

DEVELOPMENT REVIEW BOARD
108 Shed Road
Berlin, Vermont

APPROVED MINUTES
Meeting of TUESDAY, November 4, 2014

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

Members present: Robert J. Wernecke, Chair; Karla Nuisl, Vice-Chair; Henry A. LaGue, Jr.; John Friedrich; and Harvey Golubock.

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

Others present: Patrick Malone, Richard DeWolfe, Alicia Feiler, Mike Foster and Greg Isabelle.

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. 14-071 – Malone Properties submitted an application to renovate two existing structures with grading and associated site improvements requiring conditional use review. The property is located at 856 Route 302, Berlin, Vermont, in the Highway Commercial Zoning District and Special Flood Hazard Area. Patrick Malone, Richard DeWolfe, Alicia Feiler, Mike Foster and Greg Isabelle were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 14-071, dated 10/03/2014; **Exhibit #2:** Site Plans prepared by DeWolfe Engineering Associates, Incorporated: Hooker's Plaza Redevelopment Cover Sheet, C0.01, dated 09/24/2014; Legend and General Notes, C0.02, dated 09/24/2014; **Exhibit #3:** Existing Conditions, C1.01, dated 09/24/2014; Site and Utility Plan, C1.02, dated 09/24/2014; Erosion Control and Grading Plan, C1.03, dated 09/24/2014; Construction Details, C5.01, dated 09/24/2014; **Exhibit #4:** Letter dated 09/30/2014 (and revised 10/16/2014) from Richard S. DeWolfe, III, P.E., with DeWolfe Engineering Associates, Incorporated, to the Town of Berlin describing the project and addressing conditional use review criteria; **Exhibit #5:** Letters dated 09/24/2014 from Richard S. DeWolfe, P.E., with DeWolfe Engineering Associates, Incorporated, to the Berlin Police and Berlin Volunteer Fire departments describing the project and requesting an impact statement; **Exhibit #6:** Memo dated 08/28/2014 to Rick DeWolfe from Ben Swanson with RSG regarding a turn lane warrant analysis; **Exhibit #7:** Email and attachments dated 10/06/2014 from ZA Thomas Badowski to Sacha Pealer with the State of Vermont, Central Vermont Floodplain Manager, concerning costs of the proposed project; **Exhibit #8:** Email dated 10/28/2014 from Rob Evans, CFM, State Floodplain Manager, Agency of Natural Resources, to the Town of Berlin in response to costs associated with the proposed project (Substantial Improvement Determination); **Exhibit #9:** Memorandum dated 09/29/2014 from the Berlin Police Department stating that the proposed application would have no adverse impact on its Department; **Exhibit #10:** Letter dated 10/20/2014 from the Berlin Volunteer Fire Department requesting the installation of a monitored fire alarm system and a Lock Box.

Rick DeWolfe with DeWolfe Engineering Associates, Incorporated provided an overview of the project and how it differed from the prior proposal (Application 14-034). He advised that the project consists of renovating two existing buildings, Rubber Bubbles (Building A) and the Countertop building (Building B). Barre Electric will take over the Rubber Bubbles building. No changes are being proposed to Building C

which is currently occupied by Hooker's Furniture and Barre Electric. Improvements to the two buildings (A and B) include new roofing, new siding and replacement of windows and doors. Building B improvements also includes code upgrades to plumbing and electrical, interior fit up, a new entrance door and a new overhead door. Mr. DeWolfe advised that a new store front and handicap accessible ramp would also be added to Building B. There would also be site improvements including repaving and a new retaining wall between the proposed at grade overhead door and existing loading dock door on the northeastern side of Building B. No fill is proposed within the portion of the lot which is in the floodway. Some fill, up to 2.5 feet in some areas would be needed to get to grade. Mr. DeWolfe pointed out the few inches of area shown on the plans that would be re-graded. He explained drainage as shown with a swale between the parking lots which is directed toward the railroad tracks. Landscaping would remain the same, the existing trees and other vegetation would remain.

