

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

**APPROVED MINUTES
Meeting of TUESDAY, June 19, 2018**

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

Members present: Robert J. Wernecke, Chair; Karla Nussli, Vice-Chair; John Friedrich; Josh Fitzhugh; and Shane Mispel.

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

Others present: Gregory Western, Timothy Swartz, Lane Clark, Donald R. Marsh, Jason P. Merrill, Helen Bryan, Betty J. Sweet, James E. Cultrera and Nancy Carpenter.

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 present requested party status.

2. New business

A. 18-029 – Greg Western submitted an application for Concept Plan Review, Preliminary Plan Review, and Final Plan Review of a Major three (3) lot commercial subdivision involving a 12.18-acre parcel. The property is located at 6390/6092 VT Route 12, Berlin, Vermont, in the Commercial (CG) and Highland Conservation (AR) Districts, Parcel ID: VT12-002. Greg Western and Donald Marsh, P.E., were sworn in to give testimony on this matter. In addition, abutters Tim Swartz, president of Capital City Grange, and Lane Clark were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, 18-029, received on 05/29/2018; **Exhibit #2:** Survey – Subdivision of Land of Gregory Western, prepared by Michael J. Patterson, L.S., dated 05/01/2018; **Exhibit #3:** Site Plan, OA-1 – Well & Septic Replacement System, prepared by Marsh Engineering Services PLC, dated 12/28/2017; **Exhibit #4:** VT Department of Environmental Conservation, Drinking Water and Groundwater Protection Division, re Wastewater System and Potable Water Supply Permit # WW-5-7621, dated 03/21/2018; **Exhibit #5:** Cover letter from Greg Western describing the proposed subdivision, dated 05/23/2018.

Greg Western advised that he purchased the property from the Cooke family, long-time residents of Berlin, who also owned property in Montpelier. He purchased the property in Berlin and in Montpelier which included an antique store, driveway, and another home. The parcel is approximately 12.18 acres to be divided into three lots consisting of: Lot #1 at 1.85 acres including the existing log cabin store located at 6390 VT Route 12; Lot #2 at 0.734 acres including an existing house located at 6392 VT Route 12, and Lot #3 at 9.60 acres which is undeveloped.

Mr. Western advised he lives in the house located in Montpelier and needs the driveway for access. He will keep the wooded area and the driveway to the house in Montpelier. The proposed subdivision will allow him to sell the log cabin store (Lot #1) and the house (Lot #2) located on this parcel in the Town of Berlin. He described the lot as "U" shaped which folds around to VT Route 12 at two points. The driveway to his house in Montpelier is shared by the Capital City Grange. He will retain all of the land in the back. He advised that Lot #1 and Lot #2 are within the Commercial District, and Lot #3 is within the Commercial and Highland Conservation districts.

Zoning Administrator Badowski advised that all three lots meet the size, frontage and other requirements for the districts in which located. The Commercial District requires a minimum of 25,000 square feet in size with 120 feet of frontage. The lots being proposed are slightly larger than the minimum requirement. The house previously owned by the Cooke's is located within the Commercial District.

In response to questions from the Board, Mr. Western advised that access to Lot #2 and Lot #3 will be via a 20-foot wide Right-of-Way in favor of Lot #1. He explained that there is also access to Lot #3 by his driveway, however to achieve the required frontage for Lot #3, the Right-of-Way had to be created. The Right-of-Way is about 50 feet from the existing house and is on the property line. Access to his house is via an existing shared driveway with the Capital City Grange. He is not proposing any new development, just the subdivision of the parcel to separate out the existing structures and wooded area. Lot #3 is not developed and he has no immediate plans to develop it, thus he requested a deferral from the State of Vermont with respect to water and wastewater system approval.

Timothy Swartz, advised he is the president of the Capital City Grange, and mentioned the shared access. He had no objections to the proposed subdivision and did not request party status.

In response to questions from the Board, Mr. Western advised he was not aware of any restrictions about the driveway through the easement for Green Mountain Power. He noted that the Cooke's used to drive through that area. Access is shown to Lot #3 but will continue via the existing driveway shared by the Capital City Grange. He advised he was not given any permits with respect to access when he bought the land but understood it was called Quarry Road and predated the Interstate. The dotted line shown on the survey represents an existing water line. He noted that because the waterline is within the Vermont Agency of Transportation's Right-of-Way near Interstate 89, approval from the state was needed. The lots being created would have spring rights. The existing spring served the log cabin store and house. The new owners could drill a new well or utilize the existing spring.

