



BERLIN MAYOR AND COUNCIL

Meeting Agenda

Berlin Town Hall
10 William Street
Tuesday, May 28, 2019

7:00 PM REGULAR SESSION – Council Chambers

1. Approval of the Minutes for:
 - a. Executive Session of 05/13/19
 - b. Statement of Closure for Executive Session of 05/13/19
 - c. Regular Session of 05/13/19
2. Motions to Approve:
 - a. Motion 2019-12: Berlin Roadway and Utility Improvements Proposal – Robert Duma, P.E., Davis, Bowen & Friedel
 - b. Motion 2019-13: On What Grounds? Request for tables and chairs on sidewalks – Dana Gottlob, Owner
3. Resolution 2019-03: Athena Properties Annexation Agreement – Spiro Buas and Peter Buas
 - a. Public Hearing
 - b. Action on Resolution 2019-03
4. Resolution 2019-04: Resolution establishing Water and Sewer usage rates and connection fees – Robert Duma, P.E., Davis, Bowen & Friedel
5. First Reading on Ordinance 2019-04: Amending Chapter 108, Article II, Division 5, Subdivision II, Section 108-165, Entitled “Variances” – Planning Director David Engelhart
This item is for discussion only; public hearing and action is scheduled for Monday, June 24, 2019
6. Departmental Reports
7. Town Administrator’s Report
8. Comments from the Mayor
9. Comments from the Council
10. Comments from the Public
11. Comments from the Press
12. Adjournment

Anyone having questions about the meetings mentioned above or needing special accommodations should contact Laura Allen, Town Administrator at (410) 641-4144. Written materials in alternate formats for persons with disabilities are made available upon request.

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BERLIN MAYOR AND COUNCIL
Meeting Minutes
Monday, May 13, 2019

7:00 PM REGULAR SESSION – Berlin Town Hall Council Chambers

Present: Mayor Gee Williams, Vice-President Elroy Brittingham, Councilmembers Thom Gulyas, Zackery Tyndall, Dean Burrell, and Troy Purnell.

Staff Present: Town Administrator Laura Allen, Managing Director Jeff Fleetwood, Administrative Services Director Mary Bohlen, Finance Director Natalie Saleh, Water Resources/Public Works Supervisor Jamey Latchum, Police Chief Arnold Downing, Planning Director Dave Engelhart, Economic and Community Development Director Ivy Wells, Town Attorney David Gaskill, and Town Clerk Kelsey Jensen.

Following the Lord’s Prayer and Pledge of Allegiance, Mayor Williams called the meeting to order at approximately 7:00 PM.

1. Approval of the Minutes for:

a. Executive Session of 04/22/19:

On the motion of Councilmember Gulyas, the Executive Session minutes of April 22, 2019 were approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

b. Statement of Closure for Executive Session of 04/22/19:

Mayor Williams read the Statement of Closure.

c. Regular Session of 04/22/19:

On the motion of Councilmember Gulyas, the Regular Session Minutes of April 22, 2019 were approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

d. Budget Work Session of 04/29/19:

Councilmember Tyndall said he would like to see a change made on page two that Mr. Stern discussed increasing the taxes to be in line with inflation rates, but if there is a year with no inflation we should not increase the tax rate. He also recalled him saying we need to combine those efforts with tightening the budget and budget cuts. Councilmember Burrell said he did not recall the conversation that way.

On the motion of Vice-President Brittingham, the Regular Session Minutes of April 29, 2019 were approved as is by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall		X			
<i>Voting Tally</i>	4	1			

2. Motion 2019-11: Assateague Coastal Trust Business Use of Park for Berlin Falls Park for Coast Kids Activity on Saturday, May 18, 2019 from 6:30pm to 8pm
Verena Chase with Assateague Coastal Trust requested approval of this activity. She said they hope to have 12 children there ranging in age from 3-13. Members will be free, and non-members will be \$3. Councilmember Burrell asked if the kids would be supervised by their parents; she said they would.

On the motion of Councilmember Burrell, Motion 2019-11 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

3. Public Hearings:
 - a. Ordinance 2019-03: Setting the Real Property Tax Rate
Mayor Williams explained Ordinance 2019-03 and stated that this step is needed before the budget adoption which will take place on June 10, 2019.
Mayor Williams opened the public hearing at 7:11pm. The following residents expressed opinions, concerns, and raised questions:
 Jeff Smith – Davis Court
 Tracy Albrecht – William Street
 Deborah Fletcher – Powell Circle
 Suzanne Parks – Baker Street
 Cindi Krempel – Broad Street
 Rose Zollinger – Ann Drive
 Don Fletcher – Powell Circle
 Jim Meckley – Buckingham Road
 Cam Bunting – Ann Drive
 Brian Behounek – Vine Street
 With no further comment, Mayor Williams closed the public hearing at 8:12pm.

Councilmember Burrell said they discussed this in detail at the last meeting and he has no further comments; Vice-President Brittingham agreed. Councilmember Gulyas said this is a difficult decision to make and it will affect them too; he thanked everyone that has participated in the process.

On the motion of Councilmember Burrell, Ordinance 2019-03 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall		X			
<i>Voting Tally</i>	4	1			

b. Ordinance 2019-01: Business License Late Penalties Increase

Town Administrator Laura Allen discussed the Ordinance and said as of now, there are still 14 unpaid licenses and the bills went out to those businesses almost a year ago.

Mayor Williams opened the public hearing at 8:23pm. Jeff Smith, Davis Court, asked for clarification of the Ordinance. Councilmember Tyndall asked if page four section D should be its own section for clarity purposes. Councilmember Gulyas stepped off the dais to speak as a business owner. Thom Gulyas, owner of Ace Printing, asked if we can include timeframes of when the misdemeanor penalties would go into effect; Town Attorney David Gaskill said we can. Mr. Gulyas also said he does not think we are being business friendly with publishing the names of those who have not paid. Councilmember Burrell said the businesses are not being business friendly if we have to badger them about payment. Mr. Gaskill said we have always had the option to publish the names of the businesses, but we have chosen not to. Councilmember Tyndall said he would like to see Councilmember Gulyas on the dais discussing this item since he has information about which businesses have not paid and the public does not; Mr. Gulyas disagreed. Mr. Gulyas said he would like to see publications of the names of the late businesses done later in the process. Ms. Allen clarified that the changes discussed include indicating that publication will be done after 90 days, and that the misdemeanor citation would take place after 90 days as well. With no further comment, Mayor Williams closed the public hearing at 8:52pm.

Mayor Williams asked about the possibility of waiting to adopt this Ordinance until the changes are made and can be reviewed. Ms. Allen said they could, but staff would not be able to put these changes into effect on July 1st. Councilmember Tyndall made a motion to separate section D in section 8-28; Mr. Gaskill suggested adding it into section 8-22.

On the motion of Councilmember Tyndall, moving section D of section 8-28 to section 8-22 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				

<i>Voting Tally</i>	5				
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On the motion of Councilmember Burrell, with Councilmember Tyndall's approved Motion and adding that publication will occur 90 days after non-payment, Ordinance 2019-01 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

4. First Reading/Introduction of Ordinance 2019-02: Fiscal Year 2020 Budget Adoption
Mayor Williams discussed Ordinance 2019-02 and Town Administrator Laura Allen read the Ordinance aloud and said it is available online. Mayor Williams said the budget for FY19 was 18.2 million and this year proposed budget is 15.6 million; the public hearing on this matter will take place on June 10, 2019.
5. Berlin Fire Company request for early processing of final quarterly payment by May 15, 2019
President David Fitzgerald and EMS Captain John Holloway asked for early payment. Councilmember Burrell said a schedule was put in place, and if it needs adjusted then we need to figure that out before next year; he said it is reasonable in year one, but dates should be set next year. Councilmember Tyndall asked where we stand with next years contract; Mr. Fitzgerald said it is with their attorney. Councilmember Tyndall said it will be best to meet about the contract to discuss specifics before July 1, 2019; Mayor Williams said it is necessary, so let him know when they are available to come to a meeting.

On the motion of Councilmember Burrell, the request for early payment to be processed on May 15, 2019 was approved by the following vote:

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				
Zackery Tyndall	X				
<i>Voting Tally</i>	5				

6. Departmental Reports:

a. Finance Director – Natalie Saleh

Ms. Saleh said she is going to change the name of some line items in the budget for clarity purposes; she will send it and show the changes when she is complete.

b. Water Resources/Public Works Supervisor – Jamey Latchum

Mr. Latchum discussed the awards that Mr. Dukes and Ms. Kreiter were awarded at the Maryland Rural Water Conference. He also said there will be bulk pickup this Wednesday. Ms. Saleh added that we should be seeing the awards and recognitions earlier in the meetings because the public is not ever around to see it; the Council agreed that it should be moved up on the agenda.

c. Police Chief – Arnold Downing

Chief Downing said there was a cookout on Saturday for law enforcement appreciation day. He said the body camera general order is completed and will need to be approved; he will send it to Ms. Allen and Mr. Gaskill for review. Lastly, he mentioned that the events have been greatly attended which has put a push on them for man power. Councilmember Tyndall mentioned that this week is law enforcement appreciation week and said he appreciates what our Police Department does for us.

d. Planning and Zoning Director – David Engelhart

Mr. Engelhart said on Tuesday, May 28, 2019 at the next Council Meeting, there will be a public hearing on the annexation for the property at 818 and North Main which was recommended by the Planning Commission back in March. He also explained that during annexations, the developer is responsible for water hook up, utility poles, etc., but once the property is annexed it generated tax revenue to the Town. Lastly, he explained his role in the business license process since it was discussed this evening.

e. Economic and Community Development Director – Ivy Wells

Ms. Wells said the issue with the business license payments only stems from a few businesses, but they cannot be singled out which is why they needed to make a change this evening. She discussed the success of Reggae Playday that Ocean 98 sponsored. Volunteers are needed for Ambassador; contact her if you are interested. Lastly, there is still \$10,000 available for façade grants in the Main Street district.

f. Managing Director – Jeffrey Fleetwood

Mr. Fleetwood said open enrollment will take place on May 21 (8am-12pm), May 22 (8am-4pm), and May 23 (1pm-4pm) in Town Hall; he wants to see every employee attend.

