

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

**APPROVED MINUTES**  
**Meeting of TUESDAY, September 16, 2014**

1. The meeting was called to order at 7:02 P.M.

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

Staff present: Dana Hadley, Town Administrator, Thomas J. Badowski, Zoning Administrator; and Carla Preston, Recording Secretary.

Others present: Aaron Fuller, Benjamin Dunham, Keith Schumacher, Marilyn B. Miller, Christine Mercier Martel, Brian Martel, James Bond 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. Marilyn Miller, abutter re 14-058 requested and was granted party status.

Mr. LaGue advised that he is an officer in a corporation that owns property abutting the property now owned by Ironwood, LLC. No one expressed any objections to having Mr. LaGue serve on the hearing panel.

2. New business

**A. 14-058 – Ironwood LLC** submitted an application for the development of a contractor's yard with associated light manufacturing requiring Conditional Use and Site Plan Review. The property is located on Marvin Road, Berlin, Vermont, in the Highway Commercial District. Aaron Fuller, Ben Dunham and Keith Schumacher were sworn in to give testimony on this matter. In addition, Marilyn Miller, abutter, was sworn in to give testimony.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, received on 08/27/2014; **Exhibit #2:** Site Plan, prepared by Aaron S. Fuller with North Country Septic Design, dated 06/23/2014; **Exhibit #3:** Description of Proposed Metal Bending Building and Narrative, prepared by Aaron S. Fuller with North Country Septic Design; **Exhibit #4:** Copies of letters from Aaron Fuller dated 06/23/2014 to the Berlin Highway, Police and Fire Departments requesting an impact statement; **Exhibit #5:** Copy of Cover Memo and Project Review Sheet from the Department of Environmental Conservation & Natural Resources Board dated 07/16/2014; **Exhibit #6:** Letter dated 09/11/2014 from the Berlin Volunteer Fire Department Inc. requesting a fire department Lock Box be installed to allow access in the event of an emergency; **Exhibit #7:** Memo dated 09/11/2014 from the Berlin Highway Department stating that the proposed application would have no adverse impact on the Highway Department; and **Exhibit #8:** Memo dated 07/15/2014 from the Berlin Police Department stating that the proposed application would have no adverse impact on the Police Department.

Aaron Fuller with North Country Septic Design advised that he was representing the Applicants and had prepared the plans submitted for the proposed project. He advised that the Applicants recently purchased the 1.29 acre parcel which had been used as a warehouse for a landscaping company.

The existing building is currently used as a contractor's yard for a construction company, Headwaters Construction, LLC, also owned by Messrs. Dunham and Schumacher. The proposed

building would be used to store metal bending equipment and would be occupied about two hours a day. He described the lot as open with a large gravel driveway and parking area. There is existing screening/vegetation between Marvin Road and the existing building. He mentioned the location of existing swales for stormwater runoff.

The Applicants advised that the proposed new building will be constructed of recycled portions of a previously existing building at the nearby dealership. The building would be 20 feet by 20 feet and 22 feet high. Initially, the Applicants indicated that there would be no man door, only two garage doors, but amended that statement later on to include a man door.

Zoning Administrator Badowski showed a map indicating the zoning districts for the area. He noted that there are similar uses in the surrounding area. Setbacks are met for the district. He advised that both proposed uses, contractor's yard and light manufacturing, are conditional uses in this district.

Marilyn Miller advised that she lives on Marvin Road and asked for verification of the proposed uses in comparison to existing uses.

The Applicants advised that there would be little difference than what is going on there now. They have a construction company and also want to perform metal bending for their roof work.

The applicants addressed Conditional Use and Site Plan Review Criteria.

**a. Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.** The Applicants advised that there would be little or no change in traffic, estimated at two trips a day with four employees at each building for a maximum of two hours a day. The current use is a contractor's yard for their construction business. The site is a large open graveled area off a dirt road providing sufficient room for vehicular circulation. Pedestrians would consist of employees who could easily move from one building to the other building within the site and from the parking area. They explained that the work is job specific and that it does not take very long to bend the metal. They have been doing this at the job location. They advised that there might be an occasional visitor to the site, perhaps to pick someone up. There is no showroom that would draw in customers. Since there would not be employees there full time no water or sewer is required. There is a portal there now. The Applicants advised that there are occasional deliveries, perhaps once every two weeks or so. They noted that it would really not be much different than the current operation.

Ms. Miller asked for clarification about ownership of the buildings which the Applicants explained.

