

## BERLIN ZONING BOARD OF APPEALS MEETING ADMINISTRATIVE MINUTES

**MEETING DATE/LOCATION:** Wednesday, August 9, 2017, Room 227, Town Hall Building, 23 Linden Street, Berlin, MA 01503

**TOWN OFFICIALS (& OTHERS) PRESENT:**

**MEMBERS SITTING/PRESENT:**

R/A		Boundless Adventures	The Capes of Berlin	71 Summer Road
R	Lynn Ryan, Chair	S	S	S
R	Dennis Bartlett	S	S	S
R	Kevin Diggins	S	S	S
R	Pat Jackson	S	S	S
R	Jim Royer	S	S	S
A	Ginny Zukatynski	P	P	P
A	open			

Keith Boughrum, Amy Beaudet, Mike & Laura Busky, Mike & Terry Rochette, , Matt Senie, Larry Greene, Berkeley Williams, Brian Funtleyler, Sabay Buth, Ron Ackley, Mark Rhodes, Seth Donohoe, Thomas Andrew, Selectmen, Paul Zbikowski, Fire Chief; Lisa Wysocki, Selectmen; Susan Reguere, Board of Health, Bill Brookings, Nashoba Board of Health

Regular/Alternate                      Sitting/Present/Absent

**Administrative:**

The meeting was opened at 6:30pm by Chairman Ryan. A brief discussion regarding the incomplete application received on July 12, 2017 for 28 Oak Street ensued. Chairman Ryan explained to the Petitioner that this application was not specific enough for her to generate a public hearing notice. The Petitioner was advised that several of his requests were too vague to post such as “any other special permits per Section 3.312”, “special permit for service establish”, “accessory uses as multiple principal uses”, and a reference to a pre-existing non-conforming use for indoor and outdoor storage. Chairman Ryan noted the property is both Commercial/Village and Residential/Agricultural, and a site plan was needed to show the delineation. Chairman Ryan indicated the Petitioner should discuss plans for a home-based business with the Building Inspector and that in order to have a home-based business the property must be owner occupied. Chairman Ryan also recommended the Petitioner speak with the Fire Department regarding potential storage of fertilizers for said business. Chairman Ryan noted the Purchase and Sale has not been signed by the seller. The Petitioner decided to withdraw his application and submit a new application once he ascertained the specific details needed in order for a public hearing notice to be created. Formal notice from the Town Clerk for withdrawal of Application 2017-08 was received at 8:05pm.

Board Member Bartlett informed the Board that the Town Accountant is looking to close two accounts, Northbrook Village II with a balance of \$5,016.52 and Whitney Road with a balance of \$2,210.82. Chairman Ryan suggested Bartlett investigate whether or not monies are still needed for either of the two and if not, obtain a release in order to vote next month regarding the return of any monies.

Motion was made by Board Member Bartlett to sign the Notice of Withdrawal for 48 Summer Road Variance as written. The motion was seconded by Board Member Jackson, and the motion passed 5-0.

Motion was made by Board Member Royer to accept the minutes of July 12, 2017 as written. The motion was seconded by Board Member Bartlett, and the motion passed 5-0 with Board Member Bartlett abstaining.

**Boundless Adventures – Site Plan Approval:**

Chairman Ryan opened the Public Hearing at 7:00pm. The Applicant provided Land Use Clerk, Liane Leahy, proof of publication of the hearing notice in local newspaper as well as proof of abutter notification. Larry Greene of Waterman Design and Berkley Williams of Boundless Adventures came forward to make a presentation. The Petitioner is proposing an outdoor adventure park located on approximately 26 acres on the

River Run property on River Road West. The Petitioner intends to divide the total acres into two plots with the boundary line going through the parking lot. They have applied for the subdivision with the Planning Board. Matthew Seine of Riverbridge LLC, owner of the land, explained that the reason for splitting the parcel into two lots was an agreement arrived at with the Town giving the Town the option to purchase one lot in the future for \$1 as mitigation. Liane to obtain a copy of the agreement from the Town Clerk.

