

BERLIN ZONING BOARD OF APPEALS

MEETING ADMINISTRATIVE MINUTES

MEETING DATE/LOCATION: Wednesday, June 21, 2017, Room 227, Town Hall Building, 23 Linden Street, Berlin, MA 01503

TOWN OFFICIALS (& OTHERS) PRESENT:

MEMBERS SITTING/PRESENT:

R/A		The Capes of Berlin	48 Summer Road
R	Lynn Ryan, Chair	S	S
R	Dennis Bartlett	S	S
R	Kevin Diggins	S	S
R	Pat Jackson	S	S
R	Jim Royer	S	S
A	Ginny Zukatynski	P	P
A	open		

Regular/Alternate

Sitting/Present/Absent

Tricia & James Concannon, Michael & Laura Busky, Mark Rhodes, Mark Rhodes, Jr., Seth Donohoe, Kristen Costa, Dennis Minnich, Ron Ackley, Rich Mariani, Paul Wheeler Peter Mancini, Rich Marshall, Tim Butland, Thomas Andrew, Selectmen; Chris Keefe, Selectmen; David Lichwell, Fire Captain, Lisa Wysocki, Selectmen; Piper Wysocki

The meeting was opened at 7:29pm by Chairman Ryan.

Single Signatory Authorization:

Motion was made by Board Member Jackson that the Berlin Zoning Board of Appeals designate Dennis Bartlett as its single signatory to approve bills, invoices, and warrants to be paid from the Board's annual budget line item (\$600). Such authority shall comply with Massachusetts General Law 41, Section 56 as amended in 2016 and shall adhere to the following:

- A record of any such action will be made available to the Board's membership at the first meeting following such action
- No such bill, invoice, or warrant shall exceed the balance available in the Board's budget line item
- No bill, invoice, or warrant payable directly to or on behalf of the single signatory designee may be self-approved

Motion was seconded by Board Member Royer, and the motion passed 5-0.

Meeting Minutes:

Brief discussion on minutes of May 10, 2017 with suggested revisions by Board Member Diggins. Motion made by Board Member Bartlett to accept the minutes as amended. Motion was seconded by Board Member Royer, and the motion passed 5-0.

Motion was made by Board Member Bartlett to accept the minutes of the May 24, 2017 meeting as written. The motion was seconded by Jim Royer, and the vote passed 5-0.

The Capes of Berlin – Comprehensive Permit:

The hearing was opened at 8:00pm. Civil Engineer, Seth Donohoe, outlined for the Board what they have accomplished since the last meeting. Affordable Housing Consultant, Kristen Costa, noted that a draft master deed and trust agreement was submitted, as requested at previous meeting. Petitioner Rhodes stated that he complied with the Board's request to meet with town boards, however, it was indicated that they would not put anything in writing unless directly requested by the Board.

Petitioner Rhodes did a site walk with the Highway Superintendent regarding a sidewalk to the elementary school. The Highway Superintendent, as well as an abutter, is opposed, as he feels there is not enough room.

Chairman Ryan asked the Petitioner if he had met with the school department regarding students from the development who will need bus service. The Petitioner stated he did not. The Petitioner offered to put a shelter at the end of the development for bus students. Chairman Ryan requested that the Petitioner meet with the school department and discuss.

Chairman Ryan asked the Petitioner if he had met with the Board of Health. Petitioner Rhodes stated that he had and asked them to put their findings in writing to the Board. Chairman Ryan read into record a letter received from the Board of Health received on June 16, 2017 indicating that they are not in favor of the project. It is the Board of Health's opinion that "every available foot of land, as well as a totally maximized allowance for septic discharge, has been utilized." Mr. Donohoe pointed out that the development meets the zoning requirements for green space.

Chairman Ryan asked the Petitioner if he had presented the Board of Health with construction level plans. The Petitioner indicated it was premature to do construction level plans. Attorney Kwesell stated that the Board could not grant waivers without a septic plan showing locations, elevations, ground water, etc. Chairman Ryan asked if the representative from the Nashoba Board of Health was present at the meeting. The Petitioner indicated he was not. The Petitioner suggested a joint meeting with the Board of Appeals and the Board of Health might be beneficial.

