

DEVELOPMENT REVIEW BOARD
108 Shed Road
Berlin, Vermont

APPROVED MINUTES
Meeting of TUESDAY, July 7, 2015

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

Members present: Robert J. Wernecke, Chair; Karla Nuisl, Vice-Chair; and Josh Fitzhugh Alternate.
Absent: John Friedrich and Henry A. LaGue, Jr.

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

Others present: David Frothingham, III and Fred Connor, III.

The Board welcomed Josh Fitzhugh as an alternate to serve on the Development Review Board.

2. New business

A. 15-056 – Connor Realty, LLC submitted an application for illumination of a previously approved 14.5 square foot Commercial sign. The property is located at 327 US Route 302, Berlin, Vermont, in the Modified Residential District, Parcel ID US302-068. Fred J. Connor, III was sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 15-056, dated 06/03/2015; **Exhibit #2:** Site Plan, C2.0 dated 10/31/2014 with revisions on 12/10/2014, 12/19/2014, 01/09/2015, and on 05/21/2015 to add the freestanding sign; **Exhibit #3:** Sign design showing ground mounted freestanding sign with address of 327 at the top and two sign bands, one for *Extension – The University of Vermont* and one stating: Space For Lease 2520 SF, prepared by Sign Here, dated 06/02/2015; and **Exhibit #4:** Light fixture specifications that will illuminate the sign. **Exhibit #5:** Detail re Outdoor All Aluminum Sign Gooseneck Light, model, size and wattage of bulb submitted on or about 07/10/2015.

Mr. Connor advised that they previously requested and received approval from the Zoning Administrator for this freestanding sign as non-illuminated and now wishes to illuminate the sign. He advised that the sign would be externally illuminated on both sides with two gooseneck fixtures with light-emitting diode (LED) illumination.

By way of history, the project consisted of demolishing two old buildings, merging two lots to a single lot, and erecting one new building. Proposed signage is for one of the tenants, the UVM Extension Service, which would have a sign band that reads: *Extension - The University of Vermont*. Mr. Connor advised that he has not yet secured a tenant for the rest of the space. There are 40 parking spaces provided at the rear of the building.

Mr. Connor confirmed that they are requesting gooseneck fixtures for illumination of the ground mounted sign, two on each side located at the top of the sign. The lights are designed to only shine down directly on the face of the sign. The sign consists of clad steel wrapped in composite for a wood look. He advised that he has approval for two sign bands or panels, 60 inches by 12 inches. The sign has a colonial trim style at the top where the number reflecting the address appears, 327.

The 14.5 square foot sign is well within the square footage allowed based on the frontage of the building (120 linear feet).

Zoning Administrator Badowski confirmed that he approved the freestanding sign as non-illuminated. He noted that this is the only proposed sign for the project; there is no sign on the building.

In response to questions from the Board regarding timers on the lights, Mr. Connor advised that the lights would be on timers and not lit all night. He advised that the exterior lights on the poles are not on all night even though the hours of operation are 24/7. They are on motion sensors. After a brief discussion, Mr. Connor advised that the sign would not be illuminated after 10:00 PM.

Based on testimony heard and documents presented, Mr. Fitzhugh made a motion, seconded by Ms. Nuisl, to close the hearing with respect to Application 15-056. The question was called and the motion passed unanimously.

B. 15-062 – Malone Properties, Inc. submitted an application to Amend Permit No. 13-004 to add fill in the parking area, part of which is located within the floodplain. The property is located at 3 Overlook Drive, Berlin, Vermont, in the Highway Commercial District, Parcel ID US302-016. David L. Frothingham, III, PE with DeWolfe Engineering Associates Incorporated was sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 15-062, dated 06/22/2015; **Exhibit #2:** Site Plans prepared by DeWolfe Engineering Associates Incorporated: Cover Sheet, C0.01 dated 02/25/2013; Legend and General Notes, C0.02, dated 02/25/2013; Existing Conditions, C1.01, dated 02/25/2013; Site Plan, C1.03, dated 03/12/2015 with revisions on 04/14/2015, 05/13/2015, 06/03/2015 and 06/19/2015; Grading Plan, C1.05, dated 03/12/2015 with revisions on 04/14/2015 and 06/19/2015; Erosion Control Plan, C1.06, dated 02/25/2013 with revisions on 03/12/2015; Construction Details, C5.01, C5.02 and C5.03, dated 02/25/2013; **Exhibit #3:** Narrative describing proposed project as amended dated 06/19/2015 and revised on 07/06/2015; and **Exhibit #4:** Email dated 06/18/2015 from Sacha Pealer, Central Vermont Floodplain Manager, regarding the proposed fill within the flood hazard area.

