

State of Vermont



LAND USE PERMIT AMENDMENT

CASE NO: 5W0584-19 (Altered)
Spruce Place, LLC
21 Carmichael Street
Essex Junction, Vermont 05452
and
Berlin Mall, LLC
c/o Heidenberg Properties
234 Closter Dock Road
Closter, New Jersey 07624

LAWS/REGULATIONS INVOLVED

10 V.S.A. §§ 6001 - 6093 (Act 250)

The District 5 Environmental Commission hereby issues Land Use Permit Amendment 5W0584-19 (Altered), pursuant to the authority vested in it by 10 V.S.A. §§ 6001-6093. This permit amendment applies to the lands identified in Book 120, Pages 30-38, of the land records of the Town of Berlin, Vermont, as the subject of a deed to Berlin Mall, LLC. This permit specifically authorizes the construction of a four-story, ninety eight (98) unit senior living facility with an underground parking garage, a paved parking lot and 3 access drives to be constructed on a 1.94 acre lot within the Berlin Mall tract. The project is located at 430 Berlin Mall Road in Berlin, Vermont.

Jurisdiction attaches because the project constitutes a material change pursuant to Act 250 Rule 2(C)(6) and, and thus requires a permit amendment pursuant to Act 250 Rule 34.

1. The Permittees and their assigns and successors in interest, are obligated by this permit to complete, operate and maintain the project as approved by the District 5 Environmental Commission in accordance with the following conditions.
2. The project shall be completed, operated and maintained in accordance with the conditions of this permit, Findings of Fact and Conclusions of Law 5W0584-19 and the permit application, plans, and exhibits on file with the Commission. The approved plans are:
 - Sheet 0 - "Existing Conditions Plan" dated 5-13-19 (Exhibit #018)
 - Sheet PL1 - "Subdivision Plat" dated 1-11-19 (Exhibit #019)
 - Sheet 1 - "100-Scale Overall Site Plan" dated 1-11-19, last revised 7-15-19 (Exhibits #020 and #020a)
 - Sheet 2 - "Site Plan" dated 6-11-19, last revised 8-9-19 and 11-19-19 (Exhibits #021, #021a and #021b)
 - Sheet 3 - "Utility Plan" dated 5-2-19 (Exhibit #022)
 - Sheet 4 - "40-Scale Utility Plan" dated 12-11-18 (Exhibit #023)
 - Sheet 5 - "Lighting Plan" dated 1-22-19 (Exhibit #024)
 - Sheet 6 - "EPSC Plan" dated 12-11-18, last revised 11-19-19 (Exhibits #025 and #025a)
 - Sheet 7 - "Water and Sewer Details" dated 12-11-18 (Exhibit #026)
 - Sheet 8 - "General Details" dated 1-22-19 (Exhibit #027)

Sheet ST1 – “Stormwater Management Plan” dated 5-2-19 (Exhibit #028)

Sheet ST2 – “Underground Stormwater System Details” dated 5-2-19 (Exhibit #029)

Sheet ST3 – “Post Construction Soil Testing and Maintenance Plan” dated 1-22-19 (Exhibit #030)

Sheet S – “Landscape Plan” dated 10-10-18 (Exhibit #031)

Sheet A101 – “Garage Floor Plan” dated 12-6-18 (Exhibit #032)

Sheet A102 – “First Floor Lobby Level Plan” dated 5-30-19 (Exhibit #033)

Sheet A103 – “Second Floor Plan” dated 5-30-19 (Exhibit #034)

Sheet A104 – “Third Floor Plan” dated 5-30-19 (Exhibit #035)

Sheet A105 – “Fourth Floor Plan” dated 5-30-19 (Exhibit #036)

“Three-D Rendering, Building Exteriors”, dated 8/19/19 (Exhibit #037)

Sheet 1A – “150-Scale Overall Parcel Plan” dated 7-15-19 (Exhibit #040)

