

## **BERLIN ZONING BOARD OF APPEALS**

### **Regular Meeting Minutes**

January 26, 2021

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The Berlin Zoning Board of Appeals met in person on Tuesday, January 26, 2021 at 7:00 p.m. The public was invited to access and participate in this meeting in person, via WebEx videoconference or telephone conference call as provided below.

Join WebEx Meeting:

<https://townofberlin.my.webex.com/townofberlin.my/j.php?MTID=m30523f96c3b020c559e553c4bbea8630>

Meeting number: 132 135 6351

Password: ZBATu700 (92288700 from phones and video systems)

Join by phone +1-408-418-9388 United States Toll Access code: 132 355 5116

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#### **Members Present:**

Antonio Francalangia, Chairman, Leonard Tubbs, Co-Vice Chairman, Sandra Coppola, Secretary, Corey Whiteside, Christine Mazzotta, Alternate, not seated, Ryan Zelek, Alternate, seated

#### **Members Absent:**

Nelson Graca, Co-Vice Chairman, Hunter Mathena, Alternate

#### **Staff Present:**

Maureen Giusti, Acting Town Planner, Adam Levitus, Zoning Enforcement Officer

#### **Call to Order**

Call to order Chairman Francalangia called the meeting to order at 7:00 p.m. He reviewed the protocol for the virtual meeting.

Zoning Enforcement Officer Levitus conducted a roll call.

#### **Public Hearings**

**ZBA #2020-11**

**288 Beckley Road      Map 11-3 Block 132 Lot 9**

aka: 286 Beckley Rd and 55 Ledge Drive

POSTPONED

Carrier Enterprises, LLC is appealing the decision of the Zoning Enforcement Officer dated July 7, 2020, to deny a zoning permit for Building Permit Application for new construction of a single-family house. *(postponed at request of applicant)*

**ZBA #2020-12                      288 Beckley Road                      Map 11-3 Block 132 Lot 9**  
aka: 286 Beckley Rd and 55 Ledge Drive

POSTPONED

Carrier Enterprises, LLC is appealing the decision of the Zoning Enforcement Officer dated August 19, 2020, to deny a zoning permit for Building Permit Application for new construction of a single-family house. *(postponed at request of applicant)*

**ZBA #2021-01                      12 Simms Road                      Map 2-3 Block 9 Lot 1A**

David Lallier (property owner) is requesting a variance for a 6-foot-tall fence in a residential front yard when up to 3 feet tall is permitted in a residential front yard per Berlin Zoning Regulations §IV.B.7. The property is on a corner lot, with the requested variance along Lincoln Street.

David Lallier was in attendance to present the application to the Board. Mr. Lallier noted that Eversource recently took down 90 feet of arborvitae along his property line. The trees were along the property line for 18 years, and they provided a nice natural barrier. He explained that Eversource would not allow for the trees to remain because of the potential for growth over 15-feet. Eversource has agreed to put up a fence along the property line to replace the 90-feet of trees that have been removed. The proposed fence will run from the back of the property line, up to the three small trees in the front of the property. Mr. Lallier noted that the fence would be a good offset for the removal of the trees. He explained that the removal of the trees not only impacts his property, but those of his neighbors along Simms Road and Lincoln Street. The fence would provide privacy. Eversource will purchase and install the 6-foot tall tongue and groove vinyl fence once a permit has been obtained. The Board discussed potential alternatives to a fence, including other species of vegetation. Mr. Lallier explained that Eversource will not allow anything planted that could potentially impact the power lines. Commissioner Coppola inquired about the potential for reducing visibility for drivers. Mr. Lallier noted that the visibility would not be impacted due to the proposed location of the fence. He explained that the fence would be located 55-feet from the corner of Lincoln Street and Simms Road. Commissioner Tubbs inquired about the hardship. Mr. Lallier indicated that Eversource took down 90-feet of arborvitae that was maintained for 18 years. Not only did that impact the privacy of his property and neighbors' properties, but it has also impacted safety. He explained that the fence would provide a safety barrier along Lincoln Street, which is busy.

**Comments in Favor**

There were none.

### **Comments in Opposition**

There were none.

### **Staff**

Mr. Levitus noted that information provided to the ZBA from Eversource, indicating that they are part of the process. He confirmed that there would be no impact to visibility with traffic.

The Board discussed the type of variance requested, inquiring about the need for a setback variance. Mr. Levitus noted that a fence abutting the front yard has a maximum height of 3-feet, and a setback variance would not be needed. Ms. Giusti noted that a fence variance typically refers to height.

Chairman Francalancia moved to close the public hearing. The motion was seconded by Commissioner Tubbs. The motion carried unanimously (Francalancia, Tubbs, Coppola, Whiteside, Zelek).

