

# TOWN OF BRADFORD

## Planning Commission Decision for Site Plan Review

**In re: Berner Boys  
Permit Application No. 17-40**

### A. INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding involved review of an application for the Site Plan Review submitted by Berner Boys LLC under the Town of Bradford Zoning Bylaws (adopted October 27, 2005) in a concurrent hearing with the Zoning Board of Adjustment for Conditional Use.
2. The application was received by Robert Wing, Zoning Administrator on 12/12/2017. A copy of the application is available at the Bradford Town Office. The subject property is located at 9 South Pleasant Street.
3. On January 3, 2017 notice of a public hearing was published in the Journal Opinion for Hearing on January 23, 2018. Berner Boys LLC informed the Commission that they were unable to attend the hearing on that date. A notice of cancellation was published in the Journal Opinion on January 10, 2018. On February 7, 2018 a notice of a public hearing was published in the Journal Opinion for Hearing on February 24, 2018.
4. On February 6, 2018, notice of a public hearing was posted at the following places:
  - a. The Bradford Town Office lobby.
  - b. 9 South Pleasant Street, property for which the application was made.
  - c. The public notice board at Community National Bank on Main Street.
  - d. The public notice board at the Bradford Post Office on Barton Street.
5. On or about February 6, 2018, a copy of the notice of a public hearing was mailed to the applicant and the owners of properties adjoining the property subject to the application (please refer to the attached abutter list).
6. The application was considered by the Planning Commission and the Board of Adjustment at a concurrent public hearing on February 24, 2018 at 10:00 am following a site visit at 9:30 am. The hearing was closed at 10:30 am on February 24, 2018. The planning commission reviewed the application under the Town of Bradford Zoning Bylaws, as amended October 27, 2005 (Town of Bradford Zoning Bylaws).
7. Present at the hearing were the following members of the Bradford Planning Commission:
  - a. Marcey Carver, Chairman
  - b. Ted Unkles
  - c. Ron Huntington
8. Also present at the hearing were the following members of the Board of Adjustment:

- a. Bud Haas, Chairman
  - b. Shirley Beresford
  - c. Doug Miller
  - d. Christine Pratt
  - e. Janice Larrabee
9. Also present at the hearing was Bob Wing, Zoning Administrator.
10. At the outset of the hearing, the Planning Commission afforded those persons wishing to achieve status as an interested person an opportunity under 24 V.S.A. Sec 4465(b) to demonstrate that the criteria set forth in the subsection are met. The following persons were sworn in:
- a. Sam Berner

A record of the name and address of persons wishing status as an interested person is attached hereto.

11. During the course of the hearing the following exhibits were submitted to the planning commission:

None beyond the original application

These exhibits are available at the Bradford Town Office.

## **B. TESTIMONY**

Carver swore in Sam Berner (applicant).

Carver explained the process for the hearing. She asked Berner to explain his project.

Carver asked if Berner had a site plan. Berner said he did not understand what a site plan is. He provided layout of the building interior. He said he would describe the parking but he could send a layout to the town. He explained that he would have two parking spaces up on the South Pleasant Street side parallel to the road and 4 parking spaces down on the Goshen Road side of the property where the current garage door is located.

Berner explained that there would be one entrance on the South Pleasant Road side between the two parking spaces. Another entrance for the apartment in the back on the second floor would be located at the rear corner facing parcel 23-90-19, currently owned by Waits River Housing. The basement unit would have an entrance on the same side as the current garage opening, to the left of the garage door.

Berner stated that for lighting, there are already lights in place. If we can, he said they will install downward facing lights. Berner said that they would have a structure along the wall at South Pleasant Street (on the lower level). Huntington asked if there would be a dumpster or trash bins. Berner said that he would probably have bins rather than dumpster as accessing the dumpster might be difficult. Huntington asked who would be responsible for removing the trash. Unkles stated that it was most important from the town's position that the trash not build up or become an odor issue.

Carver asked if wants to keep the parking spaces up on South Pleasant Street.

