

**Nov 9 Email from Jeff Blow to Tom Badowski.** I was planning on attending the public hearing this week. However my business in Bethel has need for my attention Wed. evening. I am writing with regards to the proposed zone change for my parcel of property at the corner of Rt 63 and East Road. When I purchased the property there was a small area of land on each one of the four corners here that was zoned for light industrial. It was zoned that way to take advantage of light industry in a very small corner of the town of Berlin. The purpose was to keep the zone small so the impact on the residential zone would be minimal and the impact on town infrastructures would be negligible given the proximity to the state transportation system.

I want to encourage the planning commission to leave the four corners at East Road and Rt 63 zoned as light industrial for the very reasons it was zoned that way some 28 years ago when I purchased the property. The light industry in this area has very little impact on the neighborhood while allowing for significant tax base to be generated for the town. As an example, our parcel pays more in town taxes than the amount of allowable houses you could put on this parcel if it had originally been zoned for residential activity. These four small parcels remaining at light industrial zone will keep truck traffic off your municipal roads. Any light industrial growth at this intersection will be controlled by the size of the zone and the limited access to the state road way system. but it will help support municipal services through taxes, while extremely little impact on town services. This would seem to be a win win for everyone.

In closing, the impact of leaving the zone as it is at the intersection of Rt 63 and East Road has negligible impact on the town as a whole, but can generate a good tax \$ in revenue to the town as this small restricted zone develops.

Please keep me in the loop as this process moves forward.

**Reply from Brandy Saxton.** Thank you for sending us your comments on the first draft of the zoning. I am the consultant that is working with Tom and the Planning Commission on revising Berlin's zoning. I want to clarify a couple of issues with you and ask a few more questions about what you see as the best use of your property and the other land at Exit 6.

The land at Exit 6 is not currently zoned light industrial, it is zoned commercial. That district allows the following as permitted uses: Accessory dwelling, Home occupation, Home Child Care, Hotel, Motel, Retail store, Shopping center, Automobile sales & service, Office buildings, Bank, Business services, Restaurant/bar, Private club, Indoor and outdoor recreation, Hospital, Mortuary, Parking facility, and Agricultural and forest uses. It allows the following with conditional use approval from the Development Review Board: One-family dwelling, Two-family dwelling, Dormitories, Elderly housing, Nursing home, Gasoline service station, Contractor's yard, Warehouse, Religious institution, School, State or municipal building or facility, Licensed child care, Public utility substation, and Telecommunications facility.

As you saw, the first draft of the revised zoning would re-zone the land at Exit 6 to the Rural district. This new zoning district would allow the following as permitted uses: Single-family dwelling, Two-family dwelling, Accessory dwelling, Home occupation, Family childcare home, Bed and breakfast or inn, Outdoor recreation, Religious facility, Cemetery, Essential services, Communication antenna, Agriculture or forestry, Stable or equine facility, Game, fishing or wildlife reserves. It would allow the following with conditional use approval from the Development Review Board: Multi-family dwelling, Home business, Rooming or boarding house, Lawn, garden or farm supply sales, Lumber yard or building materials sales, Contractor's yard, Warehouse or storage, Media broadcast facility or studio, Wholesale trade, Composting facility, Education facility, Government facility, Cultural facility, Daycare facility, Air transportation facility, Communication tower, Kennel, Extracting, quarrying or stone cutting, Rural enterprise.

The draft proposed changes to the Commercial district would make it more of a mixed-use district with both residential and business uses. It is designed to fit the areas of town that have or could have access to infrastructure like water and sewer, and so could accommodate more compact, higher-density development on smaller lots. So that district as revised might not be such a good fit for your property. Your email suggests that you would like the land zoned Light Industrial. That or the Industrial district might be a better fit than the revised Commercial district. You may want to look at those two districts in the draft of Part 2 that is available online and see what you think of those options.

Further, we are thinking about adding an option for a planned unit development (PUD) that would allow business uses to be established in the Rural district along main roads like Route 63 and Route 12 (where some other existing commercial and light industrial districts would also be re-zoned to the new rural district). That section is not written yet, but as the Planning Commission thinks about that language, it would be helpful to know what uses you would like to see allowed in the Exit 6 area that are not in the above list for the Rural district.

From a planning perspective, the concern about leaving the land at Exit 6 zoned Commercial is the potential for traveler services and retail development that could compete with the town's more centrally-located and established commercial areas and that could spur a new pattern of strip development at an interstate exit that currently is not developed in that manner. I don't think there is much concern about industrial uses like trucking, manufacturing, storage, etc. locating in this area.

We will be continuing to work on the revised zoning and would appreciate your feedback as the draft continues to be developed and refined. Feel free to contact Tom or I with any further comments or questions.

**Reply from Jeff Blow.** Your correct,,, I trusted my memory with the current zoning,,,, it is commercial,, I want to be sure that should I choose to add another building on the

large flat area behind my current building that zoning will not prohibit this. I was under the impression that changing the zone to residential would likely eliminate by ability to add another structure at some point in the future.

**Nov 10 Email from Jim Fecteau to Tom Badowski.** Not sure I can be there Wednesday at this point but will the Highway Commercial district continue to allow residential development like the project we have approved for lot 2? I feel it is important that the highway commercial, and all districts for that matter, continue to promote mixed uses and allow the board the flexibility to approve logical projects that may not be entirely contemplated in the creation of zoning districts or the definition of permitted and conditional uses. In other words, let the zoning be a guide but don't paint the board into a corner on a project that may be the best for the town and the area. Give them the authority to investigate and endorse projects regardless of whether they are on the "list".

**Reply from Brandy Saxton.** Tom asked me to respond to your message regarding Berlin's proposed zoning changes. I am the consultant working with him and the Planning Commission on the re-zoning project.

The proposed changes to the Highway Commercial district would continue to allow for multi-family housing (as a conditional use) but would not allow for new single- or two-family homes. Just in case you did not notice, there is also a proposed change to the zoning district boundaries in the vicinity of Overlook Drive. I believe your entire parcel would be in the Highway Commercial district and would no longer be split between the HC and a residential district. We have tried to reduce the number of parcels split by a zoning district boundary and have the district boundaries match parcel boundaries or follow other easily definable features like streams, roads, power lines, etc. as much as possible.

