

BERLIN ZONING BOARD OF APPEALS MEETING ADMINISTRATIVE MINUTES

MEETING DATE/LOCATION: Wednesday, March 10, 2021, via Zoom Webinar 878 7328 2748

TOWN OFFICIALS (& OTHERS) PRESENT:

MEMBERS SITTING/PRESENT:

R/A		Capes of Berlin		
R	Lynn Ryan, Chair	S		
R	Dennis Bartlett	S		
R	Pat Jackson	S		
R	Jim Royer	S		
R	Ginny Zukatynski	A		
A	Sue Roberts	S		
A	Keith Soucy	P		

Regular/Associate

Sitting/Present/Absent

Attorney Amy Kwesell, Town Counsel (Capes of Berlin only); Mark Rhodes, Seth Donohoe, Attorney Paul Haverty, Dennis Minnich, Peter Wheeler, Chris Keefe, Select Board; Louise Janda, Conservation Commission; John Aney, Conservation Commission; Carolyn MacDonald, Conservation Commission

Chairwoman Ryan opened the meeting at 6:02pm with a roll call of Board members in attendance (Ryan, Royer, Bartlett, Jackson, Roberts, Soucy).

The Capes of Berlin – substantial modification to a comprehensive permit

Chairwoman Ryan opened the hearing at 6:03pm with a roll call of Board members in attendance (Ryan, Royer, Bartlett, Jackson, Roberts, Soucy).

Associate Board Member Roberts asked Attorney Kwesell to refresh everyone's memory and re-state what a denial of the modification by the Board would mean. Attorney Kwesell stated that if the Board were to deny the modification, the petitioner would then have the option of reverting back to the approved Remand Comprehensive Permit issued in October 2018 or to go to the Housing Appeals Committee (HAC). In her opinion, the HAC would overturn the Board's decision. It is Attorney Kwesell's opinion that all the work the Board has done throughout the hearing to get screening, vegetation, provisions in the HOA for the benefit of abutters and the Town, etc. would not be required to be implemented by the state. It is always better to negotiate at a local level.

Chairwoman Ryan informed Board members all hearing dates are listed on the front page of the Decision, and if a member was absent during a hearing, they will need to attest to the fact they received and read through materials.

It was reported the three affordable units are 1, 6, and 12 and that unit 6 is a 2-bedroom unit while units 1 and 12 are 3-bedroom units.

Chairwoman Ryan asked if the covered bus stop shelter is on the current plan. Attorney Kwesell responded the covered bus stop shelter is a condition of the approved 2018 Remand Comprehensive Permit, and that this condition is still in effect and was never shown on the plan. Attorney Kwesell reminded the Board they are only addressing the modification to the Remand Comprehensive Permit, which is the creation of twelve separate lots with each containing a dedicated septic system and drinking water well (increasing from 3 to 12) and changing the ownership from condominium to homeowner's association.

Discussion ensued regarding the draft Decision. Chairwoman Ryan asked if it is stated anywhere in the Decision how the HOA fees were to be disbursed in relation to the affordable units (at 70%) and that this cannot be changed without coming before the Board for a majority vote.

Board Member Royer asked if there should be something included in the Decision regarding the Board of Appeals being provided with the HOA document approved by Town Counsel, and that the HOA cannot be changed without Board approval.

It is the consensus of the Board they would like to see a final version of the Decision, in addition to a final HOA agreement, with time to review in order to vote at next month's meeting.

Attorney Kwesell explained the petitioner's option of closing the hearing tonight with no additional testimony or information received and a Decision filed within 40 days. Attorney Haverty expressed his opinion it would make sense to keep the hearing open.

Abutter Minnich asked if the Decision and HOA would be posted for the public prior to next month's meeting. Mr. Minnich also asked who would manage the project once it is approved. Mr. Minnich was informed enforcement lies with the Building Inspector.

A motion was made by Board Member Royer to continue the public hearing for a substantial modification to a comprehensive permit at the request of the Petitioner to Wednesday, April 14, 2021 at 6:00pm via Zoom virtual meeting. The motion was seconded by Board Member Bartlett, and the motion passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Roberts).

Administrative

A motion was made by Board Member Bartlett to approve the meeting minutes of February 10, 2021 with one minor correction. The motion was seconded by Board Member Royer, and the motion passed 6-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Roberts, Soucy).

Board members confirmed they had all received Citizen Planner training information from Chairwoman Ryan. Chairwoman Ryan encouraged board members to attend any upcoming online training sessions that spark interest.

Chairwoman Ryan reported to the Board she and Associate Board Member Roberts attended the Planning Board meeting on February 23 to discuss warrant articles for Annual Town Meeting in May relating to bylaw changes. It was reported a home-based contracting business will be limited to the homeowner or a blood relative living at the property. Gross vehicular weight for equipment allowed for a home-based contracting business will be as defined by the Registry of Motor Vehicles. In addition, any changes in composition, direction, length, or pitch of a common driveway will need approval from the Planning Board.

Select Board Member Keefe introduced herself as the Select Board liaison for the Board of Appeals. She stated she plans to regularly attend meetings whenever possible and encouraged board members to reach out to her at any time.

Chairwoman Ryan expressed appreciation for a Select Board liaison as well as Louise Janda being a liaison for the Conservation Commission. Ms. Ryan expressed her desire to also have a liaison from the Planning Board and Board of Health.

Conservation Commission Wetlands Protection Bylaw

Commission members John Aney, Carolyn MacDonald, and Louise Janda were in attendance to present, answer questions, and receive feedback regarding the warrant article for Annual Town Meeting. The purpose of the bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas. The bylaw changes are to strengthen the Wetlands Protection Act. Due to numerous weaknesses in the state law many municipalities are passing bylaws.

The Commission began with a MACC template created by lawyers to use as a starting point to create the bylaw from scratch. It was stressed that this is not a revised bylaw from previous years. It was reported the most significant change is regarding the appeals process with a Decision of the Commission being reviewable in Superior Court or through a mediation process conducted by a qualified environmental professional. They feel a mediation process would be a less onerous solution.

The Commission also seeks the ability to impose fines for violations and institute filing fees for the purpose of securing outside consultants in the review of proposed large projects.

The Commission seeks to have the authority to continue a hearing for just cause to a specific date announced at the hearing.

Board members offered feedback suggesting clear definitions and clarification of fines. It was suggested the presumption of the public is Conservation Commission is being aggressive – overstepping their boundaries. Concern was also raised as to what happens in the future when there is a ‘new’ Conservation Commission. The Board believes the current Commission to be honest and operating in good faith, however, once a bylaw is created a future Commission would then have the authority.

Mr. Aney responded definitions are provided in the Wetlands Protection Act, and fines would be spelled out in the regulations once the bylaw is approved. Mr. Aney further commented the Commission already has the authority to do most of what is in the document. The proposed bylaw would allow protection of isolated vernal pools, a 25-foot No Disturb Zone, imposition of fines, imposition of consultant fees for large projects, and a changed appeal process. Mr. Aney expressed his willingness to talk with anyone with questions and/or skepticism.

A motion was made by Board Member Royer to adjourn the meeting. The motion was seconded by Board Member Jackson, and the motion passed 6-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Roberts, Soucy). The meeting was adjourned at 7:47pm.

Respectfully submitted by: _____

Liane Leahy, Clerk for Berlin Zoning Board of Appeals