Carver mentioned that the lot size is small. With three units, based on current zoning, the lot size in Village Residential is required to be a minimum of 18000 square feet. The lot is .16 acres or 6970 square feet. Carver stated that a variance to allow a three unit apartment in a lot of less than 18000 square feet is the responsibility of the Zoning Board of Adjustment. Carver stated that the Planning Commission does not have the authority to grant a variance.

Carver stated that we need to review egress for vehicles and pedestrians, glare, landscaping, drainage, protection of renewable and natural resources. Unkles pointed out the need for consideration because there is an underground stream. He does not believe it goes under that lot. Drainage should take into account to not add to burden. Unkles pointed out the need to work with the state fire marshal. Unkles suggests that they should contact the Highway foreman concerning the existing driveway. Carver mentioned that paving should be discouraged. Unkles stated that lighting should not extend beyond the property. Carver also pointed out that it is important that ingress/egress is sufficient to allow for emergency vehicles such as ambulances to have access to the property.

Haas asked if notices had been posted and if abutters were notified. Carver stated that she posted in the Journal Opinion for the first meeting, the cancellation and the current meeting. Carver asked Wing if he posted a sign on the property and he confirmed that he did.

Haas asked if having an additional unit will significantly impact municipal and governmental services. Berner stated that he feels there will not be significant impact. Haas asked how the character of the area will be affected. Berner responded that it is compatible as there are several multifamily properties in the area. Haas asked if there will be significant impact on traffic on the roads. Haas stated they need to consider the impact of the additional rental on the provisions of the Zoning Bylaws. He indicated it is not something to get into. And lastly Haas stated that they need to consider the utilization of renewable energy resources. Berner stated that they are looking into heat pumps and other renewable possibilities. There is discussion about heat pumps becoming viable in colder climates like Vermont. Berner stated that new units work effectively down into the negative teens. Carver suggested that there are programs for solar water heaters.

Haas stated there are a set of standard conditions that are included if the ZBA approves a conditional use. Haas appeared to be reading from a document other than the town zoning bylaw (Is this relevant?). He stated that the plan is to be completed as specified in the application. The permit runs with the land. Prior to beginning any construction, permittee shall obtain any other local and state permits that are required. Copies of all these are to be filed with the town administrative officer. There should be no changes without submission to the Development Review Board. And by acceptance of this permit, the permittee authorizes the administrative officer to access the property to ascertain the compliance with the permit. There was general discussion about whether the permittee was required to let someone enter a building.

Haas then commented that once a decision is made (within 45 days), that the applicant or any interested party has 15 days to appeal to the Environmental Court. Carver indicated that there are no other interested parties.

Haas indicated that the Zoning Board of Adjustment has open deliberation. Carver indicated that the Planning Commission does not have deliberations in public and does not issue verbal deliberation. Haas indicated he would accept the minutes of the hearing as completed by the

Planning Commission and that the Zoning Board of Adjustment would condition their decision on the Planning Commission's decision.

The hearing closed at 10:25 am

**A. Applicable Law and Criteria**

1. Applicable ordinances in effect at time of Application are the Town of Bradford Zoning Regulations, latest revision October 27, 2005
2. Town/City Plan: Town of Bradford Municipal Plan adopted 1/28/2016
3. 24 V.S.A. para. 4416 (a). (See appendix)

**B. Finding of Facts**

1. The Applicants submitted an Application for Site Plan Review and Conditional Use (17-40).
2. The Applicants are applying to convert single family residence on a pre-existing nonconforming lot to a 3 unit apartment building.
3. The Subject property is a 0.16 acre parcel located at 9 South Pleasant Street in the Town of Bradford (Parcel Id# 23-90-0009). The property is more fully described in a Deed recorded at Book 136 Page 654-656 in the Town of Bradford Land Records.
4. The property is located in the Village Residential District as described in the Town of Bradford Zoning Map on record at the Town of Bradford municipal office and section 3-7 of the Zoning bylaw.
5. Site Plan Review and Conditional Use approval is required for the project as a Multi-Family Dwelling (dwelling with more than 2 units). The application required review under the following sections of the Town of Bradford Zoning Bylaw for Site Plan Review:
  - a. 3-7 Village Residential Minimum Lot Size
  - b. 5-6 Off Street Parking
  - c. 5-18 Exterior Lighting
  - d. 6-6 Variance
  - e. 6-12 Site Plan Approval
6. Section 3-7 Village Residential Minimum Lot Size states that the minimum lot size for 3 unit dwelling is 18,000 square feet. This parcel is only 6970 square feet.
7. Section 5-6 Off-Street parking Section (a) two parking spaces for every dwelling unit. Berner indicated that there were two parking spaces at South Pleasant Street and 4 on the lower level accessed off Goshen Road.
8. Section 5-18 Exterior Lighting provides three criteria for exterior lighting of light level and distribution, glare and shielding. Any substantial change requires Site Plan Approval by the Planning Commission. Berner stated that there were lights in place and if replaced would be downward facing and not emit glare.