7. Town Administrator’s Report – Laura Allen – none.

8. Comments from the Mayor – none.

9. Comments from the Council:

Councilmember Burrell thanked the public for their input and participation and he said he hopes to see it continue for future meetings because it is invaluable.

10. Comments from the Public:

Samantha Pielstick, Decatur Street, suggested microphones for all staff to make the recordings clearer. She said she appreciated being able to listen to the last meeting, and it is clear when people speak into the microphones, but more would be better.

11. Comments from the Press – none.

12. Adjournment:

On the motion of Councilmember Burrell, the Mayor and Council meeting was adjourned at approximately 9:40PM.

Name	Counted toward Quorum			Recused	Absent
	Aye	No	Abstain		
Elroy Brittingham, VP	X				
Dean Burrell	X				
Troy Purnell	X				
Thom Gulyas	X				

Zackery Tyndall	X				
<i>Voting Tally</i>	5				

Respectfully Submitted,



Kelsey Jensen
Town Clerk



MOTION OF THE MAYOR AND COUNCIL 2019-12

A MOTION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN APPROVING THE BERLIN ROADWAY RECONSTRUCTION AND UTILITY UPGRADES PROPOSAL AS PROPOSED BY DAVIS, BOWEN & FRIEDEL, INC.

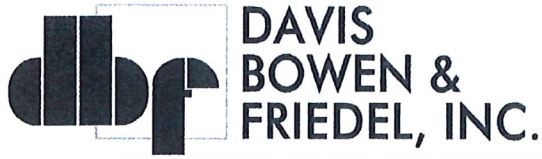
APPROVED THIS ____ DAY OF _____, 2019 BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND BY AFFIRMATIVE VOTE OF ____ TO _____ OPPOSED, WITH ____ ABSTAINING, AND ____ ABSENT.

Elroy Brittingham, Sr. Vice President

Approved this ____ day of _____, 2019 by the Mayor of the Town of Berlin.

Wm. Gee Williams, III, Mayor

ATTEST: _____
Laura Allen
Town Administrator



ARCHITECTS ENGINEERS SURVEYORS

May 14, 2019

Town of Berlin
10 Williams Street
Berlin, MD 21811

*Michael R. Wigley, AIA, LEED AP
W. Zachary Crouch, P.E.
Michael E. Wheedleton, AIA
Jason P. Loar, P.E.
Ring W. Lordner, P.E.
Jamie L. Sechler, P.E.*

Attn: Ms. Laura Allen
Town Administrator

Re: Proposal for Berlin Roadway Reconstruction and Utility Upgrades
Showell Street, Grace Street, and Bottle Branch Road
Town of Berlin, Maryland
DBF # P0050A19.038

Dear Ms. Allen:

Davis, Bowen & Friedel, Inc., (DBF) is pleased to offer the following proposal for professional design and construction phase engineering services associated with roadway reconstruction and utility improvements on, Grace Street, Showell Street, and Bottle Branch Road. It is our understanding that you desire design, permitting and construction phase services for roadway reconstruction, as well as investigation and improvements of existing water and sewer utilities and services. Services provided would include the following:

Grace Street

Our design will include geotechnical investigation of the road pavement section and subgrade to determine the best approach for pavement construction. In addition to subgrade repairs and asphalt resurfacing, our design will include replacement of existing old sections of sidewalk in kind, as directed by the Town. We will also review the storm drainage system in this area to see if replacement of storm drains or storm structures are necessary. Our design will include full width surface paving of the roadway once the subgrade repairs and utility work are completed.

We will meet onsite with the Town to investigate the existing water, sewer and storm drainage utilities and confirm the condition of existing utilities. We anticipate the utility improvements on Grace Street will include replacement of the old clay gravity sewer main and laterals to the sewer cleanouts. On both streets, we will coordinate with the Town to determine desired improvements to residential and commercial sewer laterals, water services, and fire services for existing and proposed structures for each property served.

Showell Street

Our design will include geotechnical investigation of the road pavement section and subgrade to determine the best method for pavement construction. In addition to subgrade repairs and asphalt resurfacing, we will review the storm drainage system in this area to see if replacement of storm drains or storm structures are necessary. Our design will include full width surface paving of the roadway once the subgrade repairs and utility work are completed.

We will meet onsite with the Town to investigate the existing utilities and confirm the condition of existing utilities. We anticipate that the utility improvements on Showell Street will include replacing the old 2" water main with a watermain sized for fire protection service, as well as replacement of the old 8" clay gravity sewer. On Showell Street, we recommend increasing the separation between water and sewer as necessary to meet MDE standards.

Bottle Branch Road

The proposed work for Bottle Branch Road subgrade repair in failed sections and full width mill and overlay of the entire roadway, or to extents determined by the Town. Our design will include geotechnical investigation of the road pavement section and subgrade to determine the best method for pavement construction. No stormdrain or utility improvements are anticipated.

Based on this understanding, our scope of work will be to develop site plans, utility plans and details for permitting, bidding and construction of the proposed work. A breakdown of services and fees are as follows.

DESIGN PHASE SERVICES

Topographic Survey

We will locate all existing surface features within the proposed project area, as are visible from the surface, including roadway, swales, drainage structures, utilities, manholes, cleanouts, valves, fences, landscaping, mailboxes, signs, exposed property corners and other natural and man-made features pertinent to the design of the project. We will determine the elevations of all storm drain piping, and the inverts of sewer mains that might be effected, within the project area.

DBF will request a Miss Utility locate to mark underground utilities within the project area. DBF will coordinate the locate areas with the Town prior to the survey. Our topographic survey will include location of all Miss Utility markings and flagging.

Based on surveyed property corners and deed/plat research, we will determine the existing street right-of-ways. All proposed work is anticipated to be in the existing street right-of-way. Excluded from this contract is the acquisition of easements within the project area. At this time we do not anticipate the need for any easements, however, DBF can perform deed research and prepare easement documentation if required and requested by the Town as additional services.

Excluded from this contract is the determination of the depths of underground utilities which require test pitting. If determination of the depth of these services is critical to avoid a conflict with proposed work, we can perform this work under additional services, with excavation and test pitting to be done by the Town or contractor, to determine conflict potentials.

Lump Sum Fee \$4,800

Design & Construction Drawings

We will provide construction drawings, technical specifications, and bidding documents necessary for the proposed roadway and utility work. Storm drain design, if required, will be limited to local drainage, and does not include downstream conveyance systems. Two additional field visits and/or meetings with Town staff and officials are included in this design cost.

Geotechnical sampling, testing and evaluation will be provided by an outside consultant for trench restoration design and roadway paving design. It is anticipated that 10 pavement/soil borings will be required and the cost of those borings and associated testing and analysis is included in our design cost.

Lump Sum Fee \$9,700

Erosion & Sediment Control

We will prepare Erosion & Sediment Control plans, and will submit those plans to the Worcester Soil Conservation District for permitting review and comment. We will address the comments and resubmit for approval.

Lump Sum Fee \$2,700

Stormwater Management

We will prepare site plans, and waiver request forms and submit to the Town's SWM reviewer, EA Engineering, Science & Technology, Inc., for a SWM waiver. NO additional impervious area is anticipated for the proposed improvements.

Lump Sum Fee \$1,200

CONSTRUCTION PHASE SERVICES

Bidding

DBF will provide Bidding and Award Administration including assisting with advertising, soliciting interest from contractors, responding to bidder questions, preparation of addenda, attendance at the Pre-Bid Meeting and Bid Opening, reviewing Bids received and recommendation of award. Actual cost for advertising shall be paid by the Town, or if requested, can be handled as a direct expense by DBF. Newspaper advertising costs are not included in the Lump Sum fee.

Lump Sum Fee \$7,000

Construction Administration Services

Construction Administration Services will be provided throughout the project construction and will include the following:

- Coordinate between the Town of Berlin and Contractor when appropriate.
- Conducting the Pre-Construction Conference and progress meetings for the project on behalf of the Town of Berlin including preparation and distribution of meeting minutes.
- Review of submittals by the Contractor on materials proposed for use in the construction project.
- Answer Contractor and Town of Berlin questions regarding project materials, equipment, and construction processes.
- Supervision of Resident Project Representative (RPR) monitoring and reporting activities, and distribution of Daily Field Reports generated by the RPR.
- Evaluate and track the construction schedule with notice provided to the Town of Berlin as scheduling issues arise.

- Coordinate any necessary quality control on behalf of the Town of Berlin as required by the Contract Documents or testing that may be in addition to that already provided by the Contractor.
- Review Contractor progress payment applications, make recommendations, and submit to the Town of Berlin.
- Communication with the Contractor pertaining to conflict resolution and any other issues relevant to construction activity.
- Review and recommendations for Contractor Change Order requests.
- Schedule and participate in the final inspection of the completed work to result in preparation of a punch-list.
- Verification that punch-list items have been completed and recommendations regarding acceptance to the Town of Berlin.
- Schedule, conduct, and report the results of the end-of-warranty inspection of constructed improvements.
- Construction Administration fees are based on 90 day construction period.

Lump Sum Fee \$7,200

Record Drawings

Services associated with providing record drawings will include the following: obtain contractor and RPR as-built drawings, incorporate any revisions from as-built drawings, addenda and any approved change orders, coordinate preparation of record drawings and furnish to the Town of Berlin. Hard copies of the Record drawings will be provided to the Town digital copy retained for future incorporation into the Town's GIS system.

Lump Sum Fee \$2,400

Inspection Services

RPR Services will be provided as necessary throughout the project construction and will include the following:

- Full-time time inspection of underground water system and Stormdrain improvements to verify compliance with project specifications.
- Part-time time inspection of above-ground and accessible improvements to verify compliance with project specifications.
- Inspection of materials provided by the Contractor for use in the construction project.
- Preparation of Daily Field Reports to summarize the Contractor's activities and field conditions.
- Maintain project record of field reports, meeting minutes, and construction correspondence.
- Monitoring any testing activities to confirm compliance with requirements of project specifications.
- Informing the Engineer as to the progress and quality of work.
- Review changes observed to accommodate field conditions and maintain RPR field as-built set, as well as review Contractor As-builts for preparation of Record Drawings/
- Informing the Contract Administrator of any conflicts and formulation of punch-list at conclusion of constructed improvements.

