

**BERLIN ZONING BOARD OF APPEALS  
REGULAR MEETING**

February 25, 2020

Berlin Town Hall

7:00 p.m.

Town Council Chambers  
Chambers

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**Members Present**

Antonio Francalanga, Chairman, Nelson Graca, Co-Vice Chairman, Leonard Tubbs, Co-Vice Chairman, Corey Whiteside, Sandra Coppola, Secretary, Ryan Zelek, Alternate

**Members Absent**

Christine Mazzotta (alternate), Hunter Mathena (alternate)

**Staff Present**

Maureen Giusti, Zoning Enforcement Office/Town Planner

**Call to order**

Chairman Francalanga called the meeting to order at 7:00 pm

**Election of Officers**

Commissioner Whiteside made a motion to nominate Antonio Francalanga as Chairman, Nelson Graca as Co-Chairman, Leonard Tubbs as Co-Chairman and Sandra Coppola as Secretary seconded by Sandra Coppola, passed unanimously.

**Audience of citizens**

None

**Public Hearings:**

**1005 Kensington Road, Map 21-1/Block73/Lot 15**

Remand issued by Superior Court in the matter of Liam T. Mitchell, et al. v. Berlin Zoning Board of Appeals concerning the Board's denial of the plaintiffs' appeal of a Cease and Desist Order issued by the Zoning Enforcement Officer for an unauthorized basement apartment in the R-43 zone per Berlin Zoning Regulations § XV.A.1.

**Continued to April 2020 meeting or Special Meeting.**

Corporation Counsel, Jennifer Coppola, was present and explained to the Board that in conference with opposing counsel they agree to request the remand be continued.

Chairman Francalanga made a motion to continue proposal to April 28, 2020 or Special Meeting, seconded by Commissioner Tubbs, passed unanimously.

**ZBA #2020-01      208 Stockings Brook Road, Map 19-3 Block 15 Lot 48**

Eugene Palazzolo, Garian Property Management, is requesting a variance to maintain the existing side yard setback of 30+/- feet when 50 feet is required per Berlin Zoning Regulations § V.A.10 in the R-86 zone, to allow an existing 22 ft. x 14 ft. unpermitted screened porch on the northwest rear of the existing attached garage to remain. The property is owned by Federal National Mortgage Association.

**Tabled until next meeting.**

**ZBA #2020-02      24 New Park Drive, Map 21-4 Block 153 Lot 12A**

Adam Speeg is requesting a Sales of Alcoholic Beverages Location Approval for Manufacturer for Beer and Brew Pub Liquor Permit for Skulls Brew House in the PI zone per Berlin Zoning Regulations §XI.B. The property is owned by Cariati Family Limited Partnership.

The Planning and Zoning Commission approved a text amendment to regulate Brew-Pub uses as a special permit use in the PI zone effective 11/22/2018. The applicant has applied to the Planning and Zoning Commission with an anticipated hearing date of March 5, 2020.

Adam Speeg is a Meriden resident. He is proposing the manufacturing and sales of beer as well as a tap room. He is proposing limited entertainment such as an acoustics, disc jockey, live band comedian or karaoke. He has been home brewing for nine years. He also did brew for a few months at another in state brewery. This is a long-time hobby of his. He has eight or so rotating flagships in the works. At this point he doesn't plan to distribute. He would like to entertain with food trucks. This will start as a weekend brewery. Capacity will be at 45-50 seats.

**Staff Comments**

The sale of alcoholic beverages regulations, Section XI.B. (as amended effective 10-1-2014) specifically list criteria that needs to be met to allow the location approval. Staff has reviewed the criteria and has found no outstanding items. §IX.B.2 exempts brew pubs from the distance requirement to another location with an on-premises permit. None of the uses listed in §IX.B.1.c. were found within 500 feet. The attached map shows approximate 500-foot distances from the entrance area.

The applicant has indicated to staff that they expect their footprint within the building to expand as they become successful.

The applicant has provided the cover page of the State Application for On-Premises Liquor Permit which includes:

1. Live Entertainment for: Acoustics, Disc Jockeys, Live Bands, Comedians and, Karaoke.
2. No patio area.

**Zoning Requirements**

§XI.B requires ZBA location approval for the sale of alcoholic beverages.

**Comments in Favor**

Chris edge reported that most breweries in the state are in industrial areas. There is ample parking. He has a great following. The building has been vacant for a long time. He hopes that this business will be successful.

**Comments in Opposition**

None

Commissioner Zelek moved to close the public hearing seconded by Co-Chairman Tubbs. The motion carried unanimously.

**ZBA #2020-03      74 Peter Parley Row, Map 16-3 Block 114 Lot 7**

Tim Kontogouris, PKON LLC is requesting a variance of 8 feet for a front yard setback of 27 feet when 35 feet is required in the R-15 zone per Berlin Zoning Regulations §V.A.10. for a second-floor addition over an existing house. The property is owned by Scott K. Henderson.