Mr. Western described the easements for replacement onsite wastewater systems, Lot #2 in favor of Lot #3 for a replacement system which are shown on the Well and Septic Replacement Overall Plan. Lot #1 has a well site and a new wastewater site. The easements will be shown on the deeds.

Mr. Marsh described his findings with respect to soils data and the design of the onsite wastewater systems. He referred to the Site Plan and confirmed that approval had been granted from the state.

Chair Wernecke made a motion, seconded by Mr. Friedrich, to approve Concept Plan Review of the proposed three lot Major Subdivision. The question was called and the motion passed unanimously.

The Board then considered the criteria for Preliminary Plan and Final Plan Review. The survey and site plan submitted included the required information.

Mr. Badowski advised that the Berlin Police Department had no concerns about the proposed subdivision. He had not received a response from the Berlin Volunteer Fire Department.

Mr. Western confirmed that Lot #3 will be deferred with respect to onsite wastewater as he has no plans to develop it. If it were to be developed in the future, a permit from the state would be

required. He advised that the Montpelier portion of his lot is large enough to meet zoning requirements for the district in Montpelier.

Based on documents presented and testimony heard, Mr. Friedrich made a motion, seconded by Mr. Fitzhugh, to close the hearing with respect to Application 18-029. The question was called and the motion passed unanimously.

B. 18-030 – J & H Properties submitted an application for a Site Plan Review associated with the construction of an 8,830 square foot new commercial building. The property is located at 6451 VT Route 12, Berlin, Vermont, in the Commercial District; Parcel ID: VT12-001. Donald R. Marsh, P.E. and Jason P. Merrill were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 18-030, received on 05/29/2018; **Exhibit #2:** Site Plan, C-1, Proposed Storage Units, prepared by Grenier Engineering PC, dated 05/22/2018; **Exhibit #3:** Luminaire Schedule/Location and layout from Merrill Storage, dated 05/22/2018; **Exhibit #4:** Location Map; **Exhibit #5:** Lighting Design and Specifications; and **Exhibit #6:** Narrative addressing Site Plan Review criteria.

Don Marsh explained where this project was located and indicated that they were before the Board around a year ago requesting approval for 96 storage units which are not yet developed. The powerline owned by Green Mountain Power runs through the property. This project consists of the construction of three single story storage buildings, a 5,500 square foot retail/warehouse/contractor building, a 1,600 square foot self-service truck wash, and a 1,660 square foot self-service car wash building. Access to the site would be via the existing access approved by the Vermont Agency of Transportation (VTrans). They are proposing a new access off Dog River Road which is in response to concerns that the existing access is too close to the other access point. The plan for wastewater disposal is to connect to the new collective municipal system when constructed that would serve the mobile home park, Green Mountain Transit, and Mr. Merrill's property. Mr. Marsh noted he will amend the Operational Stormwater Management Permit with the Agency of Natural Resources based on the expansion of this project.

Jason Merrill advised that they do have water on site but need a wastewater permit. The proposed three buildings are connected. The application was updated to show correct total of building square footage. In response to questions about lighting, he advised the fixtures are shielded, would be mounted on the buildings, and referred to the lighting plan.

Mr. Merrill explained that the car and truck wash facilities are for the public and pay-as-you-go. The warehouse is designed to create more space for contractors and related uses. He advised that a tractor trailer truck could pull in to the vehicle wash designed for trucks but was thinking more like trucks with trailers that would pull in off VT Route 12. They do not anticipate much of an increase in traffic as a result of this project. They expect that the vehicle wash facilities will be used by local traffic.

In response to questions about the distance between the storage buildings, Mr. Marsh agreed that it should be 20 feet, not 15 feet. He confirmed that there is no change to the storage units as part of this application but will make the correction on the site plan.

The Board indicated that the new driveway location off Dog River Road is an improvement and asked about the interior traffic pattern with three buildings. Concerns were raised about maneuvering around the site, particularly for tractor trailer trucks.