Chairman Ryan asked if the Petitioner met with the Fire Department regarding fire suppression. Petitioner Rhodes indicated that he sent a letter on May 11, 2017 to which he has had no reply to date. Petitioner Rhodes stated that since the Fire Department had previously indicated use of the fire pond and school's cistern would not be allowed he intends to put in three cisterns with 15,000 gallons capacity at the site which is shown on the updated plan. The three cisterns are grouped together in the middle of the site and are fed from a drinking water well. Attorney Kwesell, Town Counsel, indicated that if it is drawn from a drinking water well, DEP approval is needed.

Chairman Ryan asked if the Petitioner met with the Board of Selectmen regarding waiver requests from the Town By-Laws. Petitioner Rhodes responded that the Board of Selectmen were given a set of plans and list of waiver requests but that he had not met with the board to date. The Petitioner indicated he would make a request to get on the board's agenda.

Chairman Ryan indicated that the Board would like to keep things moving along and urged the Petitioner to meet with the boards/departments requested of him.

Selectmen Andrew asked to speak regarding Earth Removal waiver. Selectmen Andrew indicated that earth removal is less of a concern than importing soil. The board typically sets conditions with the Petitioner regarding hours of operation, traffic plan, truck route, etc. Board Member Royer pointed out that the plans indicate earth import rather than earth removal. Mr. Donohoe will correct the plans.

Chairman Ryan also pointed out that the Petitioner would need to discuss with the Board of Selectmen curb cuts regarding moving the existing entrance from one side to the other noting that a telephone pole exists. Board Member Royer suggested that the Highway Superintendent be invited to the meeting to express his opinion/concerns and that the Board send a written request to the Highway Superintendent requesting written input.

Chairman Ryan asked the Petitioner if he had met with the abutters regarding screening and if agreed to screening was indicated on the updated plans. Mr. Donohoe indicated that the updated plans did, in fact, include screening. Petitioner Rhodes indicated there would be a fence and that he intends to maintain existing trees.

Chairman Ryan asked for the total number of homes being built in the Petitioner's current development under construction (Green Acres). The Petitioner stated that there will be a total of 32 homes. At present eight homes are occupied, and an additional seven homes are under construction. It is the Petitioner's intention to finish Green Acres before proceeding with The Capes of Berlin.

Chairman Ryan asked who would be the responsible party for snow removal, trash removal, and electricity for septic pumping. The Petitioner indicated it would be included in the condo agreement. Board Member Jackson asked about including pesticide restrictions in the agreement.

Chairman Ryan expressed concern about only one access/egress. She asked if the Petitioner intend to include another way in/out of the development in case of emergency. The Petitioner indicated that it was not possible to accommodate another point of access/egress on this site.

Chairman Ryan asked if lighting was included on the updated plans. Mr. Donohoe indicated that street lighting is shown on the plans, however, not unit lights which will be low impact/high efficiency, and all utilities will be run underground. Chairman Ryan requested that unit lighting be added to the plans.

Chairman Ryan expressed concern over line of sight with the addition of a bus shelter and cluster mailboxes. Petitioner Rhodes indicated that the mailboxes would be further into the development and not at the entrance.

Selectman Andrew requested permission to read into record key points of a letter written by the Board of Selectmen dated June 21, 2017. The letter asks the Board to apply the balancing tests afforded by 760 CMR 56.07 in their consideration of the project. These regulations allow the municipality to rebut the presumption that the project meets local housing requirements in the context of local concern, weighing the housing need versus local concern. The letter further indicates that Berlin has actively pursued the development of affordable housing and has an approved Housing Production Plan. The letter indicates that the applicant has a prior-approved 40B project in the works and has held and awarded the lottery to the low income units yet has not pulled building permits thereby keeping those units off the SHI. The Petitioner replied he is complying with the law that one in four homes are affordable and that he is building as quickly as possible. He also indicated that the town would still not be at the 10% needed even after completion of the current development.