Mr. Dunham is a member of both limited liability companies operating businesses at this site. Headwaters Construction LLC operates a contractor's yard out of the existing building. Both Messrs. Dunham and Schumacher are members of Ironwood LLC which has proposed to erect a new building from which metal bending or light manufacturing would be conducted.

**b. Adequacy of circulation, parking, and loading facilities.** Mr. Fuller advised that the site has plenty of space for parking. They propose to have four employees at each building for no longer than two hours between the hours of 7:00 AM and 7:00 PM and have provided space for nine but undesignated parking spaces.

- c. *Bicycle and Pedestrian Access.*** The Applicants believe that this criterion is not applicable and have not provided for specific pedestrian or bicycle access.
- d. *Adequacy of landscaping.*** The Applicants propose to leave the existing vegetation and to add four more trees to provide screening from Marvin Road and U.S. Route 2. Two trees proposed along the northern edge to screen the building from the abutting storage units, and two trees along Marvin Road to screen the existing building and parking area. In response to questions concerning the size (caliper) of the evergreen trees, Mr. Fuller advised they would propose trees sized one inch caliper.

The Board advised that landscaping must be maintained. If landscaping is not maintained it would be grounds for enforcement.

Ms. Miller noted that there is a fair amount of growth there and felt it was sufficient.

- e. *Hours of Operation.*** The Applicants advised that the hours of operation would be from 7:00 AM to 7:00 PM Monday through Friday but would be very short term during the day. They would not be there after dark and typically there at 7:00 AM and 5:00 PM at night. The equipment is taken to the jobsite but occasionally someone has to come back to the warehouse for something. They noted that equipment would be stored there as well.
- f. *Setbacks.*** The Applicants advised that all setbacks are met for the Highway Commercial District. Mr. Fuller advised that the building envelope is shown on the plans. He noted that there is leeway to move the building a bit to meet setbacks if needed.
- g. *Adequacy of Exterior lighting.*** After some discussion, the Applicants advised that they would propose a shielded light fixture over each garage door. The light would be light emitting diode (LED) and meet the zoning regulations. They also decided to propose a man door in addition to the garage door.
- h. *Stormwater and Drainage.*** Mr. Fuller advised that this project would not increase the amount of impervious surface area. The additional trees will assist in the retention of waters through the site. He advised that the contours shown had been surveyed.
- In response to the Board's request for further clarification, Mr. Fuller noted that the plans showed an error in the direction of an arrow. Runoff will flow toward Marvin Road. He advised that they are not modifying existing drainage.
- i. *Utilization of renewable energy resources.*** The Applicants advised that the project will not interfere with any other abutters' ability to use renewable energy resources.
- j. *Municipal Services Impact Evaluation.*** Mr. Fuller referred to the statements he received from the Berlin Police, Fire and Highway Departments. He asked for clarification concerning the Fire Department's request for a lock box. Once explained, the Applicants advised that they would have no objection to providing a lock box for the Fire Department and will contact the Fire Chief for specifications.
- k. *Flood Hazard Review.*** Mr. Fuller advised that the site is not located in a flood hazard area. He advised that he reviewed the mapped floodplain and verified that it was based on current datum.

***l. Character of the area affected; neighboring uses.*** The Applicants advised that area uses are also commercial and similar in use and would not negatively impact the area.

***m. Bylaws then in effect.*** Not applicable.

Mr. Fuller advised that he relied on tax maps for abutters which did not list Mr. LaGue as owning abutting property.

Mr. LaGue advised that his corporation owns an approximate four acre parcel in the area which was shown as R & G Properties III, LLC in the southerly area.

The Applicants confirmed that they would be proposing a man door for ease of entrance into the building and in the event of a power outage. They advised that they will need a permit from State Buildings as well as the Fire Marshall.

Mr. Fuller advised that he found no mapped wetlands in that area but noted that there is a manmade ditch with cattails. Since it is under a half acre, it does not meet the state's criteria.

There being no further testimony, Ms. Nuisl made a motion, seconded by Mr. LaGue, to close the hearing with respect to Application 14-058. The question was called and the motion passed unanimously.

***B. 14-059 – Christine Mercier Martel*** submitted an application for a Variance regarding setbacks for an existing shed. The property is located at 111 Paul Avenue, Berlin, Vermont, in the Rural Residential Zoning District. Christine Mercier Martel and her husband Brian Martel were sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, received on or before 08/28/2014; **Exhibit #2:** Letter dated 07/14/2014 to the Town of Berlin requesting variance for shed; **Exhibit #3:** Memo dated 05/08/2014 from the Town of Berlin to Attorney Rob Halpert concerning zoning violation; and **Exhibit #4:** Numerous (11) photographs of sheds on neighboring properties claimed to not meeting setback requirements.