I think the Planning Commission is generally in agreement with your position that most of the districts should allow for mixed-use development. Only the proposed Light Industrial and Industrial districts would not allow any new housing - some form of residential development would be possible in all the other districts. The proposed changes to the Commercial and Town Center districts in particular are aimed at encouraging higher-density residential as part of mixed-use development.

The proposed zoning changes do make an effort to guide most of the auto-oriented and much of the regional retail uses to the Highway Commercial district, and to discourage that type or intensity of commercial activity in some other districts like the Village Center and Commercial. That is why only multi-family housing would be possible in the proposed Highway Commercial - the nonresidential uses and pattern of development allowed would not be particularly compatible with single-family residential development and the expectations of most homeowners for a certain quality of life. The proposed zoning does include a new Residential district portions of which would be located adjacent to the Highway Commercial. That district would allow for all types of housing

and higher residential densities than currently possible in Berlin in close proximity to major transportation corridors and services, but still allowing for development of pleasant residential neighborhoods that could meet expectations with regard to privacy, noise, lighting, traffic levels, etc.

Thank you for your comments. We will be sure they get forwarded along to the Planning Commission. If you have any further comments or questions, please feel free to contact me or Tom.

**Nov 12 Email from Martin Kelley to Karla Nuissi.** Evening. I live at 765 jct road and see that my house & land is in commercial. This should not be commercial as you will see it all houses down here. No company in there right mind will build down here as it's in the flood plain along the road and the road is a mud pit in the spring. All commercial should be kept up on the hill at the corner as they are the only ones that are benefiting from the new water system. Thanks for your time.

**Nov 17 Letter from Fred Conner to the Planning Commission.** Letter regarding zoning district boundaries along Route 2 and Route 302 attached separately.

**Nov 15 Email from Mark Gagnon to Brandy Saxton.** The Partridge Farm area needs to be changed from "Highway Commercial" to "Residential." That is what the residents want. Only Randy Rouleau and his family are against this for their own personal business reasons. It is a residential area and not commercial.

**Nov 15 Email from Wendelyn Bolles to Brandy Saxton.** I was very excited and happy to see the proposed zoning changes for the western section of the Partridge Farms neighborhood from Highway Commercial to Residential. I believe that with only one, maybe two exceptions, the residents of our neighborhood strongly support the new zoning proposal. I thank you for developing a plan that is in the best interest of our neighborhood and Berlin as a whole and urge you to . continue forward with the proposed plan.

**Nov 15 Email from Jane Bartrum to Brandy Saxton.** I strongly support rezoning the Partridge Farms area as "Residential" as opposed to "Highway Commercial". I am also joined by two other immediate neighbors, Mary Ellen Staley and Suzanne Mahoney in supporting this change.

**Nov 15 PlaceSense Website Comment from Sandra Mayerhofer.** Partridge Farms is a residential neighborhood of house, town homes and condos. It should be zoned as such, not as commercial.

**Nov 17 Email from Robert Lehmert to Brandy Saxton.** I serve as a Director on the Board of the Partridge Farms Area Association representing the Members who own single family homes. I am copying Kathy Rotondi, who is my counterpart for the Members who own condominium units.

The neighbors who have spoken with me strongly support re-zoning of the parcel between the Stevens Branch and Partridge Farms. We believe that uses of that property which consist of a Highway Commercial designation negatively impact the neighborhood. The Town has changed a great deal since Partridge Farms was laid out 27 years ago, and a change of zoning reflects the neighborhood as it is -- rather than as developer's unbuilt lots.

The bridge which connects the neighborhood to Rt 302 is a traffic chokepoint, since the residents have no other way to cross the river. We are seriously leery of what could happen if development of a permitted Highway Commercial use commenced.

I will be out of town tomorrow on business, but I look forward to attending future Planning Commission sessions. Please share my note with anyone you'd like.

**Nov 18 Email from Mary Kerin to Brandy Saxton.** I have been living in the Partridge Farms area since 1989 and fully agree with Mr. Rob Lehmert that our neighborhood should be classified Residential. I feel any commercial designation would be detrimental.

**Nov 18 Email from Linda Foti to Brandy Saxton.** I agree with Mr. Lehmert's letter. I believe that the Partridge Farms area should be zoned as residential. Keeping a commercial zoning designation will have a negative impact on our neighborhood.

**Jan 11 Email to Tom Badowski from Andrea Chandler.** If I should be directing these questions to someone else just let me know. Our Conservation Commission has a couple questions regarding the Rural district. "2109.E Applicants must design any land development within this district that requires major site plan or major subdivision approval to meet or exceed the following standards:" What qualifies for a major site plan or major subdivision?

"2109.A (4) Protecting fragile natural resources including steep slopes, high elevations, wetlands, surface waters, wildlife corridors and habitat, and large forest blocks." In the presentation, examples are given of unbuildable land. The examples cite wetlands, steep slope, and floodplain as unbuildable. Are those the only three criteria looked at for unbuildable land? What about elevation? Who determines what is buildable? Does the owner hire someone, (anyone?) to make the determination or does the town do it as part of the permit? Have the zoning regs been written yet that outline what a steep slope is or elevation limits? The summary table says there is a 120' min lot frontage. In the pictured examples it looks less than that in the subdivision. Does each house site need 120' road frontage or does that mean something else?

The PlaceSense site says that Parts 3 and 5 should be finished by the end of 2015. I didn't see them on the website. Are they close to being published? We appreciate your time. There's a lot of effort that's gone into this plan.

**Reply from Brandy Saxton.** Major and minor site plans are defined in Section 4302 (Part 4). A major site plan would include construction a new principal building, a major renovation of an existing building, a new curb cut, adding more than 2,000 sf of impervious surface - it does not include any development related to single- or two-family homes.

The Planning Commission is still discussing whether to keep the major/minor subdivision concept or use another approach. So exactly what subdivisions Subsection 2109.E would apply to is still up in the air at this point and there will probably be some further revising happening there.

With regard to 2109.A(4), the PC is also still discussing this concept of buildable vs. unbuildable land, so it isn't fully defined yet either. What I presented is generally what I am recommending - that the acreage of wetlands, slopes >25% and floodplains be subtracted from the total lot acreage before a determination is made of how many house lots the land could be subdivided into. The reason to use those three factors is that they are all mapped by the state or federal government, so landowners do not necessarily have to hire someone to do field work and determine the extents of those features. Landowners could hire someone to do a wetland delineation, for example, if they wanted to challenge the information available in the state wetland inventory but they would not necessarily have to have a delineation done and could rely on the state maps if they wanted to.

