

# **BERNARDS TOWNSHIP** **ZONING BOARD OF ADJUSTMENT**

**MINUTES**  
Special Meeting  
July 12, 2018

## **CALL TO ORDER**

Vice Chairman Zaidel called the meeting to order at 7:31 PM.

## **OPEN MEETING STATEMENT**

Vice Chairman Zaidel read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the Board of Adjustment of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, New Jersey, was sent to the Bernardsville News, Bernardsville, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk all on January 11, 2017 and was electronically mailed to all those people who have requested individual notice."

"The following procedure has been adopted by the Bernards Township Board of Adjustment. There will be no new cases heard after 10:00 PM and no new witnesses or testimony heard after 10:30 PM."

## **OATH OF OFFICE**

Ms. Wolfe swore in the following members:

- Zina Pozner, Regular Member, fulfilling unexpired four-year term of James Rhatican, expiring 12/31/2020.
- John Korn, Alternate #2, fulfilling unexpired two-year term of Zina Pozner, expiring 12/31/2018.

## **ROLL CALL:**

Members Present: Genirs, Korn, Lane, Mastrangelo, Pozner, Zaidel  
Members Late: NONE  
Members Absent: Breslin, Kleinert  
Also Present: Board Attorney, Amanda Wolfe, Esq.; Township/Board Planner, David Schley, PP, AICP;  
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

Ms. Mastrangelo moved to excuse the absences of Chairman Breslin and Ms. Kleinert. Ms. Pozner seconded and by unanimous Voice Vote, the motion was carried.

## **APPROVAL OF MINUTES**

[\*\*June 6, 2018 - Regular Session\*\*](#) - Ms. Genirs moved approval of the minutes as drafted. Mr. Lane seconded.

Roll Call:

Aye: Genirs, Lane, Mastrangelo, Pozner, Zaidel  
Nay: NONE

Motion carried.

## **APPROVAL OF RESOLUTIONS**

[\*\*Resolution #ZB18-006 - Verizon Corporate Services Group Inc.\*\*](#); Block 803, Lots 2, 3, 5, 6, 23;  
300 North Maple Avenue; Bulk Variances (approved).

Ms. Mastrangelo moved approval of the resolution as drafted. Ms. Pozner seconded.

Roll Call:

Aye: Genirs, Lane, Mastrangelo, Pozner, Zaidel  
Nay: NONE

Motion carried.

**[Resolution #ZB18-007 - Verizon Corporate Services Group Inc.](#)**; Block 804, Lots 2.01 & 16; 295 North Maple Avenue; Bulk Variances, Amended Preliminary/Final Site Plan (approved).

Ms. Genirs moved approval of the resolution as drafted. Ms. Mastrangelo seconded.

Roll Call:

Aye: Genirs, Lane, Mastrangelo, Pozner, Zaidel.  
Nay: NONE

Motion carried.

### **COMPLETENESS HEARING**

**[The Pingry Corporation; #ZB18-017](#)**; Block 11601, Lot 3.01; 131 Martinsville Road; Preliminary/Final Site Plan, Conditional Use Variance.

At its June 6, 2018 meeting, the Board did not grant a waiver requested for the checklist item requiring a plan showing the locations of existing structures, parking areas, etc. within 200' of the *entire* property. The Board did modify the requirement and Mr. Schley confirmed that the applicant had submitted a partial map showing the 200' area *near the project area* along Martinsville Road which satisfied the modified checklist item. He also confirmed that all of the checklist items, with the exception of those that were previously waived, had been submitted.

Ms. Mastrangelo moved to deem the application complete with waivers as granted. Ms. Pozner seconded.

Roll Call:

Aye: Genirs, Korn, Lane, Mastrangelo, Pozner, Zaidel.  
Nay: NONE

Motion carried.

### **COMPLETENESS HEARING**

**[Site Acquisitions LLC \(Tesla Charging Station\); #ZB18-013](#)**; Block 8501, Lot 39; 403 King George Rd; Preliminary/Final Site Plan, Use Variance.