Sheet C1 – “Line of Sight Cross Section Plan 1” dated 8-8-19 (Exhibit #042)

Sheet C2 – “Line of Sight Cross Section Plan 2” dated 8-8-19 (Exhibit #043)

Sheet A201 – “Exterior Building Elevations; South Elevation and East Elevation” dated 9-6-19 revised 10-18-19 (Exhibit #053)

Sheet A202 – “Exterior Building Elevations; North Elevation A, West Elevation and North Elevation B” dated 9-6-19 revised 10-18-19 (Exhibit #053)

Sheet A020 – “Project Information” dated 4-24-19 revised 10-18-19 (Exhibit #056)

Sheet A501 – “Wall Section ‘A’” dated 10-18-19 (Exhibit #057)

3. All conditions of Land Use Permit 5W0584 and amendments are in full force and effect except as further amended herein.
4. The Permittees shall comply with the conditions of Wastewater System and Potable Water Supply Permit WW-5-1290-3 issued on January 15, 2020 by the ANR Drinking Water and Groundwater Protection Division.
5. The Permittees shall comply with the conditions of Construction General Permit 3761-9020.2 issued on April 17, 2019 by the ANR Watershed Management Division.
6. The Permittees shall comply with the conditions of Stormwater Discharge General Permit 3761-9015.1 issued on July 24, 2019 by the ANR Watershed Management Division.
7. Representatives of the State of Vermont shall have access to the property covered by this permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.
8. Prior to commencement of construction, the Permittees shall submit the location and current uses of the deposition site for comments by the parties and Commission approval.
9. A copy of this permit and plans shall be on the site throughout the construction process.

10. No change shall be made to the design, operation or use of this project without a permit amendment issued by the Commission or a jurisdictional opinion from the District Coordinator that a permit is not required.
11. No further subdivision, alteration, and/or development on the Berlin Mall tract shall be permitted without a permit amendment issued by the District Commission. The first permit amendment application for the subdivision and/or development of any of the developable 'outlots' shall be accompanied by a master plan under all ten criteria, consistent with the Findings of Fact herein.
12. Pursuant to 10 V.S.A. § 8005(c), the Commission may at any time require that the permit holder file an affidavit certifying that the project is in compliance with the terms of this permit.
13. The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittees and their successors and assigns.
14. Construction hours shall be limited to Monday through Friday from 7:00AM to 5:00PM, and Saturdays from 8:00AM to 5:00PM.
15. No floor drains shall be installed without first obtaining a permit or submitting other necessary documentation, as required by the Vermont Department of Environmental Conservation.
16. The Permittees and all subsequent owners or lessees shall install and maintain only low-flow plumbing fixtures in any buildings. Any failed water conservation measures shall be promptly replaced with products of equal or better performance.
17. The Permittees shall be obligated to implement the Construction Site Waste Reduction Plan approved by the Agency of Natural Resources Solid Waste Management Program and included as Exhibit 50.
18. The Permittees shall comply with the exhibits for erosion prevention and sediment control. The Permittees shall prevent the transport of any sediment beyond that area necessary for construction approved herein. All erosion prevention and sediment control devices shall be periodically cleaned, replaced and maintained until vegetation is permanently established on all slopes and disturbed areas. Silt fencing shall be inspected within 24 hours of heavy rains, with any necessary repairs effected immediately. Maintenance of silt fencing shall require removing any sedimentation. The sediment may be placed as fill in low areas, if approved by the project engineer.
19. All mulch, siltation dams, water bars and other temporary devices shall be installed immediately upon grading and shall be maintained until all roads are permanently surfaced and all permanent vegetation is established on all slopes and disturbed areas. Topsoil stockpiles shall have the exposed earth completely mulched and have siltation checks around the base.
20. All areas of disturbance must have temporary or permanent stabilization within 7 days of the initial disturbance. After this time, any disturbance in the area must be stabilized at the end of each workday. The following exceptions apply: i) Stabilization is not required if work is to continue in the area within the next 24 hours and there is no precipitation forecast for the next 24 hours. ii) Stabilization is not required if the work is occurring in a self-contained excavation (i.e., no outlet) with a depth of 2 feet or greater (e.g., house foundation excavation, utility trenches).
21. All disturbed areas of the site shall be stabilized, seeded and mulched immediately upon completion of final grading.