Tim Kontogouris is proposing an upward addition of three bedrooms a bathroom on the existing 1.5 story footprint. This would be adding approximately 800 square feet to the property. The house was built in 1954 with a 27-foot setback.

Maureen Giusti reported that there is an extension of the home on the first floor that will not be in the footprint of the second-floor addition. She has found that several homes in the row seem to fall at approximately the same nonconforming setback.

**Comments in Favor**

Mr. Henderson reported that he has had an addition to his family. He noted the 2<sup>nd</sup> floor headroom is insufficient and hazardous with the sloped ceilings and they are in need of more room. He would like to stay Town of Berlin and hopes this proposal will be approved.

**Comments in Opposition**

None

**Staff Comments**

None

**Staff Comments**

The proposed second floor addition is over the cape style original house structure, with no increase to the single story 14 ft x 12 ft extension on the west side, therefore the proposed addition will meet the currently required side and rear setbacks.

**Zoning Requirements:**

§V.A.10. Front Yard-Required: 35 Existing Nonconforming: 27.4 ft. Proposed: 27.4 ft for 2<sup>nd</sup> floor.

Commissioner Zelek moved to close the public hearing seconded by Co-Chairman Tubbs. The motion carried unanimously.

**ZBA #2020-04      1128 Farmington Avenue, Map 9-4 Block 91 Lot 2-1**

Seven Moons LLC is requesting a Sales of Alcoholic Beverages Location Approval for an On-Premises Restaurant Beer & Wine Liquor Permit for Seven Moons restaurant per Berlin Zoning Regulations §XI.B. The property is owned by CHR Berlin LLC.

Attorney Silver reported the previous owner received a beer and wine approval permit. He explained this is a new Thai restaurant in the space previously occupied by Ramen Ya restaurant.

The previous restaurant obtained ZBA approval for a beer-wine permit for on premises sales on 5-30-2017. This restaurant has received zoning compliance and opened a few weeks ago. They request the same type of liquor permit.

**Zoning Requirements**

§XI.B. Sale of alcoholic beverages.

**Staff Comments**

Conditions remain the same with no uses identified in §XI.B.1.c., requiring a 500 ft separation, being identified. No changes to the site are proposed by this application.

The submitted State On-Premises Liquor Permit application for a Restaurant Wine-Beer Permit indicates no patio and no entertainment is proposed.

**Comments in Favor**

Chris Edge reported this is a great addition to the community.

**Comments in Opposition**

None

Chairman Francalangia moved to close the public hearing seconded by Co-Chairman Tubbs. The motion carried unanimously.

**ZBA #2020-05      38 Pajor Hill Road, Map 10-1 Block 76A Lot 11A**

Dave and Debbie Mangone are requesting a variance for a side yard of 7 feet when 25 feet is required in the GI-2 zone per Berlin Zoning Regulations §VII.H. for a garage and greenhouse addition on a single-family house. The property is owned by David J. Mangone.

Co Chairman Tubbs recused himself. Seated Zelek

Mr. & Mrs. Mangone reported that their family has grown. They would like a second garage and greenhouse. There is a new gym place that has opened in the past year in back of their property. Since the opening of the gym, there has been footprints on their property as well as tire marks out to their driveway. The homeowners would like to secure both their cars in a garage at night.

Maureen Giusti reported the house was built in the 1960's in a residential zone. Since then the zoning has changed to an industrial zone. She explained the property is a nonconforming use, and an interior lot. The front is on Pajor Hill Road, a private driveway which is on the land of the abutting residential property. She noted the Planning and Zoning Commission is charged with allowing an increase in square footage to the nonconforming use and did so at their February 6, 2020 meeting. There is a septic to the rear of the existing deck and the Health district has confirmed that the proposed addition as staked would just meet their required setback from the system.

**Comments in Favor**

Dave Mangone, the home owners brother would appreciate the support of this board to approve the proposal in order to secure the property of the homeowner. He noted their grandparents were the original owners and the zoning was changed.

Chris Edge reported that he is in favor of this proposal since the zoning has changed and the gym has brought in traffic for the homeowner.

**Comments in Opposition**

None

Chairman Francalangia moved to close the public hearing seconded by Commissioner Whiteside. The motion carried unanimously.

**Regular Meeting:**

**ZBA #2020-02      24 New Park Drive, Map 21-4 Block 153 Lot 12A**

Adam Speeg is requesting a Sales of Alcoholic Beverages Location Approval for Manufacturer for Beer and Brew Pub Liquor Permit for Skulls Brew House in the PI zone per Berlin Zoning Regulations §XI.B. The property is owned by Cariati Family Limited Partnership.

Commissioner Tubbs made a motion to approve the proposed application, seconded by Commissioner Zelek.

The motion carried unanimously.

- Noted – No patio was proposed.

**ZBA #2020-03      74 Peter Parley Row, Map 16-3 Block 114 Lot 7**

Tim Kontogouris, PKON LLC is requesting a variance of 8 feet for a front yard setback of 27 feet when 35 feet is required in the R-15 zone per Berlin Zoning Regulations §V.A.10. for a second-floor addition over an existing house. The property is owned by Scott K. Henderson.

