



ORDINANCE

CITY OF BERLIN

2020-04

In the year of our Lord Two Thousand Twenty

AN ORDINANCE amending the Code of Ordinances of the City of Berlin, Chapter 17, ZONING, ARTICLE II General Provisions, Sec. 17-24 Uses by Special Exception; ARTICLE V. Rural Residential Zone, Sec. 17-52 Uses; ARTICLE XI. Industrial/Business Zone, Sec. 17-112. Uses and ARTICLE XVII Standards for Specific Uses by adding Sec. 17-188 "Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facilities for facilities under 30 megawatts as defined by NH RAS 162-H:2"

Be it ordained by the City Council of the City of Berlin as follows:

That the Code of Ordinances of the City of Berlin Chapter 17, ZONING, ARTICLE II General Provisions, Sec. 17-24 Uses by Special Exception is hereby amended by removing Item 3. under Uses by Special Exception

Sec. 17-24. Uses by Special Exception

~~3. The following provisions apply to Special Exceptions sought for any Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facility as defined by NHRSA 162-H:2 (referred to herein as "Energy Projects"):~~

~~Whereas the State of New Hampshire recognizes the need and value of Energy Projects, the City of Berlin has determined that changes have occurred in the community that lead to the requirement for further consideration when reviewing and considering approval of any Energy Project. With the decline of pulp manufacturing/ heavy industry nationally and the closure and cessation of pulp manufacturing in Berlin, the community realizes that there will be projects proposed to utilize the wood, wind and water supply within the City. The citizens of Berlin through public hearings related to the Master Plan update in early 2008 have indicated a desire to properly locate energy related facilities within the community but ideally outside of the downtown area. The City wishes to encourage the development of properly located Energy Projects and has developed the enclosed provisions to ensure the responsible evaluation of these Energy Projects. The following list of criteria will be reviewed in addition to Section 17-24 1 and 2 for all proposed Energy Projects within the only possible zones in which such activity could be properly allowed—the Industrial/Business Zone and the Rural Residential Zone as stated in Section~~

~~a. All Energy Projects must meet the performance standards as stated in Article XVIII Section 17-191—17-200~~

~~b. Each Applicant for a Special Exception for an Energy Project shall provide a report or study for evaluation and review by an appropriate qualified peer reviewer that indicates in reasonable detail the primary fuel source to be used and that there is adequate long range supply available for the project. The Applicant's report shall also indicate in reasonable detail the methodology and routing for transporting any off-site fuel supply to the site. The Zoning Board shall select the peer reviewer(s) whose duty it will be to advise the Zoning Board on the issues under review; and the cost of the peer review shall be borne by the Applicant. The inadequacy of and questionable transportation methodology and/or routing of such long-term fuel supply shall be grounds for denial of the Special Exception.~~

~~c. All Energy Projects shall be sited to maximize use of existing transmission lines and minimize the creation of new transmission lines. If new lines are required, the Applicant shall provide to the Zoning Board a report from a qualified engineer stating the necessity of an upgrade to the transmission lines and the propriety of the amount and location of those new transmission lines. The Zoning Board shall select the peer reviewer(s) of that report, whose duty it will be advise the Zoning Board on the issues under review; and the cost of the peer review shall be borne by the Applicant. The inappropriateness of the amount and location of those new transmission lines shall be grounds for denial of the Special Exception.~~

~~d. Further information may be required by the Planning Board during Site Plan Review.~~

~~e. The Zoning Board shall consider the physical appropriateness of the Energy Project in relation to the surrounding area it will be located in. Several aspects should be considered when reviewing the appropriateness of the location including but not limited to scale, height, materials being used for construction, level of activity on the site both during construction and during operation, impact on existing and potential future uses of adjoining and area properties, and any other factors which may negatively impact the appropriate development of the area in compliance with the current and future Master Planning process for the City as a whole. The inappropriateness of such siting shall be grounds for denial of the Special Exception.~~

~~f. All Energy Projects must obtain a special exception from the City of Berlin before final approval by any State agency regardless of size.~~

~~g. All Energy Projects must also comply with all other City, State and Federal regulations, rules, ordinances and laws. (Ord. of 6/16/08)~~

ARTICLE V. Rural Residential Zone, Sec. 17-52 Uses. is hereby amended by renumbering and adding "Uses Permitted by Special Use Permit" as follows:

Uses Permitted by Special Exception:

