

DEVELOPMENT REVIEW BOARD
108 Shed Road
Berlin, Vermont

APPROVED MINUTES
Meeting of TUESDAY, May 15, 2018

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

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

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

Others present: Leo Foy, Josephine Kokarev and Day Kokarev.

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. 18-013 – Pomerleau Real Estate and Dog River Brewery submitted an application for Site Plan Review to add approximately 380 square feet of outside seating/dining area. The property is located at 1400 U.S. Route 302, Berlin, Vermont, in the Highway Commercial (HC) District; Parcel ID: US302-018. Leo Foy, owner of Dog River Brewery, was sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 18-013, received on 04/12/2018; and **Exhibit #2:** Sketch of proposed seating area under the covered walkway.

The owner of the property is Pomerleau Properties, Inc. d/b/a Pomerleau Real Estate. The application was signed by Brian Waxler for the property owner and by Mr. Foy, owner of the business leasing the space.

Leo Foy advised he wishes to add approximately 380 square feet of outdoor seating with tables placed up against the windows in front of his business, Dog River Brewery. The tables, chairs and temporary barriers would be removed during off hours. Mr. Foy advised that they serve beer and soft drinks and noted that people are welcome to bring their own food to go with their preferred beverage.

Zoning Administrator Badowski advised that this business is located where *Radio Shack* was previously located. He confirmed that authorization from the property owner had been received.

The Board raised concerns about the amount of space on the walkway left available when the seating and tables were out. Members noted that although it does not meet the requirements for the Americans with Disabilities Act at five feet, it would be wide enough for a wheelchair to pass and the barriers are not permanent.

Mr. Foy noted the sketch shows that there would be about 3.5 feet or 54 inches of sidewalk leftover but advised that it could be tightened up if needed. The outdoor dining area is seasonal and all tables, chairs, and barriers will be taken inside each night at closing.

The Board asked Mr. Foy to address the site plan review criteria to amend the site plan.

- a. Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.** There would be no impact on vehicular circulation. There are two businesses beyond this site, *Snap Fitness* and *China Moon* that may utilize the covered walkway however the proposed barriers are not permanent.
- b. Adequacy of circulation, parking, and loading facilities.** There would be no impact on parking. Mr. Badowski confirmed that parking is adequate for the shopping center.
- c. Bicycle and Pedestrian Access.** The Applicants are utilizing space under the covered pedestrian walkway. The barrier would be temporary consisting of a plastic chain or retractable rope and will be taken inside at closing every day.
- d. Adequacy of landscaping.** No additional landscaping is being proposed.
- e. Hours of Operation.** Mr. Foy advised the hours of operation for the business are 12:00 PM to 7:00 PM Tuesday through Thursday, and 12:00 PM to 9:00 PM on Friday and Saturday. They are closed on Sunday and Monday.
- f. Setbacks.** There would be no change in setbacks.
- g. Adequacy of Exterior lighting.** There is adequate lighting for the business including outside seating. No additional exterior lighting is being proposed.
- h. Stormwater and Drainage.** There would be no impact on stormwater and drainage.
- i. Utilization of renewable energy resources.** There would be no impact on renewable energy resources.
- j. Municipal Services Impact Evaluation.** Based on this application for outside seasonal dining, there would be no impact on municipal services.
- k. Flood Hazard Review.** The property is located within a flood hazard zone. All fixtures (tables, chairs and barriers) are temporary. There is no curbing at the entrance to the business.

Based on documents presented and testimony heard, Mr. Fitzhugh made a motion, seconded by Mr. Friedrich, to close the hearing with respect to Application 18-013. The question was called and the motion passed unanimously.

B. 18-015 – Mr. Day Kokarev & Josephine Kokarev; and Laura Malone McEnerney & Kevin McEnerney submitted an Application for Boundary Adjustment. The properties are located at 1954 and 1890 Crosstown Road, Berlin, Vermont, in the Rural Residential (R-40) and Highland Conservation (AR) Zoning Districts; Parcel ID: 27-037. Day Kokarev and Josie Kokarev were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Zoning Permit, 18-015, received on 04/23/2018; and **Exhibit #2:** Survey – Lot Line Adjustment for Kokarev and Anderson [McEnerney], prepared by Richard W. Bell Land Surveying, Inc., dated 09/2017 and stamped on 11/1/2017.

All four applicants signed the application for boundary Adjustment. Mr. and Mrs. Kokarev presented the proposed boundary adjustment to correct setback issues. Mr. Kokarev advised they purchased the property 22 years ago at which time the lot had not been surveyed. When they put their home on the market they learned that the pool and pool house or shed was not actually on their property. They need to correct the setback issues so they may again put their property on the market.