**Chairman Francalangia made a motion to approve the proposed application, seconded by Commissioner Graca.**

**The motion carried unanimously.**

**ZBA #2020-04      1128 Farmington Avenue, Map 9-4 Block 91 Lot 2-1**

Seven Moons LLC is requesting a Sales of Alcoholic Beverages Location Approval for an On-Premises Restaurant Beer & Wine Liquor Permit for Seven Moons restaurant per Berlin Zoning Regulations §XI.B. The property is owned by CHR Berlin LLC.

**Commissioner Graca made a motion to approve the proposed application, seconded by Commissioner Coppola, passed unanimously.**

**ZBA #2020-05      38 Pajor Hill Road, Map 10-1 Block 76A Lot 11A**

Dave and Debbie Mangone are requesting a variance for a side yard of 7 feet when 25 feet is required in the GI-2 zone per Berlin Zoning Regulations §VII.H. for a garage and greenhouse addition on a single-family house. The property is owned by David J. Mangone.

Commissioner Graca made a motion to approve the proposed application, seconded by Commissioner Coppola, passed unanimously.

Noted Co-Chairman Tubbs recused himself from his vote and seated Commissioner Zelek.

**Board Business**

CFPZA annual conference to be held March 26, 2020

Maureen Giusti reported that property 60 Woodlawn did not have his LLC when he applied. He has

**Approval of Minutes:**

July 23, 2019 (Francalangia, Tubbs, Coppola, Zelek, Mazzotto)

Chairman Francalangia moved to approve the minutes of July 23, 2019, seconded by Commissioner Coppola.

The motion carried out unanimously.

September 24, 2019 (Francalangia, Tubbs, Graca, Whiteside, Zelek)

Commissioner Graca moved to approve the minutes of September 24, 2019, seconded by Chairman Francalangia. The motion carried out unanimously.

November 26, 2019 (Francalangia, Tubbs, Coppola, Zelek)

Chairman Francalangia moved to approve the minutes of November 26, 2019 seconded by Commissioner Coppola.

The motion carried out unanimously.

December 9, 2019 (Francalangia, Tubbs, Coppola, Zelek)

Chairman Francalangia moved to approve the minutes of December 9, 2019, seconded by Commissioner Coppola.

The motion carried out unanimously

### **Adjournment**

Commissioner Zelek moved to adjourn the meeting, seconded by Co-Chairman Graca. The motion carried unanimously.

The time was 8:00 pm

Respectfully submitted

Marlo Matassa  
Recording Secretary

**Berlin Zoning Board of Appeals  
Regular Meeting Minutes – April 28, 2020**

**I. Call to Order**

The Berlin Zoning Board of Appeals held a r meeting on April 28, 2020. The meeting was called to order at 7:07 p.m.

In attendance

Chairman Anthony Francalangia

Co-Chairman Leonard Tubbs

Commissioner Nelson Graca

Commissioner Corey Whiteside

Alternate Commissioner Ryan Zelek (seated for applications #2020-01 and 2020-06)

Alternate Commissioner Hunter Mathena (seated for applications #2020-07 and 2020-08)

Acting Town Planner/Zoning Enforcement Officer Maureen Giusti

Absent

Commissioner Sandra Coppola

Alternate Commissioner Christine Mazzotta

**II. Public Hearings**

**a. ZBA #2020-01 208 Stockings Brook Road, Map 19-3 Block 15 Lot 48**

Eugene Palazzolo, Garian Property Management, is requesting a variance to maintain the existing side yard setback of 30+/- feet when 50 feet is required per Berlin Zoning Regulations § V.A.10 in the R-86 zone, to allow an existing 22 ft. x 14 ft. unpermitted screened porch on the northwest rear of the existing attached garage to remain. The property is owned by Federal National Mortgage Association

Mr. Eugene Palazzolo, Project Manager, Garian Property Management, stated the home is a designated "Fannie Mae" home which is being rehabilitated. The work is "90% cosmetic". A 600-foot deck is extremely unsafe and will be demolished. When a demolition permit was in the process of being obtained from the town, it was found that a permit had never been approved for the deck or the porch. They would like to remove the deck and leave the screened in porch which is in good condition. He stated he has written permission to represent Fannie Mae, Dallas, in the matter. He stated after the deck is removed, stairs to the porch may be added and both the porch and stairs will be within the required setbacks.

Ms. Giusti stated the stairs will meet setbacks and the screened porch, constructed without a permit, is the matter at hand.

Mr. Palazzolo stated the porch is structurally excellent, as is the roof tied into the garage.

Ms. Giusti stated the home is part of the “Brookview Hills Subdivision” established in 1962. The zoning for this area was changed and is now an R-86 zone. The property, 209 Stockings Brook Road, is a ¾ acre parcel which means the garage is currently an existing structure with a non-conforming setback.

Mr. Palazzolo agreed that an inspection of the unpermitted porch will be needed.