Inspection fees assume one inspector covering full-time and part-time duties for a total of 120 hours over the 90-day construction period. Estimated inspection hours for construction meetings and final

inspection are also included in the estimated fee.

Estimated Fee \$9,600

We are anticipating that the design will be completed as a Town infrastructure maintenance replacement project. No detailed stormwater management, or other permitting services are anticipated or included in this estimate. If stormwater management design is required, permitting can be provided as additional services. No specific funding agency requirements or coordination are anticipated by DBF. No specific public hearing services are included beyond the two site visits specified in design and attendance at a Mayor & Council Meeting if desired by the Town. It is understood that the scope of work and associated fees described herein shall exclude any permit application fees, agency review fees, recordation fees, and any other fees assessed by any government or regulatory agency for the purpose of reviewing and/or permitting the plan.

We will provide the design and construction phase services described above for a lump sum fee of \$18,400 for Design phase services, \$16,600 for Construction phase services, plus an estimated fee of \$9,600 for inspection services. Any work requested and authorized by the Town beyond the scope of this proposal can be billed as additional services on an hourly basis. Invoices for all services will be rendered monthly based upon actual work completed during the previous month. Payment terms and any authorized additional services will be in accordance with the attached Schedule of Rates No. 46.

TOTAL ESTIMATED FEE FOR DESIGN & CONSTRUCTION PHASE ENGINEERING SERVICES: \$44,600

We will complete the design and submit to the Town for review within 90 days after authorization to proceed. We appreciate the opportunity of providing this proposal and look forward to working with the Town to successfully complete this project. If this proposal is acceptable to you, please sign on the space provided and return one copy for our files. This proposal is valid for 60 days.

Sincerely,
DAVIS, BOWEN & FRIEDEL, INC.



Joshua J. Taylor, P.E.
Associate

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Enclosure

cc: Jane Kreiter, Water Resources/Public Works Director
Jamey Latchum, Stormwater and Wastewater Superintendent

Accepted By: _____

Date: _____

Town of Berlin

DAVIS, BOWEN & FRIEDEL, INC. ("DBF")
SCHEDULE OF RATES AND GENERAL CONDITIONS
 SCHEDULE NO. 46
 Effective June 1, 2015

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$170.00
Senior Architect	\$150.00
Architect	\$120.00
Senior Landscape Architect	\$150.00
Landscape Architect	\$120.00
Senior Engineer	\$150.00
Engineer	\$120.00
Construction Administrator	\$120.00
Senior Traffic Engineer	\$150.00
Traffic Engineer	\$120.00
Geologist	\$120.00
GIS Specialist	\$110.00
Senior Surveyor	\$150.00
Associate Surveyor	\$120.00
Surveyor	\$115.00
Senior Designer	\$115.00
Computer Graphics Designer	\$100.00
Designer	\$105.00
CADD I	\$95.00
CADD II	\$85.00
Computer Administrator	\$100.00
2 Man Field Crew	\$140.00
3 Man Field Crew	\$175.00
GPS Unit (1 man)	\$110.00
GPS Unit (2 man Crew)	\$150.00
GPS Unit (3 man Crew)	\$200.00
Resident Project Representative	\$80.00
Water/Wastewater Operator	\$120.00
Clerical	\$60.00
Travel	\$0.50
Direct Expense	Cost + 10%
Prints (In-house Reproduction)	\$2.50/sheet

GENERAL CONDITIONS

INVOICES & PAYMENT

Invoices are sent monthly or sooner if project is complete. Payment Terms: Net 30 days of invoice date. Any invoice not paid within 30 days shall bear interest at 1.0% per month (12% annually). If required to engage legal counsel to collect an overdue invoice, DBF shall be entitled to recover also its costs of collection, including counsel fees and expenses. DBF reserves the right to adjust its schedule of rates annually. Any such adjustments will be effective within 30 days after written notification to the client.

TERMINATION OF CONTRACT

Client may terminate this agreement upon seven days' prior written notice to DBF for convenience or cause. DBF may terminate this Agreement for cause upon seven days' prior written notice to client. Failure of client to pay invoices when due shall be cause for immediate suspension and ultimate termination of services, at DBF's sole discretion. This agreement may be terminated by either party for any reason with 30 days advance notice.

LIMITATION OF LIABILITY

Client agrees to limit DBF's liability related to any errors or omissions to a sum that shall not exceed the total professional fee for the project.

INDEMNIFICATION

Client and DBF each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorney's fees caused by the other's negligence. To the extent such claims, losses, damages or expenses are caused by the joint or concurrent negligence of client and DBF, the same shall be borne by each party in proportion to its negligence. This shall in no way affect the limitation of DBF's liability expressed in the preceding paragraph.

FORCE MAJEURE

Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.

CONSTRUCTION PHASE SERVICES

If this Agreement provides for any construction phase services by DBF, it is understood that the contractor, not DBF, is solely responsible for the construction of the project, and that DBF shall not be responsible for the acts or omissions of any contractor, subcontractor or material supplier; for safety precautions, programs or enforcement; or for construction means, methods, techniques, sequences and procedures employed by the contractor, its subcontractors or suppliers.

OWNERSHIP OF DOCUMENTS

All documents prepared or furnished by DBF pursuant to this Agreement, including electronic media, are instruments of DBF's professional service, and DBF shall retain an ownership and property interest therein. DBF grants client, during the period of DBF's service, a license to use such documents for the purpose of constructing, occupying and maintaining the project. Reuse or modification of any such documents by client or client's agents, without DBF's written permission, shall be at client's sole risk; and client agrees to indemnify and hold DBF harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by client or by others acting through or with the consent of client.

USE OF ELECTRONIC MEDIA

Copies of documents that may be relied upon by client are limited to the printed copies (also known as hard copies) that are signed or sealed by DBF. Files in electronic media format or text, data, graphic or other types that are furnished by DBF to client are only for convenience of client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, DBF makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, computer hardware or of a protocol differing from those in use by DBF during the period of this agreement.

SUCCESSORS & ASSIGNS

The client and DBF bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

MISCELLANEOUS PROVISIONS

Unless otherwise specified, this Agreement shall be governed by laws of the State in which the work is performed, and the courts of such State shall have exclusive jurisdiction over any disputes hereunder. Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. If this schedule is incorporated or referenced in an agreement with client, the terms of this schedule shall prevail in the event of any conflict with the terms of such agreement.

REIMBURSABLE EXPENSES

Other expenses known as direct expenses incurred in the interest of the project (including travel, toll communications, postage, delivery, photographs, subcontract engineering, testing or other consultants, renderings, models, etc.) will be billed monthly at DBF's actual cost plus ten percent.



MOTION OF THE MAYOR AND COUNCIL 2019-13

A MOTION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN APPROVING THE PLACEMENT OF "CAFÉ TABLES AND SEATING" FOR ON WHAT GROUNDS? LOCATED AT 103 N. MAIN STREET.

APPROVED THIS _____ DAY OF _____, 2019 BY THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND BY AFFIRMATIVE VOTE OF _____ TO _____ OPPOSED, WITH _____ ABSTAINING, AND _____ ABSENT.

Elroy Brittingham, Sr. Vice President

Approved this _____ day of _____, 2019 by the Mayor of the Town of Berlin.

Wm. Gee Williams, III, Mayor

ATTEST: _____
Laura Allen
Town Administrator

May 21, 2019

Dear Mayor and Town Council,

The undersigned hereby request to place 3 tables with 2 chairs each, on the sidewalk in front of our business, at 103 N Main Street. These tables and chairs will be very similar to the tables and chairs in front of DiFebo's across the street from us. We believe that having tables and chairs available to our customers will enhance their experience in our "cool town".

We have included photos for your review. They show that even with the table in place there is still more than 50 inches for pedestrians to travel back and forth. We were surprised to find that the sidewalks, on our side of Main Street, were actually wider than the other side.

Thank you for your consideration, and we look forward to answering any and all questions.

A handwritten signature in cursive script that reads "Denise Gottlob".

Denise Gottlob
On What Grounds?
103 N. Main Street
Berlin, MD 21811





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ANNEXATION RESOLUTION 2019- 03

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, A MUNICIPAL CORPORATION OF THE STATE OF MARYLAND, PROPOSING THE ANNEXATION TO THE TOWN OF A CERTAIN AREA OF LAND SITUATE AND CONTIGUOUS TO AND ADJOINING UPON THE CORPORATE LIMITS OF THE TOWN OF BERLIN AND PROVIDING FOR THE CONDITIONS AND CIRCUMSTANCES APPLICABLE TO THE PROPOSED CHANGES IN THE BOUNDARY OF THE TOWN OF BERLIN.

WHEREAS, the Town of Berlin has received, in accordance with Section 4-401, *et seq.* of the Local Government Article of the Annotated Code of Maryland (the Code”), as amended, consent of the property owner of the land to be annexed, being contiguous to and adjoining upon the corporate limits of the Town of Berlin; and

WHEREAS, the Town of Berlin has furnished the affected property owner with its proposed “Terms and Conditions” of annexation as reflected in the Annexation and Development Agreement attached hereto as Exhibit “1” and incorporated herein by reference, which includes among other things the proposed provisions for the extension of municipal services to that area; and

WHEREAS, it is the intent of the Town of Berlin to comply with existing State law and to ensure there are no enclaves created with the current annexation; and

WHEREAS, it appears that the consents received meet all requirements of Maryland State Law under the Code, as amended;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Berlin as follows:

SECTION A: It is hereby proposed and recommended that the boundaries of the Town of Berlin be changed so as to annex to, and include within said municipality, all that certain area of land, together with the improvements thereto, the property, contiguous to and adjoining upon the corporate limits of the Town of Berlin and more particularly described as follows:

Description of the lands of Athena Properties, Inc. (See Exhibit “A” and “B” of the “Annexation and Development Agreement” attached hereto and incorporated herein by reference).

SECTION B: Upon the effective date of annexation, all of the provisions of the Charter of the Town of Berlin and all Ordinances, Resolutions,

Rules and Regulations of the Town of Berlin in effect on said date shall apply to the property in the area to be annexed except as herein modified.

