

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v3
Special Meeting
June 16, 2022

CALL TO ORDER

Chairwoman Genirs called the meeting to order at 7:33 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: Baumann, Cambria, Genirs, Helverson, Kraus, Pavlosky
Members Absent: Amin, Pochtar, Tancredi
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion by Mr. Kraus, seconded by Mr. Pavlosky, all eligible in favor and carried, the absences of Mr. Amin, Ms. Pochtar (recused) and Mr. Tancredi (recused) were excused.

PUBLIC HEARING (continued from 05/04/2022)

Finley Real Estate LLC; Block 1801, Lot 1; 55 South Finley Avenue; Preliminary/Final Site Plan, Floor Area Ratio & Height Variances, Bulk Variances; ZB21-031

Present: David B. Brady, Esq., Attorney for the Applicant
Ronald A. Kennedy, PE, Engineer for the Applicant
Craig W. Peregoy, PE, Traffic Engineer for the Applicant
Mads Jepsen, Principal in the Applicant LLC
Kimo Jepsen, Principal in the Applicant LLC

Mr. Warner stated that the application had been carried with sufficient notice therefore the Board had jurisdiction to hear the application. He reminded Mr. Kennedy, Mr. Peregoy, Mr. M. Jepsen, Mr. Quinn and Mr. Schley that they remained under oath.

David B. Brady, Esq., attorney with the firm of *Brady & Correale, LLP*, Morristown, NJ, entered his appearance on behalf of the applicant. He stated that the Applicant is seeking approval to make permanent an existing 50' X 100' dining tent and related structures at the Washington House (restaurant located on the subject property, 55 South Finley Avenue) that were approved temporarily pursuant to a special use (pandemic relief) permit issued in 2020.

Kimo Jepsen, Principal in Finley Real Estate LLC with a business address of Basking Ridge, NJ, was duly sworn and stated that because parking concerns represent one of the biggest challenges for this application, they wanted to get a snapshot of parking and traffic conditions around the area of the restaurant using time-lapse photography. He testified that six (6) cameras were used at various locations and a still photo was taken every five (5) seconds from approximately 5:00 AM to midnight each day to create a true depiction of the traffic and parking conditions in each area. Friday, 06/03/2022 was chosen because Fridays are one of the restaurant's busiest days. Also, school

was in session and most business in town are open on Fridays. Sunday, 06/05/2022 was chosen because the restaurant is not as busy, not as many businesses are open and school is closed.

The following exhibits (time-lapse photography clips) were entered into evidence:

- **Exhibit A-6** – “June 3 – Henry Down” – camera directed down Henry Street
- **Exhibit A-7** – “June 3 – Back Lot” – camera directed at the auxiliary parking lot on West Henry Street
- **Exhibit A-8** – “June 3 – Front” – camera directed at the restaurant front on South Finley Avenue
- **Exhibit A-9** – “June 3 – Wells Fargo” – camera directed at the Wells Fargo parking lot
- **Exhibit A-10** – “June 3 – Rear - Post Office” – camera directed towards the Post Office
- **Exhibit A-11** – “June 5 – Henry Down” – camera directed down Henry Street
- **Exhibit A-12** – “June 5 – Front” – camera directed at the restaurant front on South Finley Avenue

Using **Exhibits A-6, A-7, A-8 and A-9**, Mr. K. Jepsen described the schedule of employees and patrons arriving and leaving the restaurant along with the school drop-off and pick-up of students. He testified that he had never received a complaint from parents or from the owners of the Wells Fargo lot concerning parking issues and opined that that is because their busiest times do not coincide with the busiest times for the restaurant. Noting that on the night of 06/03/2022, there was a record number of covers (approximately 175 seated at once at its peak), he stated that there were still empty parking spaces in both the auxiliary lot and on the street. Ms. Baumann expressed concern that there was no depiction of what the parking and traffic scenarios would be if the restaurant and tent were filled to capacity (350 seats). Mr. K. Jepsen responded that operationally, they could not service 350 patrons seated one time. Mr. Warner stated that unless the Applicant was willing to provide a lower maximum number of patrons allowed, the Board would have to make its determination based on the maximum capacity of 350. Mr. K. Jepsen responded that the Board should use the 350 number because the Applicant wanted the option to seat patrons indoors and/or outdoors without shutting off parts of the tent or restaurant or having to keep count of the number of patrons seated.

