

# **BERNARDS TOWNSHIP**

## **PLANNING BOARD**

**Minutes** v3

Regular Meeting

February 6, 2018

Chairwoman Piedici called the meeting to order at 7:30 PM.

### **FLAG SALUTE**

### **OPEN PUBLIC MEETING STATEMENT**

Chairwoman Piedici read the following open meeting and procedural statement:

"In accordance with the requirements of the Open Public Meetings Law of 1975, notice of this regular meeting 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 sent to the Bernardsville News, Bernardsville, NJ, and to the Courier News, Bridgewater, NJ, on January 19, 2017 and was electronically mailed to 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 PM and no new witnesses or testimony heard after 10:30 PM."

### **ROLL CALL:**

Members Present: Asay, Bianchi, Coelho, Crane, Malay, Moschello, Piedici, Ross, Surano, Zaidel.

Members Late: NONE

Members Absent: NONE

Also Present: Board Attorney Jonathan Drill, Esq.; Township Planner David Schley, PP, AICP; Board Engineer, Thomas Quinn, PE, CME; Board Planner, David Banisch, PP, AICP; Board Secretary, Cyndi Kiefer.

### **APPROVAL OF MINUTES**

**November 21, 2017 - Regular Session** - Mr. Zaidel moved approval of the minutes as drafted. Second by Mr. Moschello.

Roll Call:

Aye: Moschello, Piedici, Zaidel.

Nay: NONE

Abstain: NONE

Motion carried.

**November 21, 2017 - Closed Session** - Mr. Moschello moved approval of the minutes as drafted. Second by Mr. Zaidel.

Roll Call:

Aye: Moschello, Piedici, Zaidel.

Nay: NONE

Abstain: NONE

Motion carried.

**January 16, 2018 - Regular and Reorganization Sessions** - Mr. Surano moved approval of the minutes as drafted. Second by Mr. Ross.

Roll Call:

Aye: Bianchi, Coelho, Crane, Malay, Moschello, Piedici, Ross, Surano, Zaidel.

Nay: NONE

Abstain: NONE

Motion carried.

### **PUBLIC HEARING**

**Pizzo, Kenneth & Meaghan; Block 7301, Lot 42.04; 37 Kenworthy Court; Revision to Preliminary & Final Major Subdivision; #PB11-008B.**

Present: Frederick B. Zelle, Esq., Attorney for the Applicant  
Robert V. Kiser, PE, PP, Engineer/Planner for the Applicant  
Kenneth Pizzo, Applicant

### **PUBLIC HEARING**

**LOUJOR LLC (Mayo); Block 7301, Lot 42.05; 27 Kenworthy Court; Revision to Preliminary & Final Major Subdivision; #PB11-010B.**

Present: Frederick B. Zelle, Esq., Attorney for the Applicant  
Robert V. Kiser, PE, PP, Engineer/Planner for the Applicant  
Jorge Mayo, Member; LOUJOR, LLC; Applicant

Mr. Drill explained to the board members why he felt that the Planning Board had jurisdiction over these two applications. In addition to variance relief for the fencing, the Pizzo application (#PB11-008B) required a modification of a condition of a prior approval by the Planning Board for the proposed sunroom and therefore had to appear before this board. The LOUJOR LLC application (#PB11-010B) required only variance relief for the fencing which would normally fall under the jurisdiction of the Zoning Board of Adjustment. However, since one section of that fencing was common to the properties of both applicants, Mr. Drill opined that the purpose of the Municipal Land Use Law was best advanced by having both appear before the Planning Board.

Mr. Drill further opined that, in order to avoid duplication of testimony, the "hearing" portion of the applications could be consolidated however there had to be separate deliberations and motions along with a separate resolution for each application. The board members were unanimously in favor of proceeding in this manner.

Mr. Zaidel, Committeeman Malay, Committeewoman Bianchi, Mr. Crane and Chairwoman Piedici all stated that they had conducted site visits and noted their observations.

Mr. Zelle, attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, advised the board members that he would be representing both applicants during this hearing and that he agreed with Mr. Drill's opinions. He stated that the sunroom proposed by Kenneth and Meaghan Pizzo (#PB11-008B) deviated from Condition #3 of the resolution memorialized on August 29, 2013 for Application #PB11-008A (Second Amended Subdivision Approval) which limited the impervious coverage for the dwelling to 6,848 square feet. The sunroom was to be constructed over an existing raised concrete patio which currently counted towards "other" coverage but not dwelling coverage. Once built, the sunroom would count towards dwelling coverage instead of "other" coverage so there would be no change in the overall *total* coverage.

