

# **TOWNSHIP OF BERNARDS**

## **PLANNING BOARD**

### **MINUTES <sup>v2</sup>** **REGULAR SESSION** May 3, 2022

Chairwoman Piedici called the meeting to order at 7:31 PM.

#### **FLAG SALUTE**

**OPEN MEETING STATEMENT** - Chairwoman Piedici read the following statement:

"In accordance with the requirements of the Open Public Meetings Law of 1975, notice of this meeting of the Planning Board 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 mailed to the Bernardsville News, Whippany, and to the Courier News, Bridgewater on January 19, 2022 and was mailed to all those people who have requested individual notice and paid the required fee.

The following procedure has been adopted by the Bernards Township Planning Board. 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, Damurjian, Eorio, Mallach, Piedici, Seville  
Members Absent: McNally, Manduke, Mastrangelo  
Members Late: Crane (9:15 PM)  
Also Present: Board Attorney, Jonathan E. Drill, Esq.; Township Planner, David Schley, PP, AICP;  
Board Planner, David Banisch, PP, AICP; Board Secretary, Cyndi Kiefer

Moved by Mr. Damurjian, seconded by Mr. Baumann, all eligible in favor and carried, that the absences of Deputy Mayor McNally, Ms. Manduke and Ms. Mastrangelo be excused.

#### **APPROVAL OF MINUTES**

April 5, 2022 – Regular Session - On motion made by Mr. Damurjian and seconded by Mr. Baumann, all eligible in favor and carried, the minutes were adopted as drafted. (Ineligible: Seville)

#### **PUBLIC HEARING**

Ahmed, F./Faizan, A./Kirkwood, Kevin & Nathalie; ZB21-030; Block 2301 Lots 4 & 5; 48 & 62 Wisteria Way;  
Amended Preliminary/Final Subdivision; PB21-005

Present: Faizan Ahmed/Anila Faizan, Applicants  
Kevin Kirkwood, Applicant  
Michael Shapiro, Neighbor of Applicants  
Sunil Gangwani, Neighbor of Applicants  
Frank D'Amore, Bernards Township Fire Official  
Peter von der Linde, Fire Chief, Basking Ridge Fire Company

Mr. Shapiro, Mr. Gangwani, Mr. D'Amore and Mr. von der Linde were duly sworn. Mr. Ahmed, Dr. Faizan, Mr. Kirkwood, Mr. Banisch and Mr. Schley were duly sworn at the 04/06/2022 meeting and remained under oath.

Mr. Baumann, Mr. Damurjian and Mr. Mallach advised that they had visited the site and they shared their observations.

Chairwoman Piedici stated that at the end of the 04/06/2022 hearing, it was unclear as to whether the application sought to amend the 2001 and 2002 subdivision approvals relating to the Wisteria Way development by eliminating the requirement that the applicants maintain an emergency access road that traverses their

properties or to vacate the easement entirely. Mr. Ahmed responded that he sought to have the easement vacated. Mr. Drill stated that the Planning Board could eliminate the condition requiring the easement and recommend to the Township Committee that the easement be vacated, however the jurisdiction to vacate an easement falls solely under the purview of the Township Committee.

Mr. Drill noted that at the end of the 04/06/2022 hearing, there was a discrepancy in the Fire Official's memo (02/14/2022) and Mr. Kirkwood's testimony as to whether the emergency access road had ever been used by the fire company. This was one of the reasons that prompted the board to request that both the Bernards Township Fire Official and a representative from the Basking Ridge Fire Company provide testimony at this meeting.

Frank D'Amore, Bernards Township Fire Official, provided a description of his position, education and experience. He testified that as a career fire fighter, he had seen firsthand the difficulties emergency personnel encounter when they are unable to gain access to a site. He felt that eliminating the access road would create a safety issue and that nothing had changed since the condition to require it was approved in 2001. Mr. Ahmed asked Mr. D'Amore if, during his site visits, he had taken notice of the fact that there are no large trees or overhead wires that could fall and block the road during a storm. Mr. D'Amore responded that he had not.

Hearing no questions from the board members, Chairwoman Piedici opened the hearing to the public for questions of this witness. Hearing none, that portion of the hearing was closed.

Peter von der Linde, Chief of the Basking Ridge Fire Company (BRFC), provided a description of his position and education which included training in many disciplines related to emergency response. He added that he had 30+ years as a fire fighter. He testified that there had been 26 calls on Wisteria Way over the past 10 years and that during one call, BRFC members recalled that the access road on Wisteria Way had been used however there was nothing in any reports to corroborate that recollection. He then offered several scenarios when the access road would prove useful.

Chief von der Linde testified that because the foundation of the new dwelling on 62 Wisteria Way is at the edge of the access road, he would not allow the fire company to use the road since there is a chance that the roadway might cave in and jeopardize both personnel and equipment. Once the house is completed, he would consider using the access road only if the foundation area was inspected and approved by an engineer as being able to support the emergency vehicles and equipment. Mr. Schley asserted that the access road was originally the driveway to the previous house, noting that although it is currently paved, the condition of approval in 2001 only required a 12-foot-wide gravel road.

After a brief description of several past emergency calls on Wisteria Way, Chief von der Linde provided testimony about the order in which fire trucks and emergency personnel are deployed. He stated that the first arrivals lay out the hose which may block the road so that subsequent responders might only have access to the site via the access road. He added that normally a second fire hydrant is available within a few hundred feet if the hydrant closest to the site fails but that in this case, the closest secondary water source is a pond located on the access road. He completed his testimony by stating that although the access road doesn't solve all potential problems, it did give emergency responders more options.

Mr. Kirkwood, applicant residing at 48 Wisteria Way, reiterated his testimony from the 04/06/2022 hearing that he never saw the access road used by emergency personnel or vehicles.

