

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

**APPROVED MINUTES**  
**Meeting of TUESDAY, March 3, 2015**

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.; Harvey Golubock and John Friedrich.

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

Others present: Clare A. Buckley, Esq. and Stephen Powers, PE.

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. 15-007 – Berlin Mall, LLC** submitted an application to amend Permit 14-061 regarding *Kohl's Department Store* with respect to a reduction in parking, the addition of a bus pull off and shelter, and a new sidewalk requiring Site Plan Review. The property is located at 123 Berlin Mall Road, Berlin, Vermont, in the Town Center (TC) Zoning District. Clare Buckley, Esq. with Storrow & Buckley LLP, for the Berlin Mall and Stephen J. Powers, P.E. with Greenberg Farrow Architecture Incorporated were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 15-007, received on 02/09/2015; **Exhibit #2:** Survey Plans, Tax Map R2, Lot 33B, Outlot E, prepared by Doucet Survey Inc. dated 01/02/2014 with revisions on 03/24/2014 and 09/10/2014; **Exhibit #3:** Site Plans, prepared by GreenbergFarrow dated 03/20/2014 with revisions on 07/25/2014 and 01/22/2015 consisting of: Title Sheet; Site Layout Plan, C3.0; Overall Plan, C3.1; Truck Maneuvering Plan, C3.2; Grading & Drainage Plan, C4.0; Utility Plan, C5.0; Utility Profiles, C5.1; Erosion Control Plan, C6.0; Photometric Plan, PH-1.0; Construction Details, C7.0, C7.1, C7.2, C7.3, C7.4 and Landscape Plan, L1.0 revised on 07/25/2014 and 12/31/2014; **Exhibit #4:** Memorandum dated 02/09/2015 from Charles Storrow, Esq. with Storrow & Buckley, LLP re the proposed revisions to the previously approved site plan; and **Exhibit #5:** Copy of the Applicant's application for Authorization to Discharge Stormwater dated 02/13/2015 that was submitted to the Vermont Department of Environmental Conservation.

Attorney Clare Buckley provided an overview of where they were in the process. She referred to Attorney Storrow's February 9, 2015 Memorandum which described the proposed revisions to the site plan for Kohl's Department Store which was previously approved by the Town of Berlin in January of 2015 under permit 14-061. She advised that these proposed revisions are based on recommendations from the District 5 Environmental Commission as a result of the ACT 250 process. Amended plans incorporating those recommendations were submitted to the State and reviewed at a hearing held on February 3, 2015. She advised that the updated site plans reviewed by the state during the ACT 250 review process are now being submitted back to the Town for amendment to agree with what the State considered.

Stephen J. Powers, P.E. advised that the District Commission has not yet made a decision. A recessed Memo was issued with a list of items to submit unrelated to the site plans but pertained to wetlands and so forth. He advised that they are working out the other issues but do not expect another hearing to be required. They have not heard whether the State will accept their signage proposal. The Applicant understands that another amendment to the permit may be required if it differs from what was previously approved by the DRB. The revised site plan before the Board pertains only to a reduction in parking, and the additions of a bus pull off and shelter, and a sidewalk along the building.

Mr. Powers explained that the changes requested by the District 5 Environmental Commission were based on pulling back away from the wetlands by incorporating as much impervious area as possible. The Commission was concerned about the impervious areas close to the wetlands which meant pulling back the parking areas and the truck route in particular. To accomplish this they pulled the rear drive closer to the building. It did not change the impervious area there but allowed for additional landscaping in the area. They are also proposing a reduction in parking from 294 to 247 spaces by eliminating spaces on the northerly end of the parking lot, along the easterly side of the parking lot and behind the building which is shown on the plans. He explained that based on Kohl's research their minimum parking requirements are 222 spaces. They have added 25 spaces to accommodate maximum employee shift parking which brings the total spaces to 247 spaces.

The group discussed the rationale for parking requirements particularly when considering a mall area with multiple stores. Every store may not need the minimum amount of parking based on the formula. The Applicant believes that based on the varying uses there would be overlapping coverage with the rest of the mall and that proposed parking is sufficient.

