

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

**APPROVED MINUTES**  
**Meeting of TUESDAY, July 18, 2017**

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

Members present: Robert J. Wernecke, Chair; Karla Nuisl, Vice-Chair; John Friedrich; Josh Fitzhugh; and Shane Mispel.

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

Others present: Donald Marsh, Fred Connor, and Jason Merrill.

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. 17-041 – RHTL Partners, LLC and The Connor Group LLP** submitted an application for Boundary Adjustment involving an exchange of 0.17 acres. The properties are located at 1162 US Route 2, Berlin, Vermont, Parcel ID: US002-002, and at 1100 US Route 2, Berlin, Vermont, Parcel ID: US002-005. Both properties are located in the Highway Commercial District. Fred Connor was sworn in to give testimony on this matter.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Application for Boundary Adjustment, 17-041, received on 06/22/2017; **Exhibit #2:** Survey – Lot Line Adjustment of Lands of The Connor Group and RHTL Partners, LLC, prepared by Vermont Mapping & Survey Co., LLC, Terry W. Wilson, LS, and dated June 2017; and **Exhibit #3:** Letter dated 06/21/2017 from Edward Farr with RHTL Partners, LLC authorizing Fred Connor to represent his company's interest in the boundary adjustment.

Fred Connor advised that this boundary adjustment is intended to correct an issue he was unaware of for many years after owning the property. He referred to the area as the bow-tie parcel consisting of 0.17 acres along the river. The owners want to correct the issue and have agreed to swap acreages. The boundary line between the two properties will not change, the line is extended in one place and eliminated in another. The strip behind their property is being swapped for the other parcel.

The Board noted that typically the edges of rivers or streams are not used as property lines and asked Mr. Connor if he had reviewed the deeds. The center of a stream or river is typically referenced versus the edge.

Mr. Connor advised that he had not reviewed the deed but agreed to do so. He advised that the bank of the river is secure in that area. That area was chosen because it made the most sense. They are transferring a strip of property to correct property ownership. Mr. Connor advised that it will also correct a setback issue and bring it into compliance.

Mr. Connor confirmed that no new lot was being created as a result of this boundary adjustment. The proposed boundary adjustment would not cause any lot to become nonconforming and actually corrects a prior setback issue bringing it into compliance.

Based on documents presented and testimony heard, Mr. Friedrich made a motion, seconded by Mr. Fitzhugh, to close the hearing with respect to Application 17-041. The question was called and the motion passed unanimously.

- A. 17-042 – Brian Morse** submitted an application for a Concept Plan Review and Final Plan Review of a Minor Two Lot Subdivision involving a 25.52 acres parcel. The property is located at Dog River Road, Berlin, Vermont, in the Commercial District, Parcel ID: SA8-005. Jason Merrill was sworn in to give testimony on this matter on behalf of the applicant.

The following documents were submitted and admitted as exhibits: **Exhibit #1:** Subdivision Application, 17-042, received on 06/29/2017; and **Exhibit #2:** Survey – Subdivision of Lands of BM Properties, LLC, prepared by Richard W. Bell Land Surveying, Inc., Richard W. Bell, LS, dated May 2017.

Jason Merrill advised that Brian Morse wants to create another lot to sell out of the larger parcel. Mr. Morse also owns an abutting lot which has a separate deed. The 25.52 acres parcel would be divided into two lots consisting of Lot #1 with 9.61 acres and Lot #2 with 15.91 acres. Mr. Merrill indicated they might be proposing a boundary adjustment as well but noted that it does not impact this lot being subdivided. He confirmed that it is the commercial lot that was recently logged off.

Zoning Administrator Badowski advised that the proposed subdivision was warned for both Concept and Final Plan Review. He noted that with respect to sewer, Packard was creating a pump station along Route 12 to which the bus station and other businesses along Route 12 would connect. He advised that permitting is in process and once obtained, the town will assume ownership of that sewer line. He noted that there may be public water supply along that route as well in the near future.

The Board questioned whether the proposed subdivision was Minor or Major because it involved a commercial property. The definition of a Minor subdivision reads, "Any residential subdivision containing less than four (4) lots or dwelling units." The definition of a Major subdivision reads, "Any subdivision not classified as a minor subdivision."

