

DEVELOPMENT REVIEW BOARD
108 Shed Road
Berlin, Vermont

APPROVED MINUTES
Meeting of TUESDAY, November 18, 2014

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

Members present: Robert J. Wernecke, Chair; Karla Nussli, Vice-Chair; John Friedrich; and Paul Irons, Alternate. Absent: Henry A. LaGue, Jr. and Harvey Golubock.

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

Others present: Charles Storrow, Esq., Jesse Daniels, Hjonis Hanson and Wanda Baril.

The Board explained its Policy and definition of party status and interested person to attendees. Copies of the Rules and Policies and Procedure were available as handouts.

2. Old Business

A. 14-061 – Berlin Mall, LLC submitted an application for the construction of a 55,502 square foot freestanding *Kohl's* department store on Out Lot E with associated parking and infrastructure. The property is located at 282 Berlin Mall Road, Berlin, Vermont, in the Town Center District. Chuck Storrow, Esq. representing the Berlin Mall was sworn in to give testimony on this matter. This matter was recessed from the October 21, 2014 meeting.

The following documents were submitted and admitted as exhibits: **Exhibit #16:** Memo dated 10/23/2014 from Chuck Storrow to ZA Badowski re Stormwater & Wetlands Approvals; **Exhibit #17:** Letters dated 09/17/2014 and 09/18/2014 from Vanasse Hangen Brustlin Inc. (VHB) to the VT Department of Environmental Conservation re the general and stormwater permits; **Exhibit #18:** Letter dated 09/22/2014 from Vanasse Hangen Brustlin Inc. (VHB) to the U.S. Army Corps of Engineers re fill; **Exhibit #19:** Email communication dated 10/23 & 24/2014 between Attorney Storrow and Attorney William Rice, AAG with VTrans regarding the need for Notice of Intent from the Agency of Transportation pursuant to 19 V.S.A. § 1111; **Exhibit #20:** Memo dated 10/28/2014 from Chuck Storrow to Craig Keller, Utilities & Permits Division, VTrans re the need for a permit under 19 V.S.A. § 111; **Exhibit #21:** Memo dated 11/08/2014 from Chuck Storrow to the DRB addressing outstanding issues from the 10/21/2014 hearing; **Exhibit #22:** Notice of Authorization from VT Environmental Conservation re Notice of Intent Number: 3761-9020.1 re construction phase stormwater management of the project; **Exhibit #23:** Cut sheets re parking lot lights; **Exhibit #24:** Signage details re style, illumination and location; Kieffer & Co, Inc. re *KOHL'S* wall signs (front 192.7 square feet and rear 94.5 square feet) dated 09/05/2013 and freestanding pylon sign by Poyant received 11/07/2014; and **Exhibit #25:** Letter dated 11/07/2014 from Craig Keller, PE with Utilities and Permits Unit, VTrans, to Chuck Storrow advising that since there would be no physical work proposed in the VT Route 62 right-of-way a permit is not required under 19 V.S.A. § 1111.

Zoning Administrator Badowski reported the outstanding issues from the October 21, 2014 hearing. He mentioned that Attorney Storrow will address whether a VTrans LOI was required. There were also outstanding issues concerning the size and number of freestanding signs. A few other areas needed further clarification as well.

Attorney Chuck Storrow advised that he is representing the Berlin Mall LLC and noted that at the October 21st hearing they were present with the owners, engineers, architects and others to address criteria about the project. He mentioned that the Legislature enacted a law (19 V.S.A. § 1111) for towns regarding curb cut access off state highways requiring a Letter of Intent (LOI) which became effective on as of July 1, 2014. He advised that VTrans has confirmed that an LOI is not needed regarding this application because they are not proposing any work within the right-of-way. He does not believe the project will have a significant impact on traffic and overburden the highway.

Chair Wernecke indicated that they would have a traffic impact by changing volumes. He noted that the issue may surface again during subsequent applications.

Zoning Administrator Badowski advised that Craig Keller from the Utilities and Permits Division (VTrans) explained that they are looking at all applications due to grandfathering situations or active permits that may not be adhered to correctly.

Mr. Storrow advised that they have not yet received input from VTrans with respect to traffic impacts but will be ready to speak to it during the ACT 250 proceeding.

Chair Wernecke advised it is an issue of concern, particularly with a drop in service from D to E at the intersection of Fisher Road, Paine Turnpike and Stewart Road. He mentioned that the intersection is not signalized and referred to Table 8 from the traffic study.

