

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES

Regular Meeting
October 9, 2019

CALL TO ORDER

Chairman Breslin called the meeting to order at 7:38 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, Pochtar, Tancredi, Zaidel
Members Absent: Lane
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Sam Koutsouris, PE; Board Secretary, Cyndi Kiefer

On motion by Ms. Genirs, seconded by Mr. Tancredi, all in favor and carried, the absence of Mr. Lane was excused.

APPROVAL OF MINUTES

August 7, 2019 – Regular Session - On motion by Mr. Tancredi, seconded by Mr. Zaidel, all eligible in favor and carried, the minutes were accepted as written. Abstentions for those who were absent: Genirs, Kleinert, Kraus.

APPROVAL OF RESOLUTIONS

LaTourette, Thomas & Lisa; #ZB19-014; Block 5302, Lot 6; 45 Canter Drive; Bulk Variance (approved)
Mr. Zaidel moved approval of the resolution as drafted. Ms. Pochtar seconded.

Roll Call: Aye: Breslin, Eorio, Pochtar, Zaidel
Nay: NONE

Motion carried.

Millington Quarry Inc.; #ZB18-026; Block 6001, Lot 6; 135 Stonehouse Road; Resolution of Withdrawal
Ms. Genirs moved approval of the resolution as drafted. Mr. Tancredi seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kleinert, Kraus, Tancredi, Zaidel
Nay: NONE

Motion carried.

Chairman Breslin announced that there would be a change in the order of items listed in the agenda and that Application #ZB19-015, David and Jennifer DaSilva, would be heard next.

COMPLETENESS AND PUBLIC HEARING

DaSilva, David & Jennifer; Block 2602, Lot 11; 29 Dogwood Way; Bulk Variances; #ZB19-015

Present: David DaSilva, Applicant

David DaSilva, applicant residing at 656 Passaic Avenue, Kenilworth, NJ, and the board's professionals were duly sworn.

Mr. Warner stated that notice was sufficient and timely therefore the board had jurisdiction to hear this application.

Mr. DaSilva testified that he proposed to raze the majority of the existing house and construct a new two-story dwelling on the existing foundation, requiring relief for minimum lot width, minimum front yard setback and minimum improvable lot area. The existing pool, driveway and two-car garage would remain, the latter because it was located over a sanitary sewer easement. Finally, he testified that there would be no changes made to the grading of the property and that no trees would be removed.

Mr. Warner noted that the Environmental Commission had no comment on the proposal. Mr. DaSilva stipulated, as a condition of approval, to all comments in both Mr. Schley's memo dated 09/20/2019 and Board Engineer Thomas Quinn's memo dated 10/04/2019. He also stipulated that the porch would remain open.

Mr. DaSilva testified that he had taken the photos submitted with the application and that they accurately reflected the property as it currently exists. He noted that the last two pages depicted nearby properties that are comparable to the proposed project and that he was unaware of any objections from neighbors.

The hearing was opened to the public for questions or comments. Hearing none, that portion was closed.

After deliberating, the board felt that the applicant had satisfied the positive and negative criteria required for a "c(1)" or "hardship" variance. Mr. Zaidel moved to deem the application complete and to direct the board attorney to draft a resolution memorializing the board's decision to grant the application for variance relief requested subject to the conditions stipulated to by the applicant and as stated during deliberations. Ms. Genirs seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kleinert, Kraus, Tancredi, Zaidel
Nay: NONE

Motion carried.

REHEARING REQUEST

Pareddy, S./Duggirala, J.; Block 11401, Lot 5.02; 393 Martinsville Road; Bulk Variance (approved in part); #ZB18-005

Present: Martin A. Newmark, Esq., Attorney for the Applicant
Surandar Pareddy, Applicant

Martin A. Newmark, Esq., attorney with the firm of *Porzio, Bromberg & Newman, PC*, Morristown, NJ, entered his appearance on behalf of the applicants. After giving a brief history of the project, he stated that in its 2017 resolution for application #ZB17-021, the board treated the existing walls as retaining walls requiring no variance relief, even though they were freestanding at the time, because as a condition of approval, the applicant was to provide grading plans to show how the walls would function as retaining walls. These plans were never submitted and the approvals expired. When the applicant returned in April of 2019, he did request variance relief for the two walls in case the board did not consider them to be retaining walls and that request was denied. Mr. Newmark asserted that the applicant was now asking for an opportunity to establish that these did qualify as retaining walls, or, should the board still consider them as freestanding, to provide testimony to support a "c-2" variance.

Mr. Warner asked Mr. Newmark if he agreed that during the April 2019 hearing, that there was no attempt to preclude the applicant from providing testimony to support a finding that the walls were, in fact, retaining walls and that it was the applicant's burden to bring such testimony forward to support that or to satisfy the burden of proof for a variance if the walls were considered freestanding. Mr. Newmark agreed.

Mr. Warner advised that the bylaws for the board allow for reconsideration of a decision and that case law supports that option when either a mistake or fraud are present. Mr. Newmark opined that the board made a mistake when, in the 2019 hearing, it did not give deference to its 2017 decision which said that the walls would function as retaining walls once completed.

A discussion ensued and the board determined that there was no direct finding in the 2017 resolution that the walls would be considered to be retaining walls once completed. They also determined that it had been the applicant's burden to provide testimony to support his assertion that these were retaining walls or to support variance relief for the walls to remain as freestanding walls; hence, no mistake was made.