**Exhibit A-1**, Sheet A-1 of 9, Floor Plan set prepared by *Douglas J. Coleman Architects and Associates LLC*, Warren, NJ, last revised July 8, 2016, and **Exhibit A-2**, Sheet A-2 of 9, Elevations/Sections, of the same were submitted into evidence. Both exhibits showed architectural information for the proposed sunroom.

Mr. Zellely then outlined the relief sought for the fence height deviations (8 feet and 6 feet existing where a maximum of 6 feet and 4 feet respectively are allowed) on the Pizzo property. He stated that the fence had been there for six (6) years and was heavily buffered by vegetation.

The Board's professionals, Applicants' professionals and Applicants were duly sworn by Mr. Drill.

Kenneth Pizzo, applicant, testified that the fence, which also served as a pool fence, was in place when he moved into the home during September of 2012. He explained that the 8 foot high rear fencing was to protect the landscaping and prevent animals such as deer, coyotes and black bears from entering the property. It was constructed with poles and mesh (with a tighter weave in the bottom 4 feet) and as such was almost invisible. Much of the fencing including the 6 foot high portions (ornamental in style) was buffered with shrubbery and vegetation to minimize its visibility. The common portion of the fence had been installed before the Mayos moved into their home and there had been no complaints from any of his neighbors. He testified that he was unaware that there were township ordinances governing fence height or that fence installation required construction permits.

Chairwoman Piedici opened the meeting to the public for questions. Hearing none, she closed that portion of the meeting.

Jorge Mayo, member, *LOUJOR LLC* (the Applicant), testified that he, too, did not know that there were fence height limitations or that construction permits were required. Mr. Mayo then described the fence locations and various heights (8 feet and 6 feet existing where a maximum of 6 feet and 4 feet respectively are allowed) on his property. He noted that the fence facing Liberty Corner Road was completely obscured by a row of evergreens.

Mr. Quinn noted that sections of both fences were located in New Jersey Department of Environmental Protection (NJDEP) regulated areas and/or in township easements. He asked if the posts for that fencing were just driven into the ground and opined that if there were no footings, the NJDEP may not view the posts as disturbances. Mr. Zellely stated that he was aware that this was under the jurisdiction of the NJDEP and without NJDEP approval, the fencing would have to be relocated.

In response to a question from Mr. Moschello, both Mr. Pizzo and Mr. Mayo stipulated to maintaining the appearance of the fences as they currently existed with no changes in materials, colors or design.

Robert V. Kiser, PE, PP, professional engineer and planner with *Stires Associates PA*, Somerville, NJ, provided his education and professional credentials to Chairwoman Piedici. After confirming that his licenses were current, Mr. Kiser was accepted as an expert in the fields of civil engineering and professional planning.

Mr. Kiser described the fencing on the LOUJOR property and opined that, after viewing the photos, the fence posts along the rear were driven into the ground as opposed to cemented in with footings. He also agreed that portions of the fencing were located in NJDEP regulated areas and absent NJDEP approval, the offending portions of the fences would have to be relocated. Mr. Schley added that if the NJDEP approved, the terms of the Township conservation easement provide that the fence shall be permitted within that easement.

Mr. Kiser addressed the comments in Mr. Schley's memo dated January 26, 2018 regarding the LOUJOR LLC application. It was agreed that both applicants would have 30 days to apply for all required township and NJDEP permits.

Mr. Schley directed Mr. Zellely to Item #3 in the Variance List portion of his memo (§21-16.2.c) which stated in part that, "All fences or walls shall be symmetrical in appearance..." Mr. Zellely opined that the various purposes of the fences served as justification for the use of different styles and heights.

Mr. Zellely stated that the applicant, LOUJOR LLC, would stipulate to all the items in Mr. Schley's memo, in Mr. Quinn's memo of February 2, 2018 and also in Mr. Banisch's memo of February 2, 2018.

Mr. Kiser then began testimony regarding the Pizzo application. He stated that the fencing on this property was similar to that on the LOUJOR LLC property in height and design at various locations. He noted that part of the fence was located in the riparian zone and that the applicant would also have to apply to the NJDEP for the required permits.

Mr. Schley stated that the same issue regarding fence uniformity was also present in this application and Mr. Zellely advised the board members that he would request variance relief for both applicants. The notice published and served for these applications contained a "catch all" phrase so that no new notice would be required.