The proposed rural district is moving away from using elevation as a criteria and is instead looking at road access, which will in many cases have a similar effect since the higher elevation land tends to be less accessible from the existing road network, but it should be simpler to administer than the multiple rural districts based on elevation. It is not easy for landowners to determine where exactly on their property those current zoning district lines are in many cases.

For a conventional subdivision, each lot in the proposed rural district would need at least 120 feet of road frontage. There would be a mechanism through a PUD to cluster lots with shared driveways and reduce frontage requirements.

Hope that answers your questions, if get in touch and I can try to clarify further. The PC welcomes any feedback the Conservation Commission may have. The meeting notes (posted online) indicate issues that the PC has not resolved, is still considering, is seeking input on, etc.

**Jan 13 Email to Tom Badowski from Bob Wernecke.** I will not be able to attend the meeting on January 13, 2016 but have had an opportunity to re view proposed sections 3209, 3210, 3211and 3212 and offer the following comments.

Section 3209. Erosion Control. 3209.B "any proposed land development" I assume this does not include one and two-family dwellings per section 3201.A? 3209.D I think it is a mistake to adopt a lower threshold for erosion control plans than the State and will place an undue burden on applicants and the DRB alike. I think applying the Low Risk Site Handbook standards is more appropriate. 3209.F (4) and (5) These seem to me to be very burdensome where construction activities do not disturb any soil or only very small areas. The ZA and DRB need to have some latitude when these standards should be applied.

Section 3210. Stormwater Management. 3210.D and 3210.E Again I think we should not adopt a standard stricter than the State for Stormwater Management. 15,000 square feet of proposed and existing impervious area would be just about any project we have reviewed in the past few years. However, I do think we need a better way to deal with "improvement" projects that have significant existing impervious area and no stormwater treatment.

Section 3211. Riparian Buffers. 3211.B I can not find the setbacks in Part 2. What are they? 3211.E I would add a condition of redevelopment that the applicant re-establish natural vegetation to the extent it is feasible and/or provide to runoff from the impervious areas. Ideally woody vegetation is preferred in stream buffers especially near to the stream. This does not seem to deal with non woody vegetation. A lot of this depends on the setback being used and the nature of the surface water.

3212. Steep Slopes. I think that this section is too restrictive, would be difficult to administer and is totally unnecessary. 4,000 sq. ft. is a very small area and 15% is not that steep by Vermont standards. A grading plan prepared by a Professional Engineer for 1/10 of an acre is an unnecessary burden on a developer.

Chapter 330 is not material different than our current standards but I do have a few recommendations/comment.

Section 3303. Traffic should apply all projects requiring site plan review not just conditional use projects. I do think that 3303.A (1) and (2) are very subjective. I think I like our current standards better.

Section 3305.A (3) I would strike the if portion of that sentence.

Section 3307. What is a stretch code? I don't think (4) is a reasonable requirement.

**Jan 15 Email to Brandy Saxton from Martin Kelley.** I live at 765 Jct road and my area is zoned commercial, my question is why would this be commercial when the dirt road is terrible in the spring thaw and a lot of it still in the floodplain. I'm not against people doing anything that they want to do with there land but just don't know how you can zone something this way without major reconstruction of road. Right now its all houses down there and I know there's a project coming up adjacent to my land with a 15,000 sq ft. building which I'm not against but really believe it's zoned wrong and commercial property should be in areas where road are good.

**Reply from Brandy Saxton.** Thank you for submitting comments, I will be sure that they are shared with the Planning Commission.

If I am understanding where your property is correctly, it is currently in the Industrial zoning district. The proposed revised zoning map would place that area in a different district - commercial. The revised commercial district is actually more of a mixed use district - and in fact the Planning Commission is considering re-naming it to better reflect that - that is intended to allow for both residential and smaller-scale / lower-impact businesses. So the proposed changes are moving somewhat in the direction that you think would be most appropriate for your area, but probably not as far in that direction as you would like to see, as I read your comments.

The Planning Commission will be returning to a discussion of the district boundaries and considering the feedback we have been receiving to make further adjustments probably sometime in February or March. Please feel free to stay in touch with me or Tom at the the town office as the draft continues to be refined. You are also welcome to attend a Planning Commission meeting to discuss your concerns directly with them.

**Reply from Martin Kelley.** Thanks for the reply. My main concern is that road should be upgraded to allow a mix use. As I stated I'm not against a business down there but we should have a road that will handle any increase traffic for safety reason. Thank You again.

**January 23 Front Porch Forum Post from Jerry Goss forwarded to the PC by Clara Ayer.** There has been a request to build a 15,000 ft+ 30 ft. high COMMERCIAL building in the midst of a completely residential area on Junction Rd. Berlin.

There was a Development Review Board Hearing held on Jan. 19,2016.

There were representatives from both the apps. (Junction Associates, LLC) and the many neighbors that are concerned,(one way or the other).

Much information was provided by both the "developers" and the neighbors, but the end result was that a continuance of the review be granted for the developers to go back to the drawing board. The biggest reason for this was that they were very ambiguous in what their purpose(s) were for this "warehouse".

Some of the main concerns for the board and neighbors were: SAFETY (of pedestrians,runners,walkers ect>) as this road is part of the "CROSS VERMONT TRAIL" for runners, hikers ect. and is used by many, many of these people.

Although the spot of proposed development (to start in March of 2016 with occupancy in late summer of same) is zoned "commercial" the closet "commercial-industrial" site is currently the amtrack station one half a mile up the road---with NO such buildings-work zones from there to the Middlesex/Warren Rd.

I, personally, do not see why this one plot of land in the middle of homes is zoned "commercial.??

(part of the) SAFETY ISSUES is the fact of 18 wheeler traffic that is proposed for the building, and the 20 plus parking spots that it requires for the "tenants" that will rent the areas. This--again--was left up in the air because the developers could not give precise numbers for the tenants--traffic, ect.

IN THE CONDITIONAL REVIEW provided to the board, one of the criteria for the developers to meet is "THE AFFECT ON THE CHARACTER OF THE AREA" This is (in my opinion) the main reason for the continuance of the review.