The Petitioner proposes a 300 foot roadway to the park with a gravel parking lot for 100 cars and a paved area for handicapped access. There would be one small building on site serving as an office/concession stand selling pre-packaged snacks, drinks and souvenirs (t-shirts). The Petitioner confirmed that this is a non-motorized park. It was indicated that this would be a seasonal park open from April through November, weather permitting. The park does not break down in the winter. The intention is to only be open on the weekends except for summer months when the park would be open seven days a week. The hours of operation would be 9:00am to dusk. The park would contain seven courses of varying degrees of difficulty. Age use starts at age seven. There is a weight limit of 265 pounds. The zip lines vary from 50 – 150 feet in length. The park is a three-hour climbing activity with reservations made in advance with approximately 10-12 reservations total with a group starting every 15 minutes. The Petitioner anticipates approximately 40 individuals per hour comprising mostly of families. There will be an outdoor seating area for patrons to use for snacking or for outside food brought into the park. This raised the question as to whether additional vehicles would be coming into the park delivering food. The Petitioner indicated that was a possibility, as they encourage patrons to use local vendors.

Discussion ensued regarding the parking area. The Petitioner feels the proposed parking area is sufficient and sufficient distance from the residents' homes. The closest house to the property line is 130 feet. Approximately 15-20 cars an hour are anticipated.

Brian Funtleyler of Boundless Adventures indicated they are not a franchise. They currently have a park in Long Island opened in 2014 that is 45 percent larger than the one proposed in Berlin with parking for 90 cars. They are also in the process of building a park in New Jersey to be opened in 2018 which will use shuttle service, as the park will not have on-site parking.

Board Member Jackson asked if the common driveway would be used in order to gain entrance into the park and who was the owner of the common driveway. The Petitioner indicated the common driveway would be used and that it is deeded to the property.

Board Member Diggins asked what percentage of users is repeat business. The Petitioner indicated they typically see a 75 percent repeat business after hosting a large party (birthday) and approximately 25 percent repeat business otherwise. Their experience has been mostly families using the park and often returning to take on a more challenging course.

The Petitioner stated they met earlier in the day with a representative of the Police Department, Fire Department, Highway Department and the Building Inspector regarding the plans and to discuss safety. Building Inspector, Joe Atchue, commented he felt the layout was really well done, and the Petitioner coordinated with emergency personnel safety equipment use and emergency procedures in case of injury. Full-body harnesses are used with one clip of the harness remaining locked on the cable at all times.

Board Member Diggins inquired about noise level; people shouting. The Petitioner indicated the patrons are focused on the challenge of the course and there is very little shouting.

Board Member Royer asked about signs indicating all signs, including those on buildings, need to be included on the site plan and noting signage is dictated by the Planning Board.

Chairman Ryan asked about screening around the parking area suggesting a buffer of 10 to 20 feet for the three homes most affected and requesting existing vegetation be maintained. It was also noted screening needs to be indicated on the site plan as well as any lights.

Board Member Diggins expressed concern regarding securing the park at night. The Petitioner indicated the park would contain security cameras and sensor lights and access to the courses after hours would require a ladder. They further indicated all equipment would be locked overnight in a secure trailer.

Board Member Royer asked who would financially maintain the common driveway as the park would create additional traffic use. The Petitioner indicated they intend to maintain the common driveway.

Board Member Diggins asked about staffing requirements. The Petitioner indicated there would be up to 12 ground staff (dependent upon number of reservations) and 3 staff members in the office. A question regarding bathroom facilities was then raised. The Petitioner intends to open with port-a-john trailers. Chairman Ryan indicated this would need to be discussed with the Board of Health.

The hearing was opened to the public at 7:40pm. Abutter Notley/Horne expressed their concerns for privacy and how preventing people from coming onto private property will be addressed. The Petitioner is willing to meet with the abutters to discuss a buffer zone and screening and feels proper signage would direct patrons to the park and not onto private property. Abutter Notley expressed concern for children in the neighborhood getting off school busses in the afternoon with additional traffic on the common driveway. The Petitioner reiterated the park would only be open on the weekends during the school year.