Ms. Giusti stated inspection as part of obtaining a permit.

Commissioner Tubbs moved to close the hearing.

Commissioner Graca seconded the motion.

Ms. Giusti polled the Board:

Voting Aye: Commissioners Tubbs, Whiteside, Graca, Zelek, Francalancia

The motion carried unanimously.

**b. ZBA #2020-06 Cynthia Drive, Map 9-3 Block 90 Lot 4D**

Kevin and Jill Heslin are requesting a variance of 4 feet for a side yard setback of 6 feet when 10 feet is required in the R-11 zone per Berlin Zoning Regulations §V.B.5. for garage and living space additions. The property is owned by Jill C Heslin

Both Kevin and Jill Heslin were in attendance at this virtual meeting.

Mr. Heslin stated they would like to build a garage with a master suite above it. The plans have been drawn by an architect. He stated although the variance is actually 3-1/2 feet, he had been advised to request 4 feet. The garage is being built so cars may be stored off the street for safety and security from theft.

Mr. Heslin stated five steps are needed for the proposed two car garage into the house; however, it would mean the steps push the usable garage area into the setback. Other possibilities were discussed, including changing the elevation of the garage which would not be possible due to the steepness to get into the garage.

Ms. Giusti clarified it is standard to “round up” to a whole foot for a variance and that is why the application states four feet instead of the actual three and a half feet. She stated the original house plan seems to have been sited to allow for a one car garage.

Commissioner Graca moved to close the hearing.

Commissioner Tubbs seconded the motion.

Ms. Giusti polled the Board:

Voting Aye: Commissioners Tubbs, Whiteside, Graca, Zelek, Francalancia



The motion carried unanimously

Alternate Commissioner Ryan Zelek relinquished his seat.

Alternate Commissioner Hunter Mathena was seated for the next two applications.

**c. ZBA #2020-07 50 Butternut Lane, Map 8-1 Block 29 Lot 84**

Hoa T. Nguyen, Esq. is appealing the decision of the Zoning Enforcement Officer to issue a Cease and Desist Order to Karen Hoang, owner, dated 3/5/2020 per Berlin Zoning Regulations §XV, regarding the keeping of chickens/poultry at the residential property in the R-15 zone

Attorney Nguyen stated Ms. Hoang was also online at this virtual meeting. He stated he and his client agree that she does not own a “farm” as defined in the zoning regulations. The property is on .35 of an acre. He stated the pivotal issue is that she is not keeping livestock or fowl. She does not sell the chickens or eggs. He stated his case is clear that she is keeping pets and is not in pursuit of agricultural activity. There is no profit for her keeping the chickens. He submitted various published articles, including those from the Los Angeles Times, Good Housekeeping, and New Hampshire and New York publications which defined chickens as pets.

Ms. Hoang, property owner, stated she has been a Berlin resident for approximately 11 years. She stated she was not told by the store owner who sold her the chickens that she could not keep them on her property. She stated her opinion most parcels in Berlin are not ten acres, the required number of acres to keep chickens. She stated she has a predator proof coop and a fenced in yard. She feeds the chickens organic food and gives the eggs to friends and family members. She stated the chickens provide an educational benefit for her children.

Ms. Giusti noted, for clarification, and apologized that the order of the articles submitted by Attorney Nguyen seem to have gotten mixed up in the printing and uploading.

Attorney Nguyen clarified a submitted ordinance was from Concord, New Hampshire, not Berlin. He stated that ordinance had been submitted in conjunction with other articles to show other jurisdiction recognize chickens as pets. He stated when poultry or fowl is mentioned in the Berlin regulations, it is always related to the pursuit of an agricultural interest.

In response to Commissioner Whiteside’s stating the task at hand is to determine if the Cease and Desist Order had been properly served. Chairman Francalangia responded that it had been properly served. Commissioner Whiteside stated the application before the Board is not a variance to allow the keeping of chickens but only to determine if the Cease and Desist Order had been properly served.

Ms. Giusti stated the applicant’s home is a single-family home located in the Residential 15 zone. Complaints have been received about the chickens. Prior to the adoption of the Agricultural Regulations in 2016, regulations were in place for “keeping of animals” which required three acres and Zoning Board of Appeals approval. She read related sections of zoning regulations into the record. She stated the Agricultural Regulations had been addressed in public hearings and re-writes, noting that the public can always submit a proposal to amend a regulation

if unhappy with the adopted regulation. She stated pets are usually domesticated pets kept within a home.

Attorney Nguyen stated it is their opinion the regulation doesn't apply as the property is not a farm nor is the applicant in pursuit of agricultural activity.

Commissioner Tubbs stated the Board's decision is to determine if the Cease and Desist Order had been properly served, not to allow chickens or not.

Attorney Nguyen stated this is a threshold matter and it should be determined if the process is correct.

Commissioner Mathena stated the Board's decision is to determine if the Cease and Desist Order had been served with current regulations and not to judge the fairness of those regulations.