The application states that "The proposed small commercial building with limited traffic and limited public use should not have an adverse effect on the character of the neighborhood in this industrial district."!!!!!!!!!!!!!!

IT IS MY OPINION THAT THIS BUILDING HAS NOTHING BUT AN "ADVERSE EFFECT ON THE CHARACTER OF THIS NEIGHBORHOOD---(and surrounding neighborhoods as well) I, am the abutting neighbor to this property and there WILL be "adverse effects" on my home.

I have gone on record at the meeting of my belief of this. I asked the developers if they thought that it would reduce the value of my home and they said "it was not their job to know whether it would or not.

I am concerned for the value of my property--I am concerned for my wife and I walking our dog, I am concerned for the safety of everyone in the area (of residential homes),as well as the people that use this road as a recreational pathway, (i.e.-runners,walkers of dogs, bicyclist ...ect.ect.) I am concerned for the river and the wildlife of the area.

THIS LAND SHOULD NOT BE ZONED COMMERCIAL/INDUSTRIAL!! WITH NOTHING BUT HOMES AROUND IT!!

I hope that all of you that uses and enjoys the safety of this area attends the meeting on Feb. 2, 2016 at the Berlin Town Offices at 7pm to voice any and all concerns that you may have about this development of a commercial building that is proposed to be built in a residential area (wrongly zoned commercial/industrial)

PLEASE, do not hesitate to contact me at 802-477-2476 or my email at [jageaglesnest@gmail.com](mailto:jageaglesnest@gmail.com) for any help with questions that I might or might not be able to answer. You can also request the application info from the town of Berlin, Vt. that will give you all the current specs, (including size, septic, "proposed" use ect.)

Again, Please consider this very seriously, esp if you use this Rd. And if it's allowed here, well maybe it can be allowed next to your home also----check it out!!!!!!!!!!!!

THANKS FOR YOU ATTENTION

Jerry Goss  
733 Junction Rd.

**Feb 22 Letter from Ron Lyon.** Letter regarding potential density changes in the rural areas of town, the airport overlay district, and zoning changes around Riverton attached separately.

**Feb 25 Email to Brandy Saxton from Robert Lehmert.** Hello - I enjoyed the meeting at the Berlin Elementary School on February 24. I made a comment to the presenter about the effect of the renovated Berlin mall plan on parking, and I mentioned automated parking structures. I wanted to pass this link to the Board. It is representative of a class of structures built in higher density locations. They are less expensive than conventional parking structures and are available in a wide variety of designs and sizes.The community might plan on a ZipCar station at the mall utilizing this type of structure as a base. It would also be an efficient use of space for employees at the mall. <http://www.parkmatic.com/#!rotary-carousel/c1c00>

**Mar 3 Email from Bob Wernecke.**

1101.A (8) I think that these structures should be subject to setback requirement (and waivers if necessary), especially if associated with new construction or major reconstruction. We have a history of abuse of these kinds of structures.

1101.A(9) I don't think solar devices should be exempted from the regulations. Could easily interfere with other persons rights.

1101A(10) (b) Should not be allowed to extend into a public right of way.

1101.A(11)(e) Is subjective and meaningless as a criteria for exemption. I would delete.

1101.A (17) Without definition of "essential services" this exemption is wide open to interpretation.

1101.A (18) What is "other infrastructure"? Water, Sewer, Utilities? Does that include tanks, buildings and other structures private as well as public? I think this need to better defined.

1103.B I don't think that these structures should be exempted. Is that mandated by the State? I certainly wouldn't want a 20 ft by 15 ft structure next to my lot line.

1203.B It is hard to imagine a 1/8 acre lot 40 feet deep conforming to setback requirements.

1205.B I would strike the second sentence. I think it is inappropriate to make that a condition.

**Mar 4 Email and Memo from Chris Bradley.** (memo attached separately) Susan Britto (a Berlin resident) and I understand that the Berlin Planning Commission is in the process of revising its zoning and sub-division regulations.

We have a suggestion for what we consider a positive change to the existing zoning ordinances, specifically section 3.11 (NON-CONFORMING USES & STRUCTURES) and how it might be modified to address situations where grandfathered outdoor lighting could, over time, be brought into conformance with the intent of section 3.17 (Outdoor Lighting). The attached document outlines our suggestion. Would it be appropriate for us to request some time to present this to the Commission at your next meeting on 3/9? Thank you for your time and consideration in this matter.

**Mar 9 Email from Bob Wernecke.**

2101.B (27) What is the definition of essential services? I'm sure there are many different ideas of what is essential.

2101.C (12) Does this mean any parking? 2 spaces? 10 spaces?

2101.D (1) A 1/4 ac lot is very small by Vermont standards. Without public water and sewer it can't be done, and even then it is very limiting, especially when you want to add a shed or a garage. I know because that is the size of my lot and most of my neighbors. I suggest 15,000 sq ft as a minimum with public water and sewer.

2101.D (4) As you know, I can not support the definition of Front yard Setback. The use of the edge of the traveled roadway has worked just fine. I see problems with this definition. Few people know where the ROW line is. estimating the centerline is no more exacting than the edge of the traveled way. Since most roads are 3 rod ROWs the number is 49.5 feet not 50 ft. Along the B&M road the ROW is all over the place some times right next to the edge of pavement and some times very far the edge of the road. Specific to this District Paine Turnpike ROW is actually 4 rods (66 ft.) or 60 feet (I forget which) and it is fee simple not ROW. I find you all kinds of exceptions. Portions of Brookfield Road are 2 rods.

Having said all that, I feel that 10 feet (25 feet from the edge) is too close to the ROW. It doesn't even allow room to plant a decent sized tree unless you plant it in the Town's ROW. Not a good idea. I have the same problem with a 10 ft. sideyard. Furthermore do not think having a maximum front yard setback is appropriate for any District. You have gone beyond reasonable zoning restrictions to imposing your will on how people use their property.

2101.D (7) No where do I find a definition of Riparian setback, how it is measured or what waterways it is applied to.

2101.E (1) I'm all for having sidewalks in this District, but having only Major Projects be required to build them will lead to a lot of sidewalks that lead to nowhere. Furthermore I'm not sure that we want sidewalks on both sides of the road everywhere. The DRB should be able to make it a condition, but it should be part of a planned pedestrian network. This deserves more thought than just mandating it. by the way there is no definition of major site plan approval.

2101.F I am not in favor of imposing Architectural Standards and definitely think that (1) (a) and (b), (3) and (4) go too far. It is interesting to note that many of the existing residential structures in this district do not meet these standards.

2101.F (6) Why wouldn't you want to screen trash storage from view from all neighbors? We require that now.

2102 and 2103. All of my previous comments apply to this section also.

2103.E I would apply that standard to the VC and TC Districts also.

2105.D (4) and 2106.D (4) I see no reason to increase the setback beyond the previous standard. That will make a lot of existing structures non-conforming.

2107.E (1) Again I think mandating sidewalks in this District require a little more forethought. I'm not sure we would want sidewalks the whole length of Paine Turnpike North.

2108 My comments on the VC District apply here also. Also the only likely fueling station location left in this district is off the Crosstown Road.

**Mar 10 Email from Bob Wernecke.**

2109.D (1) I still think 1/2 Ac is too small. Conversely, I don't see the logic of 5 ac for nonresidential.

2109.D (4) I remain convinced that the front setback should be measured from the edge of the traveled way and in this case should be 50 ft. 40 ft. from the ROW would make many existing structures non conforming.

2109.D (8) I assume du is a dwelling unit. Is there a definition of buildable land? It is not clear how these different criteria for du per "buildable land" works. If you have 10 ac of land and only 1 ac is buildable and you are on a class 3 road can you have a residence?

2201.C Without a map of the overlay district it is difficult to comment on the prohibited uses, but as I understand it the Approach Zone includes much of the Village Center and the Light Industrial zones. If we are to have this Overlay Zone we should rely on the recommendations of the Airport Manager and performance standards.

2202 I am opposed to having this overlay district. There are many public drinking water sources in this Town to include new wells for the Berlin system, Berlin Pond and any well that serves a "public building or system like the trailer parks. I believe this is opening a can of worms.

2203. I am disappointed to see an entirely new version of the Flood Hazard Zone Overlay District. Considerable effort on the part of many people went into the current regulations in 2013. I think that some revisions and clarifications are necessary, but lets make just those changes rather than starting all over again. If you think it makes more sense to start all over again I have numerous comments too long to type here. I urge you to start with our current version and make the necessary changes there.

**Mar 17 Email from Tom Badowski summarizing meeting with Raymond McCandless. I**

received a visit from Mr. Raymond McCandless concerning the proposed Zoning District change to his 242 Dog River Road property. Currently this, and contiguous properties, are Zoned Commercial. The proposal is for it, and contiguous properties, to be Zoned Industrial. Mr. McCandless provided the attached deed language and I have attached current and proposed Zoning Map snippets. I suggested he soon attend a Planning Commission meeting and discuss his preference to stay in the Commercial District during the Public Comment portion of the meeting. He stated he will do so and asked that I forward to you his concerns in advance.

**Mar 22 Email from Thomas Willard.** I first would like to thank the Planning Commission for the good work that has resulted in the present draft of the Town Zoning Regulations. Such a complete revision is a very big deal and significant body of work and as former Chair of both the Planning Commission and ZBA, I know how much work volunteers have put into this thoughtful and challenging revision of the regulations.

Having said that, I have very serious concerns with the boundaries of the new proposed Village Center District and the changes it will eventually bring to the historic residential area of our town. In my judgment, the proposed change will slowly erode the historic residential use which has existed for 150 years from Berlin 4 Corners west on Crosstown Road and south on Scott Hill Road. The proposed changes in permitted uses and conditional uses are inappropriate for this area of our Town.

**ZONING MAP BOUNDARIES.** The goals of the Village Center District seem to be reasonable for the areas presently zoned Commercial, Industrial, or Town Center, but inappropriate for the historic rural residential area. The Vermont Historic Preservation Division studied the existing residences in this area and published a report on the value of these historic structures and their existing uses. Of the 7 goals listed in Section 2101A, I believe only goal #3 is consistent with this historic residential district.

The existing zoning map maintains the rural residential designation on all four corners of Berlin 4 Corners in order to prevent commercial uses such as gas stations or quick stops from encroaching on the historic residential district. I believe the existing boundaries of the Rural Residential District must be maintained to protect our neighborhood and our Town into the future.

**PERMITTED OR CONDITIONAL USES.** The existing residential area at Berlin 4 Corners has continuously been under pressure for a zoning change to permit expanded uses because of the expanded transportation network including I89 and Rte 62, as well as the increasing traffic on Scott Hill Road partially as a result of the completed roadway paving, and the proximity of commercial and industrial development. With the proposed changes to both the Permitted and Conditional Uses, I believe the area will quickly evolve into an area with uses such as a gas station, attorney's office, healthcare facility, financial services office, rehabilitative housing, crematorium, garden center, restaurant, and the list is endless but not compatible with the existing residential area.

This existing historic residential area contains the municipal building, a church, skating facility, lake access and fishing, and is a very popular jogging area. It should not be transformed into an area that accommodates traveler services or regional scale businesses. The Town has many areas to accommodate these uses.

Several of the residents of this area have recently met and would like to discuss these proposed changes with the Planning Commission this Wednesday. We plan to join you at 7:00 if that is convenient for the Commission. If a later time is better, please let me know. We would like to

discuss a request that the existing Rural Residential District boundaries be maintained and protected as a Residential District or perhaps alternatively carve out a new district in the proposed Village Center that could be called something like the Historic Village Center.

I would appreciate it if you could pass this email on to the Planning Commission members, as I know I always appreciate a heads up on these kind of matters.

**Mar 23 Email from Bob Wernecke.**

3001. I think our current regulations have been working fine and see no reason for changing them.

3001.C Not allowing a fence higher than 4 1/2 feet in the front yard no matter how far it is from the road seems unduly restrictive and makes no sense. Fences should not be allowed within the ROW and fences, regardless of height, should not be allowed to obstruct minimum stopping sight distance at intersections.

3001.D What about security fences? I think that barbed wire on top of a chain link fence is sometimes necessary.

3001.E I don't see the need to restrict a retaining wall height to 12 feet especially if it can not be seen. I don't think that a Landscape Architect is licensed to design a structure such as a retaining wall and I see no need to mandate a barrier on top of a 4 foot wall. I think that the DRB should be enabled to require these restrictions including the appearance, as we are now, but not mandated.

3004.C Does this apply to branches i.e. pruning of apple trees and undergrowth. This represents a significant enforcement problem. We can't even enforce blatant structure violations.