SECTION C: The annexation of said area is made subject to the terms and conditions of the Annexation and Development Agreement and this Resolution as follows:

1. POLICE PROTECTION – Police services of the Berlin Police Department shall be extended into the annexed area immediately upon the effective date of annexation.
2. TRASH COLLECTION – Owner acknowledges its obligation to pay for and provide regular trash collection in a manner consistent with Berlin Maryland Code of Ordinance. Trash collection is available from commercial solid waste management providers.
3. WATER SERVICE – Town of Berlin currently has water service available to the area to be annexed.
 - (a) The property owner will be allocated and pay “ready to serve fees” for five (5) EDU’s for the five (5) current lots making up the annexed property. The property owner has advised the property will be utilized for commercial development, with the First Phase estimated to use up to 6 EDU’s, to service the property. The Town will assess the property Owner “ready to serve fees” for the number of EDU’s needed to support the remainder of the development as they are allocated. Owner acknowledges that the payment of “ready to serve fees” guarantees access to that capacity and facilitates the purchase of EDU’s when needed for development. Owner further acknowledges that it understands the “ready to serve” process and has decided not to pay ready to serve fees on EDU’s beyond the requested number. Owner recognizes that water capacity may not be available for future development and assumes that risk. After one year of occupancy of the completed project, the Town will review the water usage at the property and adjust the number of EDU’s accordingly.
 - (b) All wells on the property must be abandoned and capped in accordance with the Town’s Wellhead Protection Program within six (6) months of annexation.
4. WASTEWATER SERVICE – The Town of Berlin currently has wastewater service available to the area to be annexed.

- (a) The property owner will be allocated and pay “ready to serve fees” for five (5) EDU’s for the five (5) current lots making up the annexed property. The property owner has advised the property will be utilized for commercial development, with the First Phase estimated to use up to 6 Equivalent Dwelling Units (EDU’s), to service the property. The Town will assess the property owner “ready to serve fees” for the number of EDU’s needed to support the development as they are allocated. Owner acknowledges that the payment of “ready to serve fees” guarantees access to that capacity and facilitates the purchase of EDU’s when needed for development. Owner further acknowledges that they understand the “ready to serve” process and has decided not to pay ready to serve fees on EDU’s beyond the requested number. Owner recognizes that wastewater capacity may not be available for future development and assumes that risk. After one year of occupancy of the completed project, the Town will review the wastewater usage at the property and adjust the number of EDU’s accordingly.

5. PAYMENT FOR EDU’s – The property owner’s payment for the cost of the Equivalent Dwelling Units (EDU’s) shall be subject to an Allocation Agreement(s) entered into between the Mayor and Council of the Town of Berlin and the Owner, as the EDU’s are allocated.

6. ZONING – The Annexed Property shall be zoned B-2 Shopping District under the Town of Berlin Zoning Ordinance, as identified on Exhibit “C” of the Annexation Agreement, and made a part of this document, with the consent of the Worcester County Commissioners.

7. VOTING RIGHTS – In the event that in the future, persons would reside in the annexed area, upon the effective date of annexation, those persons shall have the right to vote in all general and special elections of the Town of Berlin, subject to the same requirements applicable to all voters in the Town of Berlin.

8. PROPERTY TAXES – All property in the newly annexed area shall upon the effective date of annexation be subject to the payments of taxes, real and personal, and shall further be subject to a lien for the nonpayment thereof, in the same manner and at the same rate as properties now within the existing Town limits are subject as of the effective date of this resolution. Such taxes shall become due and payable within ninety (90) days of annexation. Commencing with the fiscal year beginning July 1, 2019, all such taxes shall be billed and collected in the same manner as all other taxes in the Town of Berlin.

Adopted this ____ day of _____, 2019, by the Mayor and the Town of Berlin, Maryland,
by affirmative vote of ____ to ____ opposed, with ____ abstaining.

Elroy Brittingham, Vice President of
Council

Adopted this ____ day of _____, 2019, by the Mayor and the Town of Berlin.

Wm. Gee Williams, III, Mayor

EXHIBIT 1

ANNEXATION AND DEVELOPMENT AGREEMENT

THIS ANNEXATION AND DEVELOPMENT AGREEMENT (hereinafter “Annexation Agreement”), is made on this ____ day of _____, 2019 by the **MAYOR AND COUNCIL OF BERLIN**, a Maryland Municipal Corporation (hereinafter the “Town”) and **ATHENA PROPERTIES, INC.** (hereinafter jointly called “Owner”).

RECITALS

The recitals set forth herein, to the extent that they set forth the intentions of, or commitments by the parties, are enforceable provisions of this contract.

A. The Town is a Municipal Corporation authorized to enter into this Annexation Agreement pursuant to the Charter and Code of the Town and of the Annotated Code of Maryland.

B. Owners are the fee simple owners of a certain tract or parcel of land (hereinafter the “annexation property”) which is more particularly described as a tract of land on the southerly side of U.S. Route 50 abutting 10001 Main Street (Parcel 36) and the westerly side of Maryland Route 818 (North Main Street) described in Exhibit “A”.

C. The annexation property is currently designated as a Growth Area within the Comprehensive Plan of the Town of Berlin (Growth Area 3), and is designated as “Existing Developed Area” on the Worcester County Comprehensive Land Use Map (“Map”) and is contiguous to the Corporate Limits of the Town.

D. The Town desires that growth be in accordance with the goals and guiding principles outlined in the Town’s Comprehensive Plan and the impact of such growth is managed for the benefit of the Town and its citizens.

E. The current wastewater treatment plant serving the Town was constructed in 1933, upgraded periodically, with the last upgrade in 2013 to increase capacity and has adequate capacity to serve the Annexation Property (the “Town’s Plant”).

F. Owner has requested annexation of the Annexation Property by the Town so long as certain matters pertaining to its future development are resolved, including without limitation, matters related to planning, zoning, and the future extension of public utilities and services;

G. The Town is willing to accomplish the annexation process, and to submit the Annexation Resolution to a vote by the Town’s Council (the “Council”), and to a referendum of the Town’s citizens, if requested, provided that the Owner agrees to adhere to the goals and guiding principles of the Town’s Comprehensive Plan, and all ordinances and regulations consistent therewith, including any and all agreements which will be required by the Town in connection with any proposed development;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. Recitals. The preamble and introductory clauses prior hereto are incorporated into this Annexation Agreement is a part hereof, and such provisions accurately reflect the facts therein recited and the intention of the parties.

2. Definitions:

“Sewer EDU” shall mean the equivalent amount of wastewater treatment required to serve one (1) single family home, which is two hundred fifty (250) gpd.

“Water EDU” shall mean the equivalent amount of treated water to serve one (1) single family home, which is two hundred fifty (250) gpd.

“Owner” shall mean the fee simple owner of the Annexation Property, the contract purchaser of the Annexation Property and any of his or their successors, heirs or assigns.

“MGD” shall mean million gallons per day.

“WWTP” shall mean wastewater treatment plant.

“WTP” shall mean water treatment plant.

3. Petition. In order to effectuate the annexation of the Annexation Property, Owner shall execute and submit to the Mayor of the Town Petition for the Annexation (Annexation Petition). The submission of a letter of request will qualify for such Petition. No persons who are eligible to sign a petition and to participate in a referendum election under the provisions of Section 4-403 of the Local Government Article (formerly Article 23A) of the Md. Code Ann. (Corporation – Municipal), live within the area to be annexed. Therefore, pursuant to Md. Code Ann. Local Government Article Subtitle 4, §4-403(b)(2), any person (including an association, the two or more joint owners of jointly-owned property, a firm or corporation) owning real property within the area to be annexed has a right equal to a natural person to sign the Annexation Petition. The Owner constitutes all the persons eligible to sign the Annexation Petition and is the owner of at least twenty-five percent (25%) of the assessed valuation of the property proposed for annexation.

4. Annexation. Upon the presentation of a proper Annexation Petition, in the form of a submission letter, a satisfactory concept plan and the execution of this Annexation Agreement, the Town will introduce an Annexation Resolution for public hearing and consideration in accordance with the procedures required by the Annotated Code of Maryland and the Town Code.

5. Property. The property that is subject to this Annexation Agreement is identified on Exhibit "A" attached hereto and incorporated herein by reference. A Plat of said property is attached hereto and incorporated herein by reference as Exhibit "B".

6. Zoning Upon Annexation.

A. The properties are currently zoned C-2 Commercial under the Worcester County Zoning Code. The Town agrees that with the approval of Worcester County Commissioners (the "Commissioners"), if required by statute, the property shall be designated as a B-2 Zoning Shopping District pursuant to Chapter 108 of the Town Code upon annexation. A copy of said B-2 zoning provision are attached hereto and incorporated herein by reference as Exhibit "C". The parties agree that all existing land uses within the Annexation Property, whether permitted uses, accessory uses, non-conforming uses, or special exception uses, currently made in, or upon the Annexation Property, may continue subject to appropriate zoning regulations.

B. The Annexation Property shall be developed consistent with ordinances adopted by the Town.

7. Development Intentions.

A. Development of the Annexation Property shall be subject to any necessary approvals by the Town's Planning and Zoning Commission and the Mayor and Council as required by law.

B. 1. The property owner will be allocated and pay "ready to serve fees" for five (5) EDU's for the five (5) current lots making up the annexed property. The property owner has advised the property will be utilized for commercial development, with the First Phase estimated to use up to 6 EDU's, to service the property. The Town will assess the property Owner "ready to serve fees" for the number of EDU's needed to support the remainder of the development as they are allocated. Owner acknowledges that the payment of "ready to serve fees" guarantees access to that capacity and facilitates the purchase of EDU's when needed for development. Owner further acknowledges that it understands the "ready to serve" process and has decided not to pay ready to serve fees on EDU's beyond the requested number. Owner recognizes that water capacity may not be available for future development and assumes that risk. After one year of occupancy of the completed project, the Town will review the water usage at the property and adjust the number of EDU's accordingly.

2. Owner may transfer EDU's between properties within the Development. Owner may apply to transfer EDU's from another property outside the development with Mayor and Council approval only if the Town does not have EDU's readily available for purchase

C. As the Owner requests from the town allocation or reservation for any of the projected EDU's or any additional EDU's pursuant to MDE guidelines, Owner shall

be entitled to pay “ready to serve fees” for any such additional EDU’s as requested, if they are available, until those additional water or sewer EDU’s, if any, shall be utilized for a future purpose on the annexed property. Owner acknowledges and understands the “ready to serve” process and has decided not to pay ready to serve fees beyond the initial five (5) EDU’s at this time. Owner recognizes water capacity may not be readily available in the future and understands that risk.