Mr. Zaidel moved to deny the request for a rehearing. Ms. Kleinert seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kleinert, Kraus, Tancredi, Zaidel
 Nay: NONE
Motion carried.

* * * *The Open Session was recessed at 8:58 PM and reconvened at 9:03 PM.* * * *

PUBLIC HEARING (continued from 07/11/2019)

LCB Senior Living Holdings II LLC; Block 2301, Lot 31; 219 Mt Airy Road; Preliminary/Final Site Plan, Bulk Variances, "d" Variances, Design Exceptions; #ZB19-010

Present: Thomas J. Malman, Esq., Attorney for the Applicant
 Robert C. Moschello, PE, Engineer for the Applicant
 Michael E. Liu, AIA, NCARB, Architect for the Applicant
 Gary W. Dean, PE, Traffic Engineer for the Applicant
 Paul Phillips, AICP, PP, Planner for the Applicant
 Lee Bloom, Director of Development for the Applicant

Chairman Breslin announced that both Mr. Zaidel and Ms. Kleinert, both absent when the applicant initially presented testimony during the 07/11/2019 meeting, had viewed the video of that meeting and were eligible to vote.

Mr. Warner stated that notice was sufficient and timely therefore the board had jurisdiction to hear this application.

Thomas J. Malman, Esq., attorney with the firm of *Day Pitney LLP*, Parsippany, NJ, entered his appearance on behalf of the applicant, LCB Senior Living Holdings II LLC ("LCB"). He then gave a brief overview of the revisions that had been made to the project in response to comments on the previous plans and from the owners of the adjacent property to the west, Congregation B'nai Israel.

Gary W. Dean, PE, traffic engineer with *Dolan & Dean Consulting Engineers LLC*, Somerville, NJ, was accepted by the board as an expert in the field of traffic engineering and was reminded that he was still under oath. He testified that the proposed assisted living project would significantly lessen the traffic impact to the area compared to that of a permitted office building. He added that the employees of the proposed facility would be arriving and leaving at times outside of the typical rush hour timeframe, providing decrease in the area's traffic burden.

Mr. Dean testified that the required number of parking spaces for the facility was governed by the Residential Site Improvement Standards (RSIS) and that the proposed project exceeded that number.

The hearing was opened to the public for questions of the witness. Hearing none, that portion was closed.

Robert C. Moschello, PE, engineer with *Gladstone Engineering Inc.*, Gladstone, NJ, was reminded that he was still under oath. Earlier, a 28-page hard copy of a power point presentation was entered in evidence as **Exhibit A-2**. Using renderings and aerials photos from that exhibit, he gave a brief overview of the revisions that were made to the prior site layout in response to concerns from the adjoining Jewish Center and Basking Ridge Fire Department.

He added that the number of units would remain the same. He also stated that the applicant would stipulate to all comments made in the fire official and fire department's memos dated 09/19/2019 and 10/06/2019, respectively, and to all comments under his purview made in Mr. Schley's memo dated 10/02/2019 and in Mr. Quinn's memo dated 10/07/2019.

Mr. Moschello reviewed the variances and exceptions requested and also listed those that had been eliminated by the new design.

Mr. Zaidel asked that the applicant stipulate to having a lighting committee composed of board members, inspect the site after the lighting is installed. Mr. Malman was agreeable.

The hearing was opened to the public for questions of the witness. Hearing none, that portion was closed.

Michael E. Liu, AIA, NCARB, architect with the firm *The Architectural Team*, Chelsea, MA, was reminded that he was still under oath. Using renderings from **Exhibit A-2**, he reviewed the architectural revisions.

The hearing was opened to the public for questions of the witness. Hearing none, that portion was closed.

Paul Phillips, AICP, PP, planner with *Phillips Preiss LLC*, Hoboken, NJ, was accepted by the board as an expert in the field of planning and was reminded that he was still under oath. He presented testimony to satisfy the positive and negative criteria for the relief sought, noting that the proposed use is considered to be inherently beneficial.

The hearing was opened to the public for questions of the witness. Hearing none, that portion was closed.

The meeting was opened to the public for comment.

James Ljunglin, 20 Meeker Road, commented on the history of the site.

David L. Russell, 35 Fawn Lane, was generally in favor of the application but expressed concern about the availability of parking during special events. Lee Bloom, Director of Development for the applicant, responded by stipulating, as a condition of approval, to ensuring that arrangements would be made for additional parking when needed.

Hearing no further comments, that portion of the hearing was closed, and Mr. Malman gave a brief summary.

After deliberating, the board felt that the applicant had satisfied the positive and negative criteria required for the relief requested. Ms. Genirs moved to direct the board attorney to draft a resolution memorializing the board's decision to approve the preliminary and final site plan and to grant the application for variance relief and exceptions requested by the applicant, subject to the conditions stipulated to by the applicant, and as stated during deliberations. Mr. Tancredi seconded.

Roll Call:	Aye:	Breslin, Eorio, Genirs, Kleinert, Kraus, Tancredi
	Nay:	Zaidel

Motion carried.

COMMENTS FROM MEMBERS OR STAFF – The special meeting scheduled for October 17, 2019 was cancelled.

ADJOURN - By unanimous Voice Vote, the meeting was adjourned at 11:30 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 11/06/2019

10/18/19v3 ds sw