Mr. Marsh explained that vehicles would enter from VT Route 12 through the vehicle wash facilities and exit out the same way or off Dog River Road. Cars could also enter from Dog River Road and go to the wash facilities. There will be a drive through between the Wyman Building and proposed building.

Mr. Merrill acknowledged that tractor trailer trucks would have difficulty turning around and that they may have to limit the size of trucks that will fit into the truck wash facility and be able to turn around. He elaborated further regarding the additional businesses, possible retail and warehouse uses, products, etc.

a. Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network. Access to the site will be via the existing 40-foot wide curb cut off VT Route 12 and a new 24-foot wide curb cut off Dog River Road. The existing curb cut off Dog River Road that is close to VT Route 12 will be abandoned. The Applicants explained where onsite traffic would be one-way and where it would be two-way traffic. One way off VT Route 12 up to the vehicle wash facilities and two-way via the Dog River Road access point. The Applicants agreed that signage clearly stating one-way traffic or Do Not Enter, must be posted. After further discussion, the Applicants agreed that one-way traffic made the most sense for vehicles to enter from VT Route 12 and exist Dog River Road.

The Board advised that marked travel lanes and/or clear directional signage would be needed.

The Applicants anticipate 20 to 30 cars/trucks per day. They noted that traffic has increased due to the detour. There is very little traffic for the storage units. Mr. Marsh elaborated further on VTrans' criteria that would require a traffic study which is based on significant increases during peak hours. This is not a high traffic situation.

b. Adequacy of circulation, parking, and loading facilities. Circulation will be addressed by creating one-way traffic through the site. No loading dock is proposed but there are doors in the back where loading and unloading may occur. Mr. Merrill presented a rendering of the proposed steel building.

c. Bicycle and Pedestrian Access. The Applicants are not proposing sidewalks or a bicycle rack and anticipate very few pedestrians or bicyclists visiting this commercial business.

d. Adequacy of landscaping. The Applicants are not proposing any additional landscaping. Mr. Marsh explained that due to runoff and drainage areas at the site, it is difficult to add plantings along the drive. There are some existing grassed areas and other areas that could be turned into greenspace. Other options mentioned to break up the building included adding boulders or a fence. There are trees further down the road.

The Board noted that this is becoming a highly developed commercial area and asked the Applicants to consider adding some landscaping. Members acknowledged that renderings of the buildings showing elevations, and further detail about their style and height would be helpful. The Board asked the Applicants to submit a landscaping plan with further detail.

e. Hours of Operation. The Applicants advised that the hours of operation would be normal business hours from 6:00 AM to 9:00 PM.

f. Setbacks. All setbacks are met for the district which are shown on the plans.

g. Adequacy of Exterior lighting. The Applicants advised that all lighting would be full cut off light-emitting diode (LED) security lights over the doors of the building. They are not proposing any overall parking area lighting and referred to their lighting plan.

After further discussion, the Applicants agreed to add some lighting in the back for security purposes as well as for the exit to the car wash. They will also add lights on the directional signs for one-way traffic and Do-Not-Enter where needed. The Applicants agreed to submit a revised lighting plan with this additional information.

h. Stormwater and Drainage. Mr. Marsh advised that since the total impervious areas will exceed one acre, an amendment to the existing Agency of Natural Resources Operational Stormwater Permit will be required. A copy of the permit from ANR will be provided to the Board once issued.

i. Utilization of renewable energy resources. The project will not interfere with future potential uses of renewable energy and will not preclude the neighbors from developing renewable energy sources.

j. Municipal Services Impact Evaluation. Mr. Badowski advised that the Berlin Police, Fire and Highway Departments were notified of the project and asked to comment. The Berlin Police Department reported no adverse impact as a result of the project. He had not yet heard from the Fire or Highway Departments but acknowledged approval for the new curb cut off Dog River Road would be required from the Berlin Select Board.

Mr. Marsh agreed to show the access point to Morse Auto Sales & Service on the plans which is located across the street from the proposed new access point on Dog River Road.

k. Flood Hazard Review. The property is not located within a special flood hazard zone.

The Board advised the application would be recessed and reiterated the additional information needed which included traffic circulation, landscaping, lighting and directional signage.