D. Owner agrees that all wells and septic systems will be abandoned or capped consistent with all applicable Federal, State, and County laws and Town Codes within the six (6) months of annexation.

E. Owner acknowledges that EDU allocation agreements must be in place prior to the application for a building permit and will allow adequate time for said process.

8. Further Conditions.

8.1. Sewer and Water Facilities for Commercial Development. The Owner intends to develop the Annexation Property with commercial uses on a phased basis as indicated on the attached concept plan attached hereto as Exhibit “D”, and incorporated herein by reference. The First Phase of which is intended to be for a fuel and convenience store where indicated on the Concept Plan attached hereto. Owner recognizes that such development may necessitate infrastructure improvements within the development. It is anticipated, however, that such extensions or improvements will include:

(a) Sanitary Sewer. The Annexation Project shall be served with wastewater from the Town. The municipal sewer line borders the eastern edge of the Annexation Property pursuant to Annexation Resolution Number 2000-01.

(b) Water. The Annexation Property shall be served with treated water from the Town. The municipal water line borders the eastern edge of the Annexation Property pursuant to Annexation Resolution Number 2000-01.

8.2. User Fees. Owner shall be charged all ordinary and standard user fees for water, sewer, impact fees and building permits.

8.3. Traffic study and SHA Approval. Owner agrees to hire a licensed professional engineer to complete a traffic impact study conducted pursuant to the guidelines set forth in the SHA Access Permit Manual, to address appropriate vehicle, bike, and pedestrian access to the Development and to determine the adequacy of the intersection of MD Route 818 and Route 50 to support the development. Owner will provide a copy of the traffic impact study to the Planning director at least two weeks prior to initial concept development plan review meeting with the Planning Commission.

8.4. Design Inclusions. In addition to developing the development consistent with the Town’s Comprehensive Plan, the Owner will:

(a) Install Victorian style lighting within the development, subject to the Town's approval.

(b) The development will reflect the Town of Berlin's Victorian style and contain design elements that complement the downtown area, subject to Planning Commission Approval.

(c) The proposed development is projected to include an initial phase with a fuel and convenience store. The ultimate development is intended to be in substantial conformance with the proposed concept plan and the annexed property will be governed by Covenants, Conditions, and Restrictions governing the property. The parties acknowledge that all proposed uses are subject to, site plan approval, existing zoning, and changes due to market conditions.

8.5 Electrical Services. Currently the Town of Berlin lacks the authority from the State of Maryland Public Services Commission to provide electrical service to the area to be annexed. However, the Municipality aspires to have all of its citizens receive and enjoy all of the benefits provided by the Town in an equal and equitable manner. The Municipality proposes to request permission to extend its electrical distribution facilities, subject to agreement with Delmarva Power and/or approval and authorization from the State of Maryland Public Service Commission, and to serve all those undeveloped properties presently being served by Delmarva Power.

8.5.1 Owner and Town agree that the Town is in the process of transferring electric service from Delmarva Power for the Annexation Property. Owner agrees to pay the actual cost for the "Customer Service Change" assessed by Delmarva Power and Light up to Five Thousand Dollars (\$5,000.00) for the property annexed into town. The Town will pay all costs over Five Thousand Dollars (\$5,000.00) if any.

8.5.2 If prior to development, the Town is granted approval to provide electric service to this property, the Owner is responsible for paying the connection and installation of electrical service charges consistent with the town electrical tariff.

8.6. Storm Water Management. Owner agrees to provide Stormwater Management in accordance with all State and municipal regulations for the proposed development. Owner further agrees that if the stormwater is to be used for irrigation, it shall sample the water and provide copies of the test results to the Town upon request.

9. Requirements This Annexation Agreement is contingent in its entirety upon the following conditions precedent:

(a) Submittal of a letter constituting an Annexation Petition and all supporting documents; and

(b) The successful and final annexation of the Annexation Property into the Town. The annexation will not become effective until the referendum periods have expired, and if applicable, all referenda have been resolved in favor of the annexation.

9.1. Either Owner or the Town may declare this Annexation Agreement null and void if the conditions in Paragraph 12.A. do not occur.

10. Public Works Agreement and Bonding.

10.1 Owner acknowledges its obligation to construct any public infrastructure on-site, to accommodate the development of the Annexation Property. Owner recognizes upgrades to conveyance, distribution and transmission systems may be required and agrees to pay for such improvements necessitated by the development as specific in the Public Works Agreement. Owner shall be bound by a Town of Berlin Public Works Agreement and agrees that all public utilities shall be installed within a right of way or dedicated easement and constructed in accordance with Town Standards and applicable regulations.

10.2 The parties acknowledge that all roads and services within the Annexation Property are private including water, sewer, stormwater, streets, sidewalks, and lighting and shall be maintained by the Owner. Owner acknowledges that the Town is not responsible for snow plowing.

10.3 Owner agrees to establish and maintain an escrow account with the Planning Director for standard engineering and staff review fees pursuant to the Town's existing requirements and agreements.

11. Mutual Assistance.

A. The parties shall do all things reasonably necessary or appropriate to carry out and to expedite the terms and provisions of this Annexation Agreement and to aid and assist each other in carrying out the terms and provisions of this Annexation Agreement and the intentions of the parties as reflected by said terms including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the Town of such resolutions and ordinances and the taking of such other actions as may be necessary to enable the parties' compliance with the terms and provisions of this Annexation Agreement and as may be necessary to give effect to the terms and objectives of this Annexation Agreement and the intentions of the parties as reflected by said terms.

B. The Owner and the Town agree to promptly execute all permit applications needed by either party for permits or approvals from the Maryland Department of the Environment, the Maryland State Highway Administration, Worcester County, and its various agencies and departments, or any other public or private agencies from whom a permit is required to develop the Annexation Property, provided that such permit applications are prepared

in accordance with applicable rules, regulations, and laws, and the parties each further agree to cooperate in the securing of such permits or approvals from such agencies.

12. Termination of Annexation Agreement:

A. In the event Owner fails to: (i) secure Worcester County Commissioners approval of the requested zoning classification, if needed, (ii) secure Maryland Department of the Environment final approval of an amendment to the Worcester County Comprehensive Water and Sewer plan, if needed, then this Annexation Agreement may be terminated by either the Town or Owner, as the case may be, upon thirty (30) days notice. Notice of termination shall be sent as follows:

To the TOWN to:
Laura Allen, Town Administrator
Town of Berlin
10 William Street
Berlin, MD 21811

To the OWNERS to:
Attn: Spiro P. Buas
Athena Properties, Inc.
P.O. Box 8
Ocean City, MD 21843

With Copy to:
Regan J.R. Smith, Esquire
Williams, Moore, Shockley & Harrison, LLP
3509 Coastal Highway
Ocean City, MD 21842

B. The parties may extend any specified date by mutual written agreement.

13. Enforcement:

A. Unless lawfully terminated or cancelled, the Annexation Agreement shall be enforceable by either party to the Annexation Agreement or any party's successors in interest, in any court of competent jurisdiction, by any appropriate action or suit at law or in equity, to secure the performance of the covenants herein contained. The non-prevailing party shall reimburse the prevailing party in any such action any and all expenses incurred by the prevailing party, including but not limited to, reasonable attorney's fees and court costs, whether or not suit is filed in a court of law.

B. This Annexation Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Maryland.

C. Any enforcement shall be subject to the indemnity provisions of this Annexation Agreement.

14. Prior Matters. This Annexation Agreement is the acknowledgment and ratification of negotiations and dealings between the parties initiated prior to the submission of a Petition for Annexation to be acted upon the Town.

15. Entire Agreement. This Annexation Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Annexation Agreement.

16. Modification.

A. Neither this Annexation Agreement nor any provisions hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

B. Amendments to this Annexation Agreement shall become effective immediately upon the written agreement of both parties.

17. Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Annexation Agreement.

18. Binding Effect.

A. The terms of this Annexation Agreement shall be binding upon and shall inure to the benefit of the parties, any successor municipal authorities of the Town, successor owners of record of the Annexation Property, and the successors and assigns of the Owner. It is expressly understood and agreed that the Owner may assign his benefits, rights, duties and obligations hereunder either as part of the conveyance of the Annexation Property as an entirety or severally as part of the conveyances of portions of the Annexation Property.

B. No provisions of this Annexation Agreement shall create any third party beneficiary rights or other rights in any person or entity not a party hereto.

C. Nothing herein constitutes approval of a specific project of the Owner or associated fees.

19. Recording. This Annexation Agreement may be recorded among the Land Records of Worcester County at the expense of the recording party.

20. Severability. Should a substantial and material provision of this Annexation Agreement be determined to be invalid by any Court of this State or in violation of

any statute, law or ordinance, then either party may, at its discretion, void the remainder of this Annexation Agreement, with the exception of the duty of Owner to pay all expenses as herein provided.

IN WITNESS WHEREOF, the parties have executed and sealed this Annexation Agreement as of the day and year first above written.

ATTEST: MAYOR AND COUNCIL OF BERLIN

Elroy Brittingham, Vice President of Council By: _____
W.G. Williams, III, Mayor

WITNESS: ATHENA PROPERTIES, INC.

By: _____ (SEAL)
Spiros P. Buas, President

STATE OF MARYLAND, WORCESTER COUNTY, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 2019, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Elroy Brittingham, Vice President of Council and W.G. Williams, III, Mayor of the Town of Berlin, Maryland, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained and in the capacities therein stated.

AS WITNESS my hand and Official Seal.

Notary Public

My Commission Expires: _____

STATE OF MARYLAND, WORCESTER COUNTY, TO WIT:

I HEREBY CERTIFY, that on this ____ day of _____, 2019, before me, the undersigned officer, a Notary Public of the State and County aforesaid, personally appeared Spiros P. Buas, known to me (or satisfactorily proven) to be the president of Athens Properties, Inc. the person whose name is subscribed to the within instrument and acknowledged that in such capacity that he executed the same for the purposes therein contained.

AS WITNESS my hand and Official Seal.

Notary Public

My Commission Expires: _____

EXHIBIT A

9951 Main Street, Berlin, Maryland 21811 – Parcel 0489, Lots 1 & 2

Lot 1 Account No. 03-015653; Lot 2 Account No. 03-131475 (Athena Properties, Inc.)

