

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

**APPROVED MINUTES  
Meeting of TUESDAY, January 17, 2017**

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; Henry A. LaGue, Jr.

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

Others present: Gunner McCain, Keith Herring, Carol Herring, Cara Herring, Allen Herring, Connie Laplant, David Jennette, Arlene Davis, Bill Walsh, Paul Irons, Peggy Irons, and Daniel Rodliff.

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. No one requested party status with respect to application 16-079. Dan Rodliff with Poulos Insurance, Inc., an abutter, requested and was granted party status with respect to application 16-081.

2. New business

**A. 16-079 – Keith Herring and Carol Herring** submitted an application for Concept Plan Review and Final Plan Review of a two-lot subdivision involving a 7.98 acre parcel. The property is located at 268 Haskins Terrace Road, Berlin, Vermont, in the Rural Residential District, Parcel ID #53-031. Gunner McCain with McCain Consulting, Inc. and owners Keith Herring and Carol Herring were sworn in to give testimony on this matter. In addition, abutters Cara Herring, Allen Herring, Connie Laplant, David Jennette, Arlene Davis and Bill Walsh were also sworn in to give testimony on this matter. This meeting was continued from January 3, 2017.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, 16-079, received on 12/14/2016; **Exhibit #2:** Survey and Subdivision of the Lands of Keith & Carol Herring – Preliminary, prepared by McCain Consulting, Inc., dated 10/28/2016; **Exhibit #3:** Site Plan - Keith & Carol Herring Two Lot Subdivision – Preliminary Not For Construction, prepared by McCain Consulting, Inc., dated 09/20/2016; **Exhibit #4:** Cover Letter dated 11/29/2016 from McCain Consulting, Inc. to the Town of Berlin describing the proposed subdivision and addressing the Town Plan Compliance; **Exhibit #5:** Letter dated 12/14/2016 from McCain Consulting, Inc. to the Town of Berlin further describing proposed access for the Herring 2-lot subdivision; **Exhibit #6:** Letters dated 12/14/2016 from McCain Consulting, Inc. to the Town of Berlin Highway Department, Police Department, and Volunteer Fire Department describing the proposed subdivision and requesting an impact statement; **Exhibit #7:** List of adjoining Landowners; **Exhibit #8:** Copies of Applicable Deeds and plot map; **Exhibit #9:** Memorandum from the Berlin Police Department stating that the proposed application would have no adverse impact on that Department; **Exhibit #10:** State of Vermont, Wastewater System and Potable Water supply Permit #WW-5-7305 issued to Keith & Carol Herring, dated 10/26/2016; and **Exhibit #11:** Description and Aerial photo of the subject area outlining the parcel to be subdivided and showing access points provided by Zoning Administrator Badowski.

Gunner McCain, with McCain Consulting, Inc., advised that the Applicants propose to subdivide an approximate eight (8) acre parcel in half. Lot #1, consisting of 4.11 acres includes the existing house and shed. The Applicants propose to build a house on Lot #2, consisting of 3.87 acres. Mr. McCain advised that there are two right-of-way easements off Chandler Road for accessing the existing house. He noted that Haskins Terrace is not recognized as a private road, thus it may only

serve two lots. The existing house (Lot#1) will utilize the right-of-way easement to the south, and the proposed house (Lot#2) will utilize the right-of-way easement to the north. He advised that the looping access road will remain open and maintained for emergency vehicles.

Zoning Administrator Badowski advised that the property is located within the Rural Residential District and that both lots will meet the criteria for that district. The Town has received a copy of the Wastewater System and Potable Water Supply #WW-5-7305 applicable to the proposed new home on Lot #2.

Mr. McCain advised that although not considered part of this proposed subdivision, the application will also resolve a property line discrepancy between Herring and Jenette.

The Board reviewed the aerial photograph and asked for clarification about access. The lot being subdivided is in the back and does not have road frontage.

