

DEVELOPMENT REVIEW BOARD
108 Shed Road
Berlin, Vermont

APPROVED MINUTES
Meeting of TUESDAY, May 2, 2017

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

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

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

Others present: Ronald P. Tucker, David Jennette, John LaRosa, Jyles Yates, William Herring and Joe Gay.

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. Messrs. Jennette and LaRosa requested and were granted party status with respect to Application 17-011.

2. New business

A. 17-011 – R. E. Tucker, Inc. submitted an application for Conditional Use Review associated with the renewal of a Drilling and Blasting Permit (11-083 and C03-006). The property is located at 1163 Chandler Road, Berlin, Vermont, in the Rural Residential District, Parcel ID: 53-048.000. Ronald P. Tucker, owner, was sworn in to give testimony on this matter. In addition, David Jennette (neighbor) and John LaRosa (abutter) were sworn in to give testimony on this matter. A site visit was held on April 15, 2017.

A few Development Review Board (DRB) Members disclosed that they had been customers of the Applicant's business. Member LaGue disclosed that he also operated a gravel pit. No one expressed objections to any of the DRB Members serving on the hearing panel.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Zoning Permit, 17-011 (11-083), received on 03/30/2017; **Exhibit #2:** Cover Letter signed by Ronald P. Tucker, VP; **Exhibit #3:** Report - 2012-2016 Cubit Yards Extracted – Berlin Quarry; **Exhibit #4:** Copies of portions of Site Plans, Sheet 3 of 13, 4 of 13, and 5 of 13, prepared by Chase & Chase and dated 12/10/2001; **Exhibit #5:** 2013 Blast Report – Triple B Blasting, LLC, dated 04/18/2013; **Exhibit #6:** Uniform Blaster's Log dated: 11/20/2013, 12/02/2013; 12/09/2013; 04/08/2015; and Uniform Blaster's Log and Event Reports dated: 04/10/2015; 04/21/2015; **Exhibit #7:** Copy of Prior Permit (11-083) issued by the Town of Berlin dated 03/05/2012; and **Exhibit #8:** Copy of Prior Permit (C03-006) issued by the Town of Berlin dated 05/28/2003.

Ron Tucker advised that he is before the DRB for a continuation of his drilling and blasting permit at their Chandler Road Berlin Quarry. This is the second renewal to begin the eighth season of drilling and blasting. He provided copies of prior permits issued, 2012-2016 Blasters Log, seismograph reports, and yearly material extraction reports to show they are in compliance. Most of the blasting has occurred in Area B, the northern most part of the project and the closest area to adjoining landowners. He advised the blasts were scaled back near the residences. They used 1500 square foot blasting mats to cover shots and protect the residential area surrounding the quarry for

additional protection. He noted that since the blasts were smaller the number of blasts was greater which is reflected on the Blasters Logs. They have been in Area B over the last four years and are well within the limits for Peak Particle Velocity (PPV), air overpressure and percussion of the blast. They set up seismographs when blasting occurred near the closest neighbors. He advised that some blasts had no trigger and did not even set off a seismograph. The last time blasting occurred in Area B was in 2015 and no more blasting is needed in Area B. They are just now removing the product and crushing it. He advised that Area B is nearing completion and mentioned progress made toward reclamation thus far with final reclamation to be completed by the end of the year. He explained that less reclamation is needed on the easterly side which is very stable due to its shear rock face.

Mr. Tucker advised that they do plan to move on to Area C at some point within the next three years depending upon the need and market. He indicated that the current supply would last two years and noted they would start in Area A and work to Area C. He advised that the knoll shown in Area C would now remain. He explained that when they originally applied for a permit after acquiring the 7.5-acre parcel, there was a lot of opposition from neighboring owners, including the prior owner of John LaRosa's current home. The agreed upon resolution essentially cut the acreage in half resulting in a compromised boundary of a 20-foot vertical distance below that home so they would not hear their equipment or see them. The boundary lines were changed and approved by town and the state. In response to requests for further clarification, Mr. Tucker confirmed that the field and mountain where Ellie's pumpkins are shown, will not be removed. He added that the old farm house and barn is located uphill from there. He explained that one of the conditions pertaining to Area C was a requirement to install guardrail and chain link fence along the edge of the road there. He believes it is no longer a concern due to the change in boundary and would rather propose an alternative to guardrail since the knoll will remain. The buffer zone to the road is 75 feet and the area in question spans about 250 feet.

