

**BERNARDS TOWNSHIP
PLANNING BOARD
REGULAR MEETING
MINUTES
APRIL 6, 2010**

The Board Chairman called the meeting to order at 7:35 p.m. This meeting was video-streamed.

ROLL CALL:

Members present: Orr, Parsekian, Santoro, Spitzer, Winter, Bianchi, Gilmore
Members late: Huckins (7:39 p.m.); Malay (7:45 p.m.); Fonde (10:00 p.m.)
Members absent: Del Vento
Board Planner Frank Banisch (7:40 p.m.), and Assistant Township Planner David Schley were also present.

OPEN MEETING STATEMENT

“In accordance with the requirements of the Open Public Meetings Law of 1975, notice of this public hearing of the Planning Board of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, NJ, was mailed to the Bernardsville News, Bernardsville, NJ, to the Courier News, Bridgewater, NJ, and to the Star-Ledger, Newark, NJ all on January 11, 2010, 2009, and was mailed to all those people who have requested individual notice and paid the required fee.

“The following procedure has been adopted by the Bernards Township Planning Board. There will be no new cases heard after 10:00 p.m., and no new witnesses or new testimony heard after 10:30 p.m.”

APPROVAL OF MINUTES

The motion was made by Mr. Santoro and seconded by Mr. Orr to approve the minutes of December 8, 2009, closed session, as drafted.

Roll call:

Aye: Orr, Parsekian, Santoro
(Mr. Spitzer, Mr. Winter, Ms. Bianchi, and Ms. Gilmore were ineligible to vote)

Motion carried

The motion was made by Mr. Santoro and seconded by Mr. Orr to approve the minutes of December 22, 2009, closed session, as drafted.

Roll call:

Aye: Orr, Parsekian, Santoro, Spitzer, Winter
(Ms. Bianchi and Ms. Gilmore were ineligible to vote)

Motion carried

The motion was made by Mr. Santoro and seconded by Mr. Orr to approve the minutes of February 2, 2010 as drafted.

Roll call:

Aye: Orr, Parsekian, Santoro, Spitzer, Bianchi, Gilmore, Winter
Motion carried

Mr. Huckins and Mr. Banisch joined the meeting.

APPROVAL OF CHARGES AGAINST ESCROW ACCOUNTS

The motion was made by Mr. Orr and seconded by Mr. Huckins to approve the charges submitted by Banisch Associates for preparation of the Green Plan Element, by John Belardo, Esq. for February 2010, by EKA Associates for March 1-15, 2010 and by David Schley for March 2010.

Roll call:

Aye: Huckins, Orr, Parsekian, Santoro, Spitzer, Bianchi, Gilmore, Winter
Motion carried

APPROVAL OF RESOLUTIONS

RESOLUTION – Lailey, James B. – Block 10602, Lot 10 – Modification of Condition of Approval

The motion was made by Mr. Santoro and seconded by Mr. Huckins to approve the resolution as drafted.

Roll call:

Aye: Huckins, Santoro, Spitzer, Witner
(Mr. Orr, Ms. Parsekian, Ms. Bianchi and Ms. Gilmore were ineligible to vote)
Motion carried

APPROVAL OF 2010 MASTER PLAN

Mr. Banisch said that the technical corrections to the Master Plan draft discussed at the March 16, 2010 Master Plan public hearing were listed in his April 3, 2010 memo. There was discussion about Mr. Orr's recommendation to include a section in the Conservation and Open Space plan element that describes the watersheds located in the Township.

Mr. Malay joined the meeting.

The motion was made by Mr. Orr and seconded by Mr. Huckins to include language on watersheds as presented in Mr. Orr's March 15, 2010 memo

Roll call:

Aye: Huckins, Malay, Orr, Parsekian, Santoro, Spitzer, Gilmore
Abstain: Bianchi
Motion carried

There was further discussion about the technical corrections listed in Mr. Banisch's April 3, 2010 memo, including the status of the English wood lot and recommendations made by the Board of Adjustment.

The motion was made by Mr. Malay and seconded by Mr. Huckins to accept the technical corrections, to add the information about watersheds as requested by Mr. Orr and to adopt the 2010 Master Plan with these changes.

Roll call:

Aye: Huckins, Malay, Orr, Parsekian, Santoro, Spitzer, Bianchi, Gilmore,
Winter

Motion carried

Mr. Koenig announced that the continued public hearing on the application filed by Jaffa Building, LLC for Block 11401, Lots 36 & 37 was carried to April 20, 2010 by request of the applicant.

PUBLIC HEARING – SOMERSET COUNTRY LIVING PROPERTIES, LLC – Block 6001, Lots 10.01, 10.02, 10.05 to 10.10 – 6, 7, 16, 19, 25, 35, 38 & 47 Tall Timber Lane – Modification of Final Major Subdivision Approval to Allow Fencing in Conservation Easements.