ALL those certain lots or parcels of land lying and being situate in the Third Election District of Worcester County, Maryland, located on the Westerly side of and building upon the State Road running from Berlin to Showell, also known as Main Street Extended, North of Berlin, and more particularly described as Lots No. 1 and 2, on the Plat entitled “Lots 1 & 2, Divisions of Lands Owned by Richard W. & Anne Eschenburg, 3rd Election District, Worcester County, Maryland”. made by Vaughn A. Wimbrow & Associates, in July 1990, and recorded among the Land Records of Worcester County, Maryland, in Plat Book R.H.O. No. 128, folio 1.

BEING ALL AND THE SAME property conveyed unto the said Athena Properties, Inc. by Deed dated January 31, 1995, and recorded among the aforesaid Land Records in Liber R.H.O. No. 2132, folio 101, et seq.

9939 Main Street, Berlin, Maryland 21811 – Parcel 0417, Lot 1

Account No. 03-016374 (Athena Properties, Inc.)

ALL that lot or parcel of land lying and being situate in the Third Election District of Worcester County, Maryland, described as Lot No. 1 on the Plat entitled “Minor Subdivision Lands of Charles Wheatley Lewis and Ruth Ann Lewis Tax Map 25, Parcel 417”, made by Frank G. Lynch, Jr. & Associates, Inc. dated April, 1999 and revised July, 1999, and recorded among the Land Records of Worcester County, Maryland in Plat Book S.V.H. No. 164, folio 41.

BEING A PART of the property conveyed unto the said Athena Properties, Inc. by Deed dated March 11, 2011, and recorded among the aforesaid Land Records in Liber S.V.H. No. 5647, folio 253, et seq.

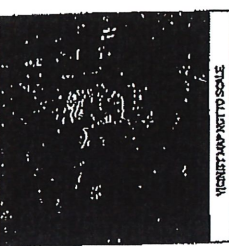
9937 Main Street, Berlin, Maryland 21811 – Parcel 0417, Lots 2 & 3

Lot 2 Account No. 03-148971; Lot 3 Account No. 03-148998 (Athena Properties, Inc.)

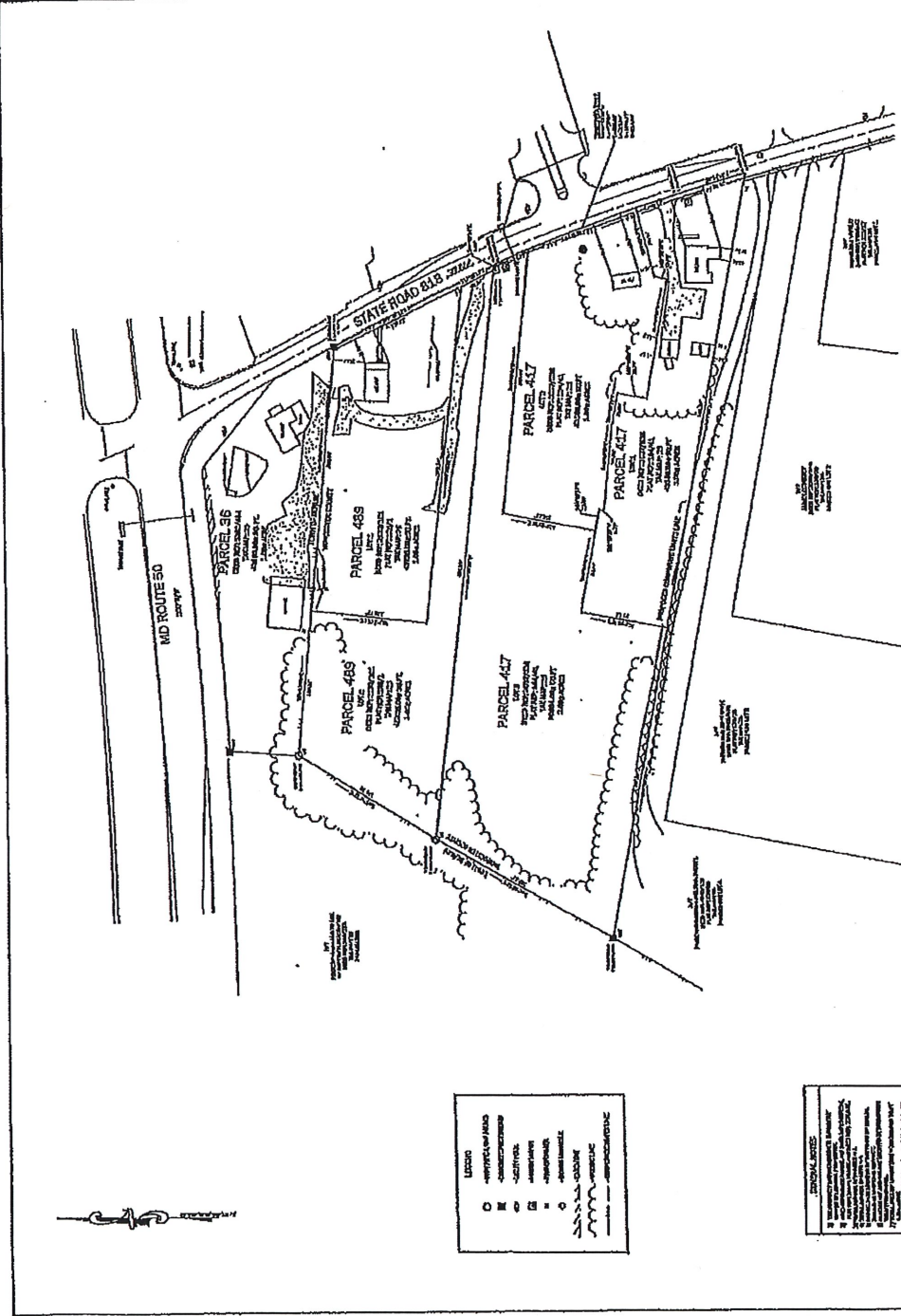
ALL those lots or parcels of land lying and being situate in the Third Election District of Worcester County, Maryland, described as Lots Nos. 2 and 3 on the Plat entitled “Minor Subdivision Lands of Charles Wheatley Lewis and Ruth Ann Lewis Tax Map 25, Parcel 417”, made by Frank G. Lynch, Jr. & Associates, Inc. dated April, 1999 and revised July, 1999, and recorded among the Land Records of Worcester County, Maryland in Plat Book S.V.H. No. 164, folio 41.

BEING A PART of the property conveyed unto the said Athena Properties, Inc. by Deed dated May 3, 2001, and recorded among the aforesaid Land Records in Liber S.V.H. No. 3037, folio 538, et seq.

EXHIBIT B



VICINITY MAP NOT TO SCALE



NO PART OF THIS PLAN IS TO BE CONSIDERED AS A CONTRACT OR AGREEMENT OF ANY KIND UNLESS SO INDICATED BY A SIGNATURE OF THE ENGINEER OR ARCHITECT.



ANNEXATION PLAN
PARCEL 436, 438, 439 AND PARCEL 447 LOTS 14
FOR
ATYENA PROPERTIES INC.

NO.	DATE	REVISION	BY	APP'D.
1	11/21/24	PRELIMINARY	RJK	
2	12/02/24	FINAL	RJK	

- LEGEND**
- STRUCTURE FLOOR
 - CONCRETION
 - EXISTING CURB
 - EXISTING WALKWAY
 - EXISTING MANHOLE
 - EXISTING CONC. COLUMN
 - EXISTING EASEMENT

TYPICAL NOTES

1. ALL NOTES REFER TO THE CONTRACT DOCUMENTS.
2. ALL NOTES REFER TO THE CONTRACT DOCUMENTS.
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EXHIBIT C

DIVISION 7. - B-2 SHOPPING DISTRICT

Sec. 108-464. - Principal uses.

The following uses shall be permitted and the following regulations and the applicable regulations contained in the other articles shall apply in the B-2 Shopping District. All principal permitted uses and conditional uses shall require site plan review in accordance with article V of this chapter, site plan review. Principal permitted uses include the following:

- (1) Any principal use or structure permitted and as regulated in the B-1 District, except as herein modified.
- (2) Boardinghouses or lodgInghouses.
- (3) Bed-and-breakfasts.
- (4) Hotels and motels.
- (5) Any community retail business or service establishment, such as a food, drug, clothing, hardware, accessory, variety or department stores, barbershops, beauty shops, florist or specialty shop, a shoe repair shop, laundromats, cleaning shop, a bank or savings and loan office, a professional office, funeral homes, a real estate or insurance office or the like, supplying commodities or performing services primarily for residents of the town and surrounding community.
- (6) Tourist homes and produce stands.
- (7) Taverns, nightclubs, drive-in eating and drinking establishments, summer gardens and road houses, including entertainment and dancing, provided that the principal building shall comply with one-half the distance requirement of section 108-712
- (8) Automobile parking lots, repair shops or general garages, subject to the provisions in section 108-817
- (9) Automobile, tire, battery, recreational vehicle and implement establishments for display, hire, sale or general repair, including sales lots.
- (10) Animal hospitals, veterinary clinic or kennel, provided that any structure or area used for such purposes shall comply with the distance requirement of section 108-712
- (11) Bakery, laundry and clothes cleaning and dyeing establishments, all subject to one-half the distance requirement of section 108-712
- (12) Wholesale business, warehousing, storage and distributing establishments, except for flammable liquids, paints or explosives.
- (13) Municipally owned electric, communication, water, sewer, gas and fuel transmission lines and necessary equipment and buildings incidental thereto. Wireless transmitting stations, transformers, boosters, railroad lines and stations, water tanks and standpipes shall be subject to one-half the distance of section 108-712
- (14) Any other retail business or service establishment which is determined by the board of appeals to be of the same general character as those specified herein, but not including any use of a class first permitted in a B-3 or M District.

(Code 1977, § 107-39(A); Ord. No. 2000-10, 9-25-2000)

Sec. 108-465. - Accessory uses.

