

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v4
Special Meeting
September 15, 2022

CALL TO ORDER

Chairwoman Genirs called the meeting to order at 7:36 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
Members Absent: Pochtar (recused), Tancredi (recused)
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

PUBLIC HEARING - (carried from 07/06/2022, last heard 06/16/2022)

Finley Real Estate LLC; Block 1801, Lot 1; 55 South Finley Avenue; Preliminary/Final Site Plan, 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
Matthew Flynn, PP, AICP, Planner for the Applicant
Mads Jepsen, Principal in the Applicant LLC
Kimo Jepsen, Principal in the Applicant LLC

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 was 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) all of which were approved temporarily pursuant to a special use (pandemic relief) permit issued in 2020. He noted that although the State had extended permission for outdoor dining until 11/30/2024, municipalities are not required to follow suit. He then gave a brief synopsis of the testimony given during the hearings held on 05/04/2022 and on 06/16/2022.

Craig W. Peregoy, PE, engineer for the firm of *Dynamic Engineering Consultants PC*, Belmar, NJ, was reminded that he remained under oath. **Exhibit A-14**, a memo entitled "Expanded Parking Data", written by Mr. Peregoy, consisting of 8 pages and dated 08/30/2022, was entered into evidence. Referring to the data in the memo, he testified that even in the worst-case scenario of 350 seats filled at one time, there would still be parking available within a five (5) minute walking distance to the restaurant. He then noted that when three (3) of the parking zones listed in the memo were removed (Brownlee Place, Rankin Avenue and the Library parking lot), there was still parking available. He acknowledged that the survey did not factor in or evaluate the parking needs of other businesses or churches that are open at the same time as the restaurant.

In response to a question from Chairwoman Genirs about stipulating to a maximum capacity of less than 350 since the Applicant had testified previously that the kitchen could not support that number, Mads Jepsen, Principal in the

Applicant LLC, stated that he wanted the flexibility to give his patrons a choice of where they wanted to sit. He added that since parking was not an issue, tearing down the tent to return that portion of the property to its prior state as a parking lot would make no sense. After a lengthy discussion about seating capacity, he then stated that he would stipulate to a lesser number as long as no seats/tables or any portion of the tent have to be removed. Mr. Brady requested a recess to discuss the matter.

* * * *The Open Session was recessed at 8:59 PM and reconvened at 9:11 PM.* * * *

Mr. Brady advised the Board that the Applicant would stipulate to a maximum of 300 *occupants* however to allow for seating flexibility, no tables would be roped off or removed. That number would be regulated by the restaurant's point-of-sale computer system which would allow the Applicant to print out the number of occupants present at any given time.

Hearing no further questions from the Board, the hearing was opened to the public for questions of Mr. Peregoy. Todd Edelstein, 172 Riverside Drive questioned the parking availability and the proposed maximum number of occupants. Hearing no further questions, that portion of the hearing was closed.

Ronald A. Kennedy, PE, PP, CME, LEED, president/founder of *Gladstone Design Inc.*, Gladstone, NJ, acknowledged that he was still under oath and stated that the Applicant proposed two (2) options for providing handicapped parking for the subject property. Referring to **Exhibit A-4** (ADA Parking Space Exhibit prepared by Gladstone Design Inc. and entered into evidence on 05/04/2022), Mr. Kennedy testified that it showed, as Option #1, a proposed ADA parking space between the tent and the existing building with ramps into the tent and ultimately into the restaurant. **Exhibit A-15**, a Right-of-Way ADA Parking Space Exhibit prepared by Gladstone Design Inc. consisting of one page and dated 09/15/2022, was entered into evidence and represented Option #2 which was the preferred option. Mr. Kennedy stated that eliminating the entrance to the restaurant's parking lot created an opportunity in the right-of-way along West Henry Street for two (2) parallel parking spots which could be made ADA compliant. He noted that this layout had been reviewed and rejected by the Township Engineer. Mr. Quinn agreed that the two (2) parallel parking spots represented a better option than backing out of a parking space between the tent and the existing building into the street, as would be required by Option #1. Mr. Kennedy stated that the Applicant would make a good faith effort to secure Township permission for Option #2, however if that failed, the Applicant would pursue Option #1. Mr. Quinn reminded the Board that because this site has no parking, ADA regulations do not require any accessible parking spaces.

