

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

## **MINUTES**

Special Meeting

June 24, 2019

### **CALL TO ORDER**

Chairman Breslin called the meeting to order at 7:34 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."

### **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 Engineer, Sam Koutsouris, PE; Board Secretary, Cyndi Kiefer

### **PUBLIC HEARING**

**Millington Quarry Inc.**; Block 6001, Lot 6, 135 Stonehouse Road; Minor Subdivision; d(1) "Use" Variances, Bulk Variances; #ZB18-026

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

Mr. Warner stated that there had been submissions made by members of the public directly to the Board Secretary and one submission made by mail directly to the Board's members. He asserted that he advised the Board members not to open the mailed submission and to return same to the Board Secretary, which he understood they did, and he advised that these communications had not been considered by the members and were not part of the official file, adding that all documentary and testimonial evidence must be presented during the hearing under oath and be placed on the record accordingly.

Michael T. Lavigne, Esq., with the firm of *Fox Rothchild LLP*, Morristown, NJ, entered his appearance on behalf of the applicant.

John P. Belardo, Esq., with the firm of *McElroy, Deutsch, Mulvaney & Carpenter LLP*, Morristown, NJ, advised the Board that he was present in his official capacity as Township Attorney to question the Board's jurisdiction to consider the application that evening. Referring to Mr. Warner's jurisdiction legal opinion memo dated May 14, 2019, and the Board's adoption thereof as its findings in its Resolution dated June 5, 2019, Mr. Belardo stated that the applicant was required to notice for a d(1) "use" variance for Lot 6.01 (Environmentally Restricted Lot) and a d(1) "use" variance for Lot 6.02 (Remainder/Office Lot). He then referred to the applicant's public notice dated June 13, 2019 in which the applicant did request a d(1) "use" variance for each lot, however, there was no proposed use given for Lot 6.01. Citing notice requirements listed in NJS 40:55D-11, he averred that because the specific use for lot 6.01 was absent, the notice should be deemed deficient and the Board should vote to deny the application.

Mr. Warner asked if there were any members of the public who were represented by counsel. There were none.

Mr. Lavigne stated that it was his understanding that the Board's resolution which was based on Mr. Warner's jurisdiction memo, concluded that a d(1) variance was required for Lot 6.01 because there was no specific use listed in the application. He explained that no use was proposed because the applicant simply wanted to subdivide the property and sell it to the contract purchaser. It would then be up to the new owner to determine a use for the subject lot. He speculated that it seemed arbitrary for the applicant to create a use other than vacant land which, he opined, was a non-use.

In his memo, Mr. Warner opined that a d(1) "use" variance for proposed Lot 6.01 is required and a proposed use must be specified, particularly given that creation of Lot 6.01 requires multiple bulk variances. One of the bulk variances is for no improvable lot area, which requires the applicant to explain why the lack of unrestricted area suitable for development should be permitted without the Board knowing what the proposed development will be in the first place. He questioned how the applicant would be able to demonstrate entitlement to such variance relief without designating a use. Further, how could the applicant satisfy the positive and negative criteria in addition to providing the enhanced quality of proof (Medici standard) so that the Board could determine entitlement to a d(1) "use" variance when no use was articulated? He then cited case law that affirmed that the notice must provide sufficient and specific information so that the public could readily understand the proposed use.

Mr. Warner opined that the Board lacked jurisdiction to proceed with the application because the notice was deficient and advised the Board to allow the applicant the opportunity to cure the legally deficient notice.

Mr. Lavigne requested the option of resubmitting new notice adding that he would discuss it with the applicant and contract purchaser to ascertain whether this course of action was viable. After it was determined that the next available date for a hearing would be August 7, 2019, Mr. Lavigne agreed to an extension of time for decision through August 8, 2019, should the Board grant his request.

After deliberating, Mr. Lane moved to deem the June 13, 2019 Notice of Hearing for Application #ZB18-026 deficient and to allow the applicant the opportunity to cure the legally deficient notice. Ms. Genirs seconded.

Roll Call:	Aye:	Breslin, Eorio, Genirs, Kleinert, Lane, Tancredi, Zaidel
	Nay:	None

Motion carried.

Mr. Warner confirmed that the time for decision was extended through August 8, 2019; however, there was no date certain yet for the hearing, but such date, time and place is to be set forth in a new notice by the applicant prior to any subsequent hearing.

**COMMENTS FROM MEMBERS OR STAFF** - None

**ADJOURN**

On motion by Ms. Genirs, seconded by Mr. Lane, all in favor and carried, the meeting was adjourned at 8:24 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

06/26/19 v3 ds sk

*07-11-2019 Approved as written.*