

RESOLUTION NO. 2018-7

Applicant: Diggerland USA 1 LLC/  
Power Engines 1 LLC

Property: 100 Pinedge Drive & Court and 441 East Franklin Avenue  
Block 2601 Lot 1, 2 & 5

Preliminary and Final Minor Site Plan Approval - with variances

RESOLUTION OF THE BERLIN TOWNSHIP PLANNING/ZONING BOARD AMENDING RESOLUTION  
NO. 2017-13, GRANTING PRELIMINARY AND FINAL MINOR SITE PLAN - WITH VARIANCES

WHEREAS. The applicant appeared before the Board on September 12<sup>th</sup> 2017, and is applying for preliminary and final Minor Site Plan, with variances, approval for property known as Block 2601 Lot 1, 2 & 5, and

WHEREAS. The applicant has submitted a site plan for approval, which has been reviewed by Charles J. Riebel Jr. P.E., P.L.S., P.P. the Engineer for the Board. The report of the Board's Engineer is dated September 8<sup>th</sup> 2017. Also, the report of the Berlin Township Fire Marshal/Official Joseph Cornforth was received and dated September 9<sup>th</sup> 2107. The applicant appeared before the Board and was represented by Timothy M. Prime Esq. of Prime Law, and

WHEREAS. Also appearing for the applicant was Ilya Girlya, CEO, Diggerland, Norman R. Dotti P.E. P.P., Robert S. Smith, P.L.S., P.P., and

WHEREAS. The applicant provided the following reports;

- a. Preliminary & Final Site Plan prepared by Gregory B. Fusco P.E., P.P., C.M.E. dated July 26<sup>th</sup> 2017.
- b. Site Lighting plan prepared by David J. Mantone P.E. dated August 8, 2017.
- c. Drainage Circulation plan prepared by Gregory B. Fusco P.E., P.P. C.M.E. dated August 21<sup>st</sup> 2017.

And

WHEREAS. All intended witnesses were sworn-in by the Board Solicitor,

WHEREAS. The Board determined that the application is properly before the Board and the proof of notice and publication is appropriate, and

WHEREAS. The Board has received and reviewed all reports filed by the applicant and the Board engineer, and

WHEREAS. The site is located within lots 1 and 5 along Cooper Road and Pinedge Drive. The proposed office parcel is located within lot 2 with access from E. Franklin Avenue by means of a one lane private road easement from the adjoining residential property. The site is located in the C-2 Commercial District Zone, and

WHEREAS. The applicant received original preliminary and final major site plan approval with variances on October 29<sup>th</sup> 2013. The applicant proposes to use a former dwelling from which the previous owner conducted a business, as an office space for administrative staff, existing garage buildings for storage, an existing concrete pad for above ground fuel storage, an existing stone

parking area for expanded parking use, and

WHEREAS. The applicant seeks the following variances;

- a. to permit an adventure ride to be 130.25 feet high tower with a 20 feet high lighting mast on the top of the tower at the north end of the ride, with zip line.
- b. to permit a 110 feet high construction elevation ride.
- c. to permit four (4) 60 feet high electric motor powered self-erecting cranes.
- d. to permit parking area within 4 feet from the curb line of Pinedge Drive.
- e. to permit vehicle maneuvering within the portion of an entrance driveway that is within 18 feet of the right-of-way Pinedge Drive.
- f. to permit an 8 feet high chain link fence with barbed wire.

And

WHEREAS. The applicant seeks the following waivers;

