

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v4
Regular Meeting
July 8, 2020

CALL TO ORDER

Chairman Breslin called the meeting to order at 7:33 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 9, 2020 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, Humbert, Juwana, Kraus, Pochtar, Tancredi
Members Absent: Genirs, Zaidel
Also Present: Board Attorney, Steven K. Warner, Esq.; Township Planner, David Schley, PP, AICP;
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion made by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, the absences of Ms. Genirs and Mr. Zaidel were excused.

APPROVAL OF MINUTES

[May 6, 2020 – Regular Session \(virtual\)](#) – On motion by Ms. Pochtar, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as drafted.

APPROVAL OF MINUTES

[June 3, 2020 – Regular Session \(virtual\)](#) – On motion by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as drafted. Abstention for absence: Humbert

COMPLETENESS AND PUBLIC HEARING

[Kangas, David C. & Kristine A.](#); Block 2701, Lot 11; 134 South Alward Avenue; Bulk Variance; ZB20-009

Present: David C. & Kristine A. Kangas, Applicants
Dickson Munds, Pool Contractor

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicants, Mr. Munds and the Board's Professionals were duly sworn.

Kristine A. Kangas, Applicant residing at 134 South Alward Avenue, testified that to maximize the outdoor use of the subject Property, she and her husband propose to construct an inground swimming pool with an attached spa, a pavilion with an outdoor kitchen and a patio/walkway, all behind the existing dwelling. She stated that because their house is located forward of the two (2) adjacent houses, the application required variance relief for a "pool not located to the rear of adjacent dwellings." She added that if the pool was located in a conforming location, many mature trees would have to be removed.

Dickson Munds, contractor with the company, *Premier Pools and Spas*, Pittstown, NJ, addressed the comments

made in Mr. Schley's memo dated July 6, 2020. **Exhibit A-1**, a compendium of four (4) color pictures taken by Mr. Kangas which showed a dozen or more mature trees that would have to be removed if the pool was relocated to a conforming spot, was entered into evidence. Mr. Munds testified that the proposed drywell was pushed back to accommodate a swale which is required for adequate drainage. In response to a suggestion by Mr. Quinn that the drywell be relocated to the side, Mr. Munds stated that there are trees in that area that would have to be removed. The Applicants stipulated, as a condition of approval, that if the Township's Engineering Department determines that the dry well could be relocated without any tree removal, they will do so.

The Applicants stipulated to all the comments in both Mr. Schley's and Mr. Quinn's memos. They also stipulated to using downlit lighting fixtures inside the cabana and to conforming to the Township's lighting ordinance.

The Applicants testified that they had spoken to the adjacent neighbors and both were in favor of the project.

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

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for a "c(2)" or "benefits outweigh detriments" variance. Mr. Tancredi moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the variance relief requested subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Kraus seconded.

Roll Call:	Aye:	Breslin, Eorio, Humbert, Juwana, Kraus, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Reynolds, Scott/Ellison, Martha; Block 5201, Lot 2; 36 Kensington Road; Bulk Variance; ZB20-010

Present: Scott Reynolds, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicant and the Board's Professionals were duly sworn.

Scott Reynolds, Applicant residing at 36 Kensington Road, testified that he proposes to replace an existing open deck with a covered deck/screened porch and a patio behind the existing dwelling requiring relief for minimum rear yard setback for one section of the porch because the rear lot line is not parallel to the porch. He noted that the porch deviation was less than that of the existing deck.

Mr. Reynolds testified that he hadn't heard any negative comments from his neighbors. He also stated that he had taken the pictures submitted with the application and that they accurately depict the property as it currently exists. Finally, he stipulated to the comments made in both Mr. Schley's and Mr. Quinn's memos.

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

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for both a "c(1)" or "hardship" variance and for a "c(2)" or "benefits outweigh detriments" variance. Ms. Pochtar moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the variance relief requested subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Eorio seconded.

Roll Call:	Aye:	Breslin, Eorio, Humbert, Juwana, Kraus, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

Mr. Kraus recused himself from hearing the following application and left the building.

* * * *The Open Session was recessed at 8:15 PM and reconvened at 8:20 PM.* * * *

COMPLETENESS AND PUBLIC HEARING

Heath, Christopher & Renee; Block 10704, Lot 42; 21 Old Stagecoach Road; Elimination of Condition, Bulk Variance; ZB20-007 (carried from 06/03/2020)

Present: Christopher & Renee Heath, Applicants
Michael J. Lipari, Esq., Attorney for the Objector

Mr. Warner advised the Board that the Applicants are requesting elimination of Condition #7 of the Resolution (ZB13-013) memorializing the Board's approval of bulk variance relief to replace a single-family house destroyed by fire with a new dwelling. This condition requires the Applicants to obtain an easement granting unrestricted access from Old Stagecoach Road to the driveway of the subject Property since it is landlocked. He stated that a challenge to the Board's jurisdiction in this matter has been raised.

Michael J. Lipari, Esq., attorney with the firm of *Cutolo Barros LLC*, Freehold, NJ, entered his appearance on behalf of the Objector, the Hills Highlands Master Association, Inc. (HHMA). Mr. Warner confirmed receipt of the legal brief submitted by Mr. Lipari which argues a deficiency in the content of the Applicants' notice and a deficiency in the scope of the 200-foot Property Owners List (POL) used, along with other arguments challenging the jurisdiction of the Board to hear the application. In addition, Ms. Kiefer could not confirm that all those listed on the POL had been served.

Renee Heath, Applicant residing at 21 Old Stagecoach Road, was duly sworn and testified that she had received the legal brief from Mr. Lipari and that notice had been served to all those listed on the POL. She then described the failed attempts through negotiations and through the courts that she had made to obtain the easement from the HHMA and hence, to satisfy the condition.

Mr. Warner advised that the issue of jurisdiction had to be decided before a hearing on the merits of the application could move forward. He recommended that the decision on jurisdiction should be postponed until the September 9, 2020 public meeting so that the parties could submit written position statements and then on September 9th present their oral arguments.

After a discussion about which properties should be included in a broader version of the POL, it was agreed by the parties that those property owners within 200 feet of the perimeter of both Lot 42 (the subject Property) and Lot 25 (the HHMA Property) should be included.

Mr. Warner recommended that the Applicants renote since there is no proof that the original notice was sent to everyone on the shorter POL. He added that the Applicants are free to use either the shorter or broader POL and are free to change the content or to use the original notice. He also noted that nothing precludes the parties from discussing the merits of the application prior to the September hearing date and coming to an agreement to resolve same. The Board directed the parties to proceed as Mr. Warner recommended. Ms. Heath agreed to provide a written response to the position statement already submitted by Mr. Lipari no later than August 5, 2020.

The Applicants granted the Board an Extension of Time to Act through September 30, 2020.

COMMENTS FROM MEMBERS OR STAFF – NONE**ADJOURN**

On motion by Ms. Pochtar, seconded by Mr. Tancredi, all in favor and carried, the meeting was adjourned at 8:50 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as amended 08-05-2020

07/21/2020v4 dssw