Attorney Nguyen stated it is their contention there is no violation and there is no agricultural use in this case.

Ms. Hoang noted she has six chickens which are outside most of the time. They do come into the house. When they were young, up to two months old, they did stay inside the house.

Commissioner Graca moved to close the hearing.

Commissioner Whiteside seconded the motion.

Ms. Giusti polled the Board:

Voting Aye: Commissioners Tubbs, Whiteside, Graca, Mathena, Francalangia

The motion carried unanimously

**d. ZBA #2020-08 125 Wethersfield Road, Map 10-2 Block 126 Lot 2A**

Richard Megos is requesting a variance of front yard setbacks on for a second-floor dormer and front porch roof extension in the required setback per Berlin Zoning Regulations §V.A.10 at an existing single-family dwelling in the R-21 zone

Mr. Megos stated he would like a roof installed over his front steps as exposure to the elements has damaged the steps. Mr. Megos stated he has a prosthetic leg, and the roof will improve the safety of the entrance, as well as improve the aesthetics of the house. He would also like to add a dormer on the back of the house as the upstairs room is not designed well and cannot function for use or placement of furniture.

Ms. Giusti stated there are actually two variances. One is for the full shed dormer and the other is to add a roof over the entry steps. Only a small portion of the new porch roof would encroach on the setback due to the angling of how the house is sited on the property.

Speaker

Mr. Wallace Suffish, 117 Wethersfield Road, spoke in favor of the application, stating the house is being “beautifully” restored from its prior condition.

Commissioner Tubbs moved to close the hearing.

Commissioner Mathena seconded the motion.

Ms. Giusti polled the Board:

Voting Aye: Commissioners Tubbs, Whiteside, Graca, Zelek, Francalangia

The motion carried unanimously

Commissioner Mathena relinquished his seat for the following two applications.  
Commissioner Zelek was seated.

**III Regular Meeting**

**a. ZBA #2020-01 208 Stockings Brook Road, Map 19-3 Block 15 Lot 48**

Eugene Palazzolo, Garian Property Management, is requesting a variance to maintain the existing side yard setback of 30+/- feet when 50 feet is required per Berlin Zoning Regulations § V.A.10 in the R-86 zone, to allow an existing 22 ft. x 14 ft. unpermitted screened porch on the northwest rear of the existing attached garage to remain. The property is owned by Federal National Mortgage Association

Commissioner Tubbs moved to approve the request for this application.

Commissioner Graca seconded the motion.

Discussion

Ms. Giusti polled the Board for comments:

Commissioners Tubbs, Whiteside, Graca, Zelek, Francalangia

Commissioner Graca commented the property should be inspected prior to approval of permits.

Ms. Giusti polled the Board for a vote for the motion:

Voting Aye: Commissioners Tubbs, Whiteside, Graca, Zelek, Francalangia

The motion carried unanimously.

**b. ZBA #2020-06 Cynthia Drive, Map 9-3 Block 90 Lot 4D**

Kevin and Jill Heslin are requesting a variance of 4 feet for a side yard setback of 6 feet when 10 feet is required in the R-11 zone per Berlin Zoning Regulations §V.B.5. for garage and living space additions. The property is owned by Jill C Heslin

Commissioner Graca moved to approve the request for this application.

Commissioner Tubbs seconded the motion.

Discussion

Ms. Giusti polled the Board for comments and vote:

Voting Aye: Commissioners Tubbs, Whiteside, Graca, Zelek, Francalangia

Commissioner Tubbs commented other alternatives are not an option; security for the property is a plus and its consistent with the neighborhood.

The motion carried unanimously.

Commissioner Zelek relinquished his seat.

Commissioner Mathena was seated.

**c. ZBA #2020-07 50 Butternut Lane, Map 8-1 Block 29 Lot 84**

Hoa T. Nguyen, Esq. is appealing the decision of the Zoning Enforcement Officer to issue a Cease and Desist Order to Karen Hoang, owner, dated 3/5/2020 per Berlin Zoning Regulations §XV, regarding the keeping of chickens/poultry at the residential property in the R-15 zone

Chairman Francalangia moved to approve the decision of the Zoning Enforcement Officer to issue the Cease and Desist Order.

Commissioner Tubbs seconded the motion.

Discussion and Vote

Voting in Favor: Commissioners Tubbs, Whiteside, Graca, Mathena, Francalangia

Commissioner Whiteside stated the interpretation is correct and upheld the Zoning Officer's issuing the Cease and Desist Order.

Commissioner Mathena stated the interpretation is correct.

Commissioner Francalangia stated the interpretation is correct based on current regulations:

Commissioner Tubbs stated the interpretation is correct.

Commission Graca agreed with the Zoning Enforcement Officer's interpretation;

The motion carried unanimously. The enforcement order is upheld.

