

BERLIN ZONING BOARD OF APPEALS MEETING ADMINISTRATIVE MINUTES

MEETING DATE/LOCATION: Wednesday, June 10, 2020, via Zoom Webinar 200 541 019

TOWN OFFICIALS (& OTHERS) PRESENT:

MEMBERS SITTING/PRESENT:

R/A		Capes of Berlin	100 River Rd W
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/Alternate

Sitting/Present/Absent

Dennis Minnich, AJ Moses, Attorney Christopher Flood, Ana Sousa, Slevin Monroy, Louise Janda, Conservation Commission, Margaret Nartowicz, Town Administrator

Chairman Ryan opened the meeting with a roll call of Board members in attendance (Ryan, Royer, Bartlett, Jackson, Zukatynski, Roberts, Soucy). It was noted that Town Administrator, Margaret Nartowicz was also in attendance.

The Capes of Berlin – substantial modification to a comprehensive permit

A motion was made by Board Member Royer to open the hearing. 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 continue the public hearing for a substantial change to a comprehensive permit in accordance with Chapter 53 of the Acts of 2020 until Wednesday, July 15, 2020 at 6:30pm at Town Offices. If the State of Emergency has not been lifted by July 15, 2020, the hearing will again be postponed. The motion was seconded by Board Member Bartlett, and the motion passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski).

100 River Road West – appeal of a determination by the Building Inspector

Proof of proper notification in a local newspaper and abutters was determined to be satisfactory. A motion was made by Board Member Jackson to open the public hearing. The motion was seconded by Board Member Bartlett, and the motion passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski).

Chairman Ryan gave the ‘floor’ to Attorney Christopher Flood who is representing the property owner, Selvin Romano Monroy. Attorney Flood stated Mr. Monroy purchased the property in March of 2020. Mr. Monroy had been operating a landscaping business at the property for approximately one year as a renter of the property prior to purchase.

Attorney Flood is requesting the Board delay, stay, or waive the penalty and fines of the Building Inspector's Cease and Desist dated April 15, 2020 until the petitioner can come before the Board for a special permit and variance for a home-based contracting business. Chairman Ryan explained the Board of Appeals has no authority to stay or lift any fines. Chairman Ryan stated the Board can only determine if the Building Inspector's finding, as listed in his Cease & Desist letter, is consistent with the Zoning By-laws. Chairman Ryan indicated a new application, which must include a letter from the Building Inspector, was needed in order to come before the Board for a special permit and/or variance. It was pointed out that a use variance is not the purview of the Board of Appeals.

Attorney Flood indicated the Building Inspector's letter referenced the property being used as a "contractor's yard." Attorney Flood was unable to find a definition of a contractor's yard in the by-laws and is challenging that determination. Discussion ensued as to whether the equipment and materials on site were consistent with what is allowed for a home-based contracting business. It was determined that equipment on site exceeds the number allowed and that the 20-50 yards of mulch on site is not allowed under the by-laws.

Associate Board Member Roberts asked if the owner of the business resided at the property. It was reported the owner lives in Marlboro. It was reported the business is registered in Marlboro with a mailing address of 186 Main Street, Suite 9. Board Member Jackson asked where the equipment was stored prior to Berlin. It was stated it was stored in a warehouse in Stow.

The petitioner was asked if any materials and/or debris were being dumped on the site. The response was no. Board Member Zukatynski read into record a letter received June 10, 2020, from abutters Tim Wheeler and Janet Woodward in which it states their concern "about the impact that the large pile of what we assume is landscape refuse will have on the adjoining wetlands on our property." The letter further states "we are also concerned with the junk that is at the base of the pile and in some cases mixed with the pile of landscape waste. From our side of the boundary wall we could see a television, drain pile, and refrigerator." Board Member Bartlett reported to the Board the Conservation Commission has issued an enforcement order.