Mr. McCain advised that the residents currently use the existing shared driveway or right-of-way known as Haskins Terrace. The proposal is for the new parcel being created (Lot#2) to utilize the easement to the north which is shown in yellow on the colored photograph. He advised that this information is specified in the deed.

Mr. Badowski advised that it is considered a shared driveway not a road. He spoke with the Berlin Road Foreman and Police chief about this matter, neither of whom expressed any concerns regarding the proposed application.

Allen Herring advised he resides at 143 Haskins Terrace and noted that maintenance of the driveway is currently shared among the residences there. The new lot will be served from the north.

The Board strongly encouraged the residents utilizing the shared access to formulate a written maintenance agreement that stays with the property in the event ownership changes in the future.

Bill Walsh and Arlene Davis advised that their parcel abuts the property being subdivided and mentioned concerns about water rights. Because their water pipe runs under Haskins Terrace, they were concerned about additional traffic on that road. They were not aware that proposed access to the new lot was from another location. The maps provided did not show the location of their well and waterline.

Keith Herring advised that efforts have been made to protect their well (blue board) and water rights. He advised it would not be an issue and noted that that information was documented in the land records.

Mr. Walsh pointed out the location of their well/spring which is near the swamp. The spring is in the vicinity of the subject property but is not affected by this proposed subdivision. The well is on the lot with the existing house but will not be affected by the proposed new house on Lot #2. Ms. Davis explained that they were concerned because they did not know anything about the location of the new house being proposed, access to the lot, and so forth. They were satisfied that the project would have no impact on their water rights.

Mr. McCain presented an old survey which showed the location of the well and confirmed there would be no impact on it as a result of this proposed subdivision. He will ask his surveyor to add the location of that well and water rights to the plan.

David Jennette advised that the boundary dispute has not yet been resolved.

Keith Herring responded and indicated that he is waiting on his attorney for final resolution to the boundary line issue to the east. They are working on it.

Mr. McCain confirmed that that boundary line will be clarified but it is not germane to this application. The boundary discrepancy is on the original parcel and not near the new lot being created.

The Board noted that the application was warned for both Concept Plan Review and Final Plan Review of a two lot Minor subdivision. The information provided was satisfactory for consideration of concept and final plan review.

Based on documents presented and testimony heard, Mr. Friedrich made a motion, seconded by Ms. Nuisl, to close the hearing with respect to Application 16-079. The question was called and the motion passed unanimously.

**B. 16-081 – Paul F. Irons and Margaret B. Irons** submitted an application for Concept Plan Review and Final Plan Review of a two-lot subdivision involving a 4.57 acre parcel. The property is located at 654 Granger Road, Berlin, Vermont, in the Light Industrial District, Parcel ID #62-002. Paul Irons, Peggy Irons, and abutter Dan Rodliff with Poulos Insurance Inc., were sworn in to give testimony on this matter.

Henry LaGue advised that he is an abutting property owner and would recuse if requested. No one objected to Mr. LaGue serving on the hearing panel in this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, 16-081, received on 12/29/2016; and **Exhibit #2:** Conceptual Plan - Proposed Subdivision - Irons Living Trust, prepared by Chase & Chase Surveyors & Septic Designers, Inc., dated 05/06/2016.

Paul Irons advised that they own the entire parcel of land as shown on the plans. They propose to subdivide the parcel into two lots consisting of Lot #1 with 3.6 acres, and Lot #2 with 42,100 square feet or just under one acre. He noted that the service road shown goes to First & Fitness. There is a 50-foot wide easement or right-of-way for access to lands owned by Woodfield Properties, LLC. In addition, there is a 20-foot wide sewer line easement for Woodfield Properties, LLC. He advised that the sewer line serving Woodfield Properties, LLC is separate from the sewer line that serves his building. There is also a 50-foot wide right-of-way for Central Vermont Medical Center which is shown on the plans. Mr. Irons advised that he has received an allocation for water and wastewater to serve Lot #2.

