

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

**APPROVED MINUTES**  
**Meeting of TUESDAY, October 7, 2014**

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

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

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

Others present: Angela Mercier, Kris Hayward and Wanda Baril.

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.

2. New business

**A. 14-063 – Angela Mercier and Rick Mercier (Donald Mercier Estate Subdivision)** submitted an application for Concept Plan review and Final Plan review approval of a two lot subdivision involving a 45.2 acre parcel. The property is located at 3796 Crosstown Road, Berlin, Vermont, in the Highway Commercial Zoning District. Angela Mercier and her husband Kris Hayward were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, received on 09/15/2014; **Exhibit #2:** Boundary Survey & Subdivision Donald Mercier Estate, dated 08/21/2013, revised on 12/12/2013 and on 09/29/2014; **Exhibit #3:** Project Narrative, dated 08/25/2014; **Exhibit #4:** Letter dated 09/03/2014 from the Berlin Volunteer Fire Department Inc. stating no concerns about the proposed subdivision; and **Exhibit #5:** Memorandum dated 11/6/2013 from the Berlin Police Department stating that the proposed application would have no adverse impact on that department.

Angela Mercier explained that Rick Mercier is her brother and that the proposed subdivision involves property in their father's estate. The 45 acre plus/minus parcel would be subdivided into two lots consisting of 31.9 acres and 5.2 acres. She advised that the 5.2 acre parcel created would become her property and the rest of it would be conveyed to her brother.

The Board noted that the application was warned for both Concept and Final Plan review which is possible when the all required information has been submitted and no issues are found. The property had been subdivided multiple times over the years. The Board asked for clarification about acreage remaining and access to the lots.

Ms. Mercier advised that access to the property is via a 25 foot easement off Mercier Drive through John Collier's lot. She advised that Mercier Drive currently serves three lots including her brother's lot and the Collier's lot.

The Board indicated that Mercier Drive is an easement (private road) and explained that the regulations do not permit more than two lots being served via a private road unless permission is granted by the Berlin Select Board. The proposed subdivision would create a new lot also being served by that private road.

Mr. Hayward advised that he had previously discussed problems concerning a culvert with Berlin's Road Foreman. He indicated that because it did not involve a Town Road, they had to take care of the problem themselves.

The Board reviewed the plans with the Applicants. The subdivision regulations restrict the number of lots that can be served by an easement to two lots (Section 900 (e)). The provision is designed to allow access off a public road without frontage. Three lots currently have access off Mercier Drive and the proposed subdivision creates yet another lot to be served via that drive.

The Applicants may petition the Berlin Select Board to have Mercier Drive designated as a private road. The road must be wide enough for emergency vehicles and maintained by the persons served by the private road, not by the Town of Berlin. The Church there has access off Crosstown Road as well as Mercier Drive.

The Board acknowledged that the subdivision regulations are outdated however it cannot approve a subdivision if access to the new lot being created exceeds the number of lots permitted to be served.

Ms. Mercier advised that they have received comments from the Berlin Fire and Police departments, both of which had no concerns. The area has a steep bank and considerable ledge which reduced options for access. She advised that her father owned the entire parcel at one time.

The matter was discussed further which resulted in three possible solutions. One option is for the Applicants to petition the Berlin Select Board to have Mercier Drive designated as a private road. The Board noted that although a written agreement among the residences regarding maintenance is not required, it is recommended. A second option would be for Ms. Mercier to grant access to Lot A (Rick Mercier) through her property, Lot F. A Right-of-Way through her property would not be needed once it is conveyed to her brother Rick. A third option would be to merge the ownership via a boundary line adjustment which cannot create a new lot. A subdivision creates a new lot regardless of the intent to merge ownership in the future.

Ms. Mercier confirmed that they own the lot where Mr. Truman resides. She noted that their attorney recommended the subdivision because of their father's estate. They agreed that the best solution was to have the Select Board grant approval for Mercier Drive as a private road since it also addresses the existing situation of exceeding the number of residents being served by that easement.

The Board advised that the issue cannot be resolved tonight with any of the possible solutions discussed which meant that it could not proceed with Final Plan Review of the proposed subdivision. The Applicants were advised to review the deeds that created Mercier Drive and the surveys done in 1984 and in 1992. The Berlin Select Board will want to know what deed created the easement and how it will be maintained.

Mr. Hayward mentioned issues with erosion and sediment and asked if there was anything that could be done about the problem. He also asked for clarification about the Highland Conservation zoning district and restrictions on uses. He noted that he would like to build a garage or storage building in the future to house and maintain his own equipment.

Chair Wernecke explained that the area has a natural drainage pattern due to the slope. The problems with erosion and sediment were not created or exacerbated by the town. The Highland Conservation district has a five acre minimum which begins at the 600 foot elevation. Permitted and Conditional uses are set forth in the regulations. The Applicants were advised to discuss future building plans with the Zoning Administrator.

The Board concluded that the application could be approved in concept based on one of three possible solutions, an easement through Lot F to Lot A, approval from the Select Board for Mercier Drive to be designated as a private road, or a boundary line adjustment. The Board noted that the Applicants would have to revise their narrative to clarify what they wanted and should discuss the matter with their land surveyor to verify that the information contained in the survey is correct.

Ms. Nussl made a motion, seconded by Mr. Friedrich, to approve Application 14-063 for Concept Plan Review of a two lot Minor subdivision. The application must be warned for Final Plan review showing any changes and the solution concerning access. 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 September 16, 2014 meeting. No changes were suggested however the Board agreed that references to its officers should be stated as Chair and Vice-Chair.

Chair Wernecke made a motion, seconded by Mr. Friedman, to approve the Minutes of the September 16, 2014 meeting as presented. 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 8:00 P.M. and out at 8:39 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, October 21, 2014.**

8. There being no further business, the meeting was adjourned at 8:44 P.M.

Respectfully submitted,

*Carla Preston*

Carla Preston  
Recording Secretary  
Town of Berlin