22. The Commission reserves the right to review erosion prevention and sediment control and to evaluate and impose additional conditions with respect to erosion prevention and sediment control as it deems necessary.
23. In addition to conformance with all erosion prevention and sediment control conditions, the Permittees shall not cause, permit or allow the discharge of waste material into any surface waters. Compliance with the requirements of this condition does not absolve the Permittees from compliance with 10 V.S.A. (§§ 1250-1284) Chapter 47, Vermont's Water Pollution Control Law.
24. The Permittees shall maintain the area of land within 50 feet of the wetland identified in Exhibit 021a in undisturbed, naturally vegetated condition. The term "undisturbed" means no activities that may cause or contribute to ground or vegetation disturbance, or soil compaction, including but not limited to construction; earth moving activities; storage of materials; tree trimming or canopy removal; tree, shrub or groundcover removal; plowing or disposal of snow; grazing; and mowing. Prior to site preparation and construction, the Permittees shall permanently mark the boundary of the area within 50 feet of the wetland with signage, boulders, split rail fencing, or other landscaping features.
25. Any extracted stumps shall be disposed of on-site above the seasonal high-water table and not in any wetland, or at a state-certified stump and inert waste disposal facility to prevent groundwater pollution.
26. The Permittees shall construct a sidewalk with a vertical separation from the traveled portion of the easterly side of Berlin Mall Road to Fisher Road. Revised plans shall be filed for the review and approval of the District Commission and the Vermont Agency of Transportation on or before May 28, 2020 and shall include the following:
 - Eliminate the proposed crosswalk crossing the Berlin Mall Road and the first segment of eastbound sidewalk going from Fisher Road to the Kohls driveway.
 - The crosswalk to get from the west side of the Berlin Mall Road to the east side shall be farther down and away from the multiple turning movements at the intersection so there is less confusion and less crossing distance. There shall also be proper curbing around the radius with drop curbing for the tactile warning pad at the existing pedestrian crossing.
 - Create a crosswalk crossing the Berlin Mall Road to the south of the Kohls and car dealership driveways and then a linking crosswalk crossing the car dealership driveway to a new westbound segment of sidewalk leading to Fisher Road.
 - The Permittees shall install a distinct and obvious vertical separation between the roadway and the sidewalk to deter vehicles from drifting into pedestrians' way.
 - Square up and minimize the skew of the JCPenney crosswalk as much as possible.
 - Ensure any crosswalks crossing the Berlin Mall Road are marked/spaced so the vehicle wheel paths avoid the white crosswalk markings.
 - Install pedestrian crossing signs at both crosswalks with arrow sub placards pointing to the crosswalks. The signs shall be gate posted (a sign on each side of the road) and signs shall

also be on both sides of each post. Signage placement, height, and layout shall meet the Manual on Uniform Traffic Control Devices (MUTCD) standards.