The group reviewed the full-size plans dated in 2004 that were on file which confirmed that the original plans encompassed the full 7.5 acres and showed guardrail to the property line. The plans were revised on 10/26/2006 regarding ledge cut in the southwest corner to reflect the area of impact from 2004. The plans were also revised in 2006 and in 2007 but still shows the full length of guardrail.

Mr. Tucker advised that reclamation has not changed, extraction has not changed, and the timeline has not changed. He suggested alternatives to guardrail such as a berm or trees that is more esthetically pleasing.

The Board explained that the Applicant could propose a change to that condition as part of this application. Chair Wernecke mentioned that engineering design standards regarding steepness would be applied to determine whether guardrail was needed. The drawings would need to be revised to reflect any change.

In response to Zoning Administrator Badowski's request for an overview of the state's process and how they regulate it, Mr. Tucker advised that the state's permit mirrors the town's permit. Since Vermont did not have its own standard regarding PPV, the standards from Massachusetts were adopted. They stay well within the 1.5 PPV and most blasts have no triggers on seismographs. They are subject to inspections by the Mine Safety and Health Administration (MSHA), an agency of the United States Department of Labor. There are very few inspections with respect to blasting but

water issues are inspected. He noted that the state is working on streamlining or combining some of the requirements that are very similar. He noted that the same permits are required at their other location. Their state permit is set to expire in 2037.

The Board asked the applicant to address the criteria for conditional use review and extraction of earth resources.

a. Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network. Mr. Tucker advised there would be no change in access or to vehicular and pedestrian circulation on site. He noted that traffic may decrease.

The Board noted that the guardrail issue could be addressed under this criterion but concluded it fit better under safety to be addressed later.

b. Adequacy of circulation, parking, and loading facilities. Mr. Tucker advised there would be no change in parking, loading or circulation.

c. Bicycle and Pedestrian Access. Mr. Tucker advised this is not applicable and not allowed based on MSHA standards.

d. Adequacy of landscaping. Mr. Tucker advised they are not proposing any changes in landscaping or to the final reclamation plan. He noted that the grades shown are existing. Since a berm in lieu of a guardrail had been mentioned, the issue was raised here.

Mr. LaRosa advised that he did not want to see either guardrail or chain link fence.

Chair Wernecke advised that grades steeper than 3 on 1 would require guardrail and noted that a shorter span may be a solution. He questioned whether there was sufficient space for a berm.

e. Hours of Operation. Mr. Tucker advised there would be no change in the hours of operation which consist of: 7:00 AM to 5:30 PM Monday through Friday; 8:00 AM to 3:00 PM Saturday; and five Sundays a year to deal with emergencies applicable only to municipal, state or federal agencies. To monitor that condition, he notifies the state when an emergency requires him to open on up on a Sunday.

David Jennette advised that he has seen trucks in there on weekends. He reported some were private contractors there at odd hours. He did not believe however, that it involved more than five Sundays.

f. Setbacks. Mr. Tucker advised there would be no change in setbacks regarding streams, roads, or property lines and noted that they are shown on the plans.

g. Adequacy of Exterior lighting. Mr. Tucker advised no exterior lighting exists or is being proposed.

h. Stormwater and Drainage. Mr. Tucker advised no change in this criterion as no runoff leaves the site.

- i. Utilization of renewable energy resources.* Mr. Tucker advised there is no change and that nothing would interfere with the sustainable use of renewable energy resources.
- j. Municipal Services Impact Evaluation.* Mr. Tucker advised there is no change that would negatively impact traffic, roads, schools, etc.
- k. Flood Hazard Review.* Mr. Tucker advised they are still maintaining all the grades established in the original permit, 10 feet above the high seasonal water table (500 feet). He noted that there was flooding during Tropical Storm Irene.
- l. The Character of the area affected; neighboring uses.* Mr. Tucker advised there has been no change since the original permit was issued in 2003. The gravel pit has been an active extraction site for well over 100 years. He noted that Fred Jewett sold sand and gravel to everyone which then consisted of 54 acres plus 100 acres across the road. The farm house still exists.
- m. Bylaws then in effect.* No changes involving this application.

Chair Wernecke read the Specific Standards under Conditional Use Review noting criteria that might be applicable (i.e., noise, landscaping, fencing, etc.). All applicable criteria had been previously addressed and there is no change. It was noted that blasting start and end times were previously amended to begin the week after Labor Day through April 30th.

Mr. Tucker noted that 2011 and 2012 were their largest drilling and blasting events. Since then they have not come near the 20,000 cubic yards maximum limit.