The group discussed how to proceed with respect to how the application was warned, the additional hearing required, proposed uses, and whether the additional information indicated for major subdivisions was necessary.

In the end, the Board concluded that the proposed subdivision application must be warned as a Major Subdivision requiring Concept Plan, Preliminary Plan, and Final Plan review. The Board will consider this meeting as Concept Plan review and advised that both Preliminary Plan and Final Plan review may be considered at the same hearing as long as properly warned for both.

The Board reviewed the criteria for a Major subdivision and agreed that most of the information had been provided. The Board noted that it has discretion with respect to the requirement for proposed and existing contour lines. The Board agreed that contours would not be required for the proposed subdivision, however when an application for future development is submitted, contours must be provided.

To reiterate, the Board classified the proposed two-lot subdivision as Major since it involves property located in a commercial district. The application must be warned as a proposed Major subdivision (Preliminary and Final). The Applicant was encouraged to review the criteria regarding Major subdivisions. If the proposed use was residential, it would require conditional use review in this district, and again have to be warned as such.

Mr. Badowski advised that all abutters were notified. He noted that he has not seen an application for a major subdivision since he has been zoning administrator.

Chair Wernecke made a motion to approve Application 17-042 for Concept Plan Review. The proposed subdivision is classified as Major and contours are not required at this time but will be required when developed. The motion was seconded by Ms. Nuissl. The Board explained the process and timeline to Mr. Merrill and noted that the application could include the proposed boundary adjustment he mentioned earlier as long as it was also included in the warning. The soonest the application for a Major Subdivision, Preliminary and Final Plan Review, and Boundary Adjustment, could be heard is August 15<sup>th</sup>. There is a thirty (30) day appeal process once the Findings of Facts and Conclusion are issued.

The question was called and the motion passed unanimously.

### 3. Old Business

**B. 17-031 – J & H Properties LLC** submitted an application to construct nine storage units. The property is located at 6451 VT Route 12, Berlin, VT, in the Commercial District; Parcel ID: VT 12-001. Donald R. Marsh, P.E. and Jason Merrill, owner, were sworn in to give testimony on this matter. This application was continued from the July 5, 2017 meeting.

The following documents were submitted and admitted as exhibits: **Exhibit #8:** Over All Plan, C-1, prepared by Marsh Engineering Services, dated 12/23/2016, with stormwater revisions on 06/16/2017, and revised Building D and Add Trees on Slope on 07/13/2017.

For the benefit of members not present at the last meeting, Mr. Marsh provided an overview of the application. The property was formerly owned by Wyman Properties and there are three existing commercial buildings on this site. The Applicant is proposing to construct approximately 9,100 square feet of storage units in nine separate buildings.

Mr. Marsh noted that some of the concerns raised pertained to the slope of the property and agreed that 1 on 1.5 is steeper than normal. He advised that the soils are very good and drain well at this site. The erosion factor is very low at 0.15 which is at the low end of the threshold established by the Vermont Agency of Natural Resources. The property will be developed right with topsoil, mulched, seeded and matted to secure the area and prevent erosion. He noted that the driveway is steep at 13 percent, however the site does not have a lot of traffic. He acknowledged that the gravel driveway will need to be well maintained.

Mr. Marsh advised that there is stormwater treatment there and confirmed that due to the amount of disturbed land, the Vermont Agency of Natural Resources, Department of Environmental Conservation requires an Operational State Stormwater Permit as well as a Stormwater Construction Discharge Permit. He advised that finished grades and elevations have been provided and are listed on the site plans. He referenced the hydrology tests performed with respect to the size pipe

required and confirmed that a 15-inch pipe is adequate. There will be some infiltration into the swale but not much. This was based on a 10-year design. The discharge point is a Class III wetland next door. He noted that they have to slow down the flow so it does not overload the wetland area.

Mr. Marsh advised that the existing access point will be utilized however it will be reduced as required by the Vermont Agency of Transportation (VTrans). He referenced the Letter of Intent issued by the state that was discussed at the last meeting. VTrans also required paving within the Right-of-Way. They estimate a slight increase in traffic at about five vehicles per day. He acknowledged that the access point is also for the U-Haul business and existing storage units.

