

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v3
Regular Meeting
June 8, 2022

CALL TO ORDER

Chairwoman Genirs called the meeting to order at 7:34 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Chairwoman Genirs read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the Zoning 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, NJ, was sent to the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk, all on January 6, 2022 and was electronically mailed to all those people who have requested individual notice.

The following procedure has been adopted by the Bernards Township Zoning 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: Amin, Baumann, Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
Members Absent: NONE
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Thomas Quinn, PE, CME

APPROVAL OF MINUTES

May 4, 2022 – Regular Session – On motion by Ms. Baumann, seconded by Mr. Cambria, all eligible in favor and carried, the minutes were adopted as drafted. (Ineligible: Amin, Pochtar)

PUBLIC HEARING (to be carried to 06/16/2022)

Finley Real Estate LLC; Block 1801, Lot 1; 55 South Finley Avenue; Preliminary/Final Site Plan, Variances; ZB21-031
Mr. Warner stated that this application would be carried to 06/16/2022, with no further notice required.

COMPLETENESS HEARING

New Jersey American Water Co. Inc.; Block 1609, Lot 25; East Oak Street (rear); Preliminary/Final Site Plan, Variances; ZB22-014

Present: Richard T. Wells, Esq., Attorney for the Applicant

Richard T. Wells, Esq., attorney with the firm of *Archer & Greiner PC*, Voorhees, NJ, entered his appearance on behalf of the Applicant and stated that many of the items listed in Mr. Schley's completeness review memo dated 05/25/2022 have been submitted and the Applicant intends to submit most of the remaining outstanding items. He noted that the Applicant has requested submission waivers for two (2) items: a Letter of Interpretation and a Project Report/Environmental Impact Assessment.

Mr. Cambria moved to grant the Applicant's request for the two (2) submission waivers. Mr. Kraus seconded.

Roll call: Aye: Baumann, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
Nay: NONE
Ineligible: Amin, Helverson

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Cook, Vincent J. & Lisa; Block 5602 Lot 3; 34 Gerard Avenue; Bulk Variances; ZB22-005

Present: Jonathan E. Booth, RA, Architect for the Applicant
Vincent Cook, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Booth, Mr. Cook, Mr. Quinn and Mr. Schley were duly sworn.

Vincent Cook, Applicant residing at 34 Gerard Avenue, testified that the proposed project, construction of a two-story addition including a two-car garage, a master bedroom and master bathroom, requires relief for encroachment into the front and rear yard setbacks. He stated that this is the same proposal that was approved by the Board in 2018 (ZB18-018) but because variances have expired, he had to reapply.

Jonathan E. Booth, RA, architect with a business address of 33 Bullion Road, Basking Ridge, NJ, was accepted by the Board as an expert in the field of architecture. He gave a brief description of the subject property and proposal, noting that the Applicants' dwelling is presently located within a stream buffer such that the existing rear yard setback is 0'. As part of the proposal, the Applicants are requesting a zone two waiver to eliminate the zone two portion of the stream buffer (granted in the 2018 approval) which would provide a more conforming rear yard setback for both the proposed addition and the existing dwelling. He added that after the 2018 approval, the Applicants sought and received the necessary New Jersey Department of Environmental Protection approvals. Finally, he affirmed that the wetlands conservation easement which will contain the stream buffer conservation area, will be established.

The comments made in Mr. Schley's memo dated 06/02/2022, Mr. Quinn's memo dated 06/06/2022 and the Environmental Commission's memo dated 05/25/2022 were addressed by Mr. Booth to the satisfaction of the Board.

Mr. Booth testified that the two (2) replacement trees requested in the 2018 resolution are shown on the current plans. He added that he had taken the pictures submitted with the application. Finally, Mr. Cook testified that he had not heard any negative comments from neighbors about the proposed addition.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions or comments. Hearing none, that portion of the hearing was closed.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for "c(1)" or "hardship" variance relief. 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 and zone two waiver requested by the Applicants, all subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Pochtar seconded.

Roll call:	Aye:	Baumann, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin, Helverson

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Silver Living LLC; Block 1607, Lot 2; 14 North Maple Avenue; Bulk Variances; ZB22-004

Present: William G. Hollows, PE, PP, PLS, Engineer for the Applicant
Douglas G. Battersby, RA, Architect for the Applicant
Frederick B. Zelle, Esq., Attorney for the Applicant
Marco Scarabaggio, Owner of Silver Living LLC, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. He then confirmed that no members of the public would be represented by counsel during these proceedings.

Mr. Warner noted that the Board had denied a proposal from this Applicant on this property in 2020 and he asked Mr. Zelle to address the potential issue of res judicata. Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicant. Stating that the current proposal represents a complete redesign of the proposed dwelling and is substantially different from the

previous one, he highlighted some of those differences. The proposed dwelling is now oriented toward North Maple Avenue instead of East Allen Street which results in a change in yard designations (example: the southerly yard, which was previously a rear yard, is now a side yard). This lessens the intensity of the improvable lot area variance and the southerly setback variance. The garage previously located on the first-floor level, is now located under the house on the basement level, thus reducing the visual mass and footprint of the proposed dwelling. The floor area has been reduced along with the total proposed lot coverage and net increase in lot coverage. Finally, the dwelling has been relocated farther away from the adjacent property located to the west in response to that property owner's concerns. The Board elected to hear the testimony prior to evaluating whether the rule of res judicata should apply.

Mr. Zelley stated that he had taken the photos submitted with the application in early August of 2020 and gave a brief description of the variance relief required for the current application.

Mr. Battersby, Mr. Hollows, Mr. Scarabaggio, Mr. Quinn and Mr. Schley were duly sworn by Mr. Warner.

Douglas G. Battersby, RA, architect with the firm of *Crane Associates PC*, Somerville, NJ, was accepted by the Board as an expert in the field of architecture. He described the structural deficiencies and dilapidated state of the existing house, opining that there is no viability for restoration. The proposed dwelling, a 2.5 story center hall colonial, will feature an open floor plan design and will be consistent with the historical nature of the area. After a brief description of the proposed floor plans, Mr. Battersby testified that the exterior of the house will be white with black trim. HardiePlank siding will be used along with a stone veneer on the foundation (local stone to be used) and an architectural asphalt roof in a charcoal color. The exterior doors, including the garage door, will be white or wood color. Finally, he addressed the comments under his purview in Mr. Schley's memo dated 06/02/2022 to the satisfaction of the Board.

The following exhibits were entered into evidence:

- Exhibit A-1 – An 18-page pdf slideshow with interior photos of the existing dwelling and pictures of 2 nearby newly built houses in the same style as the proposed dwelling taken in April of 2021 by Mr. Battersby
- Exhibit A-2 – An 11" X 17" colorized rendering of the existing conditions on the subject property prepared by Mr. Hollows, undated
- Exhibit A-3 – An 11" X 17" colorized rendering of the proposed conditions on the subject property prepared by Mr. Hollows, undated
- Exhibit A-4 – An 11" X 17" colorized rendering showing an overlay of the proposed dwelling over the existing house prepared by Mr. Hollows, undated

William G. Hollows, PE, PP, PLS, engineer with the firm of *Murphy & Hollows LLC*, Stirling, NJ, was accepted by the Board as an expert in the field of civil engineering. Using the exhibits listed above, Mr. Hollows testified that the proposed dwelling represents a significant improvement to the neighborhood over the existing building which he opined is unsalvageable. He stated that the proposed removal of the existing trees on the corner of the property (North Maple Avenue and East Allen Street) would create a safer environment for vehicular movement. Finally, Mr. Hollows reviewed the variances requested and stipulated as conditions of approval, to the comments under his purview contained in Mr. Schley's memo (06/02/2022), Mr. Quinn's memo (06/06/2022) and the Environmental Commission's memo (03/30/2022).

Marco Scarabaggio, with an address of 32 West 26th Street, Bayonne, NJ, stated that he is the owner and managing member of the Applicant LLC. He confirmed that he agreed with the testimony provided by Mr. Battersby and Mr. Hollows and that he stipulated as conditions of approval, to the comments made in the memos from the Board's professionals and the Environmental Commission.

Hearing no further comments from the Board, the hearing was opened to the public for questioning of the witnesses.

Kathleen Grant, residing at 17 East Allen Street, questioned the height of the proposed dwelling and the landscaping.

Hearing no further questions, the hearing was closed for questions and opened for public comment.

Nancy Deutsch, on behalf of the Basking Ridge Presbyterian Church Board of Trustees, 1 East Oak Street, Basking Ridge, was duly sworn. She introduced as **Exhibit P-1**, a letter from the Board of Trustees and she testified consistent with same. The letter requested and Mr. Scarabaggio stipulated to as a condition of approval, buffering the southerly side-yard, which borders the Church's memorial garden, with appropriate, hardy and "four-season" vegetative plantings.

Kathleen Grant, residing at 17 East Allen Street, was duly sworn and testified in support of the current application, despite having opposed the prior application in 2018. She requested, and the Applicant stipulated to as a condition of approval, buffering the westerly rear-yard, which borders her property, with appropriate, hardy and "four-season" vegetative plantings.

Hearing no further comments, the hearing was closed for public comment.

Mr. Zelle summarized the relief required and the testimony provided to satisfy both the positive and negative criteria required for variance approval.

A straw poll of the Board unanimously considered this application (ZB22-004) to be substantially different than the previous application (ZB20-015) and as such, the rule of res judicata did *not* apply.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for "c(1)" or "hardship" and "c(2)" or "benefits outweigh detriments" variance relief. 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 by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Cambria seconded.

Roll call:	Aye:	Baumann, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin, Helverson

Motion carried.

COMMENTS FROM MEMBERS OR STAFF

Chairwoman Genirs reminded those present that there will be a meeting on Thursday, June 16, 2022.

ADJOURN

Moved by Mr. Tancredi, seconded by Mr. Pavlosky, all in favor and carried, the meeting was adjourned at 10:45 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as amended 07/06/2022

06/29/2022 dssw