The following accessory uses are permitted in the B-2 Shopping District:

- (1) Accessory buildings and uses customarily incidental to any permitted principal use, and not otherwise prohibited.
- (2) The manufacturing, processing or treatment of goods for sale primarily at retail on the premises or the cleaning, laundering, repairing or other treatment of objects as a retail service to customers on the premises, in which operations not more than three persons shall be engaged at any one time.
- (3) Warehousing for goods merchandise or products offered for sale on the premises.

(Code 1977, § 107-39(B); Ord. No. 2000-10, 9-25-2000)

Sec. 108-466. - Required conditions.

The following conditions are required in the B-2 Shopping District:

- (1) Processes and equipment employed and goods processed or sold shall be limited to those which are not objectionable by reason of hazard, odor, dust, smoke, cinders, gas, fumes, noise, vibration, radiation, refuse matter or water-carried waste.
- (2) Lots for public display or sale of automobiles, trucks, recreational vehicles, implements, boats or other machinery or equipment shall comply with the requirement that every such lot shall be fenced along each public street by an ornamental fence not less than 30 inches high, located at least five feet back from the property line or from any public sidewalk, and the space in front thereof shall be landscaped and neatly maintained.
- (3) No lighting, other than minimum protective night lighting, shall remain on after normal business hours. All lighting shall be shaded so as to direct the light away from residential premises and from public streets.
- (4) Along any side adjacent to any R District or Institutional premises, an ornamental wall, fence or compact evergreen hedge and wire fence, not less than four feet nor more than six feet high, shall be installed and maintained in good condition without any advertising.

(Code 1977, § 107-39(C); Ord. No. 2000-10, 9-25-2000)

Sec. 108-467. - Height regulations.

Height regulations shall be the same as in the B-1 District.

(Code 1977, § 107-39(D); Ord. No. 2000-10, 9-25-2000)

Sec. 108-468. - Prohibited uses.

The following uses are prohibited in the B-2 Shopping District:

- (1) Any use specified as a permitted use or conditional use in a B-3 or M-1 District.
- (2) Warehousing for goods or merchandise other than those offered for sale on premises.
- (3) Warehousing within 50 feet of Main Street, Broad Street, William Street, or Commerce Street.

(Code 1977, § 107-39(E); Ord. No. 2000-10, 9-25-2000)

Sec. 108-469. - Lot area, width and yard requirements.

The following minimum requirements shall be observed, subject to the modified requirements contained in article IV of this chapter:

Use	Minimum	Minimum	Lot Area	Front	Side Yard	Rear
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	Lot Area	Lot Width (feet)	per Unit	Yard Depth ¹ (feet)	Width Each Side (feet)	Yard Depth (feet)
Motels and hotels	Same as B-1					
Boardinghouses	Same as B-1					
Community retail and services	Same as B-1					
Wholesale and warehousing	6,000	60	—	20	6	25
Other permitted uses	—	—	—	10 ²	None, except 10 when adjoining an R District	30 abutting an R District, otherwise 10

Notes:

1. For narrow streets, see section 108-706; for built-up frontage, see section 108-243.
2. Or greater as may be specified elsewhere in this chapter.

(Code 1977, § 107-39(f); Ord. No. 2000-10, 9-25-2000)

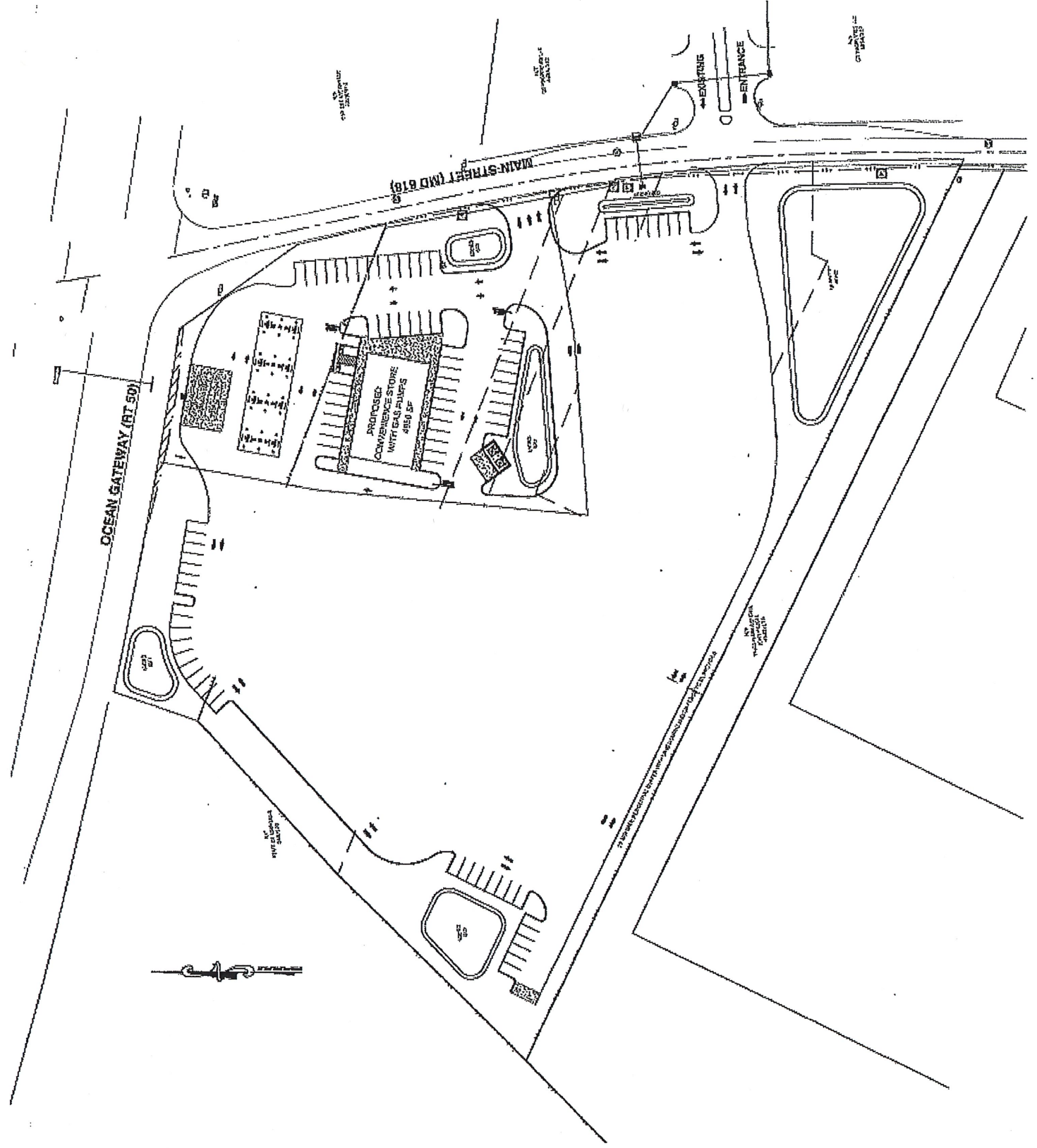
Secs. 108-470—108-491. - Reserved.

DIVISION 8. - B-3 GENERAL BUSINESS DISTRICT

§c. 108-492. - Permitted uses; regulations and requirements.

The following uses shall be permitted and the following regulations and the applications contained in other articles shall apply in the B-3 General Business District. All permitted uses and conditional uses shall require site plan review in accordance with article V of this chapter, site plan review. Principal permitted

EXHIBIT D



OCEAN GATEWAY (RT 50)

MAIN STREET (MD 618)

PROPOSED
CONFERENCE STORE
WITH EXH. STALLS
4850 SF

EXISTING ENTRANCE

ENTRANCE

EXISTING OFFICE

EXISTING STORAGE

EXISTING GARAGE

EXISTING GARAGE





RESOLUTION 2019-04

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, TO ESTABLISH WATER AND SEWER USAGE RATES AND CONNECTION FEES PURSUANT TO THE AUTHORITY SET FORTH IN THE CODE OF THE TOWN OF BERLIN, MARYLAND.

Whereas, the Mayor and Council have the authority to set usage rates and connection fees for Town services, and

Whereas, the last increase to water and sewer usage rates was in 2014, and

Whereas, the Mayor and Council held several budget work sessions to discuss increasing the rates for these services, and

Whereas, the Mayor and Council acknowledge the practice of borrowing from the General Fund to support the Sewer Fund should stop, and

Whereas, it has been determined through a rate study completed by Davis, Bowen and Friedel that an increase in water rates of 5% and an increase in sewer rates of 25% are needed to accomplish this goal.

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Berlin, Maryland that the following usage rates and connection fees are hereby established:

- 1. Pursuant to Section 30-212 of the Code of the Town of Berlin, the Rates, Fees, and Terms and Conditions for water usage are:

For metered customers INSIDE of the Town limits the following monthly water rates will apply for billing effective July 1, 2019:

Number of gallons

0 - 2,999	\$16.37
3,000 – 4,999	\$17.67
5,000 – 6,999	\$19.64

Any water consumption at or above 7,000 gallons per month will be billed at the rate of per thousand gallons as follows:

**Billing
Effective
July 1, 2019
\$4.45**

- (a) For metered customers being served OUTSIDE of the Town limits the rates in the above paragraph will be doubled.

- (b) A "READY TO SERVE FEE" will be assessed based upon the number of EDU(s) assigned, to all non-metered parcels with service available within the Corporate Limits. This fee will be 50% of the current minimum water service rate. Should a customer request the removal of an existing water meter, to qualify for this class of service the customer must pay for the actual cost to remove the meter.
- (c) The grandfathered "SPECIAL CONNECTION CHARGE" shall be the rate set when the customer begins paying ready to serve fees.
- (d) All applications for water service will be in the property owner's name. Billing will be sent to the property owner and the property owner will be responsible for all payments.
- (e) Temporary "SHUT OFF" Fee — Requests for shutoffs, except for emergency reasons, must be made on an application form provided by the Town. Non-emergency disconnection requested prior to 4:00 P.M. on a business day will normally be performed the same day. Requests received after 4:00 P.M. will be honored on the next business day. In the case of a requested EMERGENCY DISCONNECT this documentation must be completed by the end of the next working day.
 - (1) There will be no charge for this service if it is provided during business hours.
 - (2) There will be a fee in the amount of \$58.50 assessed to provide this service during non-business hours.
- (f) "TURN-ON" Fee:
 - (1) There will be no charge for this service if it is provided during business hours.
 - (2) There will be a fee in the amount of \$58.50 assessed to provide this service during non-business hours.
- (g) **The Property Owner is responsible for water meter damage to include meter and pit unless otherwise determined by the Director of Water Resources to be normal wear and tear.**

If a water meter replacement is required, a "minimum" replacement charge, which includes all normal parts and labor of Two Hundred Ninety-Two dollars (\$292) will be assessed.

2. Pursuant to Sections 30-213 and 30-252 of the Code of the Town of Berlin, Maryland, the following fees for water connection, hookup charges and special connections are hereby restated:

- (a) The Town will charge all class of customers a "CONNECTION CHARGE" to install the water service. This charge will include all costs necessary to establish the service to include labor and materials.
 - (b) SINGLE FAMILY DWELLING UNIT—The "SPECIAL CONNECTION CHARGE" to the Municipal Water Distribution System will be four thousand four hundred twenty-five dollars (\$4,425.00) per equivalent dwelling unit (EDU) for all other parcels.
 - (c) MULTI-FAMILY DWELLING UNIT-The "SPECIAL CONNECTON CHARGE" to the Municipal Water Distribution System will be four thousand four hundred twenty-five dollars (\$4,425) per equivalent dwelling unit (EDU) for all other parcels. This category includes condominiums, townhouses and apartments. One water meter will be required for each unit unless otherwise approved.
 - (d) NON-DWELLING UNIT—The "SPECIAL CONNECTION CHARGE" to the Municipal Water Distribution System will be determined by the Town of Berlin based upon the anticipated use of the property. The property owner will be assessed four thousand four hundred twenty-five dollars (\$4,425) per equivalent dwelling unit (EDU) for all other parcels. This category includes all business and commercial buildings, shopping centers, schools, restaurants and fast food establishments, Laundromats and all other Non-Dwelling buildings. One water meter will be required for each unit unless otherwise approved. The Town will monitor water flow to the Non-Dwelling unit for a period of twenty-four months. If the flow exceeds the established EDU's (two hundred fifty gallons per day per EDU), assigned to the property the Non-Dwelling unit will be assessed additional SPECIAL CONNECTION CHARGES as appropriate.
 - (e) Developers will be responsible for the extension of mains, services and installation of meter assemblies within the property. These costs are exclusive of the CONNECTION CHARGE.
 - (f) Although the Town of Berlin as a matter of practice does not extend its water mains beyond the corporate limits, in the event this situation occurs the property owner will be assessed twice the normal connection charge and the special connection charge.
 - (g) In the event a customer modifies his property to a greater water use than the current service the Town will re-compute the SPECIAL CONNECTION CHARGES stated above with a credit given for the pre-existing condition.
 - (h) In the event the water meter was removed, and sewer service abandoned prior to July 1, 2010, a Special Connection Fee will not be assessed in the case of a reconnection, as long as there is an Equivalent Dwelling Unit (EDU) attached to the property.
3. Pursuant to Section 30-109 of the Code of the Town of Berlin, the Rates, Fees, and Terms and Conditions for sewer usage are hereby established.

- (a) For metered customers **INSIDE** of the Town limits the following monthly sewer rates shall apply and be effective as of July 1, 2019:

Number of Gallons

0 - 2,999	\$61.16
3,000 – 4,999	\$66.26
5,000 – 6,999	\$73.06

Any wastewater usage at or above 7,000 gallons per month will be billed effective July 1, 2019 at the rate of \$8.50 per thousand gallons.

- (b) For metered customers being served **OUTSIDE** of the Town limits the rates in the above paragraph will be doubled.
 - (c) A "READY TO SERVE FEE" will be assessed based upon the number of assigned EDU(s) on all Non-metered parcels within the Corporate limits. This fee will be 50% of the current minimum sewer rate.
 - (d) All applications for sewer service will be in the property owner's name. Billing will be sent to the property owner and the property owner will be responsible for all payments.
4. Pursuant to Sections 30-110 and 30-252 of the Code of the Town of Berlin, the following fees for sewer connection charges, hookup charges and special connections are hereby restated:
- (a) The Town will charge all class of customers a "CONNECTION CHARGE" to install the wastewater service. This charge will include all costs necessary to establish the service to include labor and materials.
 - (b) **SINGLE FAMILY DWELLING UNIT**—The **SPECIAL CONNECTION CHARGE** to the Municipal Wastewater Collection System will be twelve-thousand two hundred sixty-one dollars (\$12,261.00) per EDU for all other parcels.
 - (c) **MULTI-FAMILY DWELLING UNIT**—The **SPECIAL CONNECTION CHARGE** to the Municipal Wastewater Collection System will be twelve thousand two hundred sixty-one dollars (\$12,261.00) per EDU for all other parcels. This category includes condominiums, townhouses and apartments.
 - (d) **NON-DWELLING UNIT**—The **SPECIAL CONNECTION CHARGE** to Municipal Wastewater Collection system will be determined by the Town of Berlin based upon the anticipated use of the property. The property owner will be assessed twelve thousand two hundred sixty-one dollars (\$12,261.00) per equivalent dwelling unit (EDU) for all other parcels. This category includes all business and commercial buildings, shopping centers, schools, restaurants and fast food establishments, laundromats and all other Non-Dwelling buildings. The Town will monitor wastewater flow from the Non-Dwelling Unit for a period of twenty-four months. If the flow exceeds the established EDU's (two hundred fifty gallons per day per EDU),

as assigned to the property, the Non-Dwelling unit will be assessed additional SPECIAL CONNECTION CHARGES as applicable.

- (e) Developers will be responsible for the extension of mains, services and clean outs within the property. These costs are exclusive of the CONNECTION CHARGE.
 - (f) Although the Town of Berlin as a matter of practice does not extend its Wastewater collection system beyond the corporate limits, in the event this situation occurs, the property owner will be assessed twice the normal SPECIAL CONNECTION CHARGES.
 - (g) In the event a customer modifies his or her property to a greater waste-water use than the current service the Town will re-compute the SPECIAL CONNECTION CHARGES as stated above with a credit given for the pre-existing condition.
5. Hydrant Permit: Pursuant to Section 30-215 of the Code of the Town of Berlin, the Rate and Terms of hydrant use is hereby established:
- (a) \$200 permit application fee,
 - (b) Water usage at current rate per 1,000 gallons of usage,
 - (c) All terms of the permit applications must be met, and
 - (d) A \$1,000 dollar fine, plus all costs of service and/or repair may be imposed upon the property owner for any unauthorized use of and/or tampering with a Town of Berlin water system hydrant, shut-off valve or meter.
6. Swimming Pool: Pursuant to Section 30-214 of the Code of the Town of Berlin, the Rate and term of swimming pools is hereby established:

Swimming pool owners may request the Town of Berlin reduce their sewer system charge by that amount of metered water used to fill their swimming pool. The Town must be notified 24 hours prior to the filling of the pool using the customers installed water meter. The sewer charge credit will be made at the rate of \$5 per 1,000 gallons up to a maximum of 10,000 gallons. A \$23.40 service charge will be applied to the customer's monthly utility bill. This credit is available only once each calendar year unless otherwise approved by the Mayor and Council.

Approved this ____ day of _____, 2019 by the Mayor and the Town of Berlin, Maryland, by affirmative vote of _____ to _____ opposed, with _____ abstaining, and _____ absent.

Elroy Brittingham, Vice President

Approved this ____ day of _____, 2019 by the Mayor and Town of Berlin.

ATTEST:

Wm. Gee Williams, III, Mayor

Laura Allen, Town Administrator

ORDINANCE 2019-04

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF BERLIN, MARYLAND, A MARYLAND MUNICIPAL CORPORATION, AMENDING CHAPTER 108, ARTICLE II, DIVISION 5, SUBDIVISION II, SECTION 108-165, ENTITLED "VARIANCES".

NOW THEREFORE, BE IT ENACTED that Section 108-165 shall be amended as follows:

Sec. 108-165. - Variances.

(a) Where, by reason of the exceptional narrowness, shallowness or unusual shape of a specific piece of property on the effective date of the ordinance from which this chapter is derived, or by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property or of the use of development of property immediately adjoining the piece of property in question, the literal enforcement of the requirements of this article would involve practical difficulty or would cause unnecessary hardship, unnecessary to carry out the spirit and purpose of this chapter, the board shall have the power upon appeal in specific cases, filed as herein before provided, to authorize such variance from the terms of this chapter as will relieve such hardship, so that the spirit and purpose of this chapter shall be observed and substantial justice done. In authorizing a variance, the board may attach thereto such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the interest of the furtherance of the purpose of this chapter and in the public interest. In authorizing a variance, with attached conditions, the board may require such evidence and guaranty, or bond, as it may deem necessary that the conditions attached are being and will be complied with.

(b) No such variance in the provisions or requirement of this chapter shall be authorized by the board unless the board finds, ~~beyond reasonable doubt~~ BY A PREPONDERANCE OF THE EVIDENCE, that all the following facts and conditions exist:

(1) That there are exceptional or extraordinary circumstances or conditions applying to the property in question, or to the intended use of the property, that do not apply generally to other properties or classes of uses in the same zoning district.

(2) That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity.

(3) That the authorizing of such variance will not be of substantial detriment to

adjacent property and will not materially impair the purpose of this chapter or the public interest.

(c) No grant of a variance shall be authorized unless the board specifically finds that the condition or situation of the specific piece of property or the intended use of said property for which variance is sought, one or the other or in combination, is not of so general or recurrent a nature as to make reasonably practicable the formation of a general regulation for such condition or situation to be adopted by the Mayor and Council as an amendment to this chapter.

THIS ORDINANCE was introduced and read at a meeting of the Town Council held on the _____ day of _____, 2019, and thereafter a statement of the substance of the Ordinance having been published as required by law.

A PUBLIC HEARING was held and this Ordinance was adopted this ___ day of _____, 2018, by the Mayor and Council of the Town of Berlin, Maryland by affirmative vote of _____ in favor, to ___ opposed, with _____ abstaining.

Elroy Brittingham, Vice-President

Approved on this _____ day of _____, 2019 by the Mayor of the Town of Berlin and was therefore effective twenty (20) calendar days later on the ___ day of _____, 2018.

Wm. Gee Williams, Mayor

ATTEST: Laura Allen, Town Administrator