



Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811

Phone 410-641-2770 Fax 410-641-2316

www.berlinmd.gov

NOTICE OF PUBLIC HEARING

Town of Berlin
Board of Appeals

Pursuant to the requirements of §108-191 of the Code of the Town of Berlin, notice is hereby given that a public hearing will be conducted by the Berlin Board of Zoning Appeals in the Mayor and Council Chambers of Berlin Town Hall, 10 William Street, Berlin, Maryland on

WEDNESDAY, February 8th, 2023 @ 5:30PM

1. Approval of Minutes – January 5th, 2022
2. Election of Chairman & Vice Chairman
3. Jonathan Selway requesting reduction in parking for 19 Gay Street project.

Any questions regarding the above agenda items shall be directed to the Berlin Department of Planning and Zoning at 410-641-4143.

Any persons having questions about the above-referenced meeting or any persons needing special accommodations should contact Dave Engelhart at 410-641-4143. Written materials in alternate formats for persons with disabilities are made available upon request. TTY users dial 7-1-1 in the State of Maryland or 1-800-735-2258 outside Maryland.

Town of Berlin
Board of Zoning Appeals
January 5th, 2022

Chairman Joe Moore called the January 5th, 2022, Board of Zoning Appeals meeting to order at 5:30PM. Members present were Joe Moore, Woody Bunting, Doug Parks, and Robert Palladino. Absent from the meeting was John Apple. Staff Present were Planning Director Dave Engelhart and Permit Coordinator Carolyn Duffy.

Chairman Joe Moore called for a motion to approve the minutes from the August 18th, 2021, meeting. He asked if there were any additions or corrections to the minutes. Mr. Robert Palladino made the motion to approve the minutes from the August 18th, 2021, meeting. Mr. Woody Bunting seconded the motion, and it was unanimously accepted by the commission.

Chairman Joe Moore stated the next item on the agenda is a request for variance to the side yard setbacks for a new single-family home for Mr. Michael O'Neal. Chairman Moore asked Planning Director Dave Engelhart to give a summary of the request. Mr. Dave Engelhart stated the property had a previous house on the lot and the address would remain 605 William Street. He stated the house that was on previously on the lot was taken down by a demolition permit in 2004 according to our records. The applicant has since purchased the lot recently in the past two years. He would like to erect a new home on the site. Mr. Engelhart stated to his knowledge it is a manufactured home. The size of the home is 60 feet wide and would require an encroachment into the south side, side yard setback of 6 feet whereby code in the R-2 District it should be 12 feet and the other side just the minimum of 8 feet with the sum of 20 to meet the setbacks. The proposed house is only 6 foot 09 inches off the property line. He would need to be 12 off that side of the house not to encroach.

Mr. Mark Cropper Attorney representing Mr. Will Esham stated they had revised the site plan. He stated the landing and the steps shown of what the board had in their packets had been eliminated. He stated the amount of the encroachment was much less on both sides of the house. He then passed out the applicants exhibit #1. Chairman Moore asked if this was the corrected proposed site plan. Mr. Cropper replied yes. He stated the landing measured was 4x4 that has been eliminated he stated the code you needed a minimum it also said you needed a combined 20. He said now they have 8 feet on each side we just don't have the combined 20. Chairman Moore stated he should identify himself. Mr. Mark Spencer Cropper 5200 Coastal Highway Suite # 200 Ocean City Maryland. He stated his client tonight was Mr. Will Esham. He stated the property is owned by two LLC's. Mr. Esham is the managing LLC, and he is representing them both for the variance. Chairman Moore stated for the record that both Mr. Mark Cropper & Mr. Will Esham were related to him. Chairman Moore asked the board if they thought he should not chair the meeting he would do so. The board members didn't want him to step aside. Mr. Cropper stated that exhibit #2 was the exterior of the house. Exhibit #3 was a colored rendering of the house that would be built on the lot. Chairman Moore stated that the picture didn't comport with the rendering the colored picture had a porch. Chairman Moore stated it's on the plan but not on the elevations. Mr. Cropper stated that exhibit #4 was an email exchange from Mr. Esham and Mr. Ernest Gerardi that owns the property to the south side where the removal of the steps he does not oppose. Exhibit #5 is the applicant Mr. Esham with an email exchange

with Megan Foley stating she does not oppose the variance. Mr. Cropper stated that Mr. Esham wanted the house perpendicular to William Street, but you could see from the lot lines that the lot was not completely square to William Street. The lines are angled and that would not make it line up -with William Street. If the house were turned it would lessen the encroachment of the 20-foot required by the code but you would still need the variance due to the size of the house so it would line up. Mr. Cropper stated you were unaware of the town code with the setback requirements of 20-feet. Mr. Cropper stated you meet the 8-feet but not the 20-foot required by the code. Mr. Cropper stated this was unique to the code and it was not in the County or Wicomico County code. He stated it was a very unique provision and now understands they may have some parts of Ocean City that has this.