Mr. Storrow advised that another outstanding issue was the technical permits from the Agency of Natural Resources and the U.S. Army Corps of Engineers. He provided copies of Vanasse Hangen Brustlin Inc. (VHB) cover letters to those agencies. He advised that they have received stormwater management and construction permits. He advised that due to the 0.2 encroachment into the manmade wetland, designated as Class III, a permit was needed from the U.S. Army Corps of Engineers. They also applied for a basic wastewater permit. Copies of the permits will be submitted to the Town when available.

Mr. Storrow advised that the pylon signs were also outstanding issues with respect to their size and because there were two of them. He referred to Section 3.13 of the regulations which states that the support structure is excluded from the measurement for freestanding signs. He noted that the regulations allow for only one freestanding sign up to a maximum of 150 square feet. Two freestanding signs were permitted years ago by the State during the ACT 250 process. He handed out additional copies of their sign package that was submitted with the application and discussed on October 21st. The proposed pylon sign at Fisher Road is larger than the Route 62 entrance. He advised that the first page represents the proposed new illuminated signage at the corner of Fisher Road and the Berlin Mall Road entrance which is the same dimensions as the existing sign, 83.4 square feet. He noted that the Board did not raise concerns about the two existing freestanding signs when reviewing the Berlin Mall's application for the Walmart expansion project. The Applicant understands that the issue VTrans has for that location is that Route 62 is a limited access highway. He advised that the proposed sign at the Route 62 entrance is the same size as the existing sign except for a triangular shaped roof on the top of it. He advised that by excluding the support structures for the Fisher Road sign, it is the same size as indicated in the initial packet from August, 72.4 square feet.

The Board confirmed that support structures are excluded when considering square footage for freestanding signs. The current regulations for shopping centers is clear that support structures are

excluded, Section 3.13 (C) 3. The Board advised that the issue of a second freestanding sign for a shopping center is the issue.

Mr. Storrow advised that the shopping center (Berlin Mall) has had two freestanding signs there for a long time and asked the Board to consider one of them as a nonconforming structure and evaluate it under conditional use review. He noted that either sign could be considered the nonconforming sign but chose the Fisher Road sign because it is larger.

The Board advised that because the Fisher Road sign is larger the Board would have to consider the proposal as enlarging or modifying a nonconforming structure. The proposed new Fisher Road freestanding sign would comply with the regulations.

Based on this discussion, Mr. Storrow advised that he will ask the Board to consider the Route 62 freestanding sign since it involves a limited access highway. They will propose the larger freestanding sign at the corner of Fisher Road and Berlin Mall Road which would meet the requirements for a shopping center. He advised that the sign would be internally illuminated with light-emitting diode (LED) illumination. He noted that the State may have an issue with an illuminated sign at the Route 62 location which would be addressed during ACT 250 review. He advised that the proposed wall signs would also be LED illuminated.

The Board also pointed out that it appeared the measurements presented included support structures therefore the overall square footage would be less once the supports were deducted. The measurement for signage must include the letters, logos and may include illuminated color schemes which the Board has seen in the recent past. The Applicant is seeking to enlarge a preexisting nonconforming structure, the freestanding sign located at Route 62.

In response to the Board's question regarding what the Applicant could live with if not approved, Mr. Storrow advised that his Client really wants both freestanding signs. They do have two existing freestanding signs causing one of them to be nonconforming. They want to make the existing bland framework for the Route 62 sign much more visible. He reviewed the conditional use criteria and opined that the proposed internally illuminated sign would not create a traffic hazard. The location of the sign is back away from the intersection. He advised that most of the criteria do not apply but addressed the character of the area. Other area businesses include a motel, convenience store, automotive dealerships, industrial businesses such as Pike Industries, and so on. Many of those existing businesses have illuminated signs. There would be no negative impact on the neighborhood.

The Board questioned how the sign would meet the definition of a nonconforming structure when it was allowed when the regulations would have restricted it. The zoning records do not mention the issue. When implemented in the early 1970's the regulations indicated that nonconforming signs had to be brought into compliance or removed within five years. This issue does not fit neatly with the regulations.

Mr. Storrow agreed that this is a unique situation concerning whether the signs are lawfully in existence. He noted that the zoning violation has been cured by the statute of limitations. The property is unusual in that it consists of 65 acres with entrances on either end.