27. VTrans shall have 15 days, or until June 11, 2020 to review and comment on the revised plans. The approved revised plans shall be incorporated via issuance of an Administrative Amendment pursuant to Act 250 Rule 34(D).
28. The Permittees shall complete construction of this sidewalk for use prior to project operation.
29. The Permittees and all assigns and successors in interest shall continually maintain the landscaping as approved in Exhibit 31 by replacing any dead or diseased plantings as soon as seasonably possible.
30. Prior to the operation of the project, the Permittees shall install a 20' tall light pole in the vicinity of the new crosswalk. The fixture shall be installed to provide downlighting so that the new crosswalk is visible in the dark
31. All exterior lighting shall be installed or shielded in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
32. The Permittees shall not erect additional exterior signage without prior written approval from the District Coordinator or the District Commission, whichever is appropriate under the Act 250 Rules. Signage includes banners, flags, and other advertising displays, excepting temporary real estate marketing signs and temporary Grand Opening signs.
33. Pursuant to 30 V.S.A. § 53, the energy design and construction shall comply with Vermont's Commercial Building Energy Standards (CBES) and the CBES Stretch Guidelines in accordance with the NRB Criterion 9(F) Procedure effective at the time of construction. (More information on this update can be found at http://publicservice.vermont.gov/energy_efficiency/cbes, <http://nrb.vermont.gov/sites/nrb/files/documents/9fprocedure.pdf> and <http://nrb.vermont.gov/sites/nrb/files/documents/cbesstretch.pdf>).
34. The installation and/or use of electric resistance space heat is specifically prohibited without prior written approval from the District Environmental Commission.
35. The Permittees, upon completion of the construction of the commercial building and prior to use or occupancy, shall submit to the District Commission a copy of the certification submitted to the Public Service Department as described under 30 V.S.A. § 53(d).
36. At the completion of the project, and prior to the occupancy of the building, the Permittees shall certify by affidavit that the project has been constructed in accordance with this permit pursuant to Act 250 Rule 32(A).
37. The Permittees shall provide each prospective purchaser of any interest in this project a copy of this Land Use Permit and the Findings of Fact before entering into any written contract of sale.
38. Pursuant to 10 V.S.A. § 6090(b)(1), this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the Permittees have not commenced construction and made substantial progress toward completion within the three-year period in accordance with 10 V.S.A. § 6091(b).

39. All site work and construction shall be completed in accordance with the approved plans by February 26, 2023 unless an extension of this date is approved in writing by the Commission. Such requests to extend must be filed prior to the deadline and approval may be granted without a public hearing.
40. The Permittees shall file a Certificate of Actual Construction Costs, on forms available from the Natural Resources Board, pursuant to 10 V.S.A. § 6083a(g) within one month after construction has been substantially completed. If actual construction costs exceed the original estimate, a supplemental fee based on actual construction costs must be paid at the time of certification in accordance with the fee schedule in effect at the time of application. Upon request, the Permittees shall provide all documents or other information necessary to substantiate the certification. Pursuant to existing law, failure to file the certification or pay any supplemental fee due constitutes grounds for permit revocation. The certificate of actual construction costs and any supplemental fee (by check payable to the "State of Vermont") shall be mailed to: Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201; Attention: Certification.
41. Failure to comply with any condition herein may be grounds for permit revocation pursuant to 10 V.S.A. sec. 6027(g).

Dated at Montpelier, Vermont, this 28th day of April 2020.

By /s/ Jeremy Reed
Jeremy Reed, Vice Chair
District 5 Environmental Commission

Commissioners participating in this decision:
Joslyn Wilschek
Peter Heitmann, participating pursuant to
3 V.S.A. § 809(i)

Any party may file a motion to alter with the District Commission within 15 days from the date of this decision, pursuant to Act 250 Rule 31(A).

Any appeal of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings. The appellant must file with the Notice of Appeal the relevant entry fee required by 32 V.S.A. § 1431.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, 10 Baldwin Street, Montpelier, VT 05633-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

Decisions on minor applications may be appealed only if a hearing was held by the district commission. Please note that there are certain limitations on the right to appeal, including appeals from Administrative Amendments and interlocutory appeals. See 10 V.S.A. § 8504(k), 3 V.S.A. § 815, and Vermont Rule of Appellate Procedure 5.

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 951-1740. The Court's mailing address is: Vermont Superior Court, Environmental Division, 32 Cherry Street, 2nd Floor, Suite 303, Burlington, VT 05401.