Dan Rodliff advised that he works for Poulos Insurance, Inc. located at 752 Granger Road which abuts the property in question. He confirmed his request for party status and asked for further clarification about the proposed subdivision.

Mr. Irons pointed out existing structures, accesses, and the property being subdivided which is not near where their properties abut. It does not affect property lines or driveways. There is nothing that serves Lot #1 that crosses Lot #2. Lot #2 has direct access from Granger Road. All setbacks are met.

Mr. Badowski advised that the proposed new lots being created meet the minimum criteria for the Light Industrial District. There is about 170 feet of road frontage for Lot #2 from Granger Road which exceeds the 150 feet required. Lot #2 is greater in size than the minimum of 40,000 square feet, therefore it meets the size requirement.

Mr. Irons noted that access to Lot #2 is available off Granger Road or via the existing common drive which would then serve three structures. Although the grade is steeper off Granger Road, it would avoid having to cross utility lines.

Mr. Rodliff had no additional questions about the proposed subdivision.

The Board noted that the application was warned for both Concept Plan and Final Plan Review of a two-lot Minor subdivision. The required information has been provided and easements and rights-of-way are described. Access to both lots is available and shown on the plans.

Based on documents presented and testimony heard, Mr. Friedrich made a motion, seconded by Mr. Fitzhugh, to close the hearing with respect to Application 16-081. 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 December 6, 2016 meeting. On page 1, it was noted that William Butler requested and was granted party status since he was the subject of the appeal. On page 2 under 16-074, the 1<sup>st</sup> sentence in the 2<sup>nd</sup> paragraph was amended to read: Zoning Administrator Badowski advised that the overhang area is somewhat angled but should be considered part of structure since it has a concrete foundation. Under 16-071, the 4<sup>th</sup> sentence in the 4<sup>th</sup> paragraph was amended to read: She asserted that the permit for a garage was then changed to a single-family dwelling. On page 5, the following sentence was added to the last paragraph under 16-071: The Board will issue Findings of Facts and Conclusion regarding this Appeal.

Mr. Fitzhugh made a motion, seconded by Mr. Friedrich, to approve the Minutes of the December 6, 2016 meeting as amended. The question was called and the motion passed unanimously.

### 4. Public Comment

Persons present participated in the meeting as noted above.

### 5. Other Business

The Board discussed amending the start time of the DRB meetings but decided to leave it at 7:00 so that all members could be present.

The Board discussed offering further explanation about party status and having more information about it available at the meeting. Members noted that it would help people understand if they qualify for party status and whether or not to request it if they qualify. Mr. Badowski will prepare handouts with more information about party status.

6. Status of Findings.

The Board voted to go into deliberative session at 7:43 P.M. and out at 8:05 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 7, 2017.**

8. There being no further business, the meeting was adjourned at 8:06 P.M.

Respectfully submitted,

Carla Preston  
Recording Secretary  
Town of Berlin

## Deliberations

16-079 – Herring

Okay – add advisory comment about maintenance agreement  
State which lot is served by which access.

### Discussion:

Josh, Private drive pg 21, E serve no more than 2 lots. Impractical?

Need to have access via private rd or right of way. Could petition sb to recognize it as a private rd. must meet sb standards.

Easement serving 3 lots. Only easement serves that lot and new proposed. Have access off chandler rd. are using easement. Emergency svcs is the issue.

Testimony will use both drives. Okay grade drops off there.

SB has no standards for private rds so will be approved. Should adopt storage should be same as private as class iii, right of way, construction, width, etc. is missing link does not solve the problem. SB needs to take care of it.

Make maintenance agreement condition. But ... going too far. Is a private drive serving 3 residences. Is their problem. Is not a town problem. Town svcs requiring access. KN said bd does good job encouraging people to do it and make it advisory but not mandated.

16-081 – Irons

Okay – no issues

Covered rights of ways and sewer

Is semblance of drive there now