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May 17, 2019

FOR IMMEDIATE PRESS RELEASE

From: John P. Belardo, Esq., Bernards Township Attorney

Re: Millington Quarry, Inc. ("MQI")
135 Stonehouse Road
Block 6001, Lot 6
Application No. ZB18-026



What follows is a brief summary of the key points of Zoning Board of Adjustment Attorney Steven K. Warner's May 14, 2019, Memorandum Opinion. The Township prevailed on significant issues of law, including the requirement that MQI must obtain heightened (d)(1) use variances for proposed lots 6.01 and 6.02, which use variances require the affirmative vote of **5 of the 7** Zoning Board of Adjustment members.

- "While it is [Attorney Warner's] legal opinion that the Zoning Board is compelled to exercise its jurisdiction to hear and decide the merits of the MQI Application rather than cede its mandatory obligation to exercise its exclusive jurisdiction, **it is [Attorney Warner's] further legal opinion that the Township may present all relevant evidence in opposition to the MQI Application**, including all testimonial and documentary evidence supporting the Township's contention that granting the MQI application would constitute an arrogation of the Township Committee and Planning Board's authority." (p.19)
- "The arrogation of the Township Committee and Planning Board's authority, as contended by the Township, could occur only if the Zoning Board grants the MQI application, and does so unconditionally. However, if the Zoning Board ultimately renders a decision denying the MQI Application, the Township's argument, that a grant of same would constitute an arrogation of the Planning Board and the Township Committee's authority, would be rendered moot. **Alternatively, if the Board**

ultimately renders a decision granting the MQI Application, it may decide to do so with multiple conditions of approval, including a condition that MQI (or any successor) shall obtain the approval of the Township Committee, after review by the Planning Board, of the requisite revised Rehabilitation Plan, prior to MQI perfecting the subdivision by recordation of the subdivision deed." (p. 20)

- "In sum, that the Zoning Board is constrained, in [Mr. Warner's] legal opinion, to exercise its jurisdiction to hear the MQI Application, does not preclude the Township from pursuing during the hearings before the Zoning Board its contention that a grant of the MQI Application would constitute an arrogation of the Township Committee and Planning Board authority over the revised Rehabilitation Plan. **Moreover, it may be that evidence of such potential arrogation is not only relevant, but actually material, to the Zoning Board's analysis and determination of the MQI Application.** (p.21)
- "It is [Attorney Warner's] opinion that MQI cannot seek to subdivide the Property and create Proposed Lot 6.01 without identifying the proposed use of said lot, particularly given that the creation of resultant Proposed Lot 6.01 requires multiple bulk variances, notably a minimum improvable lot area variance. It is [Attorney Warner's] understanding that minimum improvable lot area requirements were adopted in 2006 with the purpose of ensuring that adequate area suitable for development (i.e., free of environmental or other constraints) is provided within the building envelope on each lot. A minimum improvable lot area of 22,000 square feet is required in the R-3 Zone. The entire building envelope on Proposed Lot 6.01 is subject to an NJDEP Deed Notice/Restriction, resulting in no improvable lot area." (p. 26)
- "MQI is required to notice for, and obtain, a d(1) use variance for Proposed Lot 6.01 (the Environmentally Restricted Lot), and also a d(1) use variance, rather than a d(2) variance, to continue to use the existing building on Proposed Lot 6.02 (the Remainder/Office Lot) as commercial office space, or to use it for any use other than those uses expressly permitted in the R-3 Zone." (p.31).

The Zoning Board of Adjustment has yet to determine the date of the next hearing.