Present: Danielle N. Kinback, Esq., Attorney for the Applicant

Danielle N. Kinback, Esq., attorney with *Bisgaier Hoff LLC*, Haddonfield, NJ, advised that Board that she was present on behalf of the applicant.

As stated in Mr. Schley's Completeness Memo dated July 10, 2018, there were three (3) checklist items outstanding.

Referring to Item #1 (locations, dimensions of property lines and structures, etc. within 200' of the subject property), Ms. Kinback requested a checklist item waiver because the project was so minor compared to the entire shopping center site. Mr. Schley opined that there was sufficient information available with the combination of submissions already made to review the application. Mr. Quinn concurred.

Referring to Item #2 (tree protection details), Ms. Kinback requested a checklist item waiver since there would be no disturbance to the existing trees. Mr. Schley noted that this subject would be discussed in the professionals' memos and during the hearing.

Referring to Item #3 (project report/environmental impact assessment), Ms. Kinback requested a checklist item waiver opining that since this was such a minor project, there would be no impact. Mr. Schley noted that the applicant had submitted an abbreviated environmental impact report adding that the applicant would have to address any environmental issues that might come up at the hearing.

Ms. Genirs moved to grant the three (3) waivers as requested and to deem the application complete. Mr. Lane seconded.

Roll Call:

Aye: Genirs, Korn, Lane, Mastrangelo, Pozner, Zaidel.

Nay: NONE

Motion carried.

**COMPLETENESS AND PUBLIC HEARING**

**DePaolis, David & Debra; #ZB18-015**; Block 1502, Lot 1; 82 North Finley Avenue; Bulk Variances.

Present: Jonathan E. Booth, Architect for the Applicants  
David DePaolis & Debra Maibach, Applicants

Mr. Schley, Mr. Quinn, Mr. Booth, Mr. DePaolis and Ms. Maibach were duly sworn by Ms. Wolfe.

David DePaolis, applicant, gave an overview of the subject property, noting that it is located in the Basking Ridge Historic District. He then gave a brief description of the proposed project which consists of a single story addition (study/laundry room/bathroom) to the south side of the existing two-story dwelling and stated that it was designed to create as little disturbance as possible. Only one (1) tree would be removed and subsequently replaced.

Jonathan E. Booth, architect in Basking Ridge, NJ, was accepted by the Board as an expert in the field of architecture. He testified that subject property is a slightly undersized corner lot. The proposed addition requires relief for front yard setbacks to both North Finley Avenue and Turner Street along with relief for maximum lot coverage. Mr. Booth stated that the dwelling predates the ordinance and that the original portion is entirely in the front yard. He opined that since Turner Street has a larger than usual right-of-way, the house appears to have a larger front yard even though in actuality, the dwelling is located only a few feet from the property line.

Mr. Booth testified that the existing two-story structure was built in 1830 and consists of three (3) bedrooms and one (1) bath. There are no bathrooms on the first floor and the laundry room is located in the garage and at times is unusable during cold weather. He discussed the obstacles in trying to locate the proposed addition in a more conforming location and concluded by stating that the proposed location provides the most functionality with the least impact on the neighboring properties.

In response to comments made in Mr. Quinn's memo dated July 11, 2018, Mr. DePaolis testified that the water on his property drains towards North Finley Avenue and that if there was pooling which was rare, it would be on his property since his neighbor's property was slightly higher than his.

Mr. DePaolis stated that none of the neighbors he had spoken to had expressed any concerns. Mr. Booth testified that in February of this year, he took the pictures submitted with the application and that they accurately represented the property as it existed at the time of the hearing.

Mr. Booth affirmed that the proposed addition would be consistent with the existing dwelling.

Mr. DePaolis confirmed that the survey accurately reflected what was currently on the ground.