**d. ZBA #2020-08 125 Wethersfield Road, Map 10-2 Block 126 Lot 2A**

e. Richard Megos is requesting a variance of front yard setbacks on for a second-floor dormer and front porch roof extension in the required setback per Berlin Zoning Regulations §V.A.10 at an existing single-family dwelling in the R-21 zone

1<sup>st</sup> Variance – Porch roof extension (Wethersfield Road)

Discussion and Vote

Chairman Francalangia moved to approve the variance.  
Commissioner Whiteside seconded the motion.

Voting in Favor:

Commissioner Tubbs stated the work would improve the safety of the entry bringing it up to the standards it should be, as well as the aesthetics of the house.

Commissioner Graca stated it would be a positive addition to the home, as well as the neighborhood.

Commissioner Whiteside stated his approval of the proposal and support of neighbor

Commissioner Mathena stated his agreement with the hardship and the improvement would benefit the safety of the owner.

Chairman Francalangia stated the applicant had stated a true hardship.

The motion carried unanimously.

2<sup>nd</sup> Variance – Dormer Addition

Discussion and Vote

Chairman Francalangia moved to approve the variance.  
Commissioner Whiteside seconded the motion.

Voting in Favor:

Commissioner Tubbs said the proposal is staying within the original footprint.

Commissioner Graca stated the proposal will enhance the look of the house.

Commissioner Whiteside stated his agreement.

Commissioner Mathena stated his agreement with the hardship.

Chairman Francalangia stated the proposal will stay within the footprint of the house.

The motion carried unanimously.

**IV Approval of Minutes**

No action taken.

Commissioner Mathena relinquished his seat.

Commissioner Zelek was re-seated.

**V Adjourment**

Having no additional business to come properly before the Board, Commissioner Tubbs moved to adjourn. Commissioner Graca seconded the motion.

Voting Aye: Commissioner Tubbs, Graca, Whiteside, Zelek, Messina, Francalangia.

The time was 8:57 p.m.

Respectfully submitted,

Frances M. Semnoski

Acting Recording Secretary

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**BERLIN ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES**

**June 23, 2020  
7:00 p.m.**

**Berlin Town Hall  
Virtual Meeting**

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**Members Present**

Antonio Francalangia, Chairman  
Leonard Tubbs, Co Vice-Chairman  
Nelson Graca, Co Vice-Chairman

Corey Whiteside  
Ryan Zelek, Alternate (seated)

**Members Absent**

Sandra Coppola, Secretary  
Christine Mazzotta, Alternate  
Hunter Mathena

**Staff Present**

Maureen Giusti, Acting Town Planner/ZEO  
Attorney Jennifer Coppola, Corporation Counsel  
Kristen Grabowski, Recording Secretary

**I. Call to Order**

Chairman Francalangia called the meeting to order at 7:05. He discussed the protocol for the virtual meeting. Ms. Giusti conducted a roll call for the meeting.

Commissioner Francalangia moved to begin Executive Session with Corporation Counsel Jennifer Coppola. Commissioner Graca seconded the motion, which carried unanimously. It was noted that the Executive Session would be held on a different line. Ms. Giusti noted that the line would remain active for the audience.

**II. Executive Session:**

1. Discuss the status of the pending litigation of Liam T. Mitchell, et al. v. Berlin Zoning Board of Appeals, and possible action relating to same.
2. Consider whether to convene in executive session to discuss the status of the pending litigation of Liam T. Mitchell, et al. v. Berlin Zoning Board of Appeals.

Chairman Francalangia moved to come out of Executive Session. The motion was seconded by Commissioner Tubbs, and it carried unanimously.

The Board came out of Executive Session at 7:43 p.m.

Atty. Coppola noted the Ms. Giusti was not present at the Executive Session.

**III. Public Hearings:**

**ZBA #2020-09      1104 High Road, Map 14-1, Block 51, Lot 9**

Terry and Robin Grant are requesting a variance of 15 feet for a front setback of 24 feet when 40 feet is required and a variance of 4 feet for a side yard of 21 feet with total side

yards of 40 feet when 45 feet is required in the R-21 zone per Berlin Zoning Regulations Section V.A.10. for an attached garage. The property is owned by Robin E. and Terrence C. Grant.

Ms. Giusti noted that Commissioner Zelek (alternate) was seated for this application.

Robin Grant was on the line to present the application to the Board. Chairman Francalanga reiterated the meeting process, noting that new information must be presented during the public hearing portion of the meeting.

Ms. Grant gave a brief history of the property, noting that she purchased the house in 2000, with the intention of putting a garage on the right side of the house. She explained that there is a sewer easement on the property, which she was not aware of when she purchased the home. The easement was purchased shortly before she purchased the house. Throughout the years, she has tried to figure out a different place to put the garage on the property, but she has been unsuccessful in doing so. After getting married in 2010, the discussion about the garage began again, and rather than sell the house, she and her husband decided that it would be best to put a garage on the property. They've purchased a shed to increase storage, but it is not adequate. Ms. Grant noted that she has spoken with Maureen, and they have tried to figure out an alternate location for the garage, but the proposed location is the only feasible place on the property. Ms. Grant explained the need for a garage, noting that she and her husband would like a two-car garage with a mudroom. She explained the purpose of the mudroom would also include storage, as the house has virtually not storage at all. It was also noted that the basement is damp, so it cannot be used for storage. Ms. Grant summarized, reiterating that there is nowhere else for the garage to go on the property, especially because of the sewer easement to the right of the house.