Mr. Cropper stated they request before the board is to get the variance so he can position the house on the property. Chairman Moore asked if there was anyone that wanted to speak for or against the application. There was no one in the audience to make comments for or against the application. Planning Director Dave Engelhart wanted the board to know the elevation differed and to clarify that. The photograph looks like a smaller model then the 60 foot one shown in the black & white drawing, one picture showing more windows one more window with the one you want to put there. Mr. Esham stated he had asked his partner to provide a picture, he probably did it in a hurry. The actual picture is the sketch, and it is the dimensions shown on the plat. Not sure the colored picture is actual. Mr. Woody Bunting stated the house looks fine and the lot is fine but it's more with what the Board of Zoning requirements are. We have some limitations that we must address he stated. He stated it had to be a good cause for a variance. He stated the R-2 zoning allows a 70-foot lot and you have a 79-foot lot and you're here asking for a variance. He stated you have a lot that is 9 foot wider. He stated he didn't see a hardship in the case. Although you referred to the angle of the lot to the street it wouldn't fit because it goes from a 79-foot lot to 78. He felt for a variance like this there was nothing that separated this lot from any other lot.

Mr. Cropper read parts from the code and stated the lot was not perpendicular to the road to align a house on William Street he felt it was inconsistent. He stated as far as a hardship they don't want to put a house on the lot that was too small. They are trying to put this house on the property in keeping with the neighbors as well. Mr. Cropper stated clearly you could put a smaller house, but they felt this house to be appropriate. Chairman Moore stated they looked at a case before similar to this, but it was on the applicant to show practical difficulty which would cause unnecessary hardship. Discussion continued

Mr. Bunting stated lots of people in town have adhered to the setbacks in town and have built big houses. He then asked Mr. Engelhart about the setbacks. Mr. Engelhart replied to have distance between the houses. Mr. Bunting then asked the applicant why this house. Mr. Esham replied it could be a smaller house, they have a lot of open space but it happens to be in the rear of the lot. He stated they just wanted it to be uniform with the other houses. Mr. Engelhart stated the home is not that deep. Chairman Moore asked Mr. Cropper if he had read in the Berlin code it stated a variance could be a special exception. Mr. Cropper said it's 108-163 and he read that section again. Chairman Moore said special exception 108-166. He stated a unique alignment. The provision of the code of 8 feet setbacks with sum of 20 is unique. Mr. Cropper stated the hardship is trying to position the house on the street that goes with the neighborhood. This house

they believe is a nicer house and goes with the neighborhood. Chairman Moore stated he thought of another case 108-165 where the burden is on the applicant to show the practical difficulty. He then read the provisions is it a burden and will it affect the neighbors meaning have you done the right thing for the neighbors and the applicants. Mr. Bunting stated should they change the rules and asked if they would be setting a precedence with this. He stated he has done a lot of surveys in town and had to comply with the 8 and 20 what makes it different or exceptional. He did agree it was a nice house. Chairman Moore asked for questions or motion.

Mr. Doug Parks made the motion to approve the request. Mr. Robert Palladino seconded the motion. Chairman Moore asked all in favor of the request to say I. Mr. Parks, Mr. Palladino and Chairman Moore. Mr. Bunting opposed 3/1. Meeting adjourned 6:13PM.

Respectfully Submitted,



Carolyn Duffy

Staff Report to the Berlin Board of Zoning Appeals

Meeting Date: February 8, 2023

This evening's Appeal has been received from R&S Investments for a Special Exception for a Variance at 19 Gay Street, to allow a reduction in size of required parking spaces in the rear of a proposed mixed use building to be constructed on site.