Noting that there was no driveway leading to the garage, Mr. Quinn asked if there were any plans to use that structure for a garage which would necessitate the installation of a driveway and create more impervious coverage. Mr. DePaolis responded that because the garage was small and structurally questionable, he had no such plans.

Mr. Booth testified that he had created a tree inventory. Mr. Schley suggested that that inventory be submitted, showing which tree would be removed and how the remaining trees would be protected.

Vice Chairman Zaidel opened the meeting to the public for questions. Hearing none, he closed that portion. He then opened the meeting to the public for comments. Hearing none, he closed that portion of the hearing.

After deliberating, the board members felt that the applicants had satisfied the positive criteria required for a "c(2)" or "flexible c" variance. They also felt that the applicants had satisfied the negative criteria.

Ms. Genirs moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for variance relief requested by the applicants subject to the conditions stipulated to by the applicants and as stated during deliberations. Ms. Mastrangelo seconded.

Roll Call:

Aye: Genirs, Korn, Lane, Mastrangelo, Pozner, Zaidel.

Nay: NONE

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

**Schutz, Kevin & Joshi, Gayatri; #ZB18-012**; Block 7803, Lot 12; 63 Lurline Drive; Bulk Variances.

Present: Frederick B. Zelle, Esq., Attorney for the Applicants  
Jeffrey J. Careaga, PE, Engineer for the Applicants  
John J. Lyons IV, RA, Architect for the Applicants  
Kevin Schutz & Gayatri Joshi, Applicants

Mr. Schley, Mr. Quinn, Mr. Careaga, Mr. Lyons, Mr. Schutz and Ms. Joshi were duly sworn by Ms. Wolfe.

Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, stated that he was present on behalf of the applicants. He explained that the three (3) variances (minimum lot area, minimum lot width and minimum improvable lot area) requested were pre-existing conditions however since the applicants propose to raze the existing house and to construct a new house, variance relief was required.

Gayatri Joshi, applicant, testified that she and Kevin Schutz, applicant, had purchased the property several years ago and that their family had outgrown the house. They proposed to construct a new house since renovating the existing dwelling is not feasible. She added that the neighbors were very positive about the project.

Vice Chairman Zaidel opened the hearing to questions from the public. Hearing none, he closed that portion of the meeting.

Jeffrey J. Careaga, PE, engineer with *Careaga Engineering Inc.*, Budd Lake, NJ, was accepted by the Board as an expert in the field of civil engineering. He gave an overview of the subject property and associated drainage issues, testifying that there would be no disturbance to the wetlands buffer in the back of the property. He noted that there are two (2) drainage systems on the property. Two (2) trees would probably have to be removed however the applicants plan to replace them to the satisfaction of the Township. Mr. DePaolis advised the Board that he had spoken to the neighbor to the north side and that the neighbor did not want trees along his property line. Finally, Mr. Careaga confirmed that the applicants would comply with the comments listed in Mr. Schley's memo of June 29, 2018 and Mr. Quinn's memo of July 11, 2018.

Vice Chairman Zaidel opened the hearing to questions from the public. Hearing none, he closed that portion of the meeting.

John J. Lyons IV, RA, architect with *Lyons McConnell, LLC*, Morristown, NJ, was accepted by the Board as an expert in the field of architecture. He testified that renovation is not feasible due to structural issues with the foundation. Also, he opined that it would be difficult to add on to the existing house since it is bi-level in design. He gave an overview of the proposed new dwelling confirming that the design and materials would be consistent with the neighborhood.

Item #2 in Mr. Quinn's memo questioned the way that the garage is situated resulting in a significant differential from both the first floor and the basement. **Exhibit A-1**, a sheet submitted by *Lyons McConnell, LLC* dated February 3, 2017, last revised July 12, 2018, showing a revised detail of the stairs from the garage was introduced

into evidence. Mr. Quinn opined that because of the drainage issues, the basement and first floor had been elevated, creating that situation.

