

BERLIN ZONING BOARD OF APPEALS

MEETING ADMINISTRATIVE MINUTES

MEETING DATE/LOCATION: Wednesday, November 11, 2021, via Zoom Webinar 878 7328 2748

TOWN OFFICIALS (& OTHERS) PRESENT:

Evelyn Dueck, Mary Porter, Paul Mikelk, Jill Foisy, Erik & Rebecca von Geldern, Mike Yerardi, Linda Yates, Holly Parmenter, Joe Atkinson, Peg, Serge Paul-Emile, Richard & Leanne Weideman, Rev. Janet Newton, Karen Kowal, Barry Edgar, Judy Booman, June Miller, Bob Hodge, Director BPL; Dave Lichwell, Fire Marshall; Richard Hanks, Building Commissioner; Chris Keefe, Select Board; Margaret, Town Administrator; Eric Schartner, Interim Police Chief

MEMBERS SITTING/PRESENT:

| R/A | | 19 Carter St | 275 Central St | |
|-----|------------------|--------------|----------------|--|
| R | Lynn Ryan, Chair | S | S | |
| R | Dennis Bartlett | S | S | |
| R | Pat Jackson | S | S | |
| R | Jim Royer | S | S | |
| R | Ginny Zukatynski | S | S | |
| A | Sue Roberts | P | P | |
| A | Keith Soucy | P | P | |

Regular/Associate

Sitting/Present/Absent

19 Carter St – Appeal of Building Commissioner’s Decision

The hearing was opened at 7:08pm with a roll call of Board members in attendance. Verification by Land Use Boards Clerk, Liane Leahy, that the petitioner met deadline requirements for newspaper advertisement and abutter notification was made two days prior to the hearing.

Chairwoman Ryan conveyed the purpose of the hearing was to determine the validity of the decision by the Building Commissioner under Article 10, Section 1020 regarding noise level at property lines at different times of the day and whether this section applies to the property in question.

Chairwoman Ryan invited the petitioner to speak. Mary Porter asked to speak on behalf of 19 Carter with Evelyn Dueck and Paul Mikelk in attendance along with her. Ms. Porter indicated they are asking if the determination made by the Building Commission in his August 17, 2021 regarding Section 1020 Noise is applicable as defined in 1021.1 noise as measured at the property line of the lot. They seek to have the Board establish that the scope of Section 1020 is limited to construction noise at building sites and thus does not apply to events held at 19 Carter as an existing building. The term “lot” is defined in Article 14 as “see building lot”. Building lot is defined as “A building lot is that area of land described in an application for a building permit or an application to the Board of Appeals for a special permit or a variance, or otherwise defined as the area on which a structure is to be constructed or a certain use is to be carried on. A building lot shall not include any part of a street which is relied upon to qualify the lot as frontage.”

Chairwoman Ryan asked Board Members for their interpretations. It was the consensus of the Board that general requirements apply to all lots in town. Each section under Article 10 is its own entity and not a subparagraph of 1010.

The hearing was opened to the public at 7:24pm. Several abutters made comment regarding decibel levels pertaining to a residential neighborhood. Comment was made as to the interruption in abutters ability to enjoy their property when concerts were being held at 19 Carter. Consensus is there were too many, they were too loud, and ran too late.

It was noted the bylaw isn't clear and consists of errors and conflicting information. Chairwoman Ryan stated any change to the bylaw is made by the Planning Board and reminded those in attendance that the issue before the Board was whether to uphold or overturn the Building Commissioner's determination.

Question was raised as to whether the Building Commissioner has jurisdiction to make a determination. It was also noted he did not take any reading of decibel level, and his letter does not state there was a violation. It was clarified that the Building Commissioner serves as zoning enforcement giving him jurisdiction.

A motion was made by Board Member Royer to deny the request to overturn the Building Commissioner's determination. The motion was seconded by Board Member Bartlett, and the motion passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski).

A motion was made by Board Member Jackson to close the public hearing. The motion was seconded by Board Member Royer, and the motion passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski). The hearing was closed at 7:47pm.

275 Central St – Site Plan Approval

The hearing was opened at 7:48pm with a roll call of Board members in attendance. Verification by Land Use Boards Clerk that the petitioner met deadline requirements for newspaper advertisement and abutter notification was made two days prior to the hearing.

Chairwoman Ryan invited the petitioner, Michael Yerardi, to speak. Mr. Yerardi stated he is looking to create internal office space in a limited business district for his business which he is currently running out of a room in his home in Hudson. His business, Turning Point Investments, LLC, purchases houses, renovates, and resells. They have a good rating with the Better Business Bureau. Mr. Yerardi intends to clean up the property that has been in disrepair for many years and make some minor renovations. He intends to hire a coordinator for a staff of two, potentially increasing to three, which would include himself. His business does not require clients to transact business at this location.

