

**BERNARDS TOWNSHIP
ZONING BOARD OF ADJUSTMENT
MINUTES**

Regular Meeting

April 5, 2017

Chairman Rhatican called the meeting to order at 7:31 PM

OPEN MEETING STATEMENT

Chairman Rhatican read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this regular 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 mailed to the Bernardsville News, Bernardsville, New Jersey; the Courier News, Bridgewater, New Jersey; and was filed with the Township Clerk all on January 11, 2017, and was mailed electronically 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 will be heard after 10:30 PM."

ROLL CALL:

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| Members Present: | Bellows, Breslin, Genirs, Lane, Mastrangelo, Nungester, Rhatican, Surano, Zaidel |
| Members Late: | NONE |
| Members Absent: | NONE |
| Also Present: | Board Counsel Steven K. Warner Esq., Township Engineer Thomas Timko PE, Township Planner David Schley AICP, PP, Board Secretary Cyndi Kiefer |

APPROVAL OF RESOLUTIONS

Resolution: Kalafer, Joshua & Rachel; Block 5801, Lot 13; 55 Lyons Place; #ZB16-017 Bulk Variance (approved).

Ms. Mastrangelo motioned to approve the resolution and Ms. Nungester seconded.

Roll Call:

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| Aye: | Breslin, Genirs, Lane, Mastrangelo, Nungester, Zaidel, Rhatican |
| Nay: | NONE |
| Abstain: | NONE |

Motion carried.

Resolution: Nuotare Investments, LLC; Block 202, Lot 16; 154 Old Farm Road; #ZB16-029 Bulk Variance (approved).

Mr. Surano motioned to approve the resolution and Ms. Genirs seconded.

Roll Call:

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| Aye: | Breslin, Genirs, Lane, Mastrangelo, Nungester, Surano, Rhatican |
| Nay: | NONE |
| Abstain: | NONE |

Motion carried.

Resolution: Ward, Susan Stocker; Block 2903, Lot 8; 49 Woodstone Road; #ZB16-028 Bulk Variance (approved).

Mr. Breslin motioned to approve the resolution and Mr. Lane seconded.

Roll Call:

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| Aye: | Breslin, Genirs, Lane, Mastrangelo, Nungester, Zaidel, Rhatican |
| Nay: | NONE |
| Abstain: | NONE |

Motion carried.

Resolution: Rockridge Court, LLC; Block 2602, Lot 4; 84 Culberson Road; #ZB16-027 Bulk Variance (approved).

Ms. Genirs motioned to approve the resolution and Ms. Mastrangelo seconded.

Roll Call:

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| Aye: | Breslin, Genirs, Lane, Mastrangelo, Nungester, Zaidel, Rhatican |
| Nay: | NONE |
| Abstain: | NONE |

Motion carried.

COMPLETENESS and PUBLIC HEARING

Harben, Emily & Chandler; Block 2903, Lot 7; 55 Woodstone Road; #ZB17-004 Bulk Variances to construction an addition.

Present: Vincent T. Bisogno, Esq., counsel for the applicant
Kevin Page, PE, PP, engineer for the applicant
Vincent J. Matarazzo, AIA, architect for the applicant
Chandler Harben, applicant

Vincent T. Bisogno, Esq., attorney with *Bisogno, Loeffler & Zelley*, Basking Ridge, NJ, advised the board members that he would be representing the applicants, Chandler and Emily Harben, during these proceedings. He then described the existing conditions of the subject property noting that both minimum lot size and minimum lot width were pre-existing conditions. The applicant was requesting relief for the front yard setback, side yard setback (north), side yard setback (south) and combined side yard setback in order to expand the original house and garage.

Counselor Warner swore in the Board Professionals and the applicant, Chandler Harben.

Mr. Harben discussed the current conditions of the subject property and noted that the proposed garage would encroach only four (4) feet further to the side and eight (8) feet further to the back. The rest of the renovations would be built above the existing house so there was very little increase in the overall footprint.

Kevin Page, PE, PP, engineer with *Page-Mueller Engineering Consultants PC*, Warren, NJ was sworn in by Counselor Warner. He provided his credentials and experience history to the Chair and was accepted as an expert in engineering.

Mr. Page described the renovation/addition. The proposed two-car garage with living areas above would bring the house closer to the neighbor to the left's *driveway* requiring side yard setback relief. Because the property was pie-shaped, the house would actually conform to the standard further back. He added that the existing front porch and stoop would be covered, not enclosed. The proposed overhang exacerbated the existing front yard setback nonconformity by only one (1) foot. He stated that this project was consistent with the neighborhood.