The Board would argue that the sign is legally in place and noted that it has been there nearly 30 years. The Applicant has never been cited to remove it. The question is how far the Board should

go to allow for the enlargement of a nonconforming structure. The sign would only be visible from one side and from one direction on Route 62, eastbound not westbound.

Mr. Storrow reviewed the square footage of the proposed structures and how they were calculated. He mentioned the Board's approval of the proposed new sign off Route 62 with the Walmart expansion project application discussed in 2012. He advised that both signs are important to the Applicant.

The Board asked for confirmation as to which sign was mentioned in the prior application for the Walmart expansion project. Records showed that the Mall Access Road and Route 62 sign were mentioned in the 2012 application [12-029].

Chair Wernecke noted that it was an issue in the 1980s when the Applicant got approval for access off Route 62, a limited access highway. He advised that the Mall access road is Town road for a short distance. The Board will have to weigh the information and make a decision. The Board can opt to allow the sign to be larger or keep it the same.

Mr. Storrow asked that both freestanding signs be allowed under the circumstances. He discussed the proposed wall mounted signs and referred to the graphic recently provided from *Kohl's*. There would be one sign on the front of the building (192.7 square feet) and one on the back of the building (94.5 square feet). He noted that they measured the rectangle around the letters to determine the size of the signs. Based on the formula for two square feet per linear foot of frontage (267 feet), they would be allowed up to the maximum of 300 square feet. The total square footage is 287.2 square feet. He advised that there would be other signs on the property such as traffic signs (stop), and directional signs.

The Board noted that traffic circulation needed to be addressed further and asked for clarification about one way traffic areas and truck access.

Mr. Storrow referred to the site plans and key regarding signs. They propose two, one way, do not enter signs and other uniform traffic control devices. After further discussion he agreed that one of the proposed signs was not located in the correct spot and should be relocated. He pointed out the entrance primarily for employees and deliveries and provided further clarification regarding the flow of traffic, whether one-way or two-way.

The Board noted that it would be useful to state service delivery only versus one way traffic in an effort to restrict people from going behind the building. It would be better to state employees only and service vehicles only so that customers would be less likely to think it was a shortcut. It was noted that some signs were shown in the wrong place on the plans. The Board asked Mr. Storrow to identify some of the signs mentioned in the key. It was noted that the size of the directional signs exceeded the two square feet maximum permitted by the regulations however larger signs have been found to improve safety and are widely accepted.

Mr. Storrow noted that it is possible that the sign code is mentioned in the key but not represented on the plans. He confirmed that they would move the do not enter sign in question and will eliminate the other one. Mr. Storrow agreed to verify that information and will report back to Zoning Administrator Badowski.

Mr. Storrow confirmed that while addressing the criteria at the October 21st hearing they amended their request for hours of operation from specific hours to no restrictions or unlimited. He advised they want flexibility due to special events. He noted there are no residences in the area. The nearby hospital operates 24/7 and it would not impact the automotive dealership nearby.

Mr. Storrow noted that based on their prehearing conference with ACT 250 a reduction in the number of parking spaces was discussed. At this time however, he asked the Board to close the record as it is. Based on the formula for square footage and the number of employees 294 spaces would be required. He noted that Kohl's only requires 222 spaces therefore ACT 250 will consider reducing the entire project. He believes this is based on legislation which was amended July 1, 2014, criterion 9L regarding strip development. There are 903 spaces at the Berlin Mall. He advised they are not ready to redesign the project. If they decide to do it they would return to amend the permit.

The Board advised that it has considered arguments from applicants for fewer parking spaces thus it would be possible and would be considered. In the past it has been allowed but the Board would have to hear their arguments. The Board also indicated that it would likely condition relocating signs as discussed above.

Mr. Storrow advised that the orientation of the building was discussed at the last hearing. He confirmed that Kohl's wants parking in the front of the store and has signed off on the plans.

There being no further testimony, Ms. Nuisl made a motion, seconded by Mr. Friedrich, to close the hearing with respect to Application 14-061 subject to clarification of directional signs or uniform traffic devices (S34), entrances, and limited or restricted access areas. The question was called and the motion passed unanimously.