Mr. Friedrich made a motion, seconded by Mr. Fitzhugh, to recess the hearing regarding Application 18-030 until July 17, 2018. The question was called and the motion passed unanimously.

C. 18-031 – Nancy D. Carpenter and Karen Grace submitted an application for Concept Plan Review, Preliminary Plan Review, and Final Plan Review of a Major Four (4) Lot Residential Subdivision involving a 28-acre parcel. The property is located at 4232 VT Route 12, Berlin, Vermont, in the Rural Residential (R-40) District; Parcel ID: VT12-037. Nancy Carpenter and James Cultrera, (with Power of Attorney) were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, 18-031, received on 05/29/2018; **Exhibit #2:** Survey – Lot Layout Plan, C1, Carpenter and Grace, prepared by Richard W. Bell Land Surveying, Inc., dated 03/12/2018; and **Exhibit #3:** Lot #3 Septic Design, C2; Lot #4 Septic Design, C3; Lot #5 Septic Design, C4; and Lot #6 Septic Design, C5; prepared by Richard W. Bell Land Surveying, Inc., dated 03/12/2018.

Mr. Cultrera advised that they now want to further subdivide one lot into four lots and build homes on them for sale. He advised they would be a land/home package and that he will build the homes. The parcels created would consist of Lot #3 with 24.82 acres, Lot #4 with 1.14 acres, Lot #5 with 1.10 acres, and Lot #6 with 0.92 acres. He explained that the lots for sale are Lots #4, 5 and 6. He would own the remaining parcel, Lot #3, to build his own house. He advised he is keeping the land behind the river, approximately two acres, and will lease the field since it is in the flood zone. He has no plans to develop it. Lots #4, #5 and #6 will not have access to the river.

Mr. Cultrera advised that access off VT Route 12 to three lots, #4, #5 and #6, is via a common 25-foot wide Right-of-Way in favor of Lot #3, the original drive. He advised that there are no separate drives off VT Route 12 since there is no suitable access.

The Board referred to Section 920E of the 1989 Subdivision Regulations which states, "Lots without required frontage on a public road, waterway or approved private road are not permitted. However, easements may be approved by the Commission to serve no more than two lots where the shape of the original parcel makes the provision of public or private road impracticable."

The Board explained that lots without frontage may only serve two residences, however these lots have frontage but cannot use it off VT Route 12 due to sight distances and a 50 mile-per-hour speed limit. It is possible that access to Lot #6 might be approved by VTTrans. From a safety perspective, it is better to have a single point of access versus an access every 300 feet. There is no purpose in requesting Select Board approval for a private road because it meets the interpretation with respect to frontage.

Mr. Cultrera advised that they will establish a shared maintenance agreement which will be included in the deeds. The common Right-of-Way is about 50 feet from the property line. He advised that for safety purposes, he would rather not have a separate access for Lot #6 off VT Route 12.

Chair Wernecke made a motion, seconded by Mr. Friedrich, to approve Concept Plan Review of this Major four lot subdivision. Further discussion ensued to clarify measurements regarding frontage. The question was called and the motion passed unanimously.

The Board reviewed the criteria regarding Preliminary Plan and Final Plan review. The Board also revisited the justification regarding past practice with respect to frontage. The subdivision regulations mention frontage, but it does not specify that applicants have to have access off that frontage, particularly off a state highway. Each of the lots being created do meet the frontage requirement for the district. There are many state roads from which lots have frontage but due to traffic, speed limits, or other safety reasons, access is not allowed.

Mr. Badowski advised that Rick Bell dropped off the plans for potable water and onsite wastewater systems for each lot. The plans revealed that Lots #3 and #6 would be in ground systems, and Lots #4 and #5 would be mound systems. The applications have been submitted to the state but permits have not yet been issued.

Based on documents presented and testimony heard, Mr. Friedrich made a motion, seconded by Mr. Mispel, to close the hearing with respect to Application 18-031. 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 June 5, 2018 meeting.

Mr. Friedrich made a motion, seconded by Ms. Nuisl, to approve the Minutes of the June 5, 2018 meeting as submitted. 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 9:06 P.M. and out at 9:09 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, July 3, 2018.**

8. There being no further business, the meeting was adjourned at 9:10 P.M.

Respectfully submitted,

Carla Preston

Carla Preston
Recording Secretary
Town of Berlin