Chairman Francalanga noted the size of the garage, indicating that a 1,200 sq. ft. garage seems large. He asked if that much room was needed for the garage, suggesting that it might be possible to reduce the size a bit to cut back on the exposure on the front property line. Ms. Grant noted that prior to finalizing these plans, they tried many things. She explained that they have a small business, so the left side of the garage includes a small work area, as well as a mudroom connected to the house. She explained that they did try to cut it back, and they shrunk the mudroom a bit. She reiterated the lack of storage in the house and need for extra space. Ms. Grant noted that she thought the variance was for 9-ft.

Chairman Francalanga noted that the variance request is for 16-ft, and that the setback is 40-ft. He explained that the proposed garage is 24-ft from the property line. He expressed concern about traffic, and the potential for cars to veer off the road, hitting the garage.

Ms. Grant noted that they've tried to cut back on the mudroom, noting the standard size of a garage is 24-ft by 30-ft. She explained that the extra 6-ft would help with the business, especially to hold tools and parts needed.



Commissioner Tubbs inquired about the type of business being run out of the home. Ms. Grant explained that they have a home heating business that provides service work, but they don't deliver oil. Commissioner Tubbs asked if they were looking for a warehouse, and Ms. Grant noted that the garage area would store a hand truck (one motorized and one standard), parts, and some transformers, but nothing major. Ms. Grant explained that the tools and materials stored would be needed for a job, but nothing that would be on display for purchase. Commissioner Whiteside noted that the business could be a potential zoning concern.

Ms. Giusti interjected, noting that the only type of home occupation allowed would be included in the home occupation regulations. She explained that she was unaware that the garage would be used for any type of business. Ms. Giusti noted that she would have to look into whether or not they would be able to meet the home occupation regulations. It would be zoning matter that has to be dealt with.

Ms. Grant noted that most supplies are kept in the truck, but the garage would be used to store the hand trucks.

Chairman Frangalancia discussed the size of the garage, once again. He explained that his small three-car garage is 23-ft by 30-ft., with about 800 sq. ft. of space is smaller than the proposed two-car garage. He inquired again as to whether that much space would be necessary, as the proposal includes 1,200 sq. ft. of space at 40-ft wide and 30-ft deep. He explained that the 40-ft was not as big of concern because of the side yard, but the 30-ft comes into the front yard quite a bit. Commissioner Whiteside noted that there is a variance request for both the front and side yard setbacks.

Ms. Grant noted that it might be possible to cut the garage back from 40-ft to 35-ft. Commissioner Tubbs noted that if the applicant stayed within the front yard setback, there would still be a 24-ft deep garage. He noted that size as bigger than most garages. Ms. Grant explained that part of the depth includes a mudroom, which is 10-ft that is part of the 40-ft mark. She explained that the 40-ft is not only the garage. Chairman Francalancia noted that even if that garage was 30-ft by 30-ft, it would still encroach on the setback, but the garage would be 10-ft farther from the road. Ms. Grant reviewed the plans, and she noted that if the garage was 34-ft instead of 40-ft, it would end up being a 30-ft setback. Chairman Francalancia noted that it would be more reasonable.

Ms. Giusti noted that she would review the parameters of the home occupation rules with the applicants separately, and make sure that whatever business is conducted in the home meets the requirements of Section XI.F.

Ms. Grant confirmed potential plan revisions, noting that instead of a 40-ft garage, it would be 34-ft. Chairman Francalancia noted that the revised plans would have to show a 34-ft by 30-ft garage. Ms. Grant noted that the garage would be 24-ft by 30-ft because of the 10-ft mudroom.

Commissioner Graca noted that the application could be pushed to another meeting so that new plans could be reviewed.

Chairman Francalangia discussed the dimensions again, noting that a 30-ft by 30-ft structure would allow for plenty of room for a mudroom. Ms. Grant explained that layout of the proposed structure, noting that the mudroom is toward front of the structure. As noted in the plans, it is part of the 40-ft going out. She noted that the mudroom is 10-ft, and the garage is 24-ft, so the structure would be 34-ft out toward the road. The garage would then be 30-ft from the road instead of 24-ft from the road.

Commissioner Graca noted that if the proposed size is what the applicant would like, then the Board could vote on it as it stands. He noted that the hardship of the case was not clearly presented. Ms. Grant noted that the garage could not be put anywhere else. Chairman Francalangia noted that the home business could present more problems. Commissioner Graca noted concerns about the potential business use in relation to the hardship. Ms. Grant reiterated that the elimination of the 6-ft from the plans, took away any storage for the business, leaving the two-car garage and the 10-ft mudroom.

