

BERNARDS TOWNSHIP
ZONING BOARD OF ADJUSTMENT

MINUTES
Regular Meeting
June 7, 2017

Chairman Rhatican called the meeting to order at 7:32 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:

Members Present: Bellows, Breslin, Genirs, Mastrangelo, Nungester, Rhatican, Surano, Zaidel
Members Late: NONE
Members Absent: Lane; on motion by Mr. Breslin, seconded by Ms. Nungester, Mr. Lane's absence was excused.
Also Present: Board Counsel Steven K. Warner Esq., Township Engineer Thomas Timko PE, CME, Township Planner David Schley AICP, PP, Board Secretary Cyndi Kiefer

APPROVAL OF MINUTES

The draft minutes listed within the consent agenda portion of the meeting have been referred to the board members for reading and study, are considered routine and will be enacted by one motion of the Zoning Board of Adjustment with no separate discussion.

Motion by Mr. Breslin, second by Ms. Nungester, that the Consent Agenda be approved.

Roll Call:

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

Motion carried.

** Begin Consent Agenda**

Approval of Draft Minutes:

January 4, 2017 – Regular Session and Reorganization
February 8, 2017 – Regular Session (Rhatican Abstained)
February 8, 2017 – Closed Session (Rhatican Abstained)
February 16, 2017 – Special Session
February March 8, 2017 – Regular Session

End Consent Agenda

APPROVAL OF RESOLUTIONS**Resolution: Boulder Construction LLC; Block 6001, Lot 10.01; 6 Tall Timber Lane; Bulk Variance #ZB16-031 (approved).**

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

Roll Call:

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

Motion carried.

Resolution: Vigeant, Charlotte & Phillip; Block 3501, Lot 1; 117 Cross Road; Bulk Variance #ZB16-010 (approved).

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

Roll Call:

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

Motion carried.

Resolution: Frenkel, Violina & Mikhail; Block 10401, Lot 27; 19 Green Mountain Drive; Bulk Variance #ZB17-001 (approved).

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

Roll Call:

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

Motion carried.

Resolution: Castronovo, Donna & Steven; Block 2906, Lot 28; 6 Woodstone Road; Bulk Variances #ZB17-002 (approved).

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

Roll Call:

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

Motion carried.

Resolution: DiSabato, Joseph; Block 702, Lot 10; 10 Brookside Avenue; Bulk Variances #ZB17-003 (approved).

Ms. Mastrangelo motioned to approve the resolution and Mr. Zaidel seconded.

Roll Call:

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

Motion carried.

Resolution: Krecicki, Kim & Keith; Block 1611, Lot 4; 136 South Maple Avenue; Bulk Variances #ZB17-005 (approved).

Ms. Mastrangelo motioned to approve the resolution and Mr. Breslin seconded.

Roll Call:

Aye: Breslin, Mastrangelo, Nungester, Surano, Zaidel, Rhatican
Nay: NONE
Abstain: NONE

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Canady, David; Block 706, Lot 3; 53 Madisonville Road; Bulk Variances for lot width, minimum improvable lot area, side yard setback and combined side yard setback; #ZB17-006.

Present: David Canady, Applicant

The Board's professionals and the applicant were duly sworn in by Mr. Warner.

David Canady, the applicant, listed his address as 17 White Ridge Way, Warren, NJ. He described the subject property as an undersized lot with an uninhabitable one bedroom house and noted that all the adjoining lots were smaller and less compliant than the subject lot. He proposed to remove the existing house, detached garage and two (2) sheds and to construct a 3,418 square foot home with a repositioned driveway. He felt that the proposed dwelling would be more in proportion in size and style to the surrounding neighborhood.

Mr. Schley summarized the relief sought by the applicant. The lot was 99.19 feet wide where 150 feet was required. The minimum improvable area was 6,706 square feet where 7,500 square feet was required. He opined that the east side yard setback deviation and the combined side yard setback deviation directly related to the narrowness of the lot. He added that the proposed house improved the existing side yard setback deviation (east) and that by removing the existing accessory structures, three (3) additional deviations were being eliminated thereby bringing the lot closer to conformity.