17. Tower Structures including but not limited to, towers for transmission (other than telecommunications), communication, cellular telephones, and wind energy. (Ord. of 7/5/05)

And by adding:

Uses Permitted By Special Use Permit

1. Telecommunications Structures or Towers
2. Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facilities for facilities under 30 megawatts as defined by NH RSA 162-H:2

ARTICLE XI. Industrial/Business Zone, Sec. 17-112. Uses. is hereby amended by renumbering and adding "Uses Permitted By Special Use Permit" as follows:

3. Group child care- Class A and B
~~Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facility as defined by NHRSA 162-H:2 (Ord. 6/16/08)~~
4. Accessory uses to the above

Uses Permitted By Special Use Permit:

1. Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facility as defined by NHRSA 162-H:2; and

ARTICLE XVII Standards for Specific Uses is hereby amended by adding Sec. 17-188 “Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facilities for facilities under 30 megawatts as defined by NH RAS 162-H:2” as follows:

17-188. Bulk Power Supply Facility, Energy Facility, or Renewable Energy Facilities for facilities under 30 megawatts as defined by NH RSA 162-H:2

1. Purpose:

The purpose of this Article is to establish general guidelines for the siting of Bulk Power Supply Facilities, Energy Facilities, or Renewable Energy Facilities as defined by NH RSA 162-H:2 (referred to herein as “Energy Projects”):

a. Preserve the authority of the City of Berlin to regulate and to provide reasonable opportunities for the siting of Energy Projects;

b. All Energy Projects must meet the performance standards as stated in Article XVIII Section 17-191—17-200;

c. All Energy Projects shall be sited to maximize use of existing transmission lines and minimize the creation of new transmission lines. If new lines are required, the Applicant shall provide to the Planning Board a report from a qualified engineer stating the necessity of an upgrade to the transmission lines and the propriety of the amount and location of those new transmission lines. The Planning Board shall select the peer reviewer(s) of that report, whose duty it will be advise the Planning Board on the issues under review; and the cost of the peer review shall be borne by the Applicant. The inappropriateness of the amount and location of those new transmission lines may be grounds for denial of the Special Use Permit.

d. The Planning Board shall consider the physical appropriateness of the Energy Project in relation to the surrounding area it will be located in. Several aspects should be considered when reviewing the appropriateness of the location including but not limited to scale, height, materials being used for construction, level of activity on the site both during construction and during operation, impact on existing and potential future uses of adjoining and area properties, and any other factors which may negatively impact the appropriate development of the area in compliance with the current and future Master Planning process for the City as a whole. The inappropriateness of such siting shall be grounds for denial of the Special Use Permit.

e. All Energy Projects must also comply with all other City, State and Federal regulations, rules, ordinances and laws.

f. Further information may be required by the Planning Board during Site Plan Review.

2. Regulation:

Energy Projects shall be allowed by Special Use Permit, in accordance with RSA 674:21 II, as either primary or accessory uses in the Industrial Business and Rural Residential Zones in the City of Berlin provided that the standards of this article are met.

3. Special Use Permit Procedures for Energy Projects:

a. The Special Use Permit Granting Authority

The Special Use Permit Granting Authority (SUPGA) shall be the Planning Board of the City of Berlin

b. Special Use Permit Conditions

Before granting a special use permit under this Section, the Planning Board may, after due consideration and consultation with other City Officials require any technical reports as may be necessary and attach any conditions deemed necessary to fully implement the purpose and intent of this Article.

c. Submittals

All commercial Energy Projects will submit an application for a Special Use Permit either prior to or jointly with their application for Site Plan Review.

4. Financial Security:

Recognizing the extremely hazardous situation presented by abandoned or discontinued Energy Projects, the Planning Board may require a form of financial security to be posted as a condition of approval for a special use permit for Energy Projects. This security, in an amount to be determined by the Planning Board, may be in the form of, cash or a non-lapsing irrevocable letter of credit or other form acceptable to the Board and the City Attorney. It will be posted by the applicant and held by the City until the Energy Project is removed. It shall be the sole responsibility of the applicant, its assign, or its successor in interest, to ensure that acceptable and adequate security, once posted, is maintained continuously and without lapse. Lapse of adequate security shall be grounds to revoke a special use permit and cause for the Energy Project to be removed.

This Ordinance shall be in full force and effect from and after passage.

PASSED: October 19, 2020
Date

APPROVED: _____
Paul Grenier, Mayor

ATTEST: _____
Shelli Fortin, City Clerk