

BERLIN ZONING BOARD OF APPEALS MEETING ADMINISTRATIVE MINUTES

MEETING DATE/LOCATION: Wednesday, February 10, 2021, via Zoom Webinar 818 480 14323

TOWN OFFICIALS (& OTHERS) PRESENT:

MEMBERS SITTING/PRESENT:

R/A		Capes of Berlin	157 Lyman Street	64 Banner Road
R	Lynn Ryan, Chair	S	S	S
R	Dennis Bartlett	S	S	S
R	Pat Jackson	S	S	S
R	Jim Royer	S	S	S
R	Ginny Zukatynski	S	S	S
A	Sue Roberts	P	P	P
A	Keith Soucy	P	P	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, Janet Lamy, Benedict & Elizabeth Alberts, Ankur Rungta, Brian Falk, Peter Hoffman, Economic Development Committee; Peg Stone, Select Board

Vice Chairman Royer opened the meeting at 6:07pm with a roll call of Board members in attendance (Royer, Bartlett, Jackson, Zukatynski, Roberts, Soucy).

A motion was made by Board Member Bartlett to approve meeting minutes of January 13, 2021 as written. The motion was seconded by Board Member Zukatynski, and the motion passed 6-0 by roll call vote (Royer, Bartlett, Jackson, Zukatynski, Roberts, Soucy).

Chairwoman Ryan joined the meeting.

The Capes of Berlin – substantial modification to a comprehensive permit

Chairwoman Ryan opened the hearing at 6:12pm with a roll call of Board members in attendance (Ryan, Royer, Bartlett, Jackson, Zukatynski, Roberts, Soucy).

Attorney Haverty stated he had received the suggested edits to the Homeowners Association Declaration of Trust from Attorney Kwesell, Town Counsel. Attorney Haverty proceeded to go through the document.

Question was raised relating to Section 2.2 (ii) vegetated buffer, does the Board want more detail than what is included?

Question was raised relating to Section 2.4 a), regarding parking on the private way. It was agreed no parking would be allowed and such language would need to be added to the document.

The petitioner approved language under Section 3.1 Initial Board: Subsequent Trustees; Number of Trustees, as suggested by Attorney Kwesell to include an affordable unit owner as a Trustee.

It was noted that Section 5.2 Authority to Assess, must also include the maintenance and testing of septic systems.

It was noted a specific provision regarding the septic system maintenance and testing needs to be added to Section 5.6 (ii), to be inspected annually remedied by the property owner. After discussion it was agreed the Homeowners Association would assume the annual cost for having all testing done and report the results to the Board of Health.

The petitioner approved language in Section 7.2 Termination of Trust, as suggested by Attorney Kwesell.

Question was raised regarding Section 9.1, 6) Arbitration, to account for other dispute resolution providers other than REBA.

The petitioner approved the proposed Fee Schedule (Exhibit A).

Chairwoman Ryan asked Board Members if they had any questions or comments. Board Member Royer asked for clarification as to the definition of a unit found in Exhibit A. He asks if a unit would be the lot or the dwelling. After discussion it was determined a unit would be defined as the dwelling unit.

Associate Board Member Roberts expressed concern for additional bedrooms being added by homeowners. It was noted the HOA clearly states any changes have to come back to the Board of Appeals with a majority vote for approval. It was noted this language should be included in both the Decision and the HOA.

Chairwoman Ryan asked which units are the affordable units. Mr. Donohoe stated the affordable units are Units 1, 6, and 12 as designated on the original comprehensive permit with Unit 1 having the longest water trek. Mr. Rhodes commented the horizontal run does not affect the size of the well pump. It was noted only three of the dwelling units have wells directly behind the house.

The petitioner was asked if it was his intention to close or continue the hearing. It was noted no additional materials or questions could be received/asked once the hearing was closed. After the closing of the hearing the Board has 40 days to draft a decision. Attorney Haverty recommended to the petitioner the hearing remain open and continued to next month.

Chairwoman Ryan opened the hearing to the public. Mr. Minnich asked to be recognized with several questions/concerns he has regarding the HOA. Mr. Minnich stated there is no mention of who is responsible for maintenance of the fence and the fencing does not appear on the landscaping plan. It was determined that fencing should be added to Section 5.6. Mr. Minnich stated he would like the type of fence to be defined. It was stated the fence was being installed to benefit abutters and is unchanged from the original comprehensive permit and can be added to the HOA. It was determined 6-foot fencing will go up prior to grading and clearing of the property.

Mr. Minnich stated he is confused as to who and how changes can be made to the HOA. It was explained any changes to the HOA must be approved by the Board of Appeals by majority vote.

It was determined minor revisions of the HOA are still needed.

Attorney Kwesell to draft a Decision to be discussed and deliberated by the Board at next month's meeting.