Ms. Martel advised that she has lived in this house located on a quarter acre lot since 1993. Last year they built a small shed (8 foot by 12 foot) for storage and positioned it so that it matched neighboring properties on these small lots. The right side setback is 16 feet from the property line and the rear yard setback is 8 feet from the property line. She admitted that they misunderstood the permitting requirements and believed that it was exempt due to its size. She advised that a neighbor abutting their property filed a complaint with the Town stating that the shed did not meet setbacks. She noted that the neighbors had put up a fence and there is also a row of pine trees between them.

The Board explained that it has the authority to grant waivers for residential small lots up to half of the required setback. It is much more difficult to grant a variance because all five criteria must be met. The Board asked her to verify her request, variance or waiver.

Zoning Administrator Badowski advised that to meet requirements for a waiver, the shed would have to be moved another 4.5 feet from the rear yard setback.

Ms. Martel advised that their goal is to be able to keep the shed where it is, thus they would need a variance.

A. *“That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of the lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.”*

Ms. Martel noted that if the 25 foot setback were met it would put the shed in the middle of their deck. They need space in the yard for a garden and play area. She referred to the 11 photographs submitted showing that storage sheds on neighboring properties do not meet setback requirements.

Chairman Wernecke noted that he understood their frustration but again explained that it was very difficult for the Board to grant a variance. He provided an example of steep drop offs as being a unique physical circumstance that might meet one of the criteria. The size of the lot is not necessarily a physical limitation because the shed could be moved and meet the provisions for a waiver.

Ms. Martel advised that it would create a hardship to move the shed now that it has been in place for a year and a half. She indicated that the shed improved the aesthetics as it cleaned up the yard.

B. *“That because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of the variance is necessary to enable the reasonable use of the property.”*

Ms. Martel advised that due to a hill the shed had to be located where it is to be on the level ground. Moving it would require leveling it off and considerable expense. She acknowledged that there was a lot of confusion when she initially discussed the matter with the Town and began sending in applications. They really want to keep the shed where it is and thought it was exempt.

Zoning Administrator Badowski advised that sheds under a certain size are exempt however the structure must meet the setback requirements regardless of its size. Accessory structures less than 80 square feet and less than 10 feet high meeting setback requirements are exempt. Section 5.01 (H).

The Board again explained difference between variances and waivers and its ability to grant them. Very few requests for a variance are submitted and the Board has much less ability to grant them because the facts must be found on all five criteria.

C. *That the unnecessary hardship has not been created by the appellant;*

Again Ms. Martel noted that the hardship is financial and the difficulty in relocating the shed up hill.

D. *That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and”*

Ms. Martel advised that their shed has no negative impact on the neighborhood. She again referred to the photographs of neighboring properties that have similar sized sheds that do not meet the setback requirements.

*E. That the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.*

Ms. Martel confirmed that they do not wish to relocate the shed. She advised that the location of their shed is consistent with other neighbors. She believes that the neighbor's son is the person who actually filed the complaint.

The Board advised that no neighbors or abutters were present at tonight's hearing thus would not have party status and could not appeal the Board's decision. The Board again reiterated the fact that granting a variance is very difficult and that it is bound by the regulations.

Mr. Friedrich made a motion, seconded by Ms. Nuisl, to close the hearing with respect to Application 14-059. The question was called and the motion passed unanimously.

**C. 14-060 – James G. Bond** submitted an application for a Waiver from property line setbacks. The property is located at 625 US Route 302, Berlin, Vermont, in the Highway Commercial Zoning District. James Bond was sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application For Zoning Permit, received on 08/27/014; **Exhibit #2:** A portion of Site Plan showing site marked up by Applicant; **Exhibit #3:** Applicant's statement addressing waiver criteria; **Exhibit #4:** Flood Insurance Rate Map of site, effective date 03/19/2013; **Exhibit #5:** List of Abutters; **Exhibit #6:** Email communication dated 09/12/2014 between Town of Berlin and Sacha Pealer, Central Vermont Floodplain Manager, re proposed project; **Exhibit #7:** Agency of Natural Resources, Natural Resources Atlas showing subject property; **Exhibit #8:** Federal Emergency Management Agency Flood Profiles, Stevens Branch; and **Exhibit #9:** Photographs of mobile homes including travel type.