Chairwoman Ryan asked how long the property had not been a residence. It is believed to be a couple of years. The property was purchased from a bank with no intention of use as a residence. Chairwoman Ryan confirmed business or professional offices are allowed with site plan approval. Mr. Yerardi was asked the square footage of proposed office space which would dictate the number of parking spaces required. The square footage is 1,219 requiring five parking spaces. Mr. Yerardi stated he has a total of eight parking spots with two in front of the garage, one closer to the street, and the remainder being cutouts going up the driveway. Board Member Jackson stated the parking spots were not clearly labeled on the site plan. Mr. Yerardi confirmed he had read the parking regulations under Article 8, Section 811 of the by-laws.

Building Commissioner, Richard Hanks, confirmed that five parking spaces would be required rectangular in shape 9 feet wide by 19 feet long, and access/egress needed a minimum distance of 50 feet from the street, which the petitioner exceeds. It is uncertain if there is an easement for the driveway going across the property line.

Access and egress are from Central Street with no clients coming in/out just staff. Chairwoman Ryan expressed that while that may be so for his business once the property changes hands, it could be used for any kind of office and the number of people coming in/out could not be restricted. Mr. Yerardi was asked if there were anywhere to relocate the driveway. It was noted the property abuts Taylor Road in the back.

Section 843 of the by-law indicates the minimum width of the driveway shall be 10 feet for one-way traffic and 18 feet for two-way traffic. The maximum width of an entrance or exit drive at the street line is 30 feet for limited business district. The width of the driveway is not known.

Further discussion of access/egress ensued with the Fire Marshall and Interim Police Chief expressing their concerns with cars entering/exiting at an already dangerous intersection. A suggestion of right turn only exiting the driveway be established or one-way coming in from Route 62 with an exit onto Taylor Road. Both expressed that a secondary driveway would be desirable. The petitioner indicated creating a new driveway would be unaffordable. Discussion ensued regarding whether or not a new driveway would need to be paved. Associate Member Roberts stated Section 840 does not indicate a driveway be paved, however, Section 825 indicates parking and loading areas be paved.

The hearing was opened to Board Members for questions and/or comments. Board Member Jackson feels more information is needed on the site plan (driveway, signage, lighting, hours of operation). Associate Member Soucy feels this would be a wonderful addition to Berlin, however, expressed concern for any future business at the site. An approved site plan would be for any business at this property address. Board Member Royer expressed acceptance of the proposal but would like to see the petitioner communicate with the Fire and Police Departments and work out details of access/egress. Royer recommends reading the requirements of site plan review and what should be included on the drawing, in particular the section on parking and driveway. Chairwoman Ryan expressed concern over the width of the driveway and whether or not it is located on Mr. Yerardi's property.

It was suggested Mr. Yerardi read Section 1234 – required site plan contents, look at parking, access/egress, and meet with the Building Commissioner for better defined lot lines, the question regarding easement, and screening, etc.

A motion was made by Board Member Royer to continue the hearing, at the petitioner's request, until December 8, 2021 at 7:00pm to allow the petitioner to further modify the site plan. The motion was seconded by Board Member Zukatynski, and the motion passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski).

Administrative

Chairwoman Ryan indicated term renewal for herself, Bartlett, and Soucy were due. Motion made by Board Member Royer to recommend Lynn Ryan until 2025, Dennis Bartlett until 2026, and Keith Soucy until 2026. The motion was seconded by Board Member Zukatynski, and the motion passed 7-0 by roll call vote.

Chairwoman Ryan provided details as to the changes she made to the draft Application Form. It was suggested that number 9 should read "as recorded in the Registry of Deeds" and that number 7 should read "Property Location/Address". Number 18 should read, "if no, please provide details on a separate sheet." Liane to make changes and send out to the Board for final approval.

Board Member Bartlett indicated he had spoken with Matthew Seine regarding the \$5,000 remaining in escrow for a well at River Run for a 40B project. It is unclear which town board requested this money. It may not be the Board of Appeals money to release. Discussion ensued. It was agreed further investigation as to who supplied the money and to which town board needed to be determined in order to return the money to the rightful owner.

Chairwoman Ryan asked Jackson and Zukatynski for an estimate of number of hours needed to create a spreadsheet to document ZBA activity pertaining to special permits with time limits within the last 10 years. It was determined that a minimum of 100 hours was needed.

A motion was made by Board Member Royer to approve meeting minutes of October 13, 2021, as written. The motion was seconded by Board Member Bartlett, and the motion passed 7-0 by roll call vote (Zukatynski voting present).

The next meeting of the Board is scheduled for Wednesday, December 8, 2021, at 7:00pm with a continuation of site plan approval for 275 Central Street.

A motion was made by Board Member Royer to adjourn the meeting. The motion was seconded by Associate Member Soucy, and the motion passed 7-0 by roll call vote. The meeting was adjourned at 9:20pm.

Respectfully submitted by: _____

Liane Leahy, Clerk for Berlin Zoning Board of Appeals