9. Section 6-6 Variances falls under the authority of the Board of Adjustment and can be granted upon appeal by the appellant in accordance with 24 V.S.A. para 4469. The Planning Commission does not have the authority to grant variances. Berner indicated they were aware of the minimum 18,000 square feet requirement for a 3 unit dwelling which the Planning Commission indicated required a variance from the Zoning Board of Adjustment.
10. Section 6-12 Site Plan Approval provides that the Planning Commission must grant site plan approval prior to any action being considered by the Board of Adjustment or Zoning Administrator. The Planning Commission reviewed the application for vehicular and pedestrian safety, parking, glare, surface drainage, protection of renewable and natural resources and provision of municipal services. Planning Commission must also consider access management standards. In addition the Planning Commission must consider landscaping and screening.

### **C. Conclusion of Law**

1. Reference applicable ordinance: Town of Bradford Zoning Regulations, adopted January 28, 2016.
2. Reference applicable sections: Town of Bradford Zoning Regulations: Sections: 3-7, 5-6, 5-18. 6-6 and 6-12.
3. Reference State Statute: 24 V.S.A para 4416(a) and 4469

### **D. Decision**

Based upon these findings, the Commission concluded that the applicant addressed the requirements under the provisions pertaining to this application.

Based on evidence presented and testimony heard, the Planning Commission hereby **APPROVES** the application for a three unit apartment **provided that Board of Adjustment issues a variance (in accordance with Section 6-6 (Variances))** to the requirement for lot size to be at least 18,000 square feet in this Village Residential District as conditioned below. **Vote: 3-0.**

#### **Conditions:**

1. Section 3-7 has minimum lot size requirement of 18,000 square feet. The parcel lot size is approximately 6970 square feet and therefore the minimum lot size is not met. A condition of this approval is that the **applicant must receive approval from the Board of Adjustment for a variance** permitting a three unit apartment on this smaller parcel.
2. Section 5-6: Off Street Parking provides for two parking spaces of 200

square feet for each dwelling unit. As a condition of this approval, there must be 6 parking spaces plus sufficient turnaround so that vehicles enter and leave the property facing the road. No on-street parking is permitted. Two spaces are permitted on South Pleasant Street parallel to the street and not blocking the entrance to the apartment. On the lower level, access and egress is to Goshen Road. The space must be sufficient to allow for emergency vehicles (ambulance) to enter the property. Vehicles must exit the parcel facing the road (i.e. backing out onto Goshen Road is not permitted). Town Driveway permit shall be obtained for the curb cut if one does not currently exist.

3. Section 5-1: Exterior Lighting provides for visibility combined with maintaining the character of the community. As a condition of this approval, all exterior lighting must be compatible with the neighborhood, must minimize glare and not directly light beyond the boundaries of the property nor result in excessive lighting. All lighting must be shielded to direct light downward (and not to the night sky) and minimize traffic hazards. Current lighting at the three entrances to apartments is approved and may be changed to conform to the above stated requirements. Any additional lighting will be deemed a substantial change and require another Site Plan hearing.
4. All State and Local permitting and licensing for this endeavor shall be on file with the town.

Dated at \_\_\_\_\_, Vermont this \_\_\_\_ day of February 2018

\_\_\_\_\_, Chair

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Planning Commission. Such appeal must be taken within 30 days of the date of this decision pursuant to 24 V.S.A. Para. 4471 and Rule 5 (b) of the Vermont Rules for Environmental court Proceedings.