The Petitioner was asked if he would consider making the development less dense to which he indicated no.

Attorney Kwesell requested that the landscaping plan include distances between each house as well as distances between septic and the houses. Mr. Donohoe indicated he would add the distances to the plans for the next meeting.

The hearing was opened to the public at 9:02pm. Abutter Busky requested that a contingency clause regarding contamination and/or loss of drinking water be included. He is quite concerned and is looking for protection. Petitioner Rhodes indicated that there would not be any blasting at this site and there should be no impact to his well. Abutter Ackley expressed the same concern regarding his well noting that a lot of water will be used before getting to his house. Mr. Mancini of 27 Bailey Road expressed concerns over wells asking how deep the wells would be and noting that there would be three wells for twelve homes, plus the cistern well, as well as residents using water for lawn care. Petitioner Rhodes indicated that the wells will be 350-600 feet deep and

that the cistern well is a one-time draw. The Petitioner agreed to seek a written, professional opinion regarding the wells.

Mr. Mancini asked what the square footage was of the homes and who would maintain the septic. The Petitioner indicated that the homes range from 1,700-2,200 square feet and that the septic will be maintained by the homeowner with the tanks being pumped every year.

Abutter Minnich requested copies of the letters from the other town boards/departments. Chairman Ryan indicated that the letters were a matter of public record and would be provided upon request. Mr. Minnich stated that he feels the Selectmen's actions were appropriate, and he is unhappy that the developer intends to proceed even though it is contrary to what the town wants.

The hearing was closed to the public and Chairman Ryan asked the Petitioner if he was clear on what was being requested for the next meeting: the Board is requesting that unit lighting and distances between the houses and septic be added to the plans, the Petitioner meet with the Board of Selectmen and Highway Superintendent regarding waivers, curb cuts, storm water runoff, opinion on entrance, and septic design and elevations; the Petitioner meet with the Board of Health with the Nashoba agent present; the Petitioner meet with the Fire Department regarding cisterns; and the Petitioner seek a professional opinion (written) regarding wells.

The hearing was closed at 9:15pm. A motion was made by Board Member Royer to continue the public hearing to 8:00pm on Wednesday, July 12, 2017. Motion was seconded by Board Member Jackson, and the motion passed 5-0.

48 Summer Road – Variance:

The hearing was opened at 9:20pm. Chairman Ryan apologized to the Petitioner for the late start. Petitioner Butland provided proof of notification to the abutters. The Petitioner stated he was seeking relief from Section 331 General Requirement of Accessory Use Regulations of the Zoning By-laws, as the addition of overhangs to the existing barn would make the building larger than the primary residence. The Petitioner would like to add the overhangs for shade cover and to protect various pieces of equipment. The overhangs would be open to airflow. The Petitioner was asked what the square footage of the existing house and barn were. The Petitioner replied that the house is 2,368 sq. ft., the barn is 2,208 sq. ft., and the proposed additional space added to the barn (overhangs) would be 1,600 sq. ft. The Petitioner was asked if he had considered a separate carport rather than an addition to the current structure. The Petitioner indicated he would rather not have an additional building but add to what already exists and minimize the area being used. The Petitioner indicated he has almost five acres of land.

Chairman Ryan pointed out that MGL 40A Section 10 states that the permit granting authority can approve a variance if it specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures. Chairman Ryan asked what is different about his request that the Board should allow the variance.

The Petitioner requested a continuation of the hearing to do further research regarding MGL 40A. A motion was made by Board Member Jackson, at the Petitioner's request, that the public hearing be continued until 7:00pm on July 12, 2017 and that the deadline to file a decision be extended 30 days. The motion was seconded by Board Member Bartlett, and the motion passed 5-0.

Motion was made by Board Member Jackson to adjourn the meeting. The motion was seconded by Dennis Bartlett, and the motion passed 5-0. Meeting was adjourned at 9:47pm.

Respectfully submitted by: _____

Liane Leahy, Clerk for Berlin Zoning Board of Appeals