The Board reiterated its concerns about the other access point off Dog River Road due to its close proximity to the intersection. The Applicant was advised that any proposed new development on the lower parcel will require relocating that access point so that it is in compliance with the zoning regulations.

Mr. Marsh advised that they do not anticipate tractor trailer size trucks at the site but indicated that the 20 feet between buildings would accommodate large trucks or moving vans. He indicated that they did truncate one storage unit on Building D so there is 20 feet between buildings at all points. There is adequate space for snow plowing and storage toward the swale.

Mr. Marsh advised that the plans have been revised to indicate the names or purpose for swales and ditches. He acknowledged that some runoff will come down the road.

The Board revisited its concerns about the steepness of the cut at one foot vertical to one and a half feet horizontal. The Board asked for further clarification about contours to get a better understanding of the steepness of the area being cut as well as the steepness of the area above the cut. No contours were shown at the top of the property.

Mr. Marsh advised that the property levels off and then drops off at the power line Right-of-Way toward the west. He confirmed that soil conditions are good at this site and well drained. He described their erosion control measures on the 40-foot embankment which will be graded, with topsoil, seeding, mulch, and matting. He indicated that there is no watershed above it as it drops off. The practice will be to stabilize the area immediately after cutting and described the area as gravel pit conditions with sandy soil and bony (rocks) which drains very well. There is no indication from the water table along the bank, such as seepage, of existing problems. They are not proposing any drain structure along the slope. There will be a concrete retaining wall at the back of the buildings. There will be footing drains behind the buildings. Mr. Marsh explained that these criteria will all be thoroughly addressed in their applications to ANR, DEC for an Operational State Stormwater Permit as well as a Stormwater Construction Discharge Permit.

Mr. Merrill advised that with respect to landscaping, they have decided to remove all of the existing trees and replace them with spruce trees (two-inch caliper) to provide screening.

In response to questions from the Board about whether proposed lighting is adequate, Mr. Marsh advised that the proposed lighting is primarily for security purposes as they do not anticipate many persons at their storage unit at night.

Mr. Merrill added that the proposed light fixtures are quite bright and would be mounted to the walls of the buildings. He noted they may install motion activated lights. He also mentioned that he may install some security cameras. He confirmed that the area would not be gated. No dumpsters will be provided.

The Board asked Mr. Marsh to provide a soils narrative regarding his data on soils for the file. Also requested for the file were copies of the applications submitted to ANR's Department of Environmental Conservation regarding stormwater discharges (operational and construction). Copies of the actual permits once issued must also be submitted.

Mr. Badowski asked whether the material being cut from the bank would remain on site or be distributed elsewhere. He noted that the town could use it in the event they had no place for it to go.

Mr. Merrill advised that he has discussed the excess material with the Town of Moretown for use in the closure of its landfill. The amount of material to be removed is approximately 40,000 cubic feet. He acknowledged that during this part of the construction phase, there would be considerable truck traffic.

Mr. Marsh advised that stormwater treatments have not been sized or designed for additional uses, but added that there is space for it to be expanded in the future. He noted that the stormwater pond is not dry and would theoretically have a foot of water in it.

Based on documents presented and testimony heard, Mr. Fitzhugh made a motion, seconded by Mr. Friedrich, to close the hearing with respect to Application 17-031. The question was called and the motion passed unanimously.

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

The Chair called for approval of the Minutes of the July 5, 2017 meeting. On page 3, under d landscaping, the last paragraph was amended to read: The Board was opposed to clear cutting and suggested either selective cutting of the existing trees or planting replacements trees to screen the buildings, particularly in the middle of the lot. The trees would not need to be very tall but should be spaced at maximum distance of 25 feet apart.

Mr. Friedrich made a motion, seconded by Ms. Nuisssl, to approve the Minutes of the July 5, 2017 meeting as amended. The question was called and the motion passed unanimously.

#### 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 8:21 P.M. and out at 8:37 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, August 1, 2017.**
9. There being no further business, the meeting was adjourned at 8:39 P.M.

Respectfully submitted,

*Carla Preston*

Carla Preston  
Recording Secretary  
Town of Berlin