Mr. Frothingham provided some background about the project noting that it was previously owned by Fecteau Commercial and was approved for the construction of a new 5,040 square foot office/retail building with associated drive, parking and utilities. Malone Properties acquired this lot and amended the previously approved site plan to reduce parking and a retaining wall which was heard by the DRB on June 16, 2015. He advised that access to the lot was changed pursuant to a condition imposed by the Vermont Agency of Transportation (VTrans). This application is to add fill within the floodplain and to tweak the access to the municipal generator building.

Mr. Frothingham explained that during the construction of the building's foundation unsuitable materials were discovered at the bottom of the footing elevation which required raising the footing by two feet. He advised that they found a layer of sand in the groundwater that could not be excavated and replaced with stone for the foundation. Therefore the first floor elevation and grades around the building were also raised, which has resulted in the re-grading of the site and the placement of fill within the floodplain. He pointed out the dotted line on the plans which represented the floodplain.

Mr. Frothingham advised that they were originally requesting significantly more fill, about 72 cubic yards, but when re-reviewing his calculations, he realized he had made a math error and that the actual amount of fill needed was significantly less at 17.6 cubic yards. He submitted a revised narrative dated 07/06/2015 for the record. He elaborated further explaining that the amount of fill within the floodplain, below 549 feet in elevation, is about 17.6 cubic yards. This volume has been minimized by increasing the cross slopes of the parking lot and parking spaces while still maintaining at grade entrances to each space within the building and proper slopes for the handicap spaces and access path. The volume of fill placed within the floodplain is offset by the construction of a new drainage system at the site which consists of 233 feet of 15 inch pipe, 79 feet of 12 inch pipe, one manhole, and three catch basins, which has a volume of 18.7 cubic yards. The result is that the construction of the project increases the capacity of the floodplain to store flood waters by one cubic yard.

The Board noted that the layout of the site made it awkward to access the municipal pump station and generator building. This amendment would actually improve the situation in that regard. Technical aspects of the system as well as interpretation of state, town and federal regulations on the topic of flooding were discussed. The Board determined that the proposed amendment would not necessarily equal zero noting that a permit was required. The base flood elevation is what is critical, not necessarily whether fill is in the floodplain.

Zoning Administrator Badowski advised that Sacha Pealer, Central Vermont Floodplain Manager, noted that fill is prohibited in the Special Flood Hazard Area according to the regulations with the exception of the need to elevate a building within the floodplain. A copy of Ms. Pealer's June 18th email was shared with the Board. Since the Applicant proposes to elevate parking the exemption would not apply. He questioned whether the state would approve it on the same basis. He advised that the Federal Emergency Management Agency (FEMA) will also review the application and will need to certify the Community Resource.

Mr. Frothingham advised that the slopes across the drive are about six to seven percent and flatten to about two percent. He noted that it was shifted to meet ADA grades. He advised that they looked at possible mitigation on the old Hooker's Furniture site but deemed mitigation there was not feasible. They argue that they are creating as much underground storage as is being displaced through the drainage system. He advised he has not presented this new approach to Ms. Pealer for consideration.

In response to questions about the location of the parking areas, Mr. Frothingham advised they did look at other options but could not make it work based on the location of the access drive. In addition, other existing buildings restrain the site.

Mr. Frothingham advised that they are also changing a portion of the area from impervious to pervious. He acknowledged that that argument pertained more to volume and rate of flood waters. He believes that the additional fill within the floodplain is mitigated by adding compensatory storage through the drainage system.

The Board noted that the federal regulations would allow fill in the floodplain but not within the floodway. The application must also be considered by the state and FEMA. There were no changes to the site plan or conditional use review criteria. The only change proposed pertained to the Special Flood Hazard area.

Based on testimony heard and documents presented, Mr. Fitzhugh made a motion, seconded by Ms. Nuisl, to close the hearing with respect to Application 15-062. 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 June 16, 2015 meeting. Since only two members from the June 16th meeting were present, the Board voted to table review and approval of the June 16, 2015 Minutes to the next meeting.

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 7:55 P.M. and out at 8:11 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, August 4, 2015.**

8. There being no further business, the meeting was adjourned at 8:15 P.M.

Respectfully submitted,

Carla Preston

Carla Preston
Recording Secretary
Town of Berlin