Hearing no questions from the board members or staff, Chairwoman Piedici opened the hearing to the public for questions of the witness. Hearing none, that portion of the hearing was closed. She thanked both Mr. D'Amore and Chief von der Linde for attending the hearing and both left the room.

Michael Shapiro, residing at 72 Wisteria Way, offered testimony refuting Chief von der Linde's testimony pertaining to emergency responses to Wisteria Way during Hurricane Sandy. He then stated that, in his opinion, the access road would not be helpful to him or many of his neighbors and therefore he supported the applicants' request to vacate the easement.

Hearing no questions from the board members or staff, Chairwoman Piedici opened the hearing to the public for questions of this witness. Hearing none, that portion of the hearing was closed.

Sunil Gangwani, residing at 49 Wisteria Way, testified that after walking the entire access road, he also supported the application to vacate the easement. He felt that in its current condition, the road might not be usable and that because of the limited route of the road, it would benefit very few of the houses on the street.

Hearing no questions from the board members or staff, Chairwoman Piedici opened the hearing to the public for questions of this witness. Hearing none, that portion of the hearing was closed. She then opened the hearing for public comment.

Mr. Shapiro, resident at 72 Wisteria Way, was reminded by Mr. Drill that he had been duly sworn. He stated that he supported vacation of the easement because the lots owned by the applicants, Mr. Ahmed and Mr. Kirkwood, were the only two lots that might benefit from the easement in an emergency. He also felt that because Wisteria Way is wide with underground wires and no large trees, there would be very little chance that the road would be blocked and require the use of the access road.

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

A discussion ensued between the board and Mr. Ahmed as to the reasons why he wanted to eliminate the access road. He cited privacy issues, aesthetics, maintenance costs and the possibility of foundation damage to his house should the firetrucks use the easement. On the latter point, he stated that the foundation for his house is in exactly the same location as the previous house.

During deliberations, several members voiced concerns that they had heard from only a few Wisteria Way residents. In response to those concerns, Mr. Baumann moved to approve the application with a condition of approval requiring written consent from all 11 Wisteria Way residents to vacation of the easement. If that condition is not met, the motion to approve would be withdrawn. Mr. Drill asked Mr. Ahmed and Mr. Kirkwood if they wanted to proceed to a vote based on that motion and both applicants requested a brief recess.

\* \* \* *The Open Session was recessed at 9:05 PM and reconvened at 9:14 PM.* \* \* \*

Mr. Crane joined the meeting at 9:15 PM and sat in the audience.

A straw poll of the board members indicated that the majority (4-2) would support a proposal which included a condition of approval requiring consent from all 11 Wisteria Way residents.

Mr. Drill gave the applicants the option of proceeding to a vote with the condition of approval that evening or to carry the application to the next available hearing date and produce the signatures at that time. The applicants requested that the application be carried to the 06/07/2022 meeting (with no further notice). Mr. Drill advised that if the applicants can provide the board with the signatures of the 11 residents consenting to the vacation of the easement, a vote will be taken. If not, Mr. Baumann's motion will be withdrawn and a vote will be taken based on a new motion/second. Both Mr. Ahmed and Mr. Kirkwood agreed to provide an extension of time to act to 08/31/2022.

#### **COMPLETENESS AND PUBLIC HEARING**

Moye, William & Carol; Block 11401, Lot 11; 11 Mountain Road; Minor Subdivision; PB22-001

Present: Stephen E. Parker, PE, Engineer for the Applicant  
William Moye, Applicant

Mr. Moye, Mr. Parker, Mr. Schley and Mr. Banisch were duly sworn by Mr. Drill.

After reviewing Mr. Schley's completeness review memo dated 04/07/2022, Mr. Damurjian moved to deem the application complete. Mr. Seville seconded.

Roll call:       Aye:               Baumann, Crane, Damurjian, Eorio, Mallach, Piedici, Seville  
                  Nay:               NONE  
Motion carried.

Stephen Parker, PE, engineer with the firm of *Parker Engineering*, Somerville, NJ provided testimony about the history of the previous application (PB17-001). Mr. Drill advised that that application was approved by the board in 2021, however, the subdivision was not perfected within the statutory time limitation and the approval expired. He added that the approval sought in the current proposal (PB22-001) is the same as the one that expired. Noting that since the 2021 approval, there have not been any amendments to the Land Development Ordinance that affect this proposal's compliance with the ordinance, the board could take quasi-judicial notice of the resolution adopted in 2021 and make a motion to regrant approval for the same reasons that were given for the initial approval. A straw poll of the board indicated that all of the members were in favor of proceeding with that approach.

Mr. Baumann moved to direct the Board Attorney to take quasi-judicial notice of the resolution adopted in 2021 for application PB17-001 and to draft a resolution memorializing the Board's decision to regrant Minor Subdivision approval subject to the conditions stipulated to by the applicants and as stated in the resolution for Application PB17-001 dated 10/19/2021. Mr. Crane seconded.

Roll call:       Aye:               Baumann, Crane, Damurjian, Eorio, Mallach, Piedici, Seville  
                  Nay:               NONE  
Motion carried.

#### **COMMENTS FROM MEMBERS OR STAFF**

Chairwoman Piedici stated that at the next meeting (05/17/2022) Mr. Banisch would present the first draft of the Demographic and Housing Summary Element of the Master Plan as well as a second draft of the Circulation Plan Element.

#### **ADJOURN**

Moved by Mr. Seville, seconded by Mr. Mallach, all eligible in favor and carried, the meeting was adjourned at 9:38 PM.

Respectfully submitted,

*Cyndi Kiefer*

Cyndi Kiefer, Secretary  
Planning Board

*Adopted as drafted 05/17/2022*

05/10/2022 dskpjd