Mr. Bond provided an overview of his request for a waiver to locate a mobile home on this small parcel along U.S. Route 302. He referred to the plan submitted and explained that the  $\frac{3}{4}$  acre lot is long and narrow, about 290 feet long at the back and 58 feet at the northerly end adjacent to Dunkin Donuts. He described his lot with varying dimensions in the front ranging from 58 feet, 103 feet, and 130 feet, and then 41 feet at the other end of the lot. He noted that he wants to utilize the lot as best as he can and believes that putting in a mobile home to be lived in would be a good solution. He noted that the area referred to as the picnic table is an existing concrete pad (11.5 feet by 56 feet). The placement of a mobile home would not meet the proper setbacks so he needs a waiver for the front yard setback (has 25 feet or half of 50 foot requirement) and rear yard setback (has 12.5 feet or half of 25 foot requirement). The side yard setbacks would be met at 31 feet and over 200 feet on the other side. He noted that there are railroad tracks in the back and neighboring uses are mixed. The closest neighbors are Dunkin Donuts and those located across the street.

Mr. Bond advised that he wants to put in a mobile home there like it was in the past about 10 years ago. He provided a handout showing travel trailers that might be an option as well.

Zoning Administrator Badowski provided a map showing the properties in the Highway Commercial District. He confirmed that the setbacks for the district would not be met which is why the applicant

is seeking a waiver. He mentioned that representatives from the Federal Emergency Management Agency (FEMA) visited the Town and requested that all applications show elevations.

The Board confirmed that a single family dwelling is a permitted use in this district. The waiver request must be reviewed under the Conditional Use Review criteria.

Mr. Bond advised that he has a survey from 1999 that shows elevations. He explained that the existing permitted use for selling mobile homes at that site would continue. He noted that the person selling the mobile homes might live in the proposed mobile home residence. He also noted that the mobile home may have tenants on a part-time basis, during the summer months. He referred to the photographs of travel trailers that might be an option.

Mr. Bond confirmed that in addition to selling mobile homes at this site, he is proposing to add a mobile home as a residence there. He mentioned other possible items for sale there which might include Christmas trees, garden produce, and so forth. He believes that it will work to have a home there as a residence and one for sale. He noted that if the person residing in the home is selling the mobile homes it could be considered as a home occupation. Municipal water and sewer are available there.

The Board noted that the business previously approved was for displaying mobile homes, not considered a permanent structure, therefore the mobile homes did not have to meet setbacks for that purpose. The new proposal is to have a permanent structure there that would be hooked up to municipal services thus would have to meet the requirements for the district.

Mr. Bond noted that he made sure he complied with the setbacks abutting Dunkin Donuts. He noted that his intention is to attract attention to the mobile home displayed and have a list of other mobile homes available for sale as well. He confirmed that the primary use would be residential although he does not anticipate someone residing there full time. He noted that it will be more profitable to him as a residential rental unit than trailer sales.

The Board asked Mr. Bond to address the criteria. The Applicant was questioned as to how he measured the front yard setback which should be measured 50 feet from the traveled portion of the highway (paved area). A 10 foot setback to the Right of Way must also be maintained.

Mr. Bond advised that the proposed mobile home cannot be reasonably placed so as to not encroach. He noted that the proposed placement is where a mobile home previously existed and that it is near the connections for power, water and sewer. He agreed that setbacks could be met on the southerly end but would require relocating access for power, water and sewer and likely require a pump.

The Board asked whether the property was located within the floodplain noting that it needed reliable data. The Town could lose its flood insurance if flood plain data is not followed. It was again noted that an elevation certificate is now being required by FEMA and that it is easy to obtain. The Board noted that a waiver can be granted if it meets the criteria, which includes that the primary use is residential.

Mr. Bond advised that he is not sure what the sewer allocation is for that site. He noted that it makes sense to have the home placed on higher ground. He mentioned the existing concrete slab which could be used for a mobile home or travel trailer similar to the pictures he presented.

He asked the Board to consider allowing a larger unit, more permanent that would fit on the existing slab. He noted that the phone company, FairPoint Communications, has an easement on the site which was shown on his previous application.

There being no further testimony, Mr. LaGue made a motion, seconded by Mr. Golubock, to close the hearing with respect to Application 13-060. The question was called and the motion passed unanimously.

3. Review and approval of the Minutes.

The Chairman called for approval of the Minutes of the September 2, 2014 meeting. The spellings of the names of some of the attendees present at the meeting were corrected.

Mr. Friedrich made a motion, seconded by Mr. Golubock, to approve the Minutes of the September 2, 2014 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 9:09 P.M. and out at 9:28 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 7, 2014.**

8. There being no further business, the meeting was adjourned at 9:29 P.M.

Respectfully submitted,

*Carla Preston*

Carla Preston  
Recording Secretary  
Town of Berlin