After discussion about the potential number of trees that would be removed, Mr. Canady stipulated, as a condition of approval, to submit a tree removal and replacement plan subject to review and approval by the Township Engineering Department. He also stipulated, as a condition of approval, to comply with those comments made by Mr. Timko in his May 11, 2017 memo and by Mr. Schley, in his June 2, 2017 memo.

In response to a question by Ms. Mastrangelo, Mr. Canady stated that he had taken the pictures that were submitted with the application and that those photos reflected the property as it currently existed. He also testified that he had not spoken directly with any of the neighbors however they had seen him on the site and never approached him with any negative comments.

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

After deliberations, the board members felt that the applicant had met the positive criteria for both a "c(1)" or "hardship" variance and a "c(2)" or "flexible c" variance and that the negative criteria had been satisfied.

Ms. Genirs moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for the variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Surano seconded.

Roll Call:

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Alvarez, Michael & Hakimzadeh, Parisa; Block 5701 Lot 27; 102 Atlas Road; Bulk Variance for front yard setback; #ZB17-007.

Present: Parisa Hakimzadeh, Applicant
Mark A. Palus, PE, PP, Planner and Engineer for the Applicants

The Board's professionals, the applicants' professional and Ms. Hakimzadeh were duly sworn in by Mr. Warner.

Mark A. Palus, 170 Kinnelon Road, Kinnelon, NJ, provided his credentials and experience history to Chairman Rhatican. After confirming that his licenses were in good standing, he was accepted as an expert in the fields of civil engineering and professional planning.

Mr. Palus testified that the applicants were requesting relief for a proposed 6' X 48' (268 square feet) covered porch as part of a larger, substantially completed, home expansion project, the majority of which did not require Board approval. He explained that the open front porch would break up the large front façade and create a more pleasing visual interest to that façade. This would require a front yard setback variance since the proposed porch would encroach into the setback (69.0 feet where 75 feet is required). He opined that this qualified under the "c(1)" or "hardship" variance criteria since the property was located on a cul-de-sac and deficient in both lot width and lot frontage. He added that there was no defined street line so the porch would not "stick out" as being too close to the road. He concluded by saying that the porch encroachment was diminimus in nature and significantly enhanced the architectural style of the project.

Chairman Rhatican asked if the applicant would stipulate, as a condition of approval, to not enclosing the porch. Ms. Hakimzadeh replied that they would.

In response to a question by Mr. Zaidel, Mr. Palus testified that Mr. Alvarez had taken the photos within the last two months and that they represented the current condition of the property.

Ms. Hakimzadeh, the applicant, 102 Atlas Road, Basking Ridge, NJ, testified that there were no future plans to create any additional impervious coverage however there was a walkway already approved that would be installed at a later date. She noted that they had received the necessary approvals from the New Jersey Department of Environmental Protection and the Township for the renovations.

Mr. Schley testified that because the property was located on a cul-de-sac, the curve brought the front setback line closer to the dwelling in the center and farther at the ends.

Chairman Rhatican asked if there were any further questions from the board members. Hearing none, he opened the meeting to the public. Hearing no comments or questions, he closed the meeting.

After deliberating, the board members felt that the requested relief could be granted under both the "c(1)" or "hardship" variance positive criteria and the "c(2)" or "flexible c" variance positive criteria. They also felt that the negative criteria had been satisfied.

Mr. Surano moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for the variance relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Genirs seconded.

Roll Call:

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Graham, Holly & Nicholas; Block 2904 Lot 2; 57 Peachtree Road; Bulk Variances for front yard setback, side yard setbacks, combined side yard setback; #ZB17-008.

Present: Nicholas Graham, Applicant

The Board's professionals and the applicant were duly sworn in by Mr. Warner.

Nicholas Graham, the applicant, 57 Peachtree Road, Basking Ridge, NJ, testified that he proposed to (1) renovate/expand the existing dwelling to include a family room and a powder room (417 sq. ft.) located to the rear of the first floor, (2) construct a new second floor (1,864 sq. ft.) on top of the existing first floor which would include bedrooms and bathrooms and (3) remove and replace the existing rear deck. He noted that the existing steep roof line had cut down the ability to utilize the limited area on the second floor. The proposed project would provide additional living space for his family.