#### **ZBA #2021-02                      655 Christian Lane                      Map 3-4 Block 76A Lot 1C & Map 3-2 Block 76A Lots 1B-1**

Gerald Antonacci (Manager, Christian Lane Realty, LLC) is requesting a variance for 38% maximum building coverage when up to 35% is permitted in the GI zone per Berlin Zoning Regulations §VII.H. The increase in maximum coverage is requested as part of a proposed 36,900 sq. ft. building addition, truck scale, and scale house project for upgraded technology/equipment at the existing recycling facility. The properties are owned by Christian Lane Realty, LLC.

Mr. Levitus, having consulted with corporation counsel, advised the Board not to open the public hearing as not all abutters were notified in time.

Commissioner Tubbs moved to postpone the application to the next meeting, and the motion was seconded by Commissioner Coppola. The motion carried unanimously (Francalancia, Tubbs, Coppola, Whiteside, Zelek).

#### **ZBA #2021-03                      0 Berlin Turnpike                      Map 10-2 Block 83 Lots 12-7333, 12-7334, 13A, 13C-7609, 13C-7510**

BT 2008 LLC (Peter D'Addeo, Managing Member of D'Addeo Family Limited Liability Company, Member of BT 2008 LLC) is requesting a motor vehicle use location approval for a gasoline filling station per Berlin Zoning Regulations § XI.R. The properties are owned by BT 2008 LLC and the gasoline filling station is being proposed as a component of a proposed mixed-use development.

Peter D'Addeo was in attendance, along with Attorney Peter Alter (Alter & Pierson, Glastonbury, CT) and Project Engineer Matt Bruton (BL Companies)

Attorney Alter noted the purpose of the application, explaining that the applicant was seeking approval for a gasoline filling station as part of a mixed-use development. He noted the location of the property on the westerly side of Berlin Turnpike, totaling 35 acres along the Mattabassett River. The displayed map indicated the proposed location of the filling station as the southerly most portion of the parcel. He explained that the proposed filling station is set apart from the rest of the development, which includes apartments, a hotel, and a retail/bank facility. The filling station will have a convenience store and coffee shop with a drive through.

Attorney Alter discussed the components required for a gasoline filling station per §XI.R of the Berlin Zoning Regulations. He noted that the proposal meets all of the requirements, noting that that the station would be located at least 1500-ft from the nearest filling station.

Attorney Alter noted that Mr. Levitus shared a memo prior to the hearing, and he addressed some of the items. The first item for clarification was regarding the timeline for approval. Attorney Alter explained that the application was currently sitting before the Planning and Zoning Commission, with the next meeting scheduled for February 18<sup>th</sup>. He noted that the Town has retained consultants to review the plan, and the public hearing process would not be finished at the next meeting as this is a significant development with many aspects to it. The Planning and Zoning Commission will need time to hear from the consultants and applicants, as well as a deliberation period.

Attorney Alter noted that if the Board decided not to act, the public hearing would need to left open so the Board could receive information discussed at the Planning and Zoning Commission hearing.

Attorney Alter noted that the gasoline filling station use is permitted in the special overlay zone. He explained that the application was pretty straightforward, and the approval could be subject to the Planning and Zoning Commission approval. It was noted that the project would comply with all regulations.

Attorney Alter addressed Mr. Levitus' memo, noting concern with the dumpster location. He confirmed that the dumpster would be located on the northwesterly pocket of property. It was noted that the dumpsters were cut off on the copies presented. Another comment in the memo indicated concern about the retail display area. Attorney Alter noted that the building would be in compliance with all regulations. He explained that the total square footage of the building is proposed to be 4320 sq. ft., but the retail area would not exceed 2000 sq. ft. The

coffee shop would be another 1000 sq. ft., and the remaining square footage would be used for hallways, restrooms, storage, etc.

Attorney Alter discussed the next steps of the application, requesting that the Board act on the application at the present meeting. He noted that the application could be conditioned on the approval of the Planning and Zoning Commission approval. It was noted that left open, the applicant would continue moving forward with the project under the assumption of eventual approval.

Matt Bruton, Project Engineer, BL Companies, discussed general layout of the property. He noted that there would be two restricted entrances to allow for entrance and exit going southbound. He reiterated Attorney Alter's presentation of a mixed-use development to include a retail/commercial use in the front of the property with a bank and hotel, along with the gasoline filling station. He noted that there would be dedicated parking spaces for the filling station/convenience store. He explained that the residential portion of the project would be located in the rear of the property with 5 carport areas as well as a clubhouse area. Mr. Bruton noted that there would also be a connection to open space and walking trails for use by residents and the public.

Attorney Alter referred to §XI.R of regulations noting that there would be no repair facility on premises, and there would be no outdoor vehicle storage. He noted that the frontage would exceed the requirements of 100-feet, as the front is nearly 300-feet. He noted that all tanks would be stored underground, and fuel pumps would be at the appropriate setback. It was noted that the building setbacks would be met, driveways would comply, and would not be located within 500-ft of a place of public assembly. Additionally, the proposed location is outside of the 1500-ft radius of another filling station. He noted that food service would have to be approved by the Health Department. He reiterated that there would be more than adequate parking.