3. New business

A. 14-075 – University of Vermont Medical Center (Central Vermont Medical Center)

submitted an application to replace existing signage for rebranding purposes. The property is located at 130 Fisher Road, Berlin, Vermont, in the Commercial Zoning District. Jesse Daniels with Daniels Sign Company, LLC and HJnois Hanson with the Central Vermont Medical Center were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 14-075, received 11/10/2014; **Exhibit #2:** Cover letter dated 10/30/2014 from Daniels Sign Company, LLC re signage to reflect the name change from Central Vermont Medical Center to University of Vermont Health Network – Central Vermont Medical Center; **Exhibit #3:** Signage package for the University of Vermont Health Network for all signs being changed: Site Plan showing aerial view with location of each new sign; Wall Signs W-01 through W-08; Freestanding Sign F-09; and Directional Signs D-10 through D-33; **Exhibit #4:** Spreadsheet listing all signs showing existing and proposed dimensions and square footages; and **Exhibit #5:** Authorization and Consent Form dated 10/30/2014 from Central Vermont Medical Center authorizing Fletcher Allen Partners (including Jesse Daniels) to perform all work associated with the sign conversion.

Overview: Jesse Daniels advised that no new signs are being proposed they are just swapping out the existing signs with the new branding and color formations, green and white. He advised that all

of the signs located at 130 Fisher Road would be in same location. He noted that in some instances the exiting footing might move slightly but would not vary more than a foot. He advised the project is located within the commercial district. He noted that two of the new signs would be slightly larger than the existing signs. All of the others are smaller than the existing signs.

Mr. Daniels noted that due to the larger, longer name two of the signs needed to be enlarged. He referred to the spreadsheet regarding square footages and then to the aerial map showing their locations. He advised that Sign W-01, Main Entrance, is internally illuminated now and will remain so with LED illumination. He advised the sign cabinets are made of aluminum so they should not rust. He believes that since they are channel letters that the letters only would be illuminated where as now the whole panel sign illuminates. He and Mr. Hanson advised that sign W-02 is an interior sign just outside the main entrance to the lobby, Welcome to CVMC Your Community Medical Center. There are other small signs shown, which are not illuminated consisting of an aluminum panel with vinyl graphics. Sign W-04 is the same as Sign W-01 but for the other entrance.

In response to the Board's question regarding how they were measured, Mr. Daniels advised that they were measured as a block which is less than the existing signs. Signs W-06 and W-07, Emergency would not be changed. He advised that the most significant change is with W-08, the wall sign for the new name of the facility, the University of Vermont Health Network Central Vermont Medical Center, which was enlarged due to lengthy name of the facility.

The Board advised that signage for this facility does not comply with the ordinance. That issue may need to be addressed in future revisions to the regulations.

Mr. Daniels explained the need for multiple signs. He noted that some of them do not include "Health Network" at the end. He indicated that he is also working on the rebranding for the Plattsburgh, New York facility. He agreed that the signs do not meet the requirements noting that W-08 is well over the maximum allowed, at 383.9 square feet. Mr. Daniels explained that the access stripes make it so much larger; if measured just around the words then it is only 150 square feet which complies with the preexisting nonconforming signs. He did not know whether the stripe would be illuminated. The viewing strip might be lit but would not be visible from a long ways off. He noted that the channel letters would be internally illuminated thus has no reason to believe that the lines below and above it would be lit. He explained how the measurement was taken noting that the "U" was calculated but not the bottom of the "Y" and that "Health Network" is smaller which totaled about 150 square feet.

The Board noted that the word "Hospital" does not exist anywhere. The regulations state that only one freestanding sign is permitted.

Mr. Daniels advised that there are 100 locations being rebranded costing millions of dollars. He noted that many of the existing signs were not in very good shape. He referred to F-09, freestanding sign showing the new name of the facility which faces the helipad. He advised that the brickwork (support posts) were calculated as well as the granite base which is not visible. He advised that every town calculates the size differently and noted that the size of this freestanding sign would be reduced based on the regulations for Berlin. He noted that there are two signs described as D-10, one of which represents a temporary sign to get them by for rebranding and the other the permanent sign near the main entrance. The signs would be internally illuminated.

The Board questioned whether that sign would block sight distance and asked Mr. Daniels to look into it further.

Mr. Daniels agreed to do so and advised that the sign is facing perpendicular to Fisher Road. It is about 20 to 25 feet off of the edge of the pavement. He did not know the distance to the right of way. He believes that it is very close to being in compliance with respect to its location and confirmed they will verify that it does not block visibility.