Zoning Administrator Badowski advised that the property requires conditional use review because it is located within a Special Flood Hazard area, based on 50 percent of value threshold. If the property was not located in the special Flood Hazard area it may not require a permit.

Chair Wernecke advised that due to the site improvements mentioned in the application a permit would be required in this situation.

Mr. DeWolfe advised that the reason for the change from the prior application was to offer a "spec" building with no proposed tenant because they did not know the use for the majority of the site. They had current tenants who wanted to occupy the site so they needed approval for the improvements to do it. He advised there will be a future application for the remainder of the site. They are not flood proofing the structures because the improvements are less than 50 percent.

The Applicants addressed Conditional Use and the Flood Hazard Review Criteria.

- a. Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.** The Applicants advised there would be no changes in access to the site. The existing parcel is served by three curb cuts. The majority of traffic will utilize the north or western end of the site. They advised that they are close to, but do not cross the 50% value for changes which are minimal. The aisle space around the handicap access ramp is about 30 feet thus will not impact traffic circulation. Building A is at grade so no handicap access ramp is required. The buildings are single story.
- b. Adequacy of circulation, parking, and loading facilities.** The Applicants advised that there would be no change in traffic circulation. Parking is provided in the general area around Buildings A and B and at the end of the handicap access ramp. Parking is also shown for the area around Building C which does not have a tenant. Based on their calculations 103 parking spaces have been provided including five handicap accessible spaces. There is an existing 30 inch high loading dock with a proposed retaining wall behind the existing Rubber Bubbles building. The back part of Building B is warehouse.
- c. Bicycle and Pedestrian Access.** The Applicants advised that there would be no changes in pedestrian access. No internal crosswalks are proposed.
- d. Adequacy of landscaping.** The Applicants advised that they are not proposing any new landscaping. There are existing trees around the site which would remain.

- e. Hours of Operation.** The Applicants advised that there would be no change in the hours of operation, 7:00 AM to 9:00 PM.
- f. Setbacks.** The Applicants advised that there would be no change in setbacks. The existing buildings are all nonconforming because setbacks requirements are not met and the lot is located within a flood hazard area (below 100 year level). The Applicants advised that nothing proposed will increase the degree of encroachment.
- g. Adequacy of Exterior Lighting.** The Applicants advised that new light fixtures would be installed over the new doors and along the northwestern side of Building B and the new store front. All fixtures would be down casting.
- h. Stormwater and Drainage.** The Applicants advised that no improvements to stormwater and drainage are proposed since they are under the State of Vermont's threshold. The redevelopment of the site results in a small reduction in the amount of impervious area. Runoff from the site is collected in a system of pipes and catch basins and is conveyed to the Steven's Branch of the river.
- i. Utilization of Renewable Energy Resources.** The Applicants advised that the proposed project will not interfere with the sustainable use of renewable energy resources by diminishing the future availability of such resources or eliminating nearby property owners' access to such resources.
- j. Municipal Services Impact Evaluation.** The Applicants advised that plans have been submitted to the Town of Berlin's Police and Fire Departments as well as to the Vermont Agency of Transportation (VTrans). The Berlin Police Department advised that the project would have no adverse impact. The Berlin Volunteer Fire Department requested an alarm system and lock box. The Applicants advised that the buildings do not have a sprinkler system. They will provide a lock box but questioned the requirement for an alarm system. They indicated that the installation of an alarm system at approximately \$5,000 would bring them over the 50 percent value threshold. The Applicants advised that they do not believe that an alarm system is required and do not propose installing an alarm system.
- k. Flood Hazard Review.** The Applicants advised that the project is entirely within the 100-year flood plain with a small portion located within the regulatory floodway. The existing structures would not be substantially improved and are therefore not required to be raised to above base flood elevation level. They advised that oil tanks are located inside the building and anchored to the floor. There are no proposed changes to water and sewer. Mr. DeWolfe advised that he has not inspected the manholes which are located off the project site, but expects that they are not sealed.

