

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

**APPROVED MINUTES**  
**Meeting of TUESDAY, September 1, 2015**

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

Members present: Robert J. Wernecke, Chair; Karla Nussli, Vice-Chair; Henry A. LaGue, Jr.; John Friedrich and Josh Fitzhugh, Alternate.

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

Others present: Jonathan Abts, LS, Brendan Connolly and Craige Lyford.

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. Mr. Lyford, an abutter to one of the properties involved, requested and was granted party status.

2. New business

**A. 15-078 – Brendan Connolly, Annette Deschamps, Thanna Adams and Korin Johnson**

submitted an application for a Boundary Line Adjustment involving adjustments to all four properties. The Properties are located at 181 Highland Avenue (Parcel ID 30-012), 120 Lyford Lane (Parcel ID 75-018), 155 Highland Avenue (Parcel ID 30-008), and at 191 Highland Avenue (Parcel ID 30-013), Berlin, Vermont. All four parcels are located within the Rural Residential (R-40) Zoning District. Jonathan Abts, LS, and Brendan Connolly were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Boundary Adjustment, 15-078, dated 08/10/2015; **Exhibit #2:** Survey – Plat of Lands of Annette R. Deschamps [Exhibit A], prepared by Richard K. Bell, LS, dated February 2014; **Exhibit #3:** Survey – Boundary Agreement involving, among others, Lands of Brendan M. Connolly and Catherine A. Raeburn [Exhibit B], prepared by Jonathan R. Abts, LS, dated August 2014; **Exhibit #4:** Survey – Plat of Lands of Annette R. Deschamps [Exhibit C], prepared by Richard K. Bell, LS, dated February 2014; **Exhibit #5:** Survey – Boundary Agreement involving, among others, Lands of Brendan M. Connolly and Catherine A. Raeburn [Exhibit D], prepared by Jonathan R. Abts, LS, dated August 2014; **Exhibit #6:** Survey – Boundary Agreement involving, among others, Lands of Brendan M. Connolly and Catherine A. Raeburn [Exhibit E], prepared by Jonathan R. Abts, LS, dated August 2014; **Exhibit #6:** Survey – Boundary Agreement involving, among others, Lands of Brendan M. Connolly and Catherine A. Raeburn [Exhibit F], prepared by Jonathan R. Abts, LS, dated August 2014; **Exhibit #7:** Letter dated 08/03/2015 from Law Offices of Merriman Smart PLC describing the proposed boundary adjustments; **Exhibit #8:** Letter dated 09/02/2015 from Law Offices of Merriman Smart PLC further detailing the proposed adjustments and agreements; **Exhibit #9:** Copy of a 1981 Survey of Vaughn & Thanna Adams property submitted by Attorney Christopher Smart; and **Exhibit #10:** Copies of Deed Into Trust, Thanna D. Adams, recorded on 05/21/2013 and earlier Deeds recorded in 1977, 1981 and in 1983.

The Board expressed concerns that only one of the four property owners affected was present and discussed whether to move forward with the application. Members noted that all four property owners did sign the application and were given notice of the hearing.

Zoning Administrator Badowski advised that he was aware that Attorney Christopher Smart had communicated and shared documents with all of the applicants even though he did not specifically state he was representing them.

Jonathan Abts advised he is a licensed land surveyor who was hired by Attorney Smart who was hired by Mr. Connolly to perform the survey work. Although he has a clear understanding of what is being proposed, he was not asked to represent the applicants, only to respond to any technical questions that arose.

The Board agreed to rearrange the agenda to allow time for Mr. Connolly to arrive.

Mr. Lyford advised he is an abutter to one of the properties involved. He was present because he was worried that the change might involve the right of way.

Brendan Connolly described their proposal and referred to the exhibits submitted with their application. He advised that the area shown in purple on Exhibit A represents the property that he and his wife currently own. The area shown in green is what they are purchasing from Ms. Deschamps which is shown in blue. He explained that northern most area shown in red of their parcel will be transferred to Korin Johnson and the area in red to the southern part will be transferred to Thanna Adams. He advised that Exhibit E represents what his lot will look line post boundary adjustment. He advised that the colored areas shown on Exhibit D better represent the areas to be adjusted for each party. He summarized by indicating that green goes to Connolly and red goes to Adams. They are purchasing from one property owner and exchanging property with three owners.

In response to the Board's question about the reason or overall goal in these exchanges, Mr. Connolly advised that the lots are small and are not being used as truly depicted. He noted that one property line cuts through his driveway, backyard, and the stairs to his deck. He added that there were allegations of adverse possession and felt that it was in the best interest of everyone to reach an agreement which they have been working on for some time. He advised that these boundary adjustments will make the property lines logical for the lots and how they are currently being used. He noted that a livestock easement for Ms. Deschamps will be established as part of this agreement which will be reflected on the final plat.