3101.A We should clarify what "associated with" means. A separate building?

3104.A (4) What is "evident"? Can't see? hear? Doesn't seem realistic. I would strike that.

3106. I don't see the purpose of restricting occupation between December 1 and March 31.

3112.C(3) Identifying elements is pretty subjective, but there probably no reasonable way to refine this by definition.

3115. What is a Utility Facility. If it is a structure it should not be exempt from lot size, frontage and setbacks.

3116. I thought that wireless communications facilities were the sole jurisdiction of Act 248.

3117. 6 temporary signs 8 sq. ft. in area seems like a lot. These temporary signs should not be allowed in the ROW.

3118.E(9) I would not mandate a 6-foot fence around the entire perimeter. Suggest "may be required by the DRB.

3118.G I'm not sure requiring a Performance Bond is something the Town should or wants to do. We don't require it for other types of development.

Figure 3-01 What is a EG and LDR District?

3202.C I recommend that you strike the word "only".

3202.F There should be a way for the DRB to provide exceptions when there are site restrains or other conditions where it make sense. I am not convinced that, even with reduced setbacks, parking needs to have the same setbacks as a structure. Few if any existing projects meet these requirements and it has never been an issue.

**Mar 28 Email from Thomas Willard.** We would like to thank the Planning Commission for the polite reception and thoughtful discussion we had at the past Commission meeting. We were relieved to hear that we shared the goals of protecting the existing residential area surrounding the Berlin 4 Corners and we look forward to continuing our discussion with the PC in the future. I think we generally agree that the existing boundaries affecting our residential area should be restored consistent with the current boundaries shown to us by Brandy. A clear map or description is imperative. The Residential District seems to fit our residential area most closely and is most consistent with the Town Plan. The neighborhood plans to meet prior to the next meeting to which we are invited to discuss these changes, to more clearly define our recommendations. Several other thoughts that came to mind that the PC may want to discuss:

1. Are parking lots, car dealership storage areas, gas canopies, large fills, underground storage tanks, etc. structures, accessory structures or otherwise have to comply with the setback requirements of the district?
2. Where a property line boundary in a district such as Commercial abuts a Commercial District but is within the 50 foot or 100 foot increased setbacks to a Rural or Residential District, Does the enhanced setbacks still apply to the development?
3. Is there a distinction between a public utility (ex. telephone line) and a public facility (ex. town garage) or are they all just essential services.

All three of these examples have been the subject of appeals and lawsuits in the past. We look forward to meeting with the PC in the near future and once again, thanks for the long hard work. Tom, could you please assure the PC gets a copy of this email?

**Reply from Brandy Saxton.** I have tried to respond to your questions below.

1. All structures, parking and storage areas have to meet setbacks unless the regulations specifically state otherwise. There are some setback exemptions for small accessory structures or for shared parking lots to be located across common setbacks and property lines, for example.
2. As the draft is written, the setback is determined by the zoning classification of the abutting property. So if an lot in the Industrial district backed up to a lot in the Rural district, the rear setback on the industrially zoned property would be 100 feet. If there was another narrow industrial property between that lot in the Industrial district and a lot in the Rural district so that the subject property itself does not abut the Rural district, the rear setback would be 25 feet no matter how close the district boundary.
3. Essential services are defined in the regulations as electric lines and distribution facilities, phone lines, cable lines, gas lines and distribution facilities, water supply lines, steam and air conditioning lines, sewer and stormwater lines. Essential services are utilities. Community facilities like highway garages, fire stations, municipal offices, etc. are not essential services.

**Reply from Thomas Willard.** Thank you for helping clarify some of the questions I raised about the proposed zoning regulations. I have some follow-up concerns that the PC may want to help clarify concerning the three previous questions.

1. In order to protect the 4 corners neighborhood from the commercial development presently under construction east of the municipal building, the neighbors raised the issue that the proposed roads, canopies, pumps, parking areas, and fill were "assemblies of man made materials for use" and therefore were "structures" as defined by the regulations and only driveways were specifically exempt. The Town regulatory board stated that the regulations had never been interpreted that way and issued a permit contrary to the neighbors testimony. Does past history argue for a clarification here?
2. The Town zoning board argued, regarding the same commercial development, that the zoning map indicated that the commercial zone extended 400 feet from the road frontage (I may have inaccurate dimensions but the concept is what is important) but the property line after a survey was only 395 feet deep. Therefore the property line technically abuts a Commercial zone and the enhanced setbacks do not apply. This argument is of course silly and circumvents the goal of the setback requirement. The setback should have been applied from the "structure" or from the zone change boundary, whichever was greater.

I should note that the map approved by Town vote did not have the 400 foot dimension printed on it and it appeared the boundary at the property line was the zone boundary. The 400 foot dimension is found on a map produced by Northern

Cartographic and hanging in the Town Clerks office. The change to clearer maps and boundaries such as property lines, roads, etc as proposed is a very positive clarification.

At a great expense to the residents of the neighborhood and I assume also to the developer as well, the neighborhood was forced to appeal to court the Town permit on both these issues in order to protect the residential area. I have to add that the developers worked with the neighborhood and the appeal was settled in a way that hopefully worked for everyone. However it seems now is the time to clarify both these issues to prevent such misunderstandings in the future.

3. The "public utility / municipal facility" issue was an attempt by the City of Montpelier to locate a water treatment facility in the Highland Conservation Zone on the shore of Berlin Pond. Public utilities were allowed but municipal facilities were absent in this zone. The City appealed the Town denial and I believe it was settled in the Town's favor after making its way to the Supreme Court. Is a substation, treatment facility, or municipal garage a "Government Facility" requiring a Conditional Use in a Residential District? I am not sure we need to do anything but some thought here might be good.

**Apr 8 Email and Memo from Berlin Conservation Commission.** (memo attached separately)

Thank you for soliciting feedback regarding the draft zoning regulations. We hope the following comments will start a conversation between our boards. Please let us know if it would be helpful to meet together at your next meeting. We appreciate all the time and effort you have dedicated to this important project. Keeping forested blocks intact provides many benefits for our town. Healthy forests absorb 70% of rainfall before it hits the ground helping to provide flood control to our rivers. Convergent upslope induced storms result in higher rainfall falling on Vermont ridgelines for which good ridgeline forest is essential. Construction compacts soil and increases impervious surfaces increasing storm water runoff. Disturbed soils wash down into rivers and ponds and hardened areas speed up the flow creating more erosion. The water quality of Berlin Pond and our rivers will be protected by healthy intact forests. We are fortunate in Berlin to have conserved a grouping of important land parcels on Irish Hill ridgeline. This dynamic, forested landmark benefits wildlife, improves water quality, absorbs storm water, provides recreational opportunities and also furnishes income from timber sales. Its protection should be a priority.