Mr. Page confirmed that the applicant would comply with the comments in Mr. Schley's memo of March 27, 2017. The applicant also agreed to confer with Mr. Schley concerning placement of additional vegetation in the buffer on the left side.

Chairman Rhatican asked if there were any further questions from the board members or public. Hearing none, he closed the meeting to the public.

Vincent J. Matarazzo, Jr., AIA, architect with *VJM Architecture*, Bedminster, NJ, was sworn in by Counselor Warner. He provided his credentials and experience history to Chairman Rhatican and was accepted as an expert in architecture.

Mr. Matarazzo stated that the project would consist of an increase of 525 sq. ft. on the first floor and 1,355 sq. ft. on the second floor for a total of 1,880 sq. ft. He introduced a colorized version of the architectural plans dated January 31, 2017 as **Exhibit A-1**. Although the proposed two-car garage exacerbated an existing side yard setback nonconformity, it was in better proportion to the home and therefore not a detriment. As a condition of approval, Mr. Harben stipulated to using exterior materials that were consistent in color and style. Mr. Matarazzo concluded that the entire project would be an improvement and a benefit to the neighborhood.

Counselor Bisogno summarized the application by stating that many property owners in the Township, such as Mr. Harben, had to deal with irregularly shaped properties requiring variances. Modernizing these properties was a benefit to the entire neighborhood and there were no detriments at all.

Chairman Rhatican asked the board members and public if there were any further questions or comments. Hearing none, he closed the meeting to the public and began deliberations.

Ms. Mastrangelo moved to deem the application complete and to approve the application. Ms. Nungester seconded.

Roll Call:

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| Aye: | Breslin, Genirs, Lane, Mastrangelo, Nungester, Zaidel, Rhatican |
| Nay: | NONE |
| Abstain: | NONE |

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Board of Trustees of the Presbyterian Church of Liberty Corner; Block 7501, Lot 4; 483 Lyons Road; Preliminary/Final Site Plan, Conditional Use Variance, FAR Variance, Bulk Variance to construct a new manse.

Present: Jolanta Maziarz, Esq., attorney for the applicant
William G. Hollows, PE, PP, LS, engineer for the applicant
Ken Szabo, licensed builder, Trustee

Jolanta Maziarz, Esq., attorney with *Woolson, Anderson, Maziarz*, Somerville, NJ, advised the board members that she would be representing the applicant during these proceedings. The applicant proposed to demolish the existing manse and construction a slightly larger manse on the subject property. She noted that this project was complicated by the fact that the lot contained both the church and the manse. All of the church activities were conducted on the Church Street portion of the lot. Both the existing manse and proposed manse were located on the Lyons Road portion and all of the changes proposed were within the area of the existing manse. There were no changes proposed to the remainder of the property.

Counselor Maziarz added that a d(3) variance was required because although the house of worship and the manse were a permitted conditional use, the proposal did not meet all the conditions. It exceeded the

maximum floor area coverage (FAR) and lot coverage. The proposed manse would eliminate some of the bulk deviations of the existing manse, decrease the maximum coverage and slightly increase the FAR.

Counselor Warner swore in the Board Professionals and the applicant's professional engineer.

William G. Hollows, PE, PP, LS, engineer with *Murphy & Hollows Associates, LLC*, Stirling, NJ, provided his credentials and experience history to Chairman Rhatican. He was accepted as an expert in civil engineering and professional planning, having previously been accepted by the Board on many other occasions.

Mr. Hollows referred to Sheet 2 of 3 of the Variance Plan that he had prepared (last revised October 24, 2016) which showed that all of the church improvements were separated from the proposed manse. This sheet was labeled **Exhibit A-1**.

Exhibit A-2 was a colorized version of Sheet 3 of 3 of the same Variance Plan and showed the existing manse with its driveway which extended over the property line. The proposed manse would utilize the same driveway entrance but move the driveway away from the property line, eliminating that deviation. The location of the proposed manse would also eliminate the existing front and rear yard setback deviations and would conform to all building setbacks. By eliminating some of the driveway pavement, the lot coverage would be reduced. The FAR deviation would be increased from 14.85% (existing) to 14.90% (proposed) where 10% is allowed. In response to a question from Chairman Rhatican, Mr. Hollows stated that even if the manse and driveway were removed altogether, the FAR and lot coverage deviations would still exist because of the church and associated developed areas of the property.

Mr. Schley's memo of March 30, 2017 was discussed. Item 7 referred to the wetlands and wetlands transition areas located in the northwest wooded portion of the property. Mr. Hollows stated that they were far away from any developed area and asked for a waiver for installation of easement markers. Mr. Schley had no objection.