Berlin Town Standards stipulate that parking spaces measure 9 feet wide and 20 feet in length. The appellant would like to provide off street parking spaces in the rear of the new building that measure 9 feet wide and 18 feet in length to accommodate better buffering, stormwater management, and landscape design between the subject property and adjoining parcels. At the 20 foot length, parking spaces would extend to the property line(s).

I have enclosed copies of the Town Code Section Division 3., "Off Street Parking", Section 108-788 for your review. Section 108-788 (d)(4) states that the Board may authorize a modification due to the exceptional shape or size of the property.

Respectfully submitted,

A handwritten signature in blue ink that reads "David H. Egelhart". The signature is fluid and cursive, with a long horizontal stroke at the end.

Planning Director

aesthetic appeal, scenic beauty, character and value of the town, and to promote public health and safety through the reduction of noise pollution, stormwater runoff, air pollution, visual pollution, and artificial light glare.

(b) *Landscaping plan.* A landscaping plan shall be submitted for all nonresidential uses, townhouse and multifamily developments and single-family subdivisions with three or more dwelling units for review and approval prior to final plat or site plan approval.

(c) *Landscaping criteria.* Landscape plans shall be in accordance with landscape criteria adopted by the planning and zoning commission.

(d) *Landscaping to be installed.* Landscaping must be installed and maintained in accordance with the approved landscape plan.

(e) *Installation of landscaping; bond.* Installation of landscaping shall be complete or bonded in the same manner in which other site improvements are required to be installed or bonded prior to the approval of the subdivision plat or issuance of a zoning certificate or other approval.

(f) *Maintenance bond.* The planning and zoning commission shall require a maintenance and replacement bond for required landscaping for a period not to exceed two years and in an amount not to exceed 100 percent of the installation cost.
(Code 1977, § 107-33; Ord. No. 2000-10, 9-25-2000)

Secs. 108-719—108-749. Reserved.

ARTICLE IX. SPECIAL PROVISIONS

DIVISION 1. GENERALLY

Secs. 108-750—108-766. Reserved.

DIVISION 2. OFF-STREET LOADING

Sec. 108-767. Requirements.

(a) In any district, in connection with every building or part thereof hereafter erected, improved, altered or extended, having a gross floor area of 10,000 square feet or more and which is to be occupied by manufacturing storage, warehouse, goods display, retail store, wholesale store, market, hotel, hospital, mortuary, laundry, dry-cleaning or other use similarly requiring the receipt or dispatch by vehicles of materials or merchandise, there shall be provided and maintained on the same lot with such building at least one off-street loading space, plus one additional such loading space for each 20,000 square feet of gross floor area so used in excess of the first 30,000 square feet.

(b) Each loading space shall be not less than ten feet in width, 45 feet in length and 14 feet in clear height.

(c) Such space may occupy all or any part of any required yard or court space, except a front yard or the required side yard on the street side of a corner lot.

(d) No such space shall be located closer than 50 feet to any lot located in any R District, unless the loading space is wholly within a completely enclosed building or unless enclosed on all sides by a wall or uniformly painted board fence not less than six feet in height.

(Code 1977, § 107-45; Ord. No. 2000-10, 9-25-2000)

Secs. 108-768—108-787. Reserved.

DIVISION 3. OFF-STREET PARKING

Sec. 108-788. Requirements.

(a) In all districts, unless otherwise specified, subject to the provisions hereof, every industrial, commercial, business, trade, institution, recreational dwelling and other use, space for parking and storage of vehicles off the streets shall

be provided to accommodate its normal parking requirements, as determined by the planning director at the time of application for a zoning certificate, but in no case not less than the following:

- (1) Automobile sales and service garages: 50 percent of floor area.
- (2) Banks, business offices and professional offices: 50 percent of floor area.
- (3) Doctor's offices: 50 percent of floor area.
- (4) Bowling alleys: five spaces for each alley.
- (5) Churches and schools: one space for each four seats in a principal auditorium or one for each ten classroom seats, whichever is greater.
- (6) Dance halls, assembly halls: 200 percent of floor area used for dancing or assembly.
- (7) Dwellings.
 - a. Two spaces for each dwelling unit.
 - b. Limited dwellings: one space per unit.
- (8) Furniture and appliance stores, household equipment or furniture repair shops with over 1,000 square feet of floor area: 100 percent of floor area.
- (9) Funeral homes and mortuaries: four spaces for each parlor or one space for each 50 square feet of floor area, whichever is greater.
- (10) Hospitals: one space for every two beds.
- (11) Hotels, motels and lodginghouses: one space for each bedroom or unit, plus one additional space for each employee.
- (12) Manufacturing plants: one space for each two employees on the maximum working shift or 25 percent of floor area, whichever is the greater.
- (13) Restaurants, beer parlors and night-clubs: 200 percent of floor area.
- (14) Retail stores, supermarkets, etc., under 2,000 square feet of floor area: 200 percent of floor area.
- (15) Retail stores, shops, etc., over 2,000 square feet of floor area: 100 percent of floor area.
- (16) Sports arenas and auditoriums other than in schools: one space for each three seats.
- (17) Theaters and assembly halls with fixed seats: one space for each three seats.
- (18) Commercial or club swimming pools: one space for each three members or each three persons of estimated maximum capacity.
- (19) Wholesale establishments or warehouse: one space for each two employees or ten percent of floor area, whichever is greater.
 - (b) In the case of any building, structure or premises the use of which is not specifically mentioned herein, the provisions for a use which is so mentioned and to which said use is most nearly similar shall apply.
 - (c) Except in the case of dwellings, no parking area provided hereunder shall be less than 1,000 square feet in area exclusive of necessary driveways, aisles or entrances. Each parking space shall be at least nine feet wide and 20 feet deep.
 - (d) Every parcel of land hereinafter used as a public or private parking area, including a commercial parking lot, shall be improved and maintained in accordance with the following requirements:
 - (1) Whenever possible, parking areas should be located to the rear of the building. Every off-street parking area for more than five vehicles shall be located at least 20 feet from any street line and

from every residential lot line. The edges of the parking area shall be curbed or buffered, and the space between the parking area and the street or the lot line shall be landscaped and maintained in a sightly condition. Where adjoining a street, such landscaping shall consist of grass and low shrubs or ornamental trees. Where adjoining a residential lot, it shall include a hedge of sufficient type and height, not less than 30 inches, to protect and screen the adjoining property.

- (2) For parking areas of three or more vehicles, the area not landscaped and so maintained, including driveways, shall be graded, surfaced with asphalt, concrete or other similar material and drained to the satisfaction of the planning director to the extent necessary to prevent dust, erosion excessive water flow across streets or adjoining property. Failure to keep parking areas in satisfactory condition, i.e., free from all holes, shall be considered a violation of this chapter. All off-street parking spaces shall be marked as to indicate their location. Parking areas shall be arranged and marked to provide safe and orderly circulation.
- (3) Any lighting used to illuminate any off-street parking area, including any commercial parking lot, shall be so arranged as to direct the light away from adjoining residential premises and from public streets. All lighting, except for security lights, shall be turned off after normal business hours.
- (4) The board of appeals may authorize, subject to the provisions of sections 108-160 through 108-165, a modification, reduction or waiver of the foregoing requirements if it should find that in the particular case appealed the peculiar nature of the residential, business, trade industrial or other use, or the exceptional shape or

size of the property or other exception situation or condition, would justify such modification, reduction or waiver.

- (5) Joint use. Two or more uses may provide for their respective required parking in a common parking lot. The board of appeals may reduce the total number of spaces that this chapter would require the uses to have if it can be demonstrated to the board of appeals, as either a variance or a conditional use, that the hours and/or days of peak parking need for the uses will justify a reduction in the number of off-street parking spaces in the common parking lot.
- (6) Mixed uses. Where a permitted use contains or includes more than one of the types of uses identified in subsection (a) of this section, the number of parking spaces required shall be the sum of the computed requirements for the separate types of uses.
- (7) Location of parking spaces. A principal use's required off-street parking spaces shall be on the same lot or premises as the principal use unless this requirement cannot be met, in which case the required off-street parking shall be located within 300 feet of the principal use. This distance shall be measured from the two lot lines, (one from the principal use's lot and one from the lot on which the off-street parking area is located) that are closest to each other.
- (8) Fractional spaces. Where the computation of required parking spaces results in a fractional number, only the fraction of one-half or more shall be counted as one.

(Code 1977, § 107-46(A)—(D); Ord. No. 2000-10, 9-25-2000; Ord. No. 2004-6, 6-14-2004)

Sec. 108-789. B-1 District parking requirements.