Referring to **Exhibit A-10**, Mr. K. Jepsen explained that this showed the parking lot adjacent to the subject property (47 South Finley Avenue) which is owned by S&P Property Management LLC. Mr. K. Jepsen stated that prior to the erection of the tent, restaurant patrons would frequently park there and now, with the tent in place, that is no longer the case. He added that patrons no longer use the Post Office parking lot since they would have to walk all the way around the tent/building to enter it.

Referring to **Exhibits A-11 and A-12**, Mr. K. Jepsen testified that on Sundays, there is some traffic in the morning because of church services and restaurants that serve breakfast. Most of the traffic and parking demand from late morning to late evening is from the restaurant however there are still many open spaces.

A discussion ensued about the possibility of reducing the size of the tent which would not only reduce the number of seats and hence the number of parking spaces required, but also return some of the spaces in the restaurant parking lot that were taken up by the tent. Ronald A. Kennedy, PE, PP, CME, LEED, president of *Gladstone Design Inc.*, Gladstone, NJ testified that the lack of access to those spaces is the issue. Mads Jepsen, Principal of the Applicant LLC, stated that if the size of the tent was reduced and Covid restrictions were reinstated, they would not be able to serve enough patrons to make the business viable. The current size of the tent allows the restaurant the flexibility to serve patrons either inside or outside and keep staff employed.

Mr. Cambria questioned why the Applicant wanted approval for 350 seats when they have said that operationally, the restaurant could not handle that number of patrons. Mr. M. Jepsen stated that that number of available seats gives them the flexibility to seat people either inside the tent or inside the restaurant or on the outside patios and that if there was a seating limit, it would be challenging for them to police. There was a lengthy discussion as to the reasoning for not limiting the number of seats.

The hearing was opened to the public for questions of the witness.

Henry Barre, residing at 165 South Maple Avenue questioned whether the tent structure had met the Uniform Construction Code (NJAC 5:23) requirements. **Exhibit A-13**, a copy of a Certificate of Approval for the tent structure dated 11/20/2020 from the Bernards Township Construction Official, Dennis Bettler, was entered into evidence by the Applicant.

Todd Edelstein, 172 Riverside Drive, questioned why those two dates were chosen for the time-lapse photography.

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

Craig W. Peregoy, PE, engineer for the firm of *Dynamic Engineering Consultants PC*, Belmar, NJ, was accepted by the Board as an expert in the field of traffic engineering. He discussed the two (2) methods by which parking requirements are calculated in the Township and opined that the calculation based on the number of seats is more in line with the guidelines issued by the Institute Transportation Engineers (ITE). Based on that, he testified that the parking deficiency is about 80 spaces. In September 2021, when only the tent was available for seating, a count of empty parking spaces in the auxiliary parking lot and along the streets in the area of the tent/restaurant indicated that the number of empty spaces almost equaled the number of spaces required. Once both the tent and the restaurant building were open in April 2022, a survey of the same locations indicated that there were more spaces available than there were in the September survey. He opined that availability is dependent not only on the Washington House but also on the many businesses and other uses in the downtown area and therefore, he could not extrapolate what would happen if the restaurant/tent was filled to capacity (350 seats). A discussion ensued as to whether the study results represented a valid depiction of parking availability since not all 350 seats were filled at any time during the survey periods.

Hearing no further questions from the Board, the hearing was opened to the public for questions. Todd Edelstein, 172 Riverside Drive, questioned the weather conditions during the April 2022 survey. Hearing no further questions from the public, that portion of the hearing was closed.

Chairwoman Genirs stated that due to the late hour, this application would be carried with no further notice required to the July 6, 2022 meeting. Mr. Brady agreed to supply an extension of time to act.

COMMENTS FROM MEMBERS OR STAFF - None

ADJOURN

Moved by Ms. Baumann, seconded by Mr. Pavlosky, all in favor and carried, the meeting was adjourned at 10:43 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as amended 08-03-2022

07/11/2022 dssw