Vice Chairman Zaidel opened the hearing to questions from the public. Hearing none, he closed that portion. He then opened the hearing to comments from the public. Hearing none, he closed that portion of the meeting.

Mr. Zellely offered a brief summary of the proposed project and the relief sought by the applicants.

After deliberating, the board members felt that the applicants had satisfied the positive criteria required for both "c(1)" or "hardship" variances and "c(2)" or "flexible c" variances. They also felt that the applicants had satisfied the negative criteria.

Ms. Mastrangelo moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for variance relief requested by the applicants subject to the conditions stipulated to by the applicants and as stated during deliberations. Ms. Pozner seconded.

Roll Call:

Aye: Genirs, Korn, Lane, Mastrangelo, Pozner, Zaidel.

Nay: NONE

Motion carried.

#### **COMPLETENESS AND PUBLIC HEARING**

**Cook, Vincent & Lisa; #ZB18-018**; Block 5602, Lot 3; 34 Gerard Ave; Bulk Variances.

Present: Jonathan E. Booth, Architect for the Applicants  
Vincent Cook, Applicant

Ms. Pozner recused herself and left the room.

Mr. Schley, Mr. Quinn, Mr. Booth, and Mr. Cook were duly sworn by Ms. Wolfe.

Vincent Cook, applicant, gave a brief overview of the proposed project which includes a two-story addition consisting of a two-car garage on the first floor and a master bedroom/bathroom on the second floor. The existing garage would be converted into a family room and a portion of the driveway would be removed. The following relief is required: minimum front yard setback and minimum rear yard setback. In addition, the applicant requested a Zone Two Waiver since the current house is located within the stream buffer.

Vice Chairman Zaidel opened the hearing to questions from the public. Hearing none, he closed that portion of the meeting.

Jonathan E. Booth, architect in Basking Ridge, NJ, was accepted by the Board as an expert in the field of architecture. He testified that the subject property is greatly constrained by wetlands, wetlands transition areas, stream buffers and a drainage easement. He added that the applicant had already filed an application with the New Jersey Department of Environmental Protection (NJDEP) because the proposed addition is in a wetlands transition area.

**Exhibit A-1**, a colorized version of page 1 of a three-page plan set submitted by Jonathan E. Booth, Architect, dated June 8, 2018, was introduced into evidence.

Because the drainage easement as shown on the tax map and early surveys varies in location, Mr. Booth stated that *Yannaccone, Ville & Aldrich LLC* (engineering firm) had mapped out the exact location of the pipe. He then testified that because of that location, the proposed garage had to be pushed forward, thus requiring a front yard setback variance. The application would also require rear yard setback relief. Mr. Schley explained that setbacks are measured from the stream buffer lines. By approving the requested Zone Two waiver, the applicant would have a larger rear yard setback and hence be closer to conformance. He added that since the stream buffer overlaps the

wetlands buffer, the wetlands regulations would protect that area. Finally, by reducing the size of the driveway, the amount of dirty runoff produced by driveway material would be decreased.

Mr. Booth opined that because of the way the surrounding homes were situated, there would be little if any impact to the neighbors.

Mr. Cook stipulated, as a condition of approval, to the comments in Mr. Schley's memo.

Vice Chairman Zaidel opened the hearing to questions from the public. Hearing none, he closed that portion and opened the hearing to comments from the public.

Art Cifelli, 5 Debra Lane, was duly sworn by Ms. Wolfe and spoke in favor of the application.

Hearing no further comments from the public, Vice Chairman Zaidel closed that portion of the meeting.

After deliberating, the board members felt that the applicants had satisfied the positive criteria required for both "c(1)" or "hardship" variances and "c(2)" or "flexible c" variances. They also felt that the applicants had satisfied the negative criteria.

Ms. Mastrangelo moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for variance relief and to grant the Zone Two waiver as requested by the applicants subject to the conditions stipulated to by the applicants and as stated during deliberations. Mr. Lane seconded.