Item 8 requiring an stream buffer conservation easement was deemed to be inapplicable since Mr. Hollows testified that the watercourse on the east side of the property was not regulated pursuant to the Township's stream buffer conservation ordinance. Mr. Schley had no objection.

Mr. Hollows stated that, in reference to Item 9 which dealt with riparian zones, he would contact the New Jersey Department of Environmental Protection to determine if the area qualified. If it did, it would be shown on the plans. The applicant stipulated to the remainder of the items.

Chairman Rhatican asked if there were any further questions from either the board members or the public. Hearing none, he closed the meeting to the public and asked for the next witness.

Ken Szabo, principal, *Trak Associates*, Bridgewater, NJ, and a licensed builder was sworn in by Counselor Warner. He testified that he was a member of the Church's Board of Trustees and would be overseeing the construction of the proposed manse. He advised the board members that the floor plans and associated materials they received were actually mirror images of what was to be built. An architect would be hired once the project was approved. Exterior materials would be similar to what was shown on the plans: brick, stone and Hardie Plank siding. He stated that although the proposed manse was slightly larger than the existing manse, it would be barely visible from Lyons Road given the density of the intervening tree buffer.

Chairman Rhatican asked the board members and the public if there were any further questions. Hearing none, he closed the meeting to the public.

Counselor Maziarz summarized by stating that the proposed manse would reduce or eliminate three (3) of the nonconformities associated with the existing manse and that it would be in compliance with all building setbacks.

Chairman Rhatican asked the board members and public if there were any further questions or comments. Hearing none, he closed the meeting to the public and began deliberations.

After deliberations, Mr. Lane moved approval of the relief requested and of the application. Ms. Genirs seconded.

Roll Call:

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| Aye: | Breslin, Genirs, Lane, Mastrangelo, Nungester, Zaidel, Rhatican |
| Nay: | NONE |
| Abstain: | NONE |

Motion carried.

COMPLETENESS AND PUBLIC HEARING

B3 LLC (The Vine Restaurant); Block 704, Lot 1.01; 95 Morristown Road; Preliminary/Final Site Plan, d(2) Variance, Bulk Variances

Present: Denis G. Murphy, Esq., counsel for the applicant
William G. Hollows, PE, PP, LS, engineer for the applicant
Daniel Gallic, PP, AICP, planner for the applicant
Jeffrey Bauer, applicant

Denis G. Murphy, Esq., attorney with *Schwartz, Simon, Edelstein & Celso LLC*, Whippany, NJ, advised the board members that he would be representing the applicant during these proceedings. He stated that the applicant was seeking relief for an as-built 991 sq. ft. patio with a solid masonry wall located in front of the restaurant and a proposed raised garden behind the restaurant. He noted that by removing some of the pavement in order to install the raised garden, the applicant would reduce the total impervious coverage of the lot. Finally, the relocation/expansion of the trash enclosure would require relief.

Jeffrey Bauer, part owner of The Vine (*B3 LLC*), residing at 30 Baldwin Court, Basking Ridge, was sworn in by Counselor Warner. He testified that the restaurant included a dining room, bar and three (3) private dining rooms upstairs. He was seeking approval for an as-built outdoor dining area so that his patrons could dine outdoors during the warmer weather. When he received approval for a liquor license, he mistakenly thought that it also granted approval for outdoor seating. Once the Township advised him that further approvals were required, he proceeded to prepare this application.

Mr. Bauer then discussed the general seating capacity of the various dining areas within the restaurant. He attested to the fact that even when there were larger parties, there was never a problem with parking since he always recommended car pooling etc. for those groups. There had been no issues with the neighbors concerning lighting. The nearest homes to the patio were across the street and substantially buffered by the existing large trees especially during the summer months.

Mr. Bauer said that he had intended the solid masonry wall to serve to enclose the patio and to act as a sound barrier. There would be flowers and small shrubs to make it more visually attractive not only for the patrons using the patio but also for those outside. He envisioned a maximum seating capacity of 50. There would be no outside bar and the furniture would be stored in the winter. He stipulated that he would not use umbrellas with advertising and that there would be no amplified music outside.

Mr. Bauer also agreed to comply with all items in Mr. Timko's memo dated March 22, 2017.

In reference to Mr. Schley's memo dated April 4, 2017, Mr. Bauer stipulated to all the recommendations and provided testimony addressing the comments pertaining to parking.

Mr. Bauman testified that the restaurant was open until 9:00 PM however there were very few patrons if any at that time. He added that since they were located under a street light, there was no need for additional lighting however he might add some string lights or battery operated table lights for ambience on the patio.

A compendium of five (5) photos of the site was submitted as **Exhibit A-1**. Mr. Bauer testified that he had taken the photos just before December 22, 2017 and that they depicted the site as it currently existed.