Christopher Quinn, Esq. represented the applicant. He explained that the applicant is seeking approval to allow individual property owners on Tall Timber Lane to install non-solid fencing along their property lines within the conservation easements. He submitted Exhibit A-1, a copy of the subdivision plan. He said the intention was to install open fencing. Mr. Malay, Mr. Spitzer and Mr. Orr remembered that they were on the Board when this subdivision was first heard.

Victor Huljack, Boulder Construction, Scotch Plains, NJ was sworn in. He showed the Board where there was existing fencing along some homeowners' rear property lines. He said that the home owners want to install fencing to connect to this existing fencing.

Mr. Huljack submitted Exhibit A-2, a copy of the grading plan for the subdivision to further illustrate the proposal.

Public hearing was opened for questions and comments on the application.

- William Ruffle, 50 Keats Road, was sworn in. He described the conditions on the lot that adjoins his lot on the north.
- Elizabeth Pan, 47 Tall Timber Lane, was sworn in. She had questions about whether she could remove dead or dangerous trees in the conservation easement and whether she had to replace those trees.
- Scott Rever, 70 Keats Road, was sworn in. He described the old fence that had been installed by Millington Quarry. He questioned who had the responsibility for the land between two fences on different lots. He had questions about the construction being done on the lot that adjoins his on the north.
- Chau Shearer, 16 Tall Timber Lane, was sworn in. She said that she wants to keep the existing fence. She noted her concerns about privacy on her lot.

Hearing no further comments, the public portion of this hearing on this application was closed.

Board members discussed how to balance keeping the buffer undisturbed and allowing fencing. Board members recommended that fencing be allowed six inches from property lines in rear yards and in side yards, and that such fencing be subject to inspection by the Township Engineer. Mr. Koenig agreed with Mr. Schley and recommended that the applicant amend the conservation easement documents.

Mr. Koenig listed as conditions of approval:

- Mr. Schley's recommendation that installed fencing be at least 50% open
- Fencing be installed no further than six inches from property lines, except where adjustment is needed to avoid existing trees, and be subject to inspection by the Township Engineer
- Easement markers be installed
- On lot 10.05 that no fencing be installed forward of the front of this house.
- No fencing will be permitted in the easements along Pond Hill Road.

The motion was made by Mr. Malay and seconded by Ms. Parsekian to approve this request subject to the discussed conditions.

Roll call:

Aye: Huckins, Malay, Orr, Parsekian, Santoro, Spitzer, Winter

Nay: Bianchi, Gilmore

Motion carried

Mr. Fonde joined the meeting.

PUBLIC HEARING – BOULDER CONSTRUCTION, LLC – Block 6301, Lots 34.01 to 34.04 – 4, 10, 18 & 22 Belmont Court – Modification of Final Major Subdivision Approval to Allow Fencing in Conservation Easements

Christopher Quinn, Esq. represented the applicant. He explained that the lots in this subdivision have a 30-ft wide conservation easement in the rear yards of each lot.

Victor Huljack, Boulder Construction, was sworn in. He said that the easement prohibited any structures being built within it but that property owners wanted to install fencing in their rear and side yards. Board members asked about the swale located along this easement. Mr. Huljack said that the original engineering plans had been amended and that yard drains were installed to supplement the swale. Board members discussed what type of fencing would be appropriate near these drainage facilities and any associated enforcement issues.

Brendan Dougher, 22 Belmont Court (Lot 34.04) was sworn in. He pointed out that his lot is different from the other three lots because there is no swale. He asked that the fence that he already installed on his property be permitted.

Board members noted that the issues with fencing in the conservation easements were different from the issues associated with installing fencing over drainage facilities. On Mr. Koenig's recommendation, they agreed to hear testimony on 22 Belmont Court (Lot 34.04) first.

Mary Anne Dougher, 22 Belmont Court, was sworn in. She said that the existing fencing on their lot was not in a drainage easement. She said they wanted to keep the existing fence located along the property line in the conservation easement.

Public hearing was opened for questions and comments concerning Lot 34.04 (22 Belmont Court).

- William Weber, 50 Overlook Avenue, was sworn in. He said that the drainage system for Belmont Court works and he did not want any changes made to it. He thought that a similar type of fencing should be installed on all of the lots.

Hearing no further questions or comments, the public portion of this hearing on this application was closed.

Mr. Dougher said he would move any fencing that was close to the grate on his property but he asked that he retain the existing fencing along the perimeter of his lot.

After Board discussion, Mr. Koenig listed as conditions of approval (for Lot 34.04 only) that fencing not be installed in a drainage easement, that the fencing be 50% open, that easement monuments be installed to indicate the location of the conservation easement, and that the location of the fence be subject to inspection by the Township Engineer.