Roll Call:

Aye: Genirs, Korn, Lane, Mastrangelo, Zaidel.  
Nay: NONE

Motion carried.

Vice Chairman Zaidel requested a brief recess at 9:19 PM.

\* \* \* \* \*

The meeting was reconvened at 9:28 PM.

**COMPLETENESS AND PUBLIC HEARING**

**[Tiny Turtle Academy c/o KRE Group; #ZB18-016; Block 10001 Lots 4 & 5; 574 Allen Rd; Bulk Variance.](#)**

Present: Michael P. O'Grodnick, Esq., Attorney for the Applicant  
James T. Kyle, PP, AICP, Planner for the Applicant  
Diana E. Jones, Owner/Director, Tiny Turtle Academy, Applicant  
Barry Ages, Director of Operations, SK Allen Road Associates LLC, Owner

Ms. Pozner returned to the room.

Michael P. O'Grodnick, Esq., attorney with *Savo, Schalk, Gillespie, O'Grodnick & Fisher PA*, Somerville, NJ, stated that he was present on behalf of the applicant. He noted that the existing daycare facility was granted approval for exceeding the maximum permitted floor area for a daycare center by the Planning Board in 1998. The applicant sought to expand into the area vacated by the Theatrical Corner in order to add baby/toddler rooms, offices and a reception area.

Mr. Schley, Mr. Quinn, Mr. Kyle, Ms. Jones and Mr. Ages were duly sworn by Ms. Wolfe.

Diana E. Jones, Owner/Director of *Tiny Turtle Academy* gave a brief overview of the operations of the facility located in the Hills Village Center, testifying that there were never any issues with parking and drop off/pick up of

students. She stated that there is a waiting list for infants and toddlers and opined that this application would fill a need for the community.

Ms. Jones testified that the proposed expansion would accommodate an additional 30 children bringing the total enrollment to 170 students. She stated that the 1998 Planning Board approval capped the enrollment at 170 and she requested a modification of Condition #16 of the Resolution to increase that cap to 180.

A colorized version of a Variance Plan by *Stires Associates PA* dated September 7, 2017 showing the distribution of retail and office use for the entire site was introduced into evidence as **Exhibit A-1**.

Vice Chairman Zaidel opened the hearing to questions from the public. Hearing none, he closed that portion of the meeting.

James T. Kyle, PP, AICP, planner with *Kyle Planning & Design*, Hopewell, NJ, was accepted by the Board as an expert in the field of professional planning. He discussed the positive and negative criteria for a "c(2)" or "flexible c" variance as they related to this proposal noting that if the application were to be approved, it would lower the percentage of space occupied by retail uses thus bringing the complex closer to conformity. Finally, he testified that he had no issue with any comments made in Mr. Quinn's memo of July 11, 2018 and Mr. Schley's memo of June 29, 2018.

Vice Chairman Zaidel opened the hearing to questions from the public. Hearing none, he closed that portion. He then opened the hearing to comments from the public. Hearing none, he closed that portion of the meeting.

After deliberating, the board members felt that the applicant had satisfied the positive criteria required for a "c(2)" or "flexible c" variance. They also felt that the applicant had satisfied the negative criteria.

Ms. Genirs moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for variance relief and to grant the modification of Condition #16 of the June 2, 1998 Planning Board resolution as requested by the applicant subject to the conditions stipulated to by the applicant and as stated during deliberations. Ms. Mastrangelo seconded.

Roll Call:

Aye: Genirs, Korn, Lane, Mastrangelo, Pozner, Zaidel.

Nay: NONE

Motion carried.

**COMMENTS FROM MEMBERS OR STAFF**

Ms. Kiefer explained that MEL is offering a special policy free of charge to all land use board members to protect them from personal exposure in land use liability claims. In order to qualify, each board member must participate in an hour long training session. A straw poll indicated most were in favor of a possible September 4, 2018 session.

**ADJOURNMENT**

By unanimous Voice Vote, the meeting was adjourned at 10:20 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment