

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v2
Special Meeting
September 16, 2021

CALL TO ORDER

Chairman Breslin called the meeting to order at 7:35 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 7, 2021 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, Baumann, Genirs, Pavlosky, Pochtar, Tancredi
Members Absent: Cambria, Kraus
Also Present: Board Attorney, Amanda C. Wolfe, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

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

APPOINTMENT OF LANDSCAPE COMMITTEE

Sposato Realty Co., Inc./Sposato Realty LP; Block 1608, Lot 10.01; 25 East Craig Street; ZB20-016

Mr. Schley gave a brief history of the subject property, which is one (1) of three (3) lots that were created as a result of a subdivision approved by the Planning Board in 2008. Subsequently, the variance approvals expired and the Applicant appeared before this Board in 2020. As part of the 2020 approval, this Board assumed responsibility from the Planning Board for the evaluation of the landscaping on all three (3) lots to ensure sufficient vegetative buffering. Chairman Breslin, Ms. Genirs and Ms. Baumann volunteered to conduct the required evaluation on Lot 10.01 as requested by the developer.

PUBLIC HEARING (continued from 06/17/2021)

Baston 95 LLC; Block 704, Lot 1.01; 95 Morristown Road; Preliminary/Final Site Plan; Use Variance; Bulk Variances; ZB21-015

Present: Frederick B. Zelle, Esq., Attorney for the Applicant
Jeffrey C. Martinson, RA, Architect for the Applicant
Catherine Mueller, PE, CME, Engineer for the Applicant
Afrim Berisha, Applicant

Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicant. Mr. Zelle gave a brief summary of the testimony from the Applicant and the Applicant's architect which was provided during the 06/17/2021 meeting. He then provided an overview of the proposed project, demolition of an existing restaurant and construction of a new California-style Mexican restaurant, and the relief required, adding that although the property is located in a residential zone, it has been

the site of various restaurants since the 1930's. Finally, he confirmed that no additional plans or documents had been submitted since the June meeting.

The following exhibits were submitted into evidence:

- Exhibit A-3** – Roof & Floor Plans, Sheet 1 of 2, revised 09-16-2021, prepared by The Martinson Group
- Exhibit A-4** – Building Elevations, Sheet 2 of 2, revised 09-16-2021, prepared by The Martinson Group
- Exhibit A-5** – Colorized Perspective Renderings (5), dated 09-16-2021, prepared by The Martinson Group
- Exhibit A-6** – 8.5 X 11 Color Picture of glass brick wall, prepared by The Martinson Group
- Exhibit A-7** – Color Aerial Photo of the Site Area, dated 09-16-2021 (Bing Maps), prepared by Page-Mueller Engineering Consultants, PC
- Exhibit A-8** – Planting Aerial, dated 09-16-2021, prepared by Bosenberg & Co. Landscape Architecture

Ms. Wolfe stated that the application was carried from the 06/17/2021 meeting with no further notice, therefore the Board had jurisdiction to hear this application. She reminded the Board's professionals, the Applicant and the Applicant's professionals that they were still under oath.

Jeffrey C. Martinson, RA, architect with the firm *The Martinson Group LLC*, Easton, PA, stated that based on comments from the previous meeting, the Applicant had made a number of revisions to the plans. **Exhibit A-3** showed a revised loggia seating plan and a better depiction of the area around that bar. A glass brick wall, similar to the one shown in **Exhibit A-6**, would be constructed on the northerly side of the terrace to address the neighbors' privacy concerns. One set of the French doors will now open to the terrace and serve as fire doors. Finally, Mr. Martinson confirmed that despite the revisions, there would be no increase in restaurant's proposed seating capacity.

A discussion ensued between the Board members and Mr. Berisha as to how he would ensure that the number of patrons would not exceed the 215 seats proposed. He explained that there are only a finite number of people he can accommodate while still maintaining the complete dining experience and high level of service he plans to provide. He also confirmed that there would be no TV or live music in either of the bars and no music on either the terrace or patio. A conversation ensued about the potential capacity.

Hearing no further questions from the Board, Chairman Breslin opened the hearing to the public for questions. The following residents questioned the witnesses concerning the testimony:

- Stacey Molinari, 27 Franklin Drive – actual number of patrons vs. proposed number of seats
- Rose A. Salaki, 114 Morristown Road – size, architectural style, seating capacity, parking
- Keith Molinari, 27 Franklin Drive – opacity of glass bricks, sound expert, seating capacity
- Lisa Wagner, 32 Franklin Drive (adjacent Lot 9) – light emanating from windows/terrace, noise, architectural style

Hearing no further questions from the public, that portion of the hearing was closed.

Catherine Mueller, PE, CME, engineer with the firm of *Page-Mueller Engineering Consultants PC*, Warren, NJ, was accepted as an expert in the field of civil engineering and was duly sworn. Using **Exhibit A-7** and **Exhibit A-8**, she gave a brief description of the subject property, the NJDEP wetlands buffer which occupies a significant portion of the property and the surrounding residential areas along with a discussion of the relief requested. She testified that the entire proposal would not increase the previously approved total existing lot coverage even though the new restaurant (relocated farther back on the property) would increase the floor area by over 1,000 sq. ft. and the overall plan would improve the parking aisles and add two (2) parking stalls. In reference to the proposed tandem parking area which the Applicant envisions to be for employee parking or possibly in the future, valet parking, Ms. Mueller stated that "Staff Parking Only" could be painted on the pavement to prevent patrons from using the area for parking. Ms. Mueller also stipulated to aligning the light poles in the parking lot with the lines between the spaces to eliminate the possibility of cars running into them when parking. She further testified that there would be no light spillage along the residential property lines and stipulated that lighting would be shielded and would remain on until 1:00 AM only if the restaurant is still open at that hour. After closing, the lighting would be reduced to security lighting levels.

Ms. Mueller noted that the number of required parking stalls is determined by either the total number of seats or by the gross floor area, whichever is greater. If parking is calculated using the number of seats, the proposed 85 spaces would exceed the number required by 13 and variance relief would not be required.

Noting that the dumpster (previously approved to be located in the wetlands buffer) would remain in the same location because of truck circulation, Ms. Mueller testified that if it were relocated outside the buffer, it would be closer to the neighboring homes and would require a new approval from the NJDEP. She stated that a new dumpster enclosure would be constructed and stipulated that the nearby fence would be upgraded to attenuate noise. In addition, the Applicant stipulated that employees would not be allowed to dump recycling into the dumpster after 10:00 PM. At Mr. Pavlosky's suggestion, she agreed to look into sound attenuating dumpster liners.

Ms. Mueller noted that even though the number of seats (which determines the sanitary sewer requirements) would remain the same as the previous restaurant, the proposal would still have to be reviewed by the Bernards Township Sewage Authority.

Ms. Mueller affirmed that the three (3) proposed signs would be the same size as the existing three (3) signs. The new signs which would be externally lit from the top and moved out of the right-of-way, would still need variance relief since such signs are not permitted in residential zones.

Ms. Mueller testified that there would be no change in drainage patterns or in the size or location of the existing detention basin.

Ms. Mueller addressed the comments under her purview in Mr. Schley's memo dated 06/15/2021, Mr. Quinn's memo dated 06/16/2021, Mr. Sylvester's (Fire Official) memo dated 06/04/2021 and Mr. von der Linde's (Basking Ridge Fire Company Chief) memo dated 06/14/2021 to the satisfaction of the Board.

Hearing no further questions from the Board, the hearing was opened to the public for questions. The following residents questioned Ms. Mueller concerning her testimony:

- Rose A. Salaki, 114 Morristown Road – potential tree removal, lighting
- Margaret "Meg" Dolan, 15 Parkview Avenue – date of the aerial photo used in **Exhibit A-7**
- Jean Marie Dour, 28 Franklin Drive – current condition of vegetative buffering, sound study
- Stacy Molinari, 27 Franklin Drive – valet/offsite parking, parking stall size, construction timeframe
- Keith Molinari, 27 Franklin Drive – safety of current patio
- Rohit Chadha, 22 Franklin Drive – restriction of exit turns

Hearing no further questions from the public, that portion of the hearing was closed.

After confirming that an Extension of Time to Act until 10/31/2021 had been granted, Ms. Wolfe advised the Applicant that this matter would be carried to October 6, 2021 with *no further notice required*.

COMMENTS FROM MEMBERS OR STAFF

Ms. Genirs suggested that the Board start the October 6, 2021 meeting at 6:30 PM.

ADJOURN

Moved by Ms. Baumann, seconded by Mr. Tancredi, all in favor and carried, the meeting was adjourned at 10:30 PM.

Respectfully submitted,