Chairwoman Ryan thanked Attorney Kwesell for her work on the HOA.

A motion was made by Board Member Royer to continue the public hearing for a substantial change to a comprehensive permit to Wednesday, March 10, 2021 at 6:00pm via Zoom virtual meeting at the request of the Board and the Petitioner. The motion was seconded by Board Member Zukatynski, and the motion passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski).

157 Lyman Road – special permit for in-law apartment

After confirmation by Liane Leahy, Land Use Boards Clerk, that abutters had been contacted and notification published in the newspaper by the designated deadlines the hearing was opened. The petitioners were invited to make a presentation.

Mrs. Alberts stated it had always been her parents' life plan to sell their house on Gates Pond Road. Due to her father's passing a few years ago they would like to move forward with that plan by combining two households into one to accommodate her widowed mother.

Chairwoman Ryan confirmed with the petitioners the apartment would not be larger than the 35 percent of the principle dwelling's floor area, as determined by the Building Inspector. Mr. Alberts confirmed all necessary boards and departments signed-off on the building permit with no issues. Mr. Alberts stated the frame of the house is up, including the roof.

Chairwoman Ryan informed Mr. & Mrs. Alberts that according to the Zoning By-laws Section 514 Criteria for Approval, the premises must be owner occupied, occupancy in the in-law apartment is limited to three people at least one of which is related by blood or marriage to the resident owner, the outside appearance remains that of a single family residence, all applicable federal, state, and local building and health codes must be satisfied, and there must be no other in-law apartment or accessory apartment on the same lot.

Chairwoman Ryan also explained the special permit is contingent on a five-year renewal (expiring automatically). The petitioner may apply for renewal of the special permit for another five-year period.

A motion was made by Board Member Royer to approve a special permit for an in-law apartment at 157 Lyman Road subject to all provisions of the Zoning By-laws. The motion was seconded by Board Member Bartlett, and the vote passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski).

A motion was made by Board Member Royer to close the public hearing. The motion was seconded by Board Member Bartlett, and the vote passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski). The hearing was closed at 7:14pm.

64 Banner Road – site plan approval and special permit for retail marijuana

Chairwoman Ryan declared the hearing opened at 7:30pm. Mr. Rungta of C3 Industries stated a letter dated February 9, 2021, was submitted to the Board requesting withdrawal of its petition without prejudice. Mr. Rungta stated it was unlikely they would be able to proceed with this site.

A motion was made by Board Member Royer to accept withdrawal of the petition without prejudice. The motion was seconded by Associate Board Member Soucy, and the motion passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski).

A motion was made by Board Member Royer to close the hearing. The motion was seconded by Board Member Zukatynski, and the motion passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski). The hearing was closed at 7:32pm.

Administrative

Liane informed the Board a request from the Conservation Commission had been received asking to come before the Board for an informal presentation of the Wetland Bylaws. A motion was made by Board Member Jackson to add this to the agenda for Wednesday, March 10, 2021 at 7:00pm. The motion was seconded by Board Member Zukatynski, and the motion passed 7-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski, Roberts, Soucy).

Board Member Jackson asked if investigation of current tenants at 64 Banner Road was taking place. Chairwoman Ryan replied the Building Inspector has been made aware of the situation, and it would be up to him to pursue.

Chairwoman Ryan opened the meeting to those in attendance asking if they had any comments/questions. Select Board Member Peg Stone asked if it were possible to access the property at 64 Banner Road by a shuttle with parking at the community garden. Chairwoman Ryan explained that the Town of Marlboro does not allow marijuana retail in the zone in which the easement exists and, therefore, travel over the easement to the facility is prohibited.

Peter Hoffman, Economic Development Committee, stated he introduced Mr. Runtga of C3 Industries to the Marlboro EDC. It was reported rezoning would be complex and would delay the project considerably. Mr. Hoffman noted Mr. Runtga was very professional and had been great to work with.

Mr. Runtga reiterated it would be very challenging to get a zoning change to allow access to the easement and that it was nearly impossible to gain access through the frontage on River Road West. The only possibility he saw was to take a slice of the community garden parcel to create a road. Mr. Runtga further commented that there were limited options of sites well suited in Berlin.

Chairwoman Ryan asked Associate Board Member Roberts if she would be interested in attending, along with her, an upcoming Planning Board meeting to discuss proposed by-law changes to be presented at Annual Town Meeting. It was agreed the two would contact the Planning Board about getting on the agenda for an upcoming meeting.

A motion was made by Board Member Royer to adjourn the meeting. The motion was seconded by Associate Board Member Soucy, and the motion passed 7-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski, Roberts, Soucy). The meeting was adjourned at 7:50pm.

Respectfully submitted by: _____

Liane Leahy, Clerk for Berlin Zoning Board of Appeals