

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES

Special Meeting
May 16, 2019

CALL TO ORDER

Chairman Breslin called the meeting to order at 7:32 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Chairman Breslin 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, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk all on January 10, 2019 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

Daniel Eorio, Regular Member, fulfilling the unexpired four-year term of Z. Pozner, expiring 12/31/20, was sworn in by Mr. Warner.

ROLL CALL:

Members Present: Breslin, Eorio, Genirs, Kleinert, Kraus, Lane, Pochtar, Tancredi, Zaidel
Members Absent: NONE
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Secretary, Cyndi Kiefer

EXECUTIVE SESSION

Resolution authorizing a closed session for the purpose of: discussing the predicate legal issue of Board jurisdiction in the Millington Quarry Inc. Application, #ZB18-026. Attorney-Client privileged legal advice will be given where confidentiality is required for the attorney to exercise his ethical duties as a lawyer.

BOA Closed Session Resolution 05-16-2019 was read into the record by Mr. Warner.

Ms. Genirs moved approval of the resolution as read and Mr. Lane seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kleinert, Lane, Tancredi, Zaidel.
Nay: NONE
Ineligible: Kraus, Pochtar

Motion carried.

* * * *The Open Session was recessed at 7:38 PM and reconvened at 8:21 PM.* * * *

PUBLIC HEARING

Millington Quarry Inc.; Block 6001, Lot 6; 135 Stonehouse Road; Minor Subdivision, Bulk Variances, d(2) Variance; #ZB18-026

Present: Michael T. Lavigne, Esq., Attorney for the Applicant

Mr. Warner stated that both counsel for the Township and counsel for the applicant had stipulated that the only issue to be addressed that evening would be the resolution of jurisdiction and jurisdictionally related issues associated with the Millington Quarry, Inc. (MQI) application. Should the Board determine that it had jurisdiction to hear the application, the merits of the application would be heard at a subsequent meeting. He then summarized the briefing process that had taken place since the March 6, 2019 meeting when the Township, through its counsel, John P. Belardo, Esq., opined that, based on the 2014 Settlement Agreement with MQI and the Township's ordinance, if the Board were to hear the application, it would be an arrogation of both the Township and the Planning Board's powers. The applicant opposed that supposition. Mr. Warner asserted that this was a legal issue and an application by the Township to dismiss for lack of jurisdiction, therefore the only parties to the application were the Township and the Applicant. As such, it was not a matter subject to public comment.

Scott Guibord, 64 Woodstone Road, commented that it was his recollection that during the March 6, 2019 meeting, Mr. Warner had stated that public comment would be allowed on this issue adding that he had a document that he wanted to submit to the Board. Both Mr. Warner and Chairman Breslin reiterated that this was a legal issue and an Application solely between the Township and the Applicant and apologized for any confusion caused by statements made at the March meeting. Mr. Guibord responded that had he known, he would have attended this meeting represented by counsel and that he would find a way to submit the document to the Board.

Michael T. Lavigne, Esq., attorney with *Fox Rothchild LLP*, Morristown, NJ, entered his appearance on behalf of the Applicant and agreed to the stipulation that this meeting would only address the issues relating to jurisdiction.

Mr. Warner presented a synopsis of his legal opinion memo dated May 14, 2019 to the Board, regarding the jurisdiction and related predicate issues. He added that after the Board voted that night, the memo will no longer be classified as "Attorney-Client Privilege" and will be available to the public. The Board then deliberated on the opinions presented.

Ms. Genirs moved to adopt, as the Board's findings on the three (3) predicate issues in this case, the May 14, 2019 Memorandum of Board Attorney, Steven Warner, Esq., including, but not limited to, his following legal opinions therein:

1. "The Township has legal standing to participate as an 'interested party' in the MQI Application to challenge the jurisdiction of the Zoning Board to hear and render a decision on the merits of same."
2. "The Zoning Board is mandated by governing statutory and case law to exercise its exclusive jurisdiction to hear and decide the MQI Application, but the Township may present evidence during the proceedings in support of its contention that a grant of the MQI Application would constitute an arrogation of the Township Committee and Planning Board's authority, and same may be material to the Zoning Board's determination on the merits of the MQI Application."

Mr. Warner opined that this portion of the motion be amended to read, "...but the Township and any interested party may present evidence..." as was discussed prior to the motion. Ms. Genirs amended her motion to include verbiage as indicated in *italics* above.

Ms. Genirs continued:

3. "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."

Mr. Lane seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kleinert, Lane, Tancredi, Zaidel.
Nay: NONE
Ineligible: Kraus, Pochtar

Motion carried.

Mr. Warner stated that the Applicant must renote once a date certain for the hearing could be arranged and Mr. Lavigne agreed to give the Board an "Extension of Time to Act" through June 30, 2019. Although he stipulated that would notice for both d(1) variances, Mr. Lavigne stated that he did not agree with the opinions rendered by Mr. Warner and that he would argue that neither proposed lot would require a d(1) variance.

DISCUSSION ITEM

2018 Annual Report and Recommendations

After discussing Mr. Schley's May 13, 2019 memo which contained additional information about the increase in lot coverage applications in 2017 and 2018, the Board declined to make any recommendations pertaining to lot coverage to the Township Committee.

Mr. Lane moved to adopt the 2018 Zoning Board of Adjustment Annual Report as drafted. Ms. Kleinert seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kleinert, Lane, Tancredi, Zaidel.
Nay: NONE
Ineligible: Kraus, Pochtar

Motion carried.

COMMENTS FROM MEMBERS OR STAFF - None

ADJOURN

By unanimous Voice Vote, the meeting was adjourned at 9:54 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

05/23/19 v3 ds sw

Approved as written 06-05-2019