

BERLIN ZONING BOARD OF APPEALS

MEETING ADMINISTRATIVE MINUTES

MEETING DATE/LOCATION: Wednesday, December 11, 2019, Room 227, Town Hall Building,
23 Linden Street, Berlin, MA 01503

TOWN OFFICIALS (& OTHERS) PRESENT:

MEMBERS SITTING/PRESENT:

R/A		Whitney Estates	Capes of Berlin	5 Randall Rd	Sawyer Hill
R	Lynn Ryan, Chair	S	S	S	S
R	Dennis Bartlett	S	S	S	S
R	Pat Jackson	S	S	S	P
R	Jim Royer	A	S	S	S
R	Ginny Zukatynski	S	S	S	S
A	Sue Roberts	S	P	P	S
A	Keith Soucy	P	P	P	P

Rebecca MacDonald; Doug Koza; Patti Ward; Dennis Minnich; Scott Mille; Mike & Laura Busky; Robin Resteghini; Seth Donohoe; Jeff & Ginny Maki; Frank Pulito; Jennifer Pike; Janet Latham, Julia Malik; Buzz Harris; Noel Rosenberg; Rebecca Pulito; Susan Skoog; Charlene DiCalogero; Chris Keefe, Selectman; Attorney Kwesell, Town Counsel (present for The Capes of Berlin only)

Regular/Alternate

Sitting/Present/Absent

The meeting was called to order at 6:05pm with discussion of a technical clarification to a comprehensive permit for Whitney Estates Condominium Trust. Board Member Royer recused himself.

Rebecca MacDonald read a letter as owner of a 40B unit at Whitney Estates on Alden Drive requesting the Board revise the comprehensive permit. Ms. MacDonald stated the reduced fees were to be in perpetuity, and the state and town both overlooked this required provision and did not copy it from the DCHD's eligibility letter and incorporate it into the comprehensive permit. This has allowed the Whitney Estates Condo Association to take advantage of the technical error by raising the fees of the 40B units to the full market rate resulting in a 30 percent increase. Ms. MacDonald feels the comprehensive permit allows the Board of Appeals the right to rectify the technical error without any further public hearings and then re-record with the Registry of Deeds.

Ms. MacDonald presented a letter written by Attorney Preston Bruno of Choate, Hall & Stewart LLP dated November 8, 2019. Ms. MacDonald stated that the 40B condo fees had been 70 percent until the recent 2018-2019 year when they were assessed at 100 percent. Historically, the past 18 years the fees have been 70 percent.

Chairman Ryan made note she has been unable to secure a copy of the LIP agreement with the Board of Selectmen. Ms. MacDonald stated she has never seen such an agreement.

Chairman Ryan asked the Board for comments and questions. Board Member Jackson feels a precedent was set over the past 18 years. Board Member Bartlett believes the intention was 70 percent fee for affordable units as approved at Town meeting with it not to be changed at will.

Associate Board Member Roberts stated it is her understanding that in order for a unit to be defined as affordable the price of the condo and maintenance fees must fall within a certain percentage of income and that by not adhering to the 70 percent it eliminates the possibility of the units ever being affordable again.

Two members of the condominium association were present at the meeting. Homeowner Koza asked that if the Board is going to make a change that will affect all the owners, is there any recourse for advising them that this change is going into effect stating the homeowners all pay just under 10 percent based on their square footage. Chairman Ryan pointed out that was a change from the original intent of the 70/30 and what is before the Board tonight. Mr. Koza stated they had been advised by counsel that each owner should be paying equally according to the original decision and that is why the fees had changed after 18 years. They believed they were rectifying an error. Mr. Koza stated the change was made by vote of the Board of Directors to change the method of disbursement based on advice from counsel. Ms. MacDonald disputes that claim.

The consensus of the Board is that this is a technical change because of intent and precedence.

Motion made by Board Member Bartlett to allow a modification to the comprehensive permit of Whitney Estates Condominium Trust for a technical change to require that the condominium fees for affordable units be 70 percent of the market priced units. The motion was seconded by Board Member Zukatynski, and the motion passed 5-0.