Abutter Grieve indicated concerns for drainage and dust from the gravel roadway and parking area. The Petitioner indicated there would be retention basins for drainage and the gravel would meet all standards.

Abutter Gumina expressed concern regarding wetlands and conservation lands. The Petitioner indicated they are meeting with the Conservation Commission regarding such.

Abutter Beaudet, who is also a member of the Conservation Commission, commented the Town's interest in future ownership of one lot was to maintain an agricultural restriction and maintain a wildlife passage.

Abutter Rochette asked about water for the site. The Petitioner indicated there are currently two wells on site as well as a pump building.

Chairman Ryan asked the Petitioner to update the site plan to include screening, signage, and lighting. She requested a copy of easement restrictions, plans for road upgrade and right of way, as well as specific plans for a concession stand. She requested the Petitioner meet with the Board or Health and Building Inspector prior to the next meeting.

A motion was made by Board Member Bartlett to continue the public hearing, at the request of the Petitioner, until September 13 at 7:00pm. The motion was seconded by Board Member Royer, and the vote passed 5-0. The hearing was closed at 8:03pm.

### **The Capes of Berlin – Comprehensive Permit:**

The hearing was opened at 8:07pm. Chairman Ryan asked for an update on progress since the last meeting. Civil Engineer, Seth Donohoe, indicated the Petitioner attended the Board of Health meeting held on July 18 regarding septic plans. The Petitioner also met with the Highway Superintendent and obtained his signature on a copy of the plan indicating his approval. Mr. Donohoe will scan the signature and send copies and give the original to the Board. The Applicant also met with the Chief of Police who sent an email to the Board indicating he had no concerns regarding the driveway location as laid out in the plans. Mr. Donohoe indicated there have been no changes to the plan since the last meeting.

William Brookings, District Sanitarian for the Nashoba Associated Boards of Health was in attendance and indicated the overall site plan has been reviewed and is compliant with Title V. Setbacks to the property lines meet the requirements of Title V. He further indicated there isn't further involvement on his part until the waivers are approved by the Board of Appeals and an application is completed with fee paid. Chairman Ryan expressed concern over approving and granting waivers pertaining to septic where the Board has no expertise and having a similar situation as the Petitioner's current 40B project Green Acres. Sue Reguera of the Board of Health stated the Petitioner must follow state regulations if the waivers are granted. Mr. Donohoe stated the waivers have been revised to meet local requirements which are well beyond Title V requirements.

Board Member Diggins expressed the abutters' concerns regarding the deep wells that will be drilled in relation to their shallow surface wells further indicating the abutters have not had any issues with well or septic in the last 29 years. Mr. Brookings stated the property owners are responsible for their own wells and indicated he saw no reason for concern.

Selectmen Andrew stated the concern would be more for the abutters' septic with the additional housing whereas the typical two acres per housing unit would not apply to the new development. Chairman Ryan asked if there would be room for septic system repair if needed or the ability to extend the leaching field. Mr. Donohoe indicated there was and there would be yearly inspections with the Board of Health being notified within 24 hours of any problems. Board Member Jackson asked what happens if there is a well failure; is there room to drill an additional well. Mrs. Reguera stated a reserve site for a leach field is required by the Board of Health for new houses.

Town Counsel representative Attorney Kwesell pointed out affordable homes are to be the same as the non-affordable homes. She expressed concern regarding all the protections for the abutters and asked about protections regarding the new homes being built indicating the three affordable homes would not be protected as well as the abutters in regards to meeting local regulations within the development as to distances to wells and septic. A 150 foot well radius and 50 foot septic from property line are typically required by the Town. A 100 foot well radius and 20 foot septic from the house is what is being proposed for this development.