Mrs. Kokarev advised that Laura Anderson (now known as McEnerney) built both houses and then subdivided the property. The people to whom she sold the house prior to them buying it, installed the pool and pool house. They moved there in 1994 and believe that the pool was built in 1989. Mrs. Kokarev advised they hired a surveyor to survey the property and found that the pool and pool house was on the McEnerney's property. During the past two years they have been working with the McEnerneys to reach an agreement for a land swap to correct the issue regarding setbacks. She confirmed that the pool house or shed is completely on the McEnerney's property and pool is partly on their property.

Mr. and Mrs. Kokarev confirmed that they were swapping land in the back by their structures for land in the front near the McEnerneys to meet setbacks. The total acreage exchanged shown as Area A and Area B on the survey is 0.12 acres. There will be no change in the total acreage of either lot (Lot R7-102A – Kokarevs at 5.76 acres and Lot R7-102 – McEnerneys at 6.46 acres).

The Board noted two concerns; 1) setback distance to the existing garage; and 2) frontage requirements for the district(s). The group reviewed the large map showing districts.

Based on the reduced size survey that was not to scale, it was difficult to confirm that the 25-foot side-yard setback was met for the garage. It appeared to be nearer to 15 feet.

Mr. Kokarev advised they hired a surveyor to prepare this survey. The pin was moved to meet the setback requirement. He advised the distance from the edge of the garage to survey pin at the property line measured 25 feet.

The Board reiterated that the survey is not clear that the side yard setback for the garage is met. It was acknowledged, that the garage setback was not material to this application, thus the application could move forward as submitted. The Board pointed out the possible issue to give the applicants an opportunity to correct the problem now versus having it a sticking point when negotiating the sale of their home in the future. Options included continuing the hearing until that measurement was verified or closing the hearing as presented.

The Board's second concern pertained to frontage requirements since the frontage on both lots was not 300 feet as required for the Highland Conservation District and would be further reduced by this boundary adjustment.

Mr. Badowski explained that there are sections on Crosstown Road that are in the Rural Residential (one acre) District, and only require 100 feet of road frontage. He noted that the north side of Crosstown Road at the McEnerneys' property is where this special section begins.

The zoning district map clearly showed this 100-foot swath of Rural Residential as well as where the line began for the Highland Conservation district.

Based on fact that the subject lots are off Crosstown Road and within the Rural Residential district, the the Board agreed that the frontage is currently met and would be met for both lots after the boundary adjustment. Neither lot has the required 300 feet of road frontage for the Highland Conservation district.

After further discussion, Mr. and Mrs. Kokarev agreed it would be best to verify the measurement to the garage and resolve that potential issue as well before moving forward. They believed it was a matter of correcting the survey but acknowledged it might involve amending their agreement with the McEnerneys.

Mr. Badowski advised that they would be heard first on the agenda since the application was continued. The application does not require re-warning however abutters are notified of continuances.

Chair Wernecke made a motion, seconded by Mr. Fitzhugh, to recess the hearing with respect to Application 18-015 to the June 5, 2018 meeting. The distance from the Kokarevs' garage to the property line needs to be verified that it meets the 25-foot side yard setback requirement. The question was called and the motion passed unanimously.

C. 18-016 – James G. Bond submitted an application for amended site plan review to allow the construction of a block retaining wall. The property is located at 625 U.S. Route 302, Berlin, Vermont, in the Highway Commercial (HC) Zoning District; Parcel ID: US302-050.

Zoning Administrator Badowski advised that Mr. Bond withdrew his application. No further action required.

3. Review and approval of the Minutes.

The Chair called for approval of the Minutes of the May 1, 2018 meeting. The spelling of Fred Satink's name will be corrected (not Satruk). Under Application 18-012, members noted that reference to the classification of the wetlands differed from the narrative and the plans and agreed to amend the minutes to reflect it as a Class III wetland. On page 3, the 7th paragraph was amended to read: Mr. Fecteau advised that due to the difficulties in finding qualified carpenters, it is possible that about 75 percent of the units would be modular.

Mr. Friedrich made a motion, seconded by Mr. Fitzhugh, to approve the Minutes of the May 1, 2018 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

- Mr. Badowski advised that the new Fire Chief is Jeremy Dufresne.
- Chair Wernecke asked to have Election of Officers added to the June 5th agenda.

6. Status of Findings.

The Board voted to go into deliberative session at 7:50 P.M. and out at 7:54 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, June 5, 2018.**

8. There being no further business, the meeting was adjourned at 7:56 P.M.

Respectfully submitted,

Carla Preston

Carla Preston
Recording Secretary
Town of Berlin