The Board acknowledged that holding all applicants to the same standard based on square footage may create additional impervious area when it is not needed. The Board has the authority to consider a reduction in parking for good cause shown.

Zoning Administrator Badowski noted that based on the Lake Champlain issues there is a big push from the State to reduce runoff. Overlapping could be interpreted to mean uses that would be concurrent.

Mr. Powers advised that as a result of these changes the area of paved surfaces is reduced from 3.18 acres to 3.02 acres and the amount of greenspace is increased from 2.26 acres to 2.42 acres. He explained how the changes to the site plan impacted stormwater and drainage. As before stormwater from the 4.1 acres of the project site would be captured and conveyed by underground pipes to the existing basin behind the mall. The underground stormwater system is tied into the existing drainage system for the mall, would be detained but not filtered, and is then discharged at the back of the mall area. He noted that the additional greenspace that was turned into a vegetated swale allows runoff to flow, get treated and then discharges to the wetlands. Based on the changes stormwater from the remainder of the project site (0.35 acres) would drain into a treatment swale adjacent to the northerly edge of the parking lot. He confirmed that the swale would discharge into the wetland and out and down toward the Central Vermont Medical Center. He advised that this amended stormwater plan has been reviewed by the State although they have not yet received an amended permit. He provided a copy of the stormwater management application that was submitted to the Vermont Department of Environmental Conservation.

Mr. Powers advised that the Commission also asked for a bus stop with a pull off area and shelter to be located near the northeast corner of the building which eliminated 11 parking spaces there. The proposed location has been approved by the Green Mountain Transit Authority. Mr. Powers explained how the bus would arrive and leave from the pull off area.

Chair Wernecke noted that the Applicant is requesting approval for the bus shelter but would not be constructing it. He advised that the Transit Authority periodically reviews their routes and stops and will decide whether the shelter is necessary.

In response to the Board's concerns about directional signage, Mr. Powers agreed that a sign near S22 on the east side of the building needed to be added to restrict the general public or customers from entering the rear of the building to avoid delivery vehicles. Mr. Powers advised that a sign would be added to read "Service Deliveries/Employees Only," similar to that of sign #36 which was discussed at the last hearing.

The final change recommended by the Commission was to add a pedestrian accessway along the westerly end of the Kohl's store. The proposed five foot wide sidewalk would be at grade, not curbed, and would be connected to both the walkway that leads from the mall to Fisher Road and the sidewalk that runs in an east/west direction along the front of the Kohl's store. Mr. Powers clarified that no landscaping was affected by the sidewalk; there is nothing between the sidewalk and the building. They have added trees and shrubs.

The Board did not ask the Applicant to address site plan criteria that were not affected by the proposed changes.

Mr. Powers noted that there are outstanding permits from the District 5 Environmental Commission regarding ACT 250, Agency of Natural Resources Environmental Conservation regarding the amendment to the operational permit (stormwater), and from the U.S. Army Corps of Engineers with respect to wetlands. The Applicant plans to begin construction in October once all permits are in order. He confirmed that they will submit copies of these permits once issued.

Based on documents presented and testimony heard, Mr. Friedrich made a motion, seconded by Ms. Nuisl, to close the hearing with respect to Application 15-007. 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 February 3, 2015 meeting. On page 2 under criterion "a," the record was clarified to show that the existing access off Marvin Road and a recently approved access off Goodnow Road were approved. An area being used by the Applicant off Marvin Road was not approved and discontinued.

Chair Wernecke made a motion, seconded by Ms. Nuisl, to approve the Minutes of the February 3, 2015 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

6. Status of Findings.

The Board voted to go into deliberative session at 7:37 P.M. and out at 7:46 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, March 17, 2015.**

8. There being no further business, the meeting was adjourned at 7:48 P.M.

Respectfully submitted,

*Carla Preston*

Carla Preston  
Recording Secretary  
Town of Berlin