Chairman Francalanga noted hesitation to do act on the application without having input from the Planning and Zoning Commission, as they are charged with reviewing the overall project. Attorney Alter noted that if the Board were to leave the public hearing open, it would be respected by the applicant. He asked the Board to relay any questions or concerns so that the applicant could fine tune the site plans. Commissioner Tubbs agreed with Chairman Francalanga, explaining that the Planning and Zoning Commission may see a need to reconfigure the layout of the project.

Commissioner Whiteside refocused the discussion to the request for a location approval for the filling station. He noted no issue with conditionally approving the application, so long as the 1500-ft location requirement was met. He noted that the Planning and Zoning Commission

Mr. Levitus expanded on comments made by the Board. He noted the intent of the preamble of Staff comments was merely data for the Board to consider. It was noted that comments have not been received from the consultant. He explained that there are many unknowns at the present time. He also referred to the shape of the lot, noting that lot line adjustments were being made and that the lot lines/configuration currently presented before the ZBA does not yet exist. Ms. Giusti addressed the Board, and noted that the Town has been in contact with Corporation Counsel regarding the third party review of private consultants in regard to the zoning criteria, site design, and engineering. She anticipates some recommended adjustments to the site, which are unknown at the present. It was noted that some of the comments may be applicable to the Zoning Board of Appeals discussion, specifically the dumpster location and lot lines. Environmental concerns would also need to be addressed.

Attorney Alter noted that if any Board member had a specific concern that should be addressed, it would be very helpful to be aware as the project moves forward. Chairman Francalanga suggested that the Planning and Zoning Commission review would likely have a better sense of the evolution of the unified plan. Commissioner Whiteside suggested that any technical issues regarding the site plan (e.g., lot lines) need to be resolved, but that he did not feel any negativity towards the project as a whole. Commissioner Tubbs identified that the process first involves getting approval from the Planning and Zoning Commission as the Board does not currently have all the information and the site plan presented to the Board may change.

Commissioner Tubbs moved to keep the public hearing open until the February meeting, or until the Planning and Zoning Commission comes back with a Site Plan Approval.

Attorney Alter noted that the plan would more than likely not be approved by the February meeting. Mr. Levitus noted that there might be decent feedback provided by the consultants at that time.

The motion was seconded by Commissioner Whiteside.

Economic Development Director Chris Edge noted that the proposed mixed use project is large, and the filling station is an important component. The overall project is located on a commercial piece of land, and it will bring jobs, taxes, and economy to Town. He spoke in favor of the filling station.

The motion carried unanimously (Francalanga, Tubbs, Coppola, Whiteside, Zelek).

## **Old Business**

**ZBA #2020-11                      288 Beckley Road                      Map 11-3 Block 132 Lot 9**

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Commissioner Coppola discussed her first-hand knowledge of restrictions imposed by Eversource. She explained that they will not allow foliage to be planted in the right of way of the power lines. She noted that she has read through documentation. She explained that the arborvitae have been maintained for 18 years, but the rules have changed, which is a hardship. She noted that the proposed fence is good quality and being put in with a cement post, so it won't blow over. The other fence on the property is well-maintained, so it would be more than likely be maintained.

Commissioner Whiteside noted that the maintenance would be in the purview of the ZEO. Commissioners Francalangia and Tubbs discussed previous variances granted for corner lots. It was also discussed that this particular corner lot is unique in that there is an Eversource easement and right of way.

Commissioner Coppola moved to approve the 6-ft variance for 90-ft of proposed fence, as proposed in the construction detail in the letter from Eversource, which includes a vinyl tongue and groove board fence with concrete footings. Commissioner Whiteside seconded the motion. The motion carried with a vote of 4-1-0 (Francalangia, Coppola, Whiteside Zelek in favor; Tubbs opposed).

**ZBA #2021-02                      655 Christian Lane                      Map 3-4 Block 76A Lot 1C &  
Map 3-2 Block 76A Lots 1B-1**

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**Approval of Minutes**

October 27, 2020 (Francalangia, Mazzotta, Whiteside, Coppola, Zelek)

Chairman Francalangia move to postpone the approval of minutes to the next meeting, seconded by Commissioner Whiteside. The motion carried unanimously.

Commissioner Tubbs discussed car storage at Kensington Family Auto on Farmington Avenue. Ms. Giusti noted that there are a number of open court cases, and they will be reviewed with Corporation Counsel. She explained that Kensington Family Auto is in the mix, but there is a major backlog of court cases and violations.

**Adjournment**

Commissioner Tubbs moved to adjourn the meeting. The motion was seconded by Commissioner Coppola, and it carried unanimously. The time was 8:49 p.m.

Respectfully submitted,

Kristen Deliman Grabowski  
Recording Secretary