Jean Marie Dour, 28 Franklin Drive, was sworn in by Counselor Warner. She expressed concerns about lighting and potential additional noise and stated that her house was visible from the patio.

Chairman Rhatican asked if any other members of the Board or public had any questions. Hearing none, he closed the meeting to the public.

William G. Hollows, PE, PP, LS, engineer with *Murphy & Hollows Associates, LLC*, Stirling, NJ, was sworn in by Counselor Warner. He provided his credentials and experience history to Chairman Rhatican and was accepted as an expert in civil engineering and professional planning, having previously been accepted by this Board on numerous other occasions.

Mr. Hollows introduced a colorized version of page 2 of the Preliminary/Final Site Plans he had prepared (last revised October 18, 2016) as **Exhibit A-2**. He discussed the existing as-built patio/wall and the proposed raised garden. With respect to the garden, the applicant proposed to remove an area of the parking lot which was slightly larger than the patio area therefore generating a net reduction in overall lot coverage. Even with that reduction in parking area, there would be no loss in the total number of parking stalls (85) however the lot would have to be reconfigured to include four (4) handicapped stalls. He noted that he had taken the most stringent method of calculating parking requirements (building floor area) which generated the 85 stall requirement. Mr. Schley confirmed that the patio square footage was not considered floor area.

A discussion ensued as to the parking requirements. Mr. Hollows noted that there was an area to the south where spaces could be banked however the applicant would then have to come back to the Board for a lot coverage variance. Mr. Bauer stated that he had no intention of increasing the number of seats indoors or expanding the hours of operation. He stipulated to ensuring that the outside area would have sufficient circulation space in order to be compliant with ADA regulations.

Frederick Dour, 28 Franklin Drive, Basking Ridge asked what the distance was from the patio to Route 202.

Daniel Gallic, PP, AICP, 44 Hillcrest Road, Warren, NJ, was sworn in by Counselor Warner and provided his credentials and experience history to Chairman Rhatican. He was accepted as an expert in the field of professional planning.

Mr. Gallic addressed the variances being sought by the applicant. The restaurant is a pre-existing non-conforming use in a residential zone and outdoor dining was currently offered by many of the other restaurants in the area. Lot coverage was being decreased although it still remained over the maximum permitted coverage. Finally, the *solid* wall served to protect the patrons from noise and light pollution from Route 202. A *50% open* wall, as required by ordinance, would not mitigate these issues and in fact the car headlights could create an annoying strobe-like effect. In his opinion, the project enhanced the neighborhood with no discernible detriments.

Exhibit A-3, a compendium of 16 photos of area businesses with outdoor dining was introduced into evidence by Mr. Gallic. He testified that he had taken the photos on April 1, 2017 and that they showed that this site was particularly well suited despite being located in a residential zone because it was surrounded by businesses. He added that the solid wall created a physical and psychological barrier along a busy road and that it represented only a small percentage of the total frontage of the property.

Chairman Rhatican opened the meeting to the public for questions or comments. Hearing none, he closed the meeting.

Mr. Murphy summarized by stating that this was not a substantial expansion of a use. It was an extension of service to an existing clientele. The applicant had accepted all the conditions provided by the Board Professionals and he asked that the board members approve the four (4) requested variances.

After some discussion, the board members decided to bifurcate the vote into (a) the wall variance and (b) the remaining three variances.

Ms. Genirs moved approval of the d(2) variance for the expansion of the preexisting non-conforming use, lot coverage, trash enclosure located within the buffer and all other aspects of the site plan excluding those related to the wall. Mr. Breslin seconded.

Roll Call:

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| Aye: | Breslin, Genirs, Lane, Mastrangelo, Nungester, Zaidel, Rhatican |
| Nay: | NONE |
| Abstain: | NONE |

Motion carried.

Mr. Breslin motioned approval of the variance to allow a wall of less than 50% openness in the front yard. Ms. Nungester seconded.

Roll Call:


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| Aye: | Breslin, Lane, Mastrangelo, Nungester, Zaidel, Rhatican |
| Nay: | Genirs |
| Abstain: | NONE |

Motion carried.

COMMENTS FROM MEMBERS

Several board members advised Chairman Rhatican that they would be unable to attend the May 11, 2017 meeting. It was decided to cancel that meeting and to place the scheduled June 15, 2017 Special Meeting on the May 3, 2017 agenda as a discussion item.

Hearing no further business, the meeting was adjourned by unanimous Voice Vote at 10:55 PM.



Cyndi Kiefer, Secretary
Bernards Township
Zoning Board of Adjustment