In reference to the proposed sunroom, Mr. Kiser testified that it would not produce any additional impervious coverage since it was being constructed on top of an existing, previously approved patio, the square footage of which was already calculated into the "other" impervious coverage number. It was a tradeoff between dwelling impervious coverage and "other" impervious coverage.

Chairwoman Piedici opened the meeting to the public for questions. Hearing none, she closed that portion of the meeting.

A discussion ensued about the accuracy of the coverage numbers.

Mr. Pizzo further testified that because of the design and the wooded buffering, none of his neighbors to the rear could see the rear fencing unless they walked to the back of their properties.

Mr. Pizzo stated that the sunroom was to be a three (3) season room with no plumbing, air conditioning or heat.

Mr. Zellely provided testimony to satisfy the positive and negative criteria for "c(2)" or "flexible c" variances for both applications.

After deliberating, Committeewoman Bianchi moved approval of Application #PB11-008B (Kenneth & Meaghan Pizzo) with the stipulations as stated during testimony. Second by Mr. Moschello.

Roll Call:

Aye:	Bianchi, Coelho, Crane, Malay, Moschello, Piedici, Ross, Surano, Zaidel.
Nay:	NONE
Abstain:	NONE

Motion carried.

After deliberating, Mr. Surano moved approval of Application #PB11-010B (LOUJOR, LLC) with the stipulations as stated during testimony. Second by Dr. Coelho.

Roll Call:

Aye: Bianchi, Coelho, Crane, Malay, Moschello, Piedici, Ross, Surano, Zaidel.  
Nay: NONE  
Abstain: NONE

Motion carried.

**EXECUTIVE SESSION**

**Resolution authorizing a closed session for the purpose of:** discussion of (1) the status of the Request for Proposal (RFP) for the Board's professional engineering expert; and (2) matters falling within the attorney-client privilege where confidentiality is required for the attorney to exercise is ethical duties as a lawyer, namely legal advice regarding the Request for Proposal.

Chairwoman Piedici read the resolution in its entirety into the record.

Mr. Ross moved approval, Mr. Crane seconded and the motion was unanimously approved by Voice Vote.

Committeeman Malay left the meeting at 9:40 PM.

The Open Session of the February 6, 2018 Planning Board meeting was recessed at 9:40 PM.

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Mr. Ross moved, Mr. Surano seconded, and by unanimous Voice Vote, the Open Session of the February 6, 2018 Planning Board meeting was reconvened at 10:10 PM. Dr. Coelho left the meeting.

**COMMENTS FROM STAFF**

Ms. Kiefer advised the board members that they would have to complete a stormwater management online class within six (6) months and that the link to the class would be sent to them shortly.

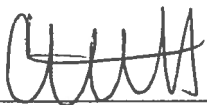
**COMMENTS FROM MEMBERS**

The board members discussed future agenda events for the Planning Board and Township Committee.

**ADJOURN**

Having no further business to conduct, Chairwoman Piedici asked for a motion to adjourn. Mr. Ross moved, Mr. Surano seconded and by unanimous Voice Vote, the meeting was adjourned at 10:20 PM.

Respectfully submitted,



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Cyndi Kiefer, Secretary  
Township of Bernards  
Planning Board

**BERNARDS TOWNSHIP PLANNING BOARD**

**RESOLUTION AUTHORIZING CLOSED SESSION**

**WHEREAS**, N.J.S.A. 10:4-12 (the Open Public Meeting Act) authorizes this Board to exclude the public from that portion of a meeting at which this Board discusses certain matters:

**WHEREAS**, the Board is about to discuss such matters, namely, the status of the Request for Proposal (RFP) for the Board's professional engineering expert as to the terms and conditions to be set forth in the RFP, which involves an employment/appointment matter as well as a matter falling within the attorney-client privilege where confidentiality is required for the Board attorney to exercise his ethical duties as a lawyer;

**WHEREAS**, this Board believes the public should be excluded from those discussions;

**NOW, THEREFORE**, be it resolved by the Bernards Township Planning Board on February 6, 2018 that the Board now go into closed session and the public be excluded and that the Board believes that the discussions conducted in the closed session may not be disclosed to the public because they will involve attorney-client privileged advice and information.

The above Resolution was adopted on February 6, 2018, by the following vote of the members of the Board:

AYES: 9

NAYES: 0

I, Cyndi Kiefer, 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 the memorializing resolution duly adopted by the said Planning Board on February 6, 2018.



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**CYNDI KIEFER, Board Secretary**