In the event of new construction or reconstruction on any parcel in the B-1 District, the owner



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BOARD OF ZONING APPEALS APPLICATION

ADDRESS OF PROPERTY: 19 Gay Street DATE: 1/18/2023

APPLICATION FOR: ☒ VARIANCE ☐ CONDITIONAL USE ☐ APPEAL

LOT # 1122 LOT SIZE: 12,678 ZONING DESIGNATION: B-1 TAX MAP 0300 PARCEL 1122

APPELLANT NAME: Jonathon Selway, R&S Investments, LLC ADDRESS: 10 81st ST, Unit 303, Ocean City, MD 21842

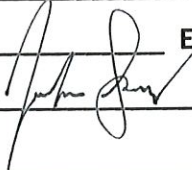
APPELLANT PHONE#: (858) 449-4686 APPELLANT EMAIL: js@jonathonselwayarchitects.com

PLEASE PROVIDE A BRIEF DESCRIPTION OF THE GROUNDS FOR THE APPEAL. IF THE REQUEST IS FOR A VARIANCE, PROVIDE A DESCRIPTION OF THE LAND USE HARDSHIP. IF THIS IS A CONDITIONAL USE REQUEST, PROVIDE A BRIEF DESCRIPTION OF THE PROPOSED USE:

Please see the attached letter to the Board detailing the land use hardship we are presenting.

PROPERTY OWNER: R&S Investments, LLC ADDRESS: 10 81st ST, Unit 303, Ocean City, MD 21842

PHONE #: (858) 449-4686 EMAIL: js@jonathonselwayarchitects.com

OWNER SIGNATURE:  DATE: 01/18/2023

FOR OFFICE USE ONLY

CASE # 2-8-23-01

DATE APPLICATION RECEIVED 1/18/2023

HEARING DATE 2-8-2023

PROPERTY POSTED DATE 1/24/2023

FEES DUE \$325.00

FEES PAID 1/18/2023

DECISION: _____

R&S Investments, LLC
10 81st ST, Unit 303
Berlin, MD 21811

January 18th, 2023

Town of Berlin Board of Appeals
10 William Street
Berlin, MD 21911

Re: Application for Variance request, 19 Gay Street

Dear Board Members,

In respect to our variance request for 19 Gay Street, the following letter outlines our intent and description of the land use hardship for this application. The respective property is narrow and deep and requires the parking lot to extend to the side property lines to fit the minimum depth parking space required by the Town of Berlin. It is also against a residential zone in the rear which is not typical of most other downtown berlin properties, which are more commonly bounded by streets and other B-1 zoning on all sides of the property. The residential zoning along the rear of the property requires increased setbacks from the parking facilities, however the berlin zoning code requires the parking to be in the rear of the building.

In addition to these facts and not typical of other B-1 properties, in lue of the fact that these lots were rezoned in 2016 from residential to B1 zoning, the neighboring property to the south at 21 gay street is still a single-family home while the zoning is B-1. In consideration of this existing use, we have increased our building setback along this side from the required 0' setback to 3.5' to be respectful of the difference in scale and use of the two properties. This further constrains our buildable footprint and requires the building to be deeper.

Lastly, while not required by code but in the spirit of being respectful to our neighbors, we have agreed to provide an access maintenance easement along the north side of our property for the adjacent property owner to maintain his existing mechanical systems which abut the north side of our property. This easement also further decreases our buildable area of commercial building space, and increases the required depth of the building.

We feel that in combination, these conditions are not typical to other B-1 properties in downtown berlin, but rather present many specific constraints to the development of our property and do represent a use hardship for the board to consider. We are requesting the Board of appeals to consider reducing the minimum required depth of the parking spaces from 9'x20' to 9'x18' so that we can provide a 2' buffer of landscape along the side property lines. In the spirit of Chapter 108 of the Berlin Code of Ordinances, this will decrease the lot coverage and impervious area of the parking lot, provide for more open space, and increase the landscape buffer for neighboring properties. It will overall provide for a better and more beautiful site plan for the project and Town of Berlin. We have presented both plans for consideration of the Board of Appeals. As you will see, we can provide the required parking space depth by building up to the property line, however, strongly urge the board to consider the alternate plan for 9'x18' parking space depth in consideration of the forementioned facts of our property.

Thank you in advance for your time and consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathon Selway", with a stylized flourish at the end.

Jonathon Selway, Managing Member
R&S Investments, LLC