- In the Conditional use standards, consider changing the term "productive forest soils" to "Forest blocks" which might better convey the various benefits of an unfragmented forest resource.
- The PUD is a good tool to address fragmentation for subdivisions of a certain size but does not apply to smaller subdivisions. It would seem likely that a high percentage of subdivisions in Berlin would involve one or two dwellings. Therefore dropping the minimum required lot size to 3 acres from the current 5 acres could overly fragment forests. Given the likelihood of smaller subdivisions please consider keeping the minimum lot size of 5 acres along class 3 or 4 roads for non-PUD subdivisions.

- Flooding in our river valleys, water quality in Berlin Pond and our rivers, and unfragmented wildlife habitat blocks are all greatly impacted by the higher elevations of the Irish Hill ridgeline. The new purpose statement for the rural district says that one purpose is to protect high elevations but the bylaw itself doesn't appear to have any specific requirements for how and if development should occur above a certain elevation. Please consider adding bylaws to support the protection of high elevations such as making dwellings over 1500 ' and under 1700' a conditional use and prohibiting dwellings over 1700'.
- Consider defining the following terms: "Buildable land", "wildlife corridor", "forest block", "high elevation".
- Consider modifying the phrase, "To the maximum extent feasible" found in some of the standards, to emphasize the importance of natural resources when balancing other factors such as cost and topography.



November 17, 2015

Karla Nuissl  
Chair  
Planning Commission  
Town of Berlin  
Via email: karla.nuissl@vermont.gov

Subject: Proposed Zoning Revisions

Dear Karla and Commission Members:

I write to respectfully request the following modifications to the Proposed Zoning Bylaw revisions:

1. U.S. Route 2: Please leave the existing Highway Commercial Zone intact, including the current Table of Uses (Table 2.07) and associated Definitions. To change this area to the Commercial Zone or reduce the allowed uses in the Highway Commercial Zone would have the unintended consequence of making many current business uses "non-conforming" (Example: Capitol City Buick GMC).
2. U.S. Route 302: Please leave the existing Highway Commercial Zone Table of Uses (Table 2.07) and associated Definitions intact. Reducing the allowed uses in the Highway Commercial Zone, as stated above, would have the unintended consequence of making many current business uses "non-conforming" (Examples: VSECU at 1028 U.S. Route 302 and GMCU at 1311 U.S. Route 302).

As a related matter, it is my understanding that proposed Zoning Bylaw/Map changes must be preceded by recommendations for same within an adopted Town Plan, as per Title 24, Chapter 117, Subchapter 009, Section 4441, copy enclosed. I am unable to locate such recommendations in the March 6, 2012 Town Plan.

I am planning on attending tomorrow night's meeting, but may be reached in the interim at 802-223-3843, or (c) 802-793-6419.

Thank you for your consideration of our requests.

Sincerely,

Fred J. Connor III  
General Partner  
The Connor Group, LLP

Cc: Tom Badowski, Zoning Administrator  
Via email: zoning@berlin.vt.org

278 South Main Street, Suite #3  
St. Albans, Vermont 05478  
Tel: 802-527-1955  
Fax: 802-527-1919  
E-mail: stalbans@connorcontractinginc.com  
www.connorcontractinginc.com

1100 U.S. Route 2   
Berlin, Vermont 05602  
Tel: 802-223-3843  
Fax: 802-223-3888  
E-mail: berlin@connorcontractinginc.com  
www.connorcontractinginc.com

## The Vermont Statutes Online

### Title 24 : Municipal And County Government

#### Chapter 117 : Municipal And Regional Planning And Development

##### Subchapter 009 : Adoption, Administration, And Enforcement

#### § 4441. Preparation of bylaws and regulatory tools; amendment or repeal

(a) A municipality may have one or more bylaws. Any bylaw for a municipality shall be prepared by or at the direction of the planning commission of the municipality and shall have the purpose of implementing the plan. An amendment or repeal of a bylaw may be prepared by the planning commission or by any other person or body.

(b) A proposed amendment or repeal prepared by a person or body other than the planning commission shall be submitted in writing along with any supporting documents to the planning commission. The planning commission may then proceed under this subchapter as if the amendment or repeal had been prepared by the commission. However, if the proposed amendment or repeal of a bylaw is supported by a petition signed by not less than five percent of the voters of the municipality, the commission shall correct any technical deficiency and shall, without otherwise changing the amendment or repeal, promptly proceed in accordance with subsections (c) through (g) of this section, as if it had been prepared by the commission.

(c) When considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal. A single report may be prepared so as to satisfy the requirements of this subsection concerning bylaw amendments and subsection 4384(c) of this title concerning plan amendments. The department of housing and community affairs shall provide all municipalities with a form for this report. The report shall provide a brief explanation of the proposed bylaw, amendment, or repeal and shall include a statement of purpose as required for notice under section 4444 of this title, and shall include findings regarding how the proposal:

(1) Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing.

(2) Is compatible with the proposed future land uses and densities of the municipal plan.

(3) Carries out, as applicable, any specific proposals for any planned community facilities.

(d) The planning commission shall hold at least one public hearing within the municipality after public notice on any proposed bylaw, amendment, or repeal.

(e) At least 15 days prior to the first hearing, a copy of the proposed bylaw, amendment, or repeal and the written report shall be delivered with proof of receipt, or mailed by certified mail, return receipt requested, to each of the following:

(1) The chairperson of the planning commission of each abutting municipality, or in the absence of any planning commission in a municipality, the clerk of that abutting municipality.

(2) The executive director of the regional planning commission of the area in which the municipality is located.

(3) The department of housing and community affairs within the agency of commerce and community development.

(f) Any of the bodies identified in subsection (e) of this section, or their representatives, may submit comments on the proposed bylaw, amendment, or repeal to the planning commission, or may appear and be heard in any proceeding with respect to the adoption of the proposed bylaw, amendment, or repeal.