Section 4.03 (B) - Extraction of Earth Resources. Commercial Purposes.

The Board shall find that the proposed operation will not:

- a. Cause a hazard to public health and safety, or

With respect to the guardrail, Mr. Tucker acknowledged that he has a permit requiring guardrail to the southerly property line and wants to amend it. After further discussion, he advised that he does not wish to make that change part of this permit application at this time. He wants to consult with his engineer and gather input from his neighbors to come up with better options than guardrail to ensure safety. He anticipates it will be three years before they get to Area C for drilling and blasting.

It was noted that the intent of the permit is to require the guardrail and fence when extraction or blasting in Area C commenced.

- b. Adversely affect neighboring properties, property values, or public facilities and services, surface water and groundwater supplies, or natural, cultural, historic, or scenic features.

Mr. Jennette advised that he acquired land and put in a spring in 1967 and used it up until 2012 without issue. The spring was located down below his house in the gully and was near ledge. In over 40 years, he never ran out of water from that spring. In October of 2012 his well was bone dry. He mentioned this to Mr. Tucker at the time and was told blasting had not occurred in that

area in a while thus it was not his fault. Mr. Jennette advised he had to spend \$9,500 to drill a well.

Mr. Tucker confirmed that he had advised Mr. Jennette that blasting had not occurred in that area in 1.5 years. He noted that problems such as the loss of a spring usually occur immediately after blasting. He offered to share all seismographic records with him.

Mr. Jennette advised that his house shook up and down at least three out of five times when blasting occurred. The 2003 Permit required the Applicant to perform pre-blast testing with respect to wells and file that information with the state. He acknowledged that the shaking had not caused any physical damage to his home.

Mr. Tucker advised that with respect to shaking Mr. Jennette's house, his equipment indicates otherwise, noting that they only used about a quarter or sixteenth of what they were allowed. He explained that the PPV goes through rock, not sand and gravel. A reading at 4.0 would put cracks in sheetrock and half that (2.0) would put cracks in plaster and lath. He reviewed the pre-blast inventory report from 2007 and found that Mr. Jennette was not on the list. It appeared that everyone around Mr. Jennette was on the pre-blast inventory list. He advised that the blasting occurred higher than the location of Mr. Jennette's well. The Blasters Log and measurements from seismographs by an independent contractor would support that fact.

Mr. Jennette wants Mr. Tucker to pay for his well. It was his understanding of the permit and conditions that wells (water sources) would be paid for by the Applicant if damaged or lost. He reiterated his spring had been there for 44 years without any issues and was suddenly bone dry.

Mr. Tucker offered that Mr. Jennette may not have been subject to a pre-blast inventory because he had a spring versus a drilled well or because the spring was outside the 500-foot realm. He asked if the Zoning Administrator could review the pre-blast inventory work on disc. He advised no one else around the area had any issue with water quality, storage or availability. Anyone outside the 500-foot realm could have a pre-blast inventory if it was requested. Most of the neighbors were present at the hearings. Mr. Tucker elaborated further about the PPV and how it gets dissipated quickly.

The Board advised it would take no further comment on the subject but will take the matter under consideration. The Board questioned whether it had the authority to require an applicant to pay an abutter or neighbor for the loss of a spring or well. The Board noted that time limits and phasing had been addressed by prior conditions. The issue regarding the required guardrail and fence will be addressed in the future prior to commencement of work in Area C.

Based on documents presented and testimony heard, Mr. Fitzhugh made a motion, seconded by Mr. Irons, to close the hearing with respect to Application 17-011. The question was called and the motion passed unanimously.

B. 17-013 – William T. Herring submitted an application for a Variance Request associated with Site Plan Review seeking relief from Table 2.03D to allow a greater Building Coverage and from Section 3.02(B)1 to allow a second driveway. The property is located at 914 Stewart Road, Berlin, Vermont, Parcel ID: 19-019.000. William Herring and Joe Gay were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Zoning Permit, 17-013, received on 04/12/2017; **Exhibit #2:** Site Plan showing existing access, proposed and existing structures, and so forth; **Exhibit #3:** Applicant's written comments to address variance criteria; and **Exhibit #4:** Copy of letter (undated) from Lamoureux & Dickinson and signed by Doug Henson, L.S. explaining that as proposed the well would need to be relocated should a replacement wastewater system be needed.