Ana Sousa, representing the owner, stated it is a family business with a desire to improve the property to code with beautification of the property and money coming back into the town. Ms. Sousa also informed the Board it is the petitioner's intention to renovate the house and move in once renovations are complete, adding the COVID pandemic has made resolving the issues difficult.

Chairman Ryan reiterated this hearing is solely for the appeal of the determination of the Building Inspector. Ms. Ryan suggested the petitioner visit other Town boards for any issues they might have.

Associate Board Member Soucy expressed his sympathy for the situation the petitioner is in and appreciates that they are apparently taking the right steps to move forward.

Attorney Flood reiterated his request that the Board overturn the determination of the Building Inspector in order to dismiss the fines that will be incurred if the Board votes to uphold.

A motion was made by Board Member Royer to approve the applicant's request to overturn the Building Inspector's determination. There was no second of the motion. A brief discussion ensued regarding the wording of the motion.

A motion was made by Board Member Jackson to uphold the Building Inspector's determination in his letter dated April 15, 2020, and to deny the petitioner's request for appeal. The motion was seconded by Board Member Zukatynski, 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 hearing. The motion was seconded by Board Member Zukatynski, and the motion passed 5-0 by roll call vote (Ryan, Royer, Bartlett, Jackson, Zukatynski).

Administrative

Board Member Bartlett reported \$224.50 approved wages for the month of May for the Land-Use Boards Clerk, Liane Leahy.

A motion was made by Board Member Jackson to approve meeting minutes of May 13, 2020, as written. 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).

A discussion of MGL Chapter 40A, Section 12, took place in which it states the term of each Board member is five years for five primary members and three associate members with one term expiring each year. Currently Board members have a three-year term with five members and two associate members. The consensus was to fill the vacancy for an associate member and spread the current terms over five years accordingly. It was noted a Board member could resign at any point in time during their term in which case someone would be appointed to fill the remainder of the term.

Chairman Ryan informed the Board re-organization of the Board for FY21 was required. Associate Board Member Roberts took over as temporary Chair. Acting as Chair Ms. Roberts accepted nominations for Chair for FY21. A motion was made by Board Member Jackson to nominate Lynn Ryan. The motion was seconded by Associate Board Member Soucy, and the motion passed 6-0 by roll call vote (Royer, Bartlett, Jackson, Zukatynski, Roberts, Soucy. Ryan voted present).

Ms. Ryan resumed position as Chair and accepted nominations for Vice-Chair for FY21. A motion was made by Associate Board Member Soucy to nominate Jim Royer. The motion was seconded by Associate Member Roberts, and the motion passed 6-0 by roll call vote (Ryan, Bartlett, Jackson, Zukatynski, Roberts, Soucy. Royer voted present).

Chairman Ryan accepted nominations for Clerk for FY21. A motion was made by Board Member Jackson to nominate Dennis Bartlett. The motion was seconded by Board Member Zukatynski, and the motion passed 6-0 by roll call vote (Ryan, Royer, Jackson, Zukatynski, Roberts, Soucy. Bartlett voted present).

Louise Janda of the Conservation Commission reported to the Board all vegetation at 28 Oak Street has taken root and their board is satisfied thus far.

Associate Member Roberts asked about a definition for a contractor yard to be added to the by-laws submitted by the Board for a vote at Annual Town Meeting. Town Administrator, Margaret Nartowicz informed the Board many articles for Annual Town Meeting have been tabled until a possible Special Town Meeting in the fall due to the present social distancing state guidelines.

Motion was made by Board Member Royer to adjourn the meeting. The motion was seconded by Board Member Zukatynski, and the motion passed by roll call vote 7-0 (Ryan, Royer, Bartlett, Jackson, Zukatynski, Roberts, Soucy).

Respectfully submitted by: _____

*Liane Leahy, Clerk for Berlin Zoning Board of Appeals
from notes taken by Associate Board Member Roberts and YouTube recording*