(g) The planning commission may make revisions to a proposed bylaw, amendment, or repeal and to the written report, and shall then submit the proposed bylaw, amendment, or repeal and the written report to the legislative body of the municipality. However, if requested by the legislative body or if a proposed amendment was supported by a petition signed by not less than five percent of the voters of the municipality, the planning commission shall promptly submit the amendment, with changes only to correct technical deficiencies, to the legislative body of the municipality, together with any recommendation or opinion it considers appropriate. Simultaneously with the submission, the planning commission shall file with the clerk of the municipality a copy of the proposed bylaw, amendment, or repeal, and the written report for public review. (Added 2003, No. 115 (Adj. Sess.), § 100.)

## Berlin Zoning Regulations Comments

2/22/16

Hello Brandy

I have not conducted a detailed review of the completed draft regulations, but as suggested in the last Planning Commission meeting, I am providing a quick list of my thoughts on a couple items pending a more detailed review of the draft and discussions with you and the PC.

My quick observations are:

1. I am concerned that the proposed regulations will result in much more extensive development in the natural areas in the center of the Town that are currently zoned Highland Conservation. These areas consist of natural resources including the steep slopes and ridgelines of the Green Mountains, Berlin Pond /watershed, Town Forests, and designated Town conservation and recreation areas. I feel these areas are a very important asset to the Town of Berlin and should be carefully managed by land use policies that ensure their protection into the future.

The Town has previously chosen to protect these areas from denser development by setting the minimum lot size at 5 acres. The proposed zoning re-designates these areas as Rural and reduces the underlying minimum residential lot size to  $\frac{1}{2}$  acre.

Although the intent of the proposed zoning is to cluster development on parcels by defining "buildable land" and road access, it is my experience that this can result in large developments that base their size mainly on the underlying regulatory lot size. Thus, a 100 acre lot in the Highland Conservation Zone that would allow a maximum of 20 residences under the current 5 acre zoning, could possibly be developed with 200 residences under the new  $\frac{1}{2}$  acre zoning. Controlling density using the definition of buildable land as noted in the proposed zoning is difficult if not impossible if the parcel does not have extremely well defined regulatory restrictions and/or if a developer challenges the Town's definition of buildable land. The proposed use of road classifications to control residential density would also be ineffective, as many Class 1 to Class 3 roads currently exist in these areas, and the proposed density increase due to the smaller lot size would make development of new roads or upgrade of existing roads economically feasible.

The result of the proposed zoning would be large developments in the Highland Conservation rural areas that I believe the Town wants to protect from dense development. There are several other areas in the Town that are contiguous to existing populated areas and are supported by developed infrastructure, and lend themselves to dense development without impacting our important natural areas.

2. I'm not sure what specific boundaries of the Airport Overlay District will be proposed, but think that restricting some developments in this area may not be necessary or good for the Town. The area around the airport is served by well-developed infrastructure that would readily

support further development. Residential and Transportation facilities may be examples of uses that should be allowed in most parts of the Overlay District.

3. The zoning and uses in the Rural and Hamlet Zones around Riverton should be reviewed closely to ensure the zoning supports development of this area as a viable community with diverse land uses. In one specific case I'm familiar with, my family has owned the large gravel pit in this area for many years, and the rezoning may unnecessarily restrict the possible uses of the parcel, possibly restricting growth in the Riverton area. It may be in the best interest of the Town and Riverton community that part or all of this parcel remain Industrial due to its existing location and terrain, and since it provides some of the only rail access opportunities in the Town. An alternative may be to include it in the Hamlet District and add some additional uses that are appropriate to the parcel location and terrain, and potential rail access.
4. *Proposed uses in several zones have changed and may not best serve the Town in the future. I haven't reviewed these uses in all zones at this time, but would like to do this more detailed review once the draft is distributed and provide additional thoughts at that time.*

I look forward to reviewing the completed draft when it is available and will be happy to provide more detailed input on these and other items at that time.

Thank you and the Planning Commission for your great work to date!

Please call/email if you have questions or would like to discuss these comments in more detail.

Regards

Ron Lyon

Section 3.17 of the current Berlin Zoning Ordinances concerns outdoor lighting, and this section was apparently first adopted in March of 2002.

We believe we understand that any outdoor lighting that existed previous to March 2002 is considered to be "grandfathered", despite the wording of 3.17 (B - General Standards), the second sentence of which states: "To ensure appropriate lighting while minimizing its undesirable effects, **the following general standards apply to all outdoor lighting in the Town of Berlin...**"

Clearly, the current wording of that sentence is incorrect, because that statement does not apply to "**all outdoor lighting**" when there are exceptions created by grandfathering.

That issue aside, please consider the following situation where an outdoor streetlight was installed prior to the creation of 3.17, the light is clearly not in conformance with 3.17, but is grandfathered. In looking at section 3.11, as laypersons we are unsure if a streetlight is a Non-Conforming Use (Section (B)) or a Non-Conforming Structure (Section (C)); we believe however that it is a structure.

In many cases, non-conforming outdoor lighting is the property of Green Mountain Power, who installs these poles and lights on a customer's property, and then "leases" the light(s) to a customer.

At the present time, if a customer has a non-conforming streetlight on their property that is GMP's, that property owner can call GMP and have them change that light at NO COST. If a customer makes this request to GMP, the following benefits are realized:

1. The customer benefits by more efficient lighting that actually costs them less per-month than a traditional sodium-vapor light;
2. GMP benefits by reducing its ongoing maintenance costs (LED lighting last significantly longer than sodium-vapor lights);
3. The environment benefits by reduced energy consumption, and
4. When this change occurs, a non-conforming light can be easily and inexpensively brought into conformance with the stated Purpose of 3.17 (A), and the General Standards of 3.17 (B).

Our suggestion is simple. Wording is added to the end of 3.11 (C) which would require the owner of a non-conforming outdoor light to bring that light in conformance with 3.17 at any time that non-conforming light has to be maintained or repaired (I.E., it burns out and someone has to essentially replace the bulb).

If such a change was adopted: Then GMP would be notified of this change, and as they perform regular maintenance non-conforming lights would be gradually brought into compliance; this as opposed to allowing non-conforming lights to stay indefinitely or the possibility that a neighbor who wishes to be vindictive might choose to keep their non-conforming light indefinitely.