Joe Gay advised he has an engineering background, but is not a consultant in this matter, only offering his assistance to Billy Herring. Mr. Herring is requesting a variance to allow greater building coverage and a second driveway. He wants to build an additional garage 40 feet by 40 feet and add a driveway to access it directly. Mr. Gay presented a rendering depicting existing and proposed structures as well as the existing and proposed driveway. The size of the lot is 0.5 acres.

Mr. Gay advised that the lot is small and has a steep embankment in two places. In addition, it creates an issue with respect to an alternate location for a replacement wastewater disposal system. The existing septic system has not failed. The proposed site for a replacement area is located in front of the house which would require relocating the well. The area shown in pink is for the replacement leach field. The matter has been discussed with an engineering consultant who visited the site but no soils testing or other subsurface investigation has occurred. They are proposing a second driveway to access the new garage directly versus connecting to the existing driveway and going over the proposed area for the replacement septic system.

Mr. Herring added that he initially had a mobile home there and then built a house and garage. The proposed garage is not for a business operation; it is for utility storage which would include his boat, four-wheeler, snowmobiles, an antique car, and so forth. He confirmed he would have two garages, noting that the existing garage close to the house would remain for their current vehicles. He needs a wide driveway for turning vehicles and may need to park trailers on the side of the driveway that do not fit in the garage.

In response to the Board's questions about grade, Mr. Gay advised that there is about a 12 percent grade which would require moving soil to level it out. He noted that they had not specifically discussed it, but some sort of retaining wall would be needed at the corner of the proposed new structure. He advised that setbacks would not be met if the new garage were placed where the existing garage is located.

The Board explained that the statutory criteria for a variance is difficult to satisfy and noted that it is easier to obtain a waiver with respect to setbacks. There is no waiver for square footage of coverage area or a second access. The Zoning Administrator could not approve the application because two driveways were proposed. The Board asked the Applicant to address the variance criteria.

The Board must find:

- A. *“That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of the lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.”*

Mr. Gay advised that the lot is just under an acre and includes a 12 percent grade above the existing dwelling and main driveway. The existing subsurface disposal system is located under the driveway. Alternate locations for the garage would interfere with the replacement wastewater disposal system which is proposed for the front of the house. This location eliminates the option of a shared driveway. Because of the grades and alternate replacement site there is no other way to have another garage. The existing garage is on a concrete slab and the septic tank is located between the house and garage. The well is located in that area as well.

The Board asked if they had considered changing the utilization of the existing garage and proposed garage to make it work.

Mr. Herring advised that they had considered it however it is preferred to park in the garage near the house.

B. “That because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of the variance is necessary to enable the reasonable use of the property.”

The size of the property together with the sloping topography does not allow strict conformity to the regulations for the proposed garage. Based on the need for an alternate wastewater site, it is not possible to combine access with the existing driveway for access to the proposed garage. Direct access to the proposed garage is the best solution.

C. That the unnecessary hardship has not been created by the appellant;

The requirements of the state and town for the placement of water supply and wastewater disposal systems must be met and the only place suitable for a replacement wastewater system is where the regulations would require a shared drive.

D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and”

The proposed garage and driveway fit with the character of the surrounding area and will not negatively impact neighbors’ ability to utilize their properties. There are two contiguous property owners. Mr. Herring has discussed the matter with his neighbors who have no objections.

E. That the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The proposal offsets an appropriate replacement wastewater disposal area for an aged existing system with a second driveway access. The proposed garage would not be a traditional two car garage with daily traffic flow. It is a utility garage designed for storage with a restoration area.

Alternatives were discussed which included replacing the existing garage with the larger garage and request waivers of setbacks to make it fit, rearranging uses to reduce the need for a second driveway, and consider purchasing or leasing abutting property to make it work.

Mr. Herring does not know the location of abutting property owners' water supply or wastewater disposal systems. They met with Road Foreman, Tim Davis to discuss access, who recommended a culvert. He wants a variance to make good use of his property.

Based on documents presented and testimony heard, Mr. Fitzhugh made a motion, seconded by Mr. Irons, to close the hearing with respect to Application 17-013. 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 April 18, 2017 meeting. On page 2, the second sentence under election of officers was corrected to read: Mr. Fitzhugh nominated Ms. Nuisl as Vice Chair, seconded by Mr. Friedrich, Motion passed.

Mr. Fitzhugh made a motion, seconded by Mr. Mispel, to approve the Minutes of the April 18, 2017 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 9:10 P.M. and out at 9:34 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, May 16, 2017.**

8. There being no further business, the meeting was adjourned at 9:35 P.M.

Respectfully submitted,

Carla Preston

Carla Preston
Recording Secretary
Town of Berlin