Mr. DeWolfe advised that vent pipes are above the base flood elevation at 558.4 feet. Fuel tanks are located within the warehouse. He advised that the 100 year flood elevation at 561 feet is the highest. The first floor elevation of the warehouse is at 558.4 and Building A is at 555.76. He advised that there is an existing propane tank located between buildings A and B. The Applicants advised that the tank will be anchored.

Mike Foster with Malone Properties pointed out the location of the propane tank, 250 gallons. He noted that Building B heats with oil, hot air.

Chair Wernecke indicated that the Town has attempted to minimize flood issues. He noted that these are existing wood framed buildings on slabs located within the flood plain.

The warehouse is elevated with a wood floor and crawl space and slab below it. Flood proofing them would require flood vents or elevation. The Applicants noted that even though the buildings are 5.3 feet below the base flood elevation, they have not been flooded since they were built in the 1950s.

In response to members of the Board asking about the flood in 1973, Mr. Malone advised that the prior owner told him they have never flooded. Mr. DeWolfe pointed out the floodway area and confirmed that they are not proposing any work there.

Based on testimony heard and documents received, Mr. Golubock made a motion, seconded by Ms. Nuisl, to close the hearing with respect to Application 14-071. The matter was discussed further.

Mr. Malone asked for clarification about conditional use and whether it meant they needed to return to the DRB every time a repair or improvement is proposed. He gave examples for further clarification, such as replacing a window to get an idea of the threshold.

The Board explained that because the property is located within the flood plain it is subject to the Special Flood Hazard area criteria. Any significant improvements will need DRB approval which includes site changes that affect traffic circulation, parking, and so forth that have to do with substantial improvements.

Zoning Administrator Badowski referred to the Federal Emergency Management Agency's (FEMA) description or definition. He advised that if a roof is patched, Board approval would not be required, but if a roof is replaced Board approval would be required. Changes to the site such as grading would require DRB approval because properties within a flood plain triggers review much quicker to maintain flood insurance for the Town.

In response to Mr. Malone's question as to the limits of the threshold, Mr. Badowski advised that he would work with him regarding reasonable expectations. He advised that any decision by the Zoning Administrator could be appealed to the Development Review Board. He advised that the 50 percent threshold has a three year window which leaves slightly over \$3000 for signage if desired.

Mr. Malone advised that the value of signage would put him over the limit. It was unclear whether signage was considered an improvement to the building. He also asked about internal improvements such as a new heater. Mr. Malone indicated that if signage is considered a substantial improvement it would put him over the 50 percent limit.

The group discussed how to interpret improvements and whether signage improves the building or the property. There is a difference between improvements versus maintenance. Examples were given such as replacing a window or replacing a roof and whether it was considered maintenance.

Mr. DeWolfe advised that he understood that FEMA is based on the monetary value not on use. There is no distinction between commercial versus residential uses.

The Board acknowledged that Mr. Malone had a valid point and advised that the Board and Zoning Administrator will work with applicants however the Town must abide by these new federal guidelines and their restrictions. The Board noted it cannot make a ruling based on speculation. 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 October 7th meeting. On page 1, the 3rd paragraph under #2 was corrected to show that the 5.2 acre parcel would be conveyed to Ms. Mercier and the rest of the property would be conveyed to her brother.

Ms. Nuisl made a motion, seconded by Mr. Friedrich, to approve the Minutes of the October 7, 2014 meeting as corrected. The question was called and the motion passed unanimously.

Review and approval of the Minutes of the October 21, 2014 meeting was tabled.

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 7:48 P.M. and out at 8:23 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, November 18, 2014.**

8. There being no further business, the meeting was adjourned at 8:24 P.M.

Respectfully submitted,

Carla Preston

Carla Preston
Recording Secretary
Town of Berlin