Board Member Diggins expressed concern over the Comprehensive Permit Site Approval Application submitted to MassHousing indicating a completion date of 2017 for Green Acres. By signing the application the Petitioner is stating, "I further certify that the information set forth in this application (including attachments) is true, accurate, and complete as of the date hereof to the best of my/our knowledge, information and belief. I further understand that MassHousing is relying on this information in processing the request for Site Approval in connection with the above-referenced project." The Petitioner stated Affordable Housing Consultant, Kristen Costa, called the state and was informed that the 2017 completion date for Green Acres indicated on the application is not relevant. The Petitioner was asked to supply such in writing.

Attorney Kwesell asked if the Board had a chance to review the proposal from BETA for peer review and if the Board had any comments/questions or wished to add/remove anything. Chairman Ryan asked if a time frame should be indicated and whether a representative of BETA should attend a meeting to present their findings. Attorney Kwesell responded yes and indicated the review can start once monies are received by the Petitioner and deposited with the Town. The Petitioner expressed concern over paying up front. Attorney Kwesell indicated any monies not used would be returned. The Petitioner indicated he could have monies deposited with the Town on Monday or Tuesday of next week.

A motion was made by Board Member Royer to approve the proposal provided by BETA and allow Town Counsel to schedule the peer review once monies are deposited with the Town with the condition that a representative of BETA appear at a Board meeting to submit their findings. The motion was seconded by Board Member Jackson, and the motion passed 5-0.

Attorney Kwesell indicated she had a conflict with the Board's next regular monthly meeting date of September 13. All Board members are available the following Wednesday, September 20. Land Use Clerk, Liane Leahy, indicated she was not available September 20.

Motion was made by Board Member Bartlett to continue the public hearing until September 20 at 7:00pm. The motion was seconded by Board Member Royer, and the motion passed 5-0. The hearing was closed at 8:47pm.

#### **71 Summer Road – Variance:**

The Public Hearing was opened at 9:00pm by Chairman Ryan. The Petitioner provided proof of advertisement in the local newspaper and notification to the abutters. The Petitioner was invited by Chairman Ryan to make his presentation to the Board noting in order for a variance to be approved under MGL Chapter 40A Section 10 Variances the Petitioner had to prove substantial hardship relating to the soil conditions, shape, or topography of such land or structures.

The Petitioner indicated he is looking to build a detached garage to the front of his lot which is an existing non-conforming lot indicating he feels it cannot be placed anywhere else. The Petitioner stated that his septic is in the rear yard. Building the garage to the left of the house would block access to the septic should repairs be needed. A very large tree owned by the Town exists to the right of the house preventing the garage from being located there.

Discussion ensued as to possible other locations for the garage. Alternate areas suggested by Board members were declined by the Petitioner, as he does not wish to have the garage located any closer to his pool or too far a distance from his house. Board Member Royer stated that although an alternate location is not what the Petitioner wants the state is very specific in what it allows the Board to approve. Chairman Ryan noted that the Petitioner must prove that the structure cannot be put anywhere else on the lot in a less intrusive manner in order for a variance to be granted. The Petitioner feels he has indicated such.

Building Inspector, Joe Atchue, suggested that the Petitioner have a surveyor map out his lot and provide a proposed location for the garage. The Petitioner's house is 45 feet from the street. Chairman Ryan indicated that an average distance of his neighbors' garages to the street can be used.

Chairman Ryan recommended the Petitioner rework the plan to show septic, well, town tree, and setback lines.

A motion was made by Board Member Bartlett to continue the public hearing, at the Petitioners request, to Wednesday, September 13 at 8:00pm. The motion was seconded by Board Member Diggins, and the motion passed 5-0. The hearing closed at 9:27pm.

Motion was made by Board Member Royer to adjourn the meeting. The motion was seconded by Board Member Diggins, and the motion passed 5-0. Meeting was adjourned at 9:30pm.

*Respectfully submitted by:* \_\_\_\_\_

*Liane Leahy, Clerk for Berlin Zoning Board of Appeals*