In response to the Board's request for clarification about the properties actually surveyed, Mr. Abts advised that he surveyed the property lines being proposed and relied on deeds for the data. He indicated that the pins are in place and that the plat for Mr. Connolly is ready for filing. He was not asked to survey other owners' properties but noted that they are shown on Mr. Connolly's survey. Deeds will be prepared for all of the properties.

The Board reviewed the cover letter from Attorney Smart which stated that the proposed changes do not create new lots or render existing lots as such. There would be no change in use from residential. The Board noted that these are pre-existing small lots some of which are already nonconforming. The Board agreed that the proposed changes would not cause the lots to become more nonconforming.

Mr. Badowski noted that the chart included in Attorney Smart's August 3<sup>rd</sup> letter was accurate. The lots are all located within the Rural Residential District which currently requires 40,000 square foot minimum. The chart described whether the proposed adjustments changed lot area, frontage,

depth, setbacks, and so forth for each property. The proposed adjustments will reduce the degree of nonconformance. He advised that each of the four lots have their own well and are all served by municipal wastewater.

Mr. Lyford advised that he had no objections to the proposed changes. He was present to get a better understanding of what was being proposed.

Mr. Fitzhugh made a motion, seconded by Mr. Friedrich, to close the hearing with respect to Application 15-078. Member LaGue was concerned that the overall acreage of parcels from which property would be taken was not shown. To ensure that the result does not cause lots to be nonconforming that information is needed. Mr. Fitzhugh withdrew his motion to allow further testimony.

Mr. Abts advised that he surveyed the property lines affected but did not survey the entire parcels of all of the properties involved. He noted that Johnson and Deschamp are shown on the Bell map but he was unsure about Adams. Mr. Abts advised that his plat shows the parcels to be exchanged. He reviewed surveys for the Johnson, Deschamps and Connolly properties but did not recall reviewing a survey of the Adams property. The swap between Adams and Johnson is close but not exact, and proposed as Adams loss by 0.004 of an acre and increase to Johnson by 0.006 of an acre. He advised that according to Bell's map the Adams property was over an acre. He reviewed his file and reported that according to the Deed, Thanna Adams rear lot consists of 1.06 acres.

Mr. Badowski researched the records and advised that for tax purposes (tax map), Thanna Adams' front lot consists of 1.6 acres and confirmed that the back lot consisted of 1.06 acres. The lots are contiguous thus there should be sufficient acreage for the proposed reduction in acreage.

The Board indicated that although surveys of the entire parcels involved in boundary adjustments is preferred there is sufficient evidence based on the deeds and the tax maps regarding this proposal to show that the changes would not create nonconforming lots or cause them to become more nonconforming.

Mr. Connolly advised that his Attorney has shared draft agreements and deeds with the other property owners involved in this matter. He understands that the deeds must be properly filed to change the boundaries as proposed.

Mr. Fitzhugh made a motion, seconded by Mr. Friedrich, to close the hearing with respect to Application 15-078. Member LaGue reiterated his concerns that not all parties involved were present or represented by someone else. The question was called and the motion passed, 4-1.

### 3. Review and approval of the Minutes.

The Chair called for approval of the Minutes of the June 16, 2015 and July 7, 2015 meetings.

With respect to the June 16<sup>th</sup> Minutes, on page 3, at the top the following sentence was added for clarification: Subsequently, the Applicant has purchased the Parcel and the original tenant is no longer involved. The 1<sup>st</sup> complete paragraph on page 3 was deleted. On page 4, the 1<sup>st</sup> sentence in the 1<sup>st</sup> paragraph was amended to read: The Board questioned the proposed island and tree plantings noting that it could present problems with respect to space. The 2<sup>nd</sup> sentence regarding f. setbacks was amended to read: Mr. Frothingham noted that the retaining wall was moved forward of the rear

property line since the Applicant does not have use of the back lot. A few other minor grammatical changes were suggested.

Mr. Friedrich made a motion, seconded by Ms. Nuisl, to approve the Minutes of the June 16, 2015 meeting as corrected. The question was called and the motion passed. Mr. Fitzhugh abstained since he was not present at that meeting.

With respect to the July 7<sup>th</sup> Minutes, on page 1, the 2<sup>nd</sup> sentence in the 5<sup>th</sup> paragraph regarding reference to wattage of the bulb was deleted under 15-056. On page 3, the 3<sup>rd</sup> paragraph was clarified with respect to mitigation. The first few sentences in the 5<sup>th</sup> paragraph were deleted and the last paragraph was clarified as follows: The Board noted that the federal regulations would allow fill in the floodplain but not within the floodway. A few other minor grammatical changes were suggested.

Ms. Nuisl made a motion, seconded by Mr. Friedrich, to approve the Minutes of the July 7, 2015 meeting as corrected. 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 8:12 P.M. and out at 8:25 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, September 15, 2015.**

8. There being no further business, the meeting was adjourned at 8:27 P.M.

Respectfully submitted,

*Carla Preston*

Carla Preston  
Recording Secretary  
Town of Berlin