Hearing no further questions from the Board, the hearing was opened to the public for questions. Todd Edelstein, 172 Riverside Drive, submitted four (4) color photos of the tent that he had taken earlier in the day. They were entered into evidence as **Exhibit O-1**. He was duly sworn and asked if the tent would have been allowed if there had not been a pandemic. Using the photos as a reference, Mr. Edelstein stated that the tent was too large and did not fit in with the character of the neighborhood.

Because of the late hour, Chairwoman Genirs asked Mr. Brady if he objected to opening the hearing for public comment prior to hearing the testimony from the Applicant's planner. She added that the hearing would be opened again for public questions and comments after that testimony. Mr. Brady did not voice any objections and the hearing was opened to the public for comments on the proposal.

Kenneth Simons, 14 Cobble Lane, was duly sworn and spoke in favor of the application stating that the proposed ADA space(s) would benefit all residents by increasing access to the downtown businesses for those who have disabilities.

Michael Reynolds, 26 Brownlee Place, was duly sworn and stated that since the tent was erected leaving no on-site area for loading/unloading, delivery trucks have been idling and double-parking on West Henry Street and Brownlee Place causing a nuisance for the neighbors. He added that the music from the restaurant was annoying especially later in the evening.

Henry Barre, 165 South Maple Avenue, was duly sworn and felt that the restaurant's parking deficit would place a burden on existing businesses in the area. He stated that the tent was created for the pandemic and was never presented to the Construction Department as a permanent structure.

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

Matthew Flynn, PP, AICP, professional planner with the firm of *John McDonough LLC*, Morris Plains, NJ, was accepted by the Board as an expert in the field of professional planning and he provided testimony to satisfy the statutory requirements needed for the Board to grant the requested relief. A discussion ensued as to how the tent fit into the historical character of the neighborhood and Mr. Flynn read several excerpts from the Master Plan that, he opined, supported his testimony.

Hearing no further questions from the Board for this witness, the hearing was opened to the public for questions. Todd Edelstein, 172 Riverside Drive, questioned the location of the entrance of the tent and Jonathan Sacco, 33 Apple Tree Lane, confirmed with Mr. Flynn that as stated in the Master Plan, restaurants are preferred over parking lots. Hearing no further questions, that portion of the hearing was closed.

Mr. Brady stated that the Applicant had no further testimony to present.

The hearing was opened again for comments from the public. Todd Edelstein, 172 Riverside Drive, and Henry Barre, 165 South Finley Avenue, spoke against granting approval. Jonathan Sacco, 33 Apple Tree Lane, was duly sworn and spoke in favor of the application. Hearing no further comments, that portion of the hearing was closed.

Mr. Brady provided a summary of the application.

After the Board began deliberations, Mr. Brady advised that the Applicant was willing to stipulate to, as a condition of approval, a maximum occupancy of 250 patrons. As an additional stipulation, the Applicant agreed to return to the Board within five (5) years with an application for a permanent structure to replace the tent or with a request for an extension of time. The Applicant also agreed to make a good faith effort to create a loading area on the subject property. Mr. Warner clarified that this would be considered a durational approval and that all relief granted would be extinguished at the end of five (5) years unless the Board grants an extension. In addition, if the application for a permanent structure is denied or if the Applicant fails to come forward with an application by the end of the five (5) year period, the tent must be removed. The Applicant, through its counsel and Messrs. Jepsen, confirmed that Mr. Warner’s clarification of the Applicant’s stipulated/amended request for relief was correct and accurately stated on the record.

After further deliberations, Mr. Cambria moved to direct the Board Attorney to draft a resolution memorializing the Board's decision to approve the Preliminary and Final Site Plan application and to grant the relief requested, subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Pavlosky seconded.

Roll call: Aye: Cambria, Genirs, Helverson, Kraus, Pavlosky
 Nay: Amin, Baumann

Motion carried.

COMMENTS FROM MEMBERS OR STAFF – NONE

ADJOURN

Moved by Mr. Kraus, seconded by Chairwoman Genirs, all in favor and carried, the meeting was adjourned at 11:48 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Approved as revised 10-05-2022.

09/28/2022 dssw