Discussion on fencing in the easements on the other lots in the subdivision will continue at a later hearing.

The motion was made by Mr. Fonde and seconded by Mr. Huckins to allow fencing in the conservation easement on Lot 34.04 and that such fencing be black and 50% open.
Roll call;

Aye: Fonde, Huckins, Malay, Orr, Parsekian, Santoro, Spitzer, Bianchi, Winter
Motion carried

Having no further business to discuss, the meeting was adjourned at 11:07 p.m.

Respectfully submitted,

Frances Florio
Secretary to the Board

JAMES B. LAILEY
PB09-008
MODIFICATION OF CONDITION OF APPROVAL
BLOCK 10602, LOT 10

WHEREAS, James B. Lailey made application to the Bernards Township Planning Board for a modification to a condition of approval established in connection with a subdivision approval granted by the Planning Board in 1998 and 1999 on property located at 19 Wellington Drive, known as Lot 10 in Block 10602 on the Bernards Township tax map; and

WHEREAS, the applicant provided a copy of a survey of the property in question, dated 2004, with a proposed hot tub location shown on the property; and

WHEREAS, the Board considered the matter at a hearing held on October 20, 2009; and

WHEREAS, the Board makes the following findings and conclusions:

1. The property in question is located in the PUD-5 Mount Laurel Option zone district, in a development known as The Hills. The property affected by the application consists of Block 10602, 10603, 10604, 10605, and 10606, including all lots along Bedford Drive, Marlborough Court, Queenberry Way, and Wellington Drive. The entire tract consists of approximately 27 acres, and includes 70 single family residences.

2. The applicant proposes to install a hot tub on the specific property which is the subject of this application. Due to the location of the proposed hot tub, the applicant will require variance relief from the Zoning Board of Adjustment. At present, the applicant seeks clarification or modification of a condition contained in the approval resolutions adopted by the Planning Board relating to The Hills Development Company, in 1998 and 1999.

3. By resolution adopted March 3, 1998, the Planning Board granted preliminary and final major site plan and subdivision approval for Section 9 of The Hills (i.e., Lafayette Watch), subject to various conditions. By resolution adopted January 19, 1999, the Board granted amended preliminary and final major subdivision approval incorporating all conditions of the 1998 resolution. Condition 20 of the 1998 resolution states:

The yards between the homes and Allen Road shall be treated as through lots as per the Township Ordinance. In addition, no swimming pools or tennis courts shall be allowed within any lots in Section 9.

4. The Land Development Ordinance, Section 21-3.1, provides that a swimming pool includes artificially constructed pools, whether located above or below

the ground, having a depth of more than 18 inches and/or a water surface in excess of 100 square feet. In the present case, the proposed hot tub has a depth of more than 18 inches, with a water surface of 64 feet or less. The “and/or” reference in the swimming pool definition means the hot tub is a swimming pool.

5. Lafayette Watch was developed at a density of 2.6 dwelling units per acre, with many lots occupying less than one-quarter acre. Since community recreation facilities, including a swimming pool, are available to all residents of The Hills, the Planning Board adopted Condition 20 to discourage unnecessary over intensification of the relatively small rear yards in Lafayette Watch through construction of swimming pools. Similar conditions were adopted for other single family neighborhoods in The Hills.

6. The Planning Board determined in the present application that it was never the intent that a hot tub would be prohibited by virtue of the prohibition on swimming pools. The Planning Board recognizes it cannot change the ordinance definition of a swimming pool, but it does have control over the wording of the condition in the prior resolutions.

7. In keeping with the intent of the restriction on swimming pools in Lafayette Watch, the Planning Board has decided to amend Condition 20 of the 1998 resolution to reflect that no swimming pools, “with a water surface of in excess of 64 square feet” shall be allowed. The Board also determined that all other rules as to swimming pools shall remain applicable, subject to appropriate variance relief, but makes no comment with reference to any relief that may be required in connection with this particular matter.

NOW, THEREFORE, BE IT RESOLVED that this resolution shall serve to memorialize the action of the Planning Board of Bernards Township in modifying Condition 20 of the 1998 resolution for The Hills Development Company, Lafayette Watch, by revising Condition 20 to read as follows:

The yards between the homes and Allen Road shall be treated as through lots as per the Township Ordinance. In addition, no swimming pools with a water surface in excess of 64 square feet or tennis courts shall be allowed within any lots in Section 9.

The above referenced modification shall supersede the prior adopted condition, and all other rules as to swimming pools shall remain applicable.

I, Frances Florio, Secretary to the Planning Board of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the said Planning Board on the 6th day of April, 2010.

FRANCES FLORIO, Secretary