



July 7, 2020

The City of Berlin  
Code Enforcement

Michel Salek 168 Main Street Berlin, NH 03570  
603-752-1630, email: msalek@berlinnh.gov

VIA SHERIFF'S SERVICE  
VIA FIRST CLASS MAIL & CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Theresa Tyler  
Florence Lavoie  
Lawrence Lavoie  
Mark Tyler  
35 Western Ave.  
Berlin, NH 03570

**Re: ORDER TO RAZE OR REPAIR PURSUANT TO RSA 155-B, et seq.  
NOTICE OF VIOLATION PURSUANT TO RSA 676:17  
CEASE & DESIST ORDER PURSUANT TO RSA 676:17-a  
ORDER TO REMOVE PUBLIC NUISANCE PURSUANT TO RSA  
147:4&11**

Dear Ms., Tyler, Mr. Tyler, Ms. Lavoie and Mr. Lavoie:

Pursuant to N.H. RSA 155-B, 2 & 3, RSA 676:17, RSA 676:17-a, the City of Berlin Zoning Ordinance (“**the Ordinance**”) and other statutes and regulations set forth more fully below, you are hereby notified that the condition of the Property located at 35 Western Ave., Berlin, NH (hereinafter “**the Property**”) is in violation of State law, the Berlin Zoning Ordinance, and various life safety and fire codes.

**I. RECENT INSPECTION**

The Property was monitored over the past several months. This review consistently revealed, *inter alia*, the following:

- 1) the siding on the building is incomplete, exposing the interior walls and insulation to the elements;
- 2) deficient structural members and header supporting 2<sup>nd</sup> floor at front porch;
- 2) several unregistered and/or uninspected vehicles are present on the Property;
- 3) motor vehicles and trailers are stored on or near the Property that are filled with articles that meet the definition of “junk” under state statute;
- 4) the ways of ingress and egress, including the exterior stairwell, are periodically blocked with materials;
- 5) the Property is used to store a significant amount of “junk”, as that term is defined in state statute and the Ordinance.

**II. REGULATIONS, PROVISIONS, SPECIFICATIONS OR  
CONDITIONS WHICH ARE BEING VIOLATED**

You are in violation of:

1) New Hampshire Statutes

a. RSA 147:4: in its current condition, the Property stands as a public nuisance injurious to the public health. As set forth in prior communications, the junk and junk motor vehicles on the Property serve as a fire hazard that imperils occupants of the Property, the neighborhood, and first responders. Further, the nuisance serves as an attractant or habitat to mosquitos, rodents and/or other animals that serve as vectors for disease.

b. RSA 155-B:2: in its current state, the Property meets the definition of “hazardous building” under RSA 155-B, *et seq*, and the hazardous conditions must be addressed.

c. RSA 236:93: in its current state, the Property meets the definition of “junk yard” as defined under RSA 236:91, and thus requires a license.

d. RSA 236:114: in its current state, the Property meets the definition of “junk yard” under RSA 236:112, and thus is required to be licensed.

2) The Ordinance

a. Sec. 7-18. “No person shall suffer or permit any cellar, vault, private drain, pool, sink, privy, sewer, or other place, upon any premises or grounds belonging to or occupied by him or them, to become offensive or injurious to the public health.” As refined in this Notice, the Property may be injurious to the public health.

b. Sec. 7-19. “No person or occupant, or any person having control or charge of any lot, tenement, premises, building, or other place, shall cause or permit any nuisance to be or remain in or upon said lot, tenement building, or other place, or between the same, and the center of the street, lane or alley adjoining.” As set forth below, the condition of the Property is such as to constitute a nuisance.

c. Sec. 7-27. “1. No person shall deposit any refuse ... of any kind in or upon any private lot, street, avenue, [or] alley ... that the same shall or may afford food, harborage or breeding areas for rats, mosquitoes or other vectors. 2. No person shall deposit or permit to accumulate in or upon any premises, or on any open lot or public area any lumber, boxes, barrels, bottles, cans, glass, containers, scrap iron, wire, metal articles, pipe, broken stone or cement, broken crockery, broken plaster or rubbish of any kind, unless the same is kept in approved covered receptacles or placed on open racks that are elevated not less than 18 inches above ground and evenly piled or stacked or disposed of as may be approved by the Town. 3. No person shall have, keep, maintain, cause or permit any collection of standing or flowing water in which mosquitoes bred or are likely to breed, unless such collection of water is treated or maintained effectually so as to prevent such breeding.

The storage of materials and junk on the property and upon the adjacent roadway referenced in this Notice violates this Ordinance section.

d. Sec. 8-104. Public Nuisance. “No owner, operator or occupant shall cause or let a property to become a Public Nuisance. For purposes of this Chapter, “public nuisance” shall mean the following:

- (a) The physical condition, or use of any premises regarded as a public nuisance at common law.
- (b) Any physical condition, use or occupancy of any premises or its appurtenances considered an accessible nuisance to children, including, but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences, structures or improperly secured buildings.
- (d) Any premises designated as unsafe for human habitation or use.
- (f) Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or unsecure as to endanger life, limb, or property.
- (g) Any premises which are unsanitary, or which are littered with rubbish, garbage, tires or appliances.
- (h) Any structure or building that is in a state of dilapidation, deterioration, or decay; damaged by fire to the extent as not to provide shelter, in danger of collapse or failure and is dangerous to anyone on or near the premises.”

The condition of the Property is such as to constitute a public nuisance under subsections a, b, d, f, g, and h of Section 8-104.

e. Sec 8-151, IPMC 307. “Any dwelling which has any or all of the following general substandard conditions shall be deemed unfit for human habitation.

(3) Floor and Roof loads. Any dwelling which has improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used shall be deemed unfit for human habitation.

f. Sec. 8-151, IPMC 308. “Any dwelling which has any or all of the following general substandard conditions shall be deemed unfit for human habitation.

(3) Inadequate egress. Any dwelling having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication shall be deemed unfit for human habitation.

(5) Unsafe, unsanitary or dangerous to public. Any dwelling which because of its condition is unsafe, unsanitary, or dangerous to the health, morals, safety or general welfare of the people of this city shall be deemed unfit for human habitation.”

As set forth in the preceding sections, many aspects of the Property render the Property unfit for habitation as contemplated in subsection (3) and (5), referenced above.

g. Section 17-62, the Berlin Zoning Ordinance at Section 17-62 permits certain uses for properties within the Residential Single Family Zone, where the Property is located. Those uses do not include the use of property as a junk yard or the storage of junk, as those terms are defined in relevant statutes and ordinances. This is a violation of the Zoning Ordinance as such use is not permitted in the Residential Single Family Zone of Berlin Zoning Ordinance.

h. Section 17-181. “No more than one (1) motor vehicle which does not have a valid state motor vehicle inspection sticker may be stored outside of a building on a lot.” Several unregistered and/or uninspected vehicles are present at the Property.

i. Section 17-182. “No motor vehicle, trailer or motor vehicle accessories, including parts thereof, whether registered or inspected, may be used for the storage of goods or materials for more than 90 days except for storing construction materials at a construction site.” Several trailers and motor vehicles appear to be used for the storage of junk for longer than the permitted period.

j. Section 17-192. “Neither shall any structure or use operate so as to create a fire, explosion, or safety hazard within the City of Berlin.” As set forth above, the condition of the structure upon the Property is such as to create a safety hazard to any occupants. Among other things, the structure is of questionable weather tightness. Moreover, the junk stored at the Property may inhibit fire fighters and other first responders who may need to respond to the Property.

k. Section 17-193(4). This section prohibits structures that are not constructed or maintained in conformance with regulations of the State of New Hampshire and all applicable sections of the fire and life safety codes of the City of Berlin as amended. As set forth herein, the Property does not meet applicable codes.

l. Section 17-192(9). “In all zones, except the Industrial/Business (IB) zone, no raw or partially processed or finished material, machinery, or equipment shall be stored in the open so as to be detrimental to adjacent properties.” As referenced above, the Property is used to store various materiel referenced in this section.

### **III. FORMAL NOTICE**

The instant notice is meant to satisfy the various notice provisions provided in the following statutes:

- a) RSA 147:4 – Notice to Remove or Destroy Nuisance
- b) RSA 147:7-a – Notice to Owner of Nuisance and Abatement Cost Collection
- c) RSA 147:11 – Order of Discontinuance of Nuisance
- d) RSA 155-B: 2&3 – Order to Raze or Repair
- e) RSA 676:17 - Notice of Violation
- f) RSA 676:17-A - Cease and Desist Order

### **IV. CORRECTIVE ACTIONS REQUIRED**

1) Remove all but one (1) motor vehicle that is unregistered or uninspected from the Property.

2) Remove all articles from the Property that meet the definition of “junk” under state statute and/or City Ordinance.

3) File the necessary application for building permits to install the siding necessary to completely side the structure and to perform the necessary structural repairs at the front porch.

- 4) Side the portions of the structure on the Property to completely enclose the structure and perform the necessary structural repairs at the front porch.
- 5) Clear blockages on stairwells or means of ingress or egress on the Property, and keep those areas clear.

#### **V. TIME FRAME TO COMPLETE CORRECTIVE ACTION**

The City previously provided the Ms. Tyler with a list of problems with the Property dated January 31, 2020, asking that the issues with the Property be addressed on or before March 31, 2020, when you were to contact City officials to schedule a re-inspection to confirm the abatement of issues with the Property. This was not done, and the condition of the Property remains unchanged. To that end, the application for a building permit must be submitted by July 20, 2020; all junk must be removed by August 14, 2020, all siding must be installed on or before September 14, 2020, and all structural repairs at front porch must be completed on or before September 29, 2020.

#### **VI. NOTICE OF VIOLATION/LIABILITY FOR ABATEMENT, RAZING AND/OR REPAIR COSTS, AND COMMENCEMENT OF FINES & PENALTIES**

This Notice also serves to advise you of your exposure to liability for Abatement, Razing and/or Repair costs, as well as civil fines. Without limitation to the City's remedies, you are liable for the following:

Pursuant to RSA 147:7, you are liable for expense of the removal or destruction of the nuisance or other thing, including the fees of the health officers who order or cause the same to be removed. Consistent with RSA 147:7-a(I)(c), failure to take the corrective action within the prescribed timeframe may result in corrective action being taken by the municipality, and that if this occurs, the municipality's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property, if not paid.

You are also advised, consistent with RSA 155-B 2 & 3, that a motion for summary enforcement of the order will be made to the court of the district or municipality in which the hazardous building is situated unless corrective action is taken, or unless an answer is filed within the time specified in RSA 155-B:6 and that any costs, attorney's fees, and expenses incurred by the municipality in bringing the property into compliance may be enforced as a lien against the subject property and any other property owned by the same owner in the state pursuant to RSA 155-B:9, II.

This notice also constitutes a cease and desist order pursuant to RSA 676:17-a. To that end, you are advised that a motion for summary enforcement of the order shall be made to the court of the district in which the property is situated unless such corrective action is taken within the time provided, or unless an answer is filed within 20 days, as provided in RSA 676:17-a (V). Failure to either take the corrective action, or to file an answer, may result in corrective action being taken by the municipality, and that if this occurs the municipality's costs shall constitute a lien against the real estate, enforceable in the same manner as real estate taxes, including possible loss of the property if not paid.

Finally, this written Notice of Violation is given to satisfy the fines and penalties requirement of RSA 676:17, I and II, which provides in part that,

I. “Any person who violates any of the provisions of . . . any local ordinance, code, . . . or any provision or specification of any . . . local . . . land use board acting under the authority of this title shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person; and shall be subject to a civil penalty not to exceed \$275 for the first offense and \$550 for subsequent offenses for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier.”

II. “In any legal action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any local ordinance, code or adopted under this title, or to enforce any planning board, zoning board of adjustment or building code board of appeals decision made pursuant to this title, or to seek the payment of any fine levied under paragraph I, the municipality shall recover its costs and reasonable attorney’s fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees, and investigatory expenses.”

## **VII. NOTICE OF FINES FOR ONGOING VIOLATIONS**

To the extent that the above-referenced violations are not remedied by **the deadline for corrective action set forth in the preceding paragraphs**, and those violations continue, you are hereby notified that such continuation of the violations constitute subsequent offenses, thus subjecting you to a fine of \$550 per day that such violations continue. Accordingly, this Notice of Violation provides express notification that the continuation of the above-referenced violations constitutes additional offenses and subjects you to an increased fine for every day that such violations continue.

If you have any questions regarding this **NOTICE OF VIOLATION / CEASE & DESIST ORDER**, you should promptly contact the undersigned of the City of Berlin at (603)752-1630.

CITY OF BERLIN  
CODE ENFORCEMENT OFFICER

Date: July 7, 2020

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Michel Salek, Code Enforcement Officer

CITY OF BERLIN  
HEALTH OFFICER

Date: July 7, 2020

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Angela Martin-Giroux – Health Officer

CITY OF BERLIN  
FIRE INSPECTOR

Date: July 7, 2020

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Peter Donovan – Fire Inspector

CITY OF BERLIN  
CITY COUNCIL

Date: July 7, 2020

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Jim Wheeler, City Manager  
Duly Authorized by Council Vote

CC: Christopher T. Hilson, Esq., City Attorney  
The Bank of New York Mellon, via procedure in RSA 510:4