The Capes of Berlin – substantial modification to a comprehensive permit

Mr. Scott Miller, President of Haley and Ward, Inc, presented the peer review dated November 23, 2019. Discussion ensued regarding Section 14 pertaining to waste water and nitrogen mitigation. Mr. Miller feels the number of homes could possibly be reduced from 34 to 27 bedrooms. The use of I/A technology for this amount of bedrooms should be cleared from the state. Mr. Miller stated The Capes of Berlin could help with the nitrogen level and the new I/A technology by decreasing the number of bedrooms. There is also concern with the fact most neighbors have shallow wells. Mr. Miller is going to check with the DEP. Yearly maintenance must be done of the wells but difficult to enforce.

Amy Kwessell, Town Counsel, requested a basic chart of previous waivers passed, current pending waivers, and basic flow chart. Board Member Bartlett asked whether the Board of Health also needs to approve a new septic plan with the I/A technology. Mr. Miller will check on questions and return next month.

Motion made by Board Member Royer to continue the public hearing to Wednesday, January 8, 2020 at 7:00pm. The motion was seconded by Board Member Bartlett, and the motion passed 5-0.

5 Randall Road – variance from front-yard setback

Robin Resteghini, wife of the petitioner, presented a letter from her husband asking for a continuance of the hearing for 30 days due to Mr. Resteghini's inability to attend tonight's hearing due to business travel. The letter was read into record by Chairman Ryan. Chairman Ryan is requesting that Mr. Resteghini be prepared to sign an Agreement to Extend the Hearing Deadline To File A Decision at next month's hearing.

Motion made by Board Member Royer to accept the letter and continue the public hearing, at the petitioner's request, to January 8, 2020, at 7:30pm. The motion was seconded by Board Member Jackson, and the motion passed 5-0.

Sawyer Hill Condominium Trust – modification to a comprehensive permit

The petitioner provided proof of advertisement in a local newspaper and abutter contact, and the public hearing was opened. Virginia Maki, petitioner, introduced their attorney, Scott Erickson of Perkins and Antcil, Westford.

Chairman Ryan asked for the percentage of number of bedrooms for affordable units versus market-rate units. Ms. Maki stated the eventually goal is to have an accessory or in-law apartment. Chairman Ryan indicated an apartment would be considered a new unit as defined in the comprehensive permit. Question was raised as to what happens if a special permit for an in-law apartment were granted and then Ms. Maki's mother no longer lives at the residence. Attorney Erickson stated that it would then become an additional bedroom to the unit and not an apartment. Associate Member Roberts asked how the association deals with an in-law apartment and value on the comprehensive permit and how it affects other affordable units and value when no longer an in-law apartment. Attorney Erickson will obtain answers to these questions and return next month. Ms. Maki was asked to provide a list of total number of bedrooms in each unit for all of Sawyer Hill Condominium Trust (Mosaic and Camelot) signed by the Board of Trustees.

Also being requested is a letter from DEP indicating all previous problems have been addressed and that they are now in compliance before another bedroom can be added to the total number allowed by the comprehensive permit.

Charlene DiCalogero of 56 Village Court stated her support of an additional bedroom added to 51 Village Court.

Motion made by Board Member Royer to continue the public hearing, at the petitioner's request, to Wednesday, January 8, 2020, at 8:00pm thereby allowing additional materials being requested to be gathered. Board member Bartlett seconded the motion, and the motion passed 5-0.

Administrative

Board Member Bartlett informed the Board he authorized payment of \$213.28 salary for the month of November for Land Use Boards Clerk, Liane Leahy.

Motion was made by Board Member Royer to adjourn the meeting. The motion was seconded by Board Member Bartlett, and the motion passed 7-0.

Respectfully submitted by: _____

***Liane Leahy, Clerk for Berlin Zoning Board of Appeals
from notes taken by Board Member Jackson and viewing of recorded meeting***