Commissioner Graca expressed concerns about voting on revised plans without having an opportunity to view them first. Ms. Grant noted that they could have new plans drawn up to reflect at 34-ft by 30-ft addition. She noted concerns about potentially being denied even after having revised plans drawn up.

Chairman Francalangia noted that the Board could vote on the existing plan with an amendment to cut it back 6-ft. He continued, noting concerns about the business.

Ms. Giusti reiterated that home occupation can only be utilized if the parameters are met, including a business office. She noted that the space would have to be within the existing home. She continued, stating that it could be addressed as a separate issue, provided that the square footage of the garage is not such that it encourages the expansion of the business.

Commissioner Tubbs noted that the 1000 sq. ft. garage is very large. She noted that the garage space is only 24-ft by 30-ft, with a 10-ft mudroom added on. Commissioner Whiteside noted that amended plans would require a 10-ft variance on the side, and the back would require a 2-ft variance.

Commissioner Whiteside reiterated that a clear hardship was not defined or articulate during the presentation. Ms. Grant noted that the garage cannot be put anywhere else on the property.

Chairman Francalangia noted that if the garage was 24-ft deep and 28-ft wide, a variance would not be necessary. Ms. Grant clarified the need for additional storage in the mudroom, explaining that the basement is wet and moldy, eliminating that as a possibility for storage.

Chairman Francalangia inquired about an upper level. Ms. Grant confirmed. Ms. Giusti referred to the floor plans, pointing out the staircase to the upper level. Chairman Francalangia noted the possibility for storage on the second level of the garage. Commissioner Tubbs noted that by cutting

off the 6-ft (to 34-ft), it would be difficult to get a car in there because it would be against the stairs. He noted that the plans elaborate for the mudroom are elaborate, including benches and storage. Ms. Grant suggested the possibility of shrinking the mudroom back to move the stairs. Chairman Francalangia inquired about plans for the upper level. Ms. Grant noted that it could eventually be finished, but there are no plans to do so at this time.

Commissioner Graca reiterated concerns about the hardship. Chairman Francalangia noted that the best thing would be to continue the application. Ms. Giusti noted that the plans as presented did not seem to have support, but the Board would have to make the decision. She noted that if continued, she would take the opportunity to advise the applicant to come in with revisions with something less encroaching. If the revised plans could fall within the setback, the application could be withdrawn.

The Board discussed concerns about the hardship. Commissioner Graca noted that the plans as presented do not clearly show the hardship. Commissioner Whiteside noted that there are specific statutes to follow. He referred to the statutory guidelines (found online), and he noted that the hardship must be clearly articulated. He noted that as presented, there are grounds to deny the application. He advised the applicant to review the guidelines to pull appropriate language to accurately articulate the hardship.

Ms. Grant noted that the garage cannot be put anywhere else on the property.

Commissioner Graca moved to continue the application to the next meeting on July 28, 2020. Commissioner Tubbs seconded the motion, which carried unanimously.

**1005 Kensington Road, Map 21-1/Block 73/Lot 15**

Remand issued by Superior Court in the matter of Liam T. Mitchell, et al. v. Berlin Zoning Board of Appeals concerning the Board's denial of the plaintiffs' appeal of a Cease and Desist Order issued by the Zoning Enforcement Officer for an unauthorized basement apartment in the R-43 zone per Berlin Zoning Regulations Section XV.A.1.

Chairman Francalangia noted that the remand was discussed with Corporation Counsel, and it will probably be discussed again. Commissioner Graca echoed the statement. Atty. Coppola noted that this matter could be continued to the July 28<sup>th</sup> meeting.

Commissioner Francalangia moved to continue this item to the July 28, 2020 meeting. Commissioner Graca seconded the motion, which carried unanimously.

**IV. Regular Meeting:**

**ZBA #2020-09      1104 High Road, Map 14-1, Block 51, Lot 9**

Terry and Robin Grant are requesting a variance of 15 feet for a front setback of 24 feet when 40 feet is required and a variance of 4 feet for a side yard of 21 feet with total side yards of 40 feet when 45 feet is required in the R-21 zone per Berlin Zoning Regulations Section V.A.10. for an attached garage. The property is owned by Robin E. and Terrence C. Grant.

Continued to 7/28/2020 meeting

**1005 Kensington Road, Map 21-1/Block 73/Lot 15**

Remand issued by Superior Court in the matter of Liam T. Mitchell, et al. v. Berlin Zoning Board of Appeals concerning the Board's denial of the plaintiffs' appeal of a Cease and Desist Order issued by the Zoning Enforcement Officer for an unauthorized basement apartment in the R-43 zone per Berlin Zoning Regulations Section XV.A.1.

Continued to 7/28/2020 meeting

- V. Approval of Minutes:**
  - February 2020**
  - April 2020**

Continued to 7/28/2020 meeting

- VI. Adjournment**

Chairman Francalanga moved to adjourn the meeting. The motion was seconded by Commissioner Graca, and it passed unanimously. The time was 8:26 p.m.

Respectfully submitted,

Kristen M. Grabowski  
Recording Secretary