Mr. Daniels confirmed that the two larger signs would be W-08 and D-28, Medical Office Building C, however by boxing in the letters the total square footage would be less. They took the logos off the directional signs so they can be considered purely directional. Mr. Daniels advised that this application does not apply to signage on the office buildings. They are changing the signage on the main buildings and will then do the physician offices.

There being no further testimony, Mr. Friedrich made a motion, seconded by Ms. Nuisl, to close the hearing with respect to Application 14-076. The question was called and the motion passed unanimously.

B. 14-076 – University of Vermont Medical Center (Woodridge Rehabilitation & Nursing)

submitted an application to replace existing signage. The property is located at 142 Woodridge Road, Berlin, Vermont, in the Commercial Zoning District. Jesse Daniels with Daniels Sign Company, LLC and HJnois Hanson with the Central Vermont Medical Center were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, 14-076, received 11/10/2014; **Exhibit #2:** Cover letter dated 10/30/2014 from Daniels Sign Company, LLC re signage to reflect the name change from Woodridge Rehabilitation & Nursing to University of Vermont Health Network – Woodridge Rehabilitation & Nurisng; **Exhibit #3:** Signage package for the University of Vermont Health Network for all signs being changed: Site Plan showing aerial view with location of each new sign; Freestanding Sign F-01, University of Vermont Health Network Central Vermont Medical Center; Directional Signs D-02 through D-05; and Parking related Signs P-06 through P-09; **Exhibit #4:** Spreadsheet listing all signs showing existing and proposed dimensions and square footages; and **Exhibit #5:** Authorization and Consent Form dated 10/30/2014 from Central Vermont Medical Center authorizing Fletcher Allen Partners (including Jesse Daniels) to perform all work associated with the sign conversion.

Mr. Daniels advised that by boxing in the letters the wall sign for this facility would be about 150 square feet, less than a one square foot increase. He advised that the freestanding sign, F-01 will be replaced but would not be illuminated. After further discussion, Mr. Daniels will advise the owners that the sign could be illuminated if they wish. He advised he will propose it as illuminated and will submit a revised sheet indicating such. He noted that parking signs are shown on the site plan for this location and referred to the other sheets for specific changes.

Mr. Daniels advised that they will return before the Board when other phases are ready for presentation. He noted that they have facilities all over that are associated with CVMC that will need to be changed. He agreed to submit a new cut sheet for the Woodridge freestanding sign that is now being proposed as illuminated.

The Board advised that the other buildings, which are separate from the hospital, must be in compliance with the regulations with respect to signage.

There being no further testimony, Mr. Friedrich made a motion, seconded by Ms. Nuiszl, to close the hearing with respect to Application 14-076. The question was called and the motion passed unanimously.

4. Review and approval of the Minutes.

The Chairman called for approval of the Minutes of the October 21, 2014 and November 4, 2014 meetings.

Minutes of October 21, 2014: On page 2, the 2nd sentence in the 3rd paragraph was amended to read: Members asked why the front is facing Fisher Road versus the Mall area. On page 3, the word quarter in the 3rd paragraph was amended to corridor. On page 9, the 5th paragraph was amended from VTrans to the District Commission. A few grammatical corrections were also suggested to add clarity. Ms. Nuiszl made a motion, seconded by Mr. Friedrich, to approve the Minutes of the October 21, 2014 meeting as corrected. Motion passed.

Minutes of November 4, 2014: Under 14-071 the record was corrected to reflect that the application was considered under Conditional Use versus Site Plan Review criteria. On page 2, the first paragraph was corrected to reflect 2.5 feet of fill.

Chair Wernecke made a motion, seconded by Mr. Friedrich, to approve the Minutes of the November 4, 2014 meeting as corrected. Mr. Irons abstained since he was not present. Motion passed.

5. Public Comment

Persons present participated in the meeting as noted above.

6. Other Business

7. Status of Findings.

The Board voted to go into deliberative session at 9:26 P.M. and out at 9:52 P.M. to discuss the status of Findings. The Board's decision with regard to (closed) adjourned applications will be reported in its Findings.

8. The next meeting of the Development Review Board is scheduled for **Tuesday, December 2, 2014.**

9. There being no further business, the meeting was adjourned at 9:54 P.M.

Respectfully submitted,

Carla Preston

Carla Preston
Recording Secretary
Town of Berlin