- a. to permit outdoor storage of equipment and supplies.
- b. from the requirement of a concrete side walk along the frontages of Cooper Road & Pinedge Drive.
- c. to permit one lane wide dirt drive from East Franklin Avenue through the Resintech property and to the proposed parking area for the office parcel.
- d. from the required 5 feet wide shade tree easement along Cooper Road and East Franklin Avenue.
- e. to permit LED site light fixtures.
- f. to waive the requirement for site lighting for the portions of the drive for the office parcel, which are not adjacent to the proposed parking area.
- g. to allow the surface for the proposed equipment storage area to be the natural soils, excluding the topsoil.
- h. to allow the surface of the proposed trail for the motorized passenger carrier to be wood chips and/or natural soils.
- i. to permit the surface of the proposed parking area to be #57 stone rather than the required paved surface.
- j. to waive the requirement for the submission of a landscaping plan, the planting of landscape plantings and the installation of an irrigation system for the lawn and landscaped areas, throughout the site.
- k. to waive the requirement for an on-site trash enclosure on the office parcel and permit the storage of refuse within the trash enclosure, which is within the confines of the adventure park.
- l. to waive the requirement for the submission of a grading plan, depicting proposed elevations and contour lines for the drives and parking area on the office parcel.
- m. to waive the requirement for a designated loading and delivery area for the office parcel.
- n. to continue to permit the walls of the relocated and expanded trash enclosure to be vinyl coated chain link fence with privacy slats in lieu of the required walls, which match the façade of the buildings.
- o. to waive the requirement for a planted buffer along the line, which abuts the Senior Citizen Housing overlay zone.

And

WHEREAS. During the testimony, it was determined the applicant did not provide proper notice, publication and service for the request variance to

permit a 110 feet high construction elevation ride and four (4) 60 feet high electric motor powered self-erecting cranes. The applicant agreed to withdraw his request for the variance expressly without prejudice to the applicant's right to request the variances at a future date, and

WHEREAS. There was discussion on the need for New Jersey approval for the proposed amusement ride. The applicant was in agreement to secure New Jersey inspection and approval of the proposed amusement ride. There was also much discussion on the noise level from the proposed use. The applicant provided testimony on the noise level from the intended amusement ride. The applicant also agreed to maintain the noise level within the acceptable noise level regulation from the Township and State requirement, and

WHEREAS. The proposed plan shows a parking area to be within the right of way of Pinedge Drive. There was testimony that the specific portion of Pinedge Drive that effects the proposed parking area is currently before the Mayor and Council to be vacated, and

WHEREAS. There was discussion on the access from East Franklin Avenue. Testimony presented concerning the easement through the adjoining Resintech property. It was determined that if the easement currently exists, the applicant will install signage showing "Private Drive, No Thru Traffic". The applicant was in agreement. The "No Parking" signs along Pinedge Drive will be corrected by the applicant to maintain the required 7 feet clearance and the post will contain breakaway hardware, and

WHEREAS. There was discussion of the use of East Franklin Avenue. Following the discussion, the applicant agreed there would be no commercial vehicle traffic on East Franklin Avenue and the traffic limited to those few administrative staff members which will be operating within the proposed office building. The applicant also testified to the continued permitted use of the neighboring property for overflow parking at peak seasonal periods, and

WHEREAS. During testimony the applicant introduced several exhibits that were marked Exhibit "A-1" through "A-6".

The applicant provided testimony that the granting of the remaining variance will not be a substantial detriment to the public good and will not substantially impair the intent and purpose of zoning.

The applicant also provided testimony that the granting of the remaining variance supports the general purpose of zoning as it does provide for an appropriate and continued use of the amusement/recreational property.

WHEREAS. The application was opened to the public. The public requested a continuance of the application to permit a group of residence to hire an attorney in opposition to the application. The Board denied the request as the application met the jurisdictional requirement under the Municipal Land Use Law, proper publication and notice had been provided and recorded testimony has concluded, and

WHEREAS. Several residents provided objection to the multiple height variances. An explanation was given that only one height variance is now being considered and the use is a determined permitted use. Objections were given to barbed wire fencing, and

WHEREAS. The applicant acknowledged receipt of report and recommendations from the Fire Marshal dated September 9, 2017, and agreed to comply with all recommendations and comments as set forth therein, with the exception of comment #6 of the report, as the Fire Marshal deemed there is no need for an additional fire hydrant to be installed. The applicant stated that he will meet all other

requirements set forth in the Engineer's report dated September 8<sup>th</sup> 2017 and will secure any and all other governmental approvals and permits as may be necessary, and

NOW THEREFORE, BE IT RESOLVED, by the Planning/Zoning Board of the Township of Berlin that the application for preliminary and final minor site plan approval, be and is hereby GRANTED.

BE IT FURTHER RESOLVED, by the Planning/Zoning Board of the Township of Berlin that the following variances are GRANTED:

- a. to permit an adventure ride to be 130.25 feet high tower with a 20 feet high lighting mast on the top of the tower at the north end of the ride, with zip line.
- b. to permit parking area within 4 feet from the curb line of Pinedge Drive.
- c. to permit vehicle maneuvering within a portion of the entrance driveway that is within 18 feet of the right-of-way of Pinedge Drive.
- d. to permit an 8 feet high chain link fence with barbed wire.

BE IT FURTHER RESOLVED, that the following Waivers have been approved;

- a. to permit outdoor storage of equipment and supplies.
- b. from the requirement of a concrete side walk along Cooper Road & Pinedge Drive.
- c. to permit one lane wide dirt drive from East Franklin Avenue through the Resintech property and to the proposed parking area for the office parcel.
- d. from the required 5 feet wide shade tree easement along Cooper Road and Pinedge Drive.
- e. to permit LED site light fixtures.
- f. to waive the requirement for site lighting for the portions of the drive for the office parcel, which are not adjacent to the proposed parking area.
- g. to allow the surface for the proposed equipment storage area to be the natural soils, excluding the topsoil.
- h. to allow the surface of the proposed trail for the motorized passenger carrier to be wood chips and/or natural soils.
- i. to permit the surface of the proposed parking area to be #57 stone rather than the required paved surface.
- j. to waive the requirement for the submission of a landscaping plan, the planting of landscape plantings and the installation of an irrigation system for the lawn and landscaped areas, throughout the site.
- k. to waive the requirement for an on-site trash enclosure on the office parcel and permit the storage of refuse within the trash enclosure, which is within the confines of the adventure park.
- l. to waive the requirement for the submission of a grading plan, depicting proposed elevations and contour lines for the drives and parking areas on the office parcel.
- m. to waive the requirement for a designated loading and delivery area for the office parcel.
- n. to continue to permit the walls of the relocated and expanded trash enclosure to be vinyl coated chain link fence with privacy slats in lieu of the required walls, which match the façade of the buildings.
- o. to waive the requirement for a planted buffer along the line, which abuts the Senior Citizen Housing overlay zone.

BE IT FURTHER RESOLVED, that the following conditions of this approval have been approved and agreed to by the applicant;

- a. The applicant will install a KNOX BOX emergency access as stated in the Fire Marshal report dated September 9, 2017.
- b. The applicant will secure all necessary New Jersey approval and inspection of the amusement ride.
- c. There will be no commercial vehicle traffic on East Franklin Avenue, and "No Parking" signs will be installed on Pinedge Drive frontage.

BE IT FURTHER RESOLVED, the Planning/Zoning Board of the Township of Berlin acknowledges the potential use of the proposed office parcel, known as Block 2601, Lot 2, for holiday events (i.e., hayride, holiday light and decoration display, etc.) and camping events.

BE IT FURTHER RESOLVED, the applicant is not required to consolidate the lots subject of the within application into one lot based upon the testimony provided by applicant.


BE IT FURTHER RESOLVED, the applicant will eliminate the sag in the existing sewer main along Pinedge Drive within 10 feet of the proposed sanitary sewer lateral connection.

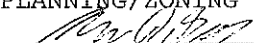
BE IT FURTHER RESOLVED, the applicant will post any and all performance guarantees required.

BE IT FURTHER RESOLVED, the applicant has agreed to plant shade trees along the frontage of Cooper Road.

BE IT FURTHER RESOLVED, the applicant will seek and receive all approvals and permits necessary from all governing departments and agencies and shall meet compliance with all applicable Federal, State and County and Municipal laws, rules and regulations.

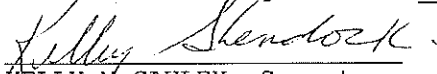
ATTEST:

  
KELLY McCAULEY  
Secretary

BERLIN TOWNSHIP  
PLANNING/ZONING BOARD  
  
Craig DeGeorge  
Chairman

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by the Berlin Township Planning/Zoning Board at a meeting held on January 9<sup>th</sup>, 2018.

  
KELLY McCAULEY, Secretary  
Shendock