mentioned above to indicate that their project would not interfere with any neighbors' potential use of solar.

Corinne Stridsberg advised that she had attended a meeting regarding the Federal Emergency Management Agency (FEMA) and took out of it that it was best to allow as much land as possible for flooding. She feels that this large commercial building does not belong there in the flood plain with that in mind. She believes that it does change the character of the area. The project does increase truck traffic now up to five trucks a day making it a huge safety concern given that the road itself is not appropriate and is heavily used recreationally at all hours.

Mr. Kelley advised that he believed that a proposed house had been mentioned for that site but could not be done because of zoning. He noted that when the land went up for sale it was not worth much and only had a pole barn.

Mr. Stridsberg presented some photographs of the property in question and asked that they be admitted as exhibits. Copies were shared with attendees. He also submitted a copy of his earlier email (01/25/2016). He advised that the first photograph was taken from standing in the road in front of their house which shows the elevation of the property and the existing pole barn. He advised that one vehicle has to pull over when meeting another one there. It is not possible for two vehicles to meet with a runner or walker present. The second photograph was taken from looking out of the window of their house which clearly shows the subject property. The building would be visible from their house and from the road. The photographs show how much that land is elevated compared to their property and evidence of the rocky fill used to raise it. The page showing three photographs depict an orange tag in the tree to show the height of land which is approximately six and a half feet or 80 inches difference. He advised that the property in question used to be below their property in elevation. The last photograph on that page shows the stream that does run all year. It was not a stream before the fill was added, just wet and marshy. The very last photograph shows the area from May of 2011 which confirmed that the area does in fact flood. He noted that it is not like it was during Tropical Storm Irene at which time water rose to their steps but it does represent typical spring flooding.

Brian Emmons advised that he lives on Junction Road and has never seen the road flood as shown there thus assumed it was more recent. He opined that that photo does not represent an every year event. Neighbors agreed that the area does flood but not as much as it did before it was filled.

Mr. Stridsberg referred back to his first photograph and pointed out the blue port-o-potty on the property in question. He noted that if he can see that object he would certainly be able to see the proposed large building. As proposed it could enclose more than three and a half basketball courts, will stick up over the trees, and will change the character of the neighborhood. He advised it would be visible from Interstate 89.

Mr. Kelley referred to a map that showed the area which was the Tucker property. A Google Earth map taken back to 1992 shows the marshy spot and that the land was all open. He explained that the darker area shows the wet area but indicated it was not considered a marsh. He also presented a photograph from 1962 which showed the old farm house, brook and spring tub. He noted that the barn is there but is facing the opposite way.

Ms. Bryan confirmed that it used to be a farm and that they reside in the farmhouse which used to be owned by Farnham. They are trying to keep it as farm land.

The Board asked the Applicants if they considered a different shape or façade for the building.

Mr. Marsh advised that they did not consider other options due to fire safety issues but did reduce the size of the building by 25 percent which makes the most sense for an industrial use. He noted that other façades such as barn boards require additional fire safety measures. To satisfy fire safety concerns steel or concrete are typically used.

Mr. Merrill confirmed that the color of the building would be earth tones to blend with the area. It would have a flat roof with a ceiling height of 20 feet. He confirmed that they have not considered solar energy. He noted that the overhead doors are 16 feet high by 12 feet wide.

There being no further testimony, Mr. LaGue made a motion, seconded by Mr. Friedrich, to close the hearing with respect to Application 15-092. 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 January 19, 2016 meeting. On page 3, the second to the last sentence in the first paragraph was amended to strike the word zoned so it is clear that the area is residential but not zoned as such. On page 4, the first paragraph was clarified to show that 17 or 18 round trips meant 34 or 36 trip ends. On page 7, the last sentence under "h" was corrected to read: The stream on the west side consists of a dry culvert off season. On page 9, the last sentence under "m" was corrected to read: He advised that the septic system is 80 feet in elevation above the building thus the system will require a pump. On page 11, the first two sentences in the 2nd paragraph were combined to read: The Applicants explained that they would share about 155 feet of driveway with the existing resident off Belknap Road and then branch off at that point with a brand new driveway.

Chair Wernecke made a motion, seconded by Ms. Nuissl, to approve the Minutes of the January 19, 2016 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

Chair Wernecke handed out copies of the "Municipal Assistance Center Technical Paper #4" from the Vermont league of Cities and Towns and asked members to review it to consider changing the process to on the record versus *de novo*. He explained that if an application is appealed the applicants have to present everything again to the court. The town has to hire attorneys which can be expensive. The matter was discussed briefly noting pros and cons about making the change and how it would impact all parties concerned. The Board will discuss this issue at a future meeting.

6. Status of Findings.

The Board voted to go into deliberative session at 8:17 P.M. and out at 9:06 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, February 15, 2016.**

8. There being no further business, the meeting was adjourned at 9:08 P.M.

Respectfully submitted,

Carla Preston
Recording Secretary
Town of Berlin