In response to a question, Mr. Graham stated that he had spoken to his neighbors about the proposed addition and had received no negative comments. He also confirmed that he had taken the photos submitted with the application during the spring and that they accurately represented the property as it currently existed.

Mr. Schley explained that the front yard setback relief was required because of the second floor front cantilever, not the front porch. The cantilever on the sides brought the structure .1' closer to each side yard necessitating relief for the northeast side yard setback, the southwest side yard setback and the combined side yard setback. The lot width was not in conformance (100 ft. where 150 ft. is required). Had it been, there would be no side yard setback encroachment.

In response to a question from Mr. Warner, Mr. Schley opined that from the street, there would be no indication that the addition was encroaching on the setbacks anymore than the existing house.

Mr. Graham addressed Comment 5 of Mr. Schley's memo dated June 2, 2017 by stating that although neither he nor the builder saw any problems with the integrity of the portion of the structure that was to remain, he was waiting for the architect to review the situation.

Mr. Schley reminded the applicant that only a certain amount of the house could be destroyed so that the project could be classified as an "addition." Demolition beyond that would require further Board approval.

Mr. Graham stipulated, as a condition of approval, to not enclose the porch.

Chairman Rhatican asked if there were any further questions from the board members. Hearing none, he opened the meeting to the public. There were no questions or comments and he closed the meeting.

After deliberations, the board members felt that the requested relief could be granted under both the "c(1)" or "hardship" variance positive criteria and the "c(2)" or "flexible c" variance positive criteria. In addition, they felt that the applicant had satisfied his burden of proof for the negative criteria.

Mr. Zaidel moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for the variance relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Surano seconded.

Roll Call:

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Kim, Lori & Edward; Block 11004, Lot 9; 11 Sentry Court; Bulk Variance for fence height in front yard; #ZB17-009.

Present: Lori Kim, Applicant
Frederick B. Zelley, Esq., Attorney for the Applicant

The Board's professionals and the applicant were duly sworn in by Mr. Warner.

Frederick B. Zelley, attorney with *Bisogno, Loeffler & Zelley LLC*, Basking Ridge, NJ, advised the board members that he would be representing the applicant during this hearing. He explained that the subject property was a corner lot (Sentry Court and Kings Ridge Road) with the majority of the property in the front yard. When the 6' fence was installed to satisfy the Zoning Ordinance's pool safety barrier requirements, neither the contractor nor the applicant realized that the approximately 150 linear feet of fencing facing Kings Ridge Road was in a front yard where the maximum fence height permitted is 4'.

Mr. Zelley stated that he had taken the photos that were included in the application and that they represented the property as it currently existed. He opined that a 6' fence around a pool was a benefit and that there were no detriments so the relief qualified for a "c(2)" or "flexible c" variance. He further stated that most of the fence was not visible from the street because of the existing tree buffer and because it was a black wrought iron, style fence. In addition, because of the slope of the land, a portion of the fence appeared to 4' in height.

Mr. Zelley noted that a neighbor (Lot 8), Mr. Russo, had called and advised that he had no problem with the fence.

Ms. Kim, the applicant, 11 Sentry Court, Basking Ridge, NJ, testified that when the fence was installed, she did not realize that the Kings Ridge Road side of the property was considered a front yard. She added that when she received approval for the installation of the pool and patio (Case No. ZB15-020), she was required to install two large drywells and the fence was routed to avoid those drywells.

Mr. Schley testified that the height restrictions for fencing in the front yard were partially for aesthetic reasons. The impact of the fence diminished the further away it was located from the road. In this case, the fence was 138.1 feet away at its closest point. In response to a question from Mr. Warner regarding buffering, Mr. Schley stated that the amount of screening or buffering for the pool was determined at the time of approval. Screening was required for pools, not fences.

Chairman Rhatican asked if there were any further questions from the board members. The public had no comment or questions.

After deliberations, the board members felt that the requested relief could be granted under the "c(2)" or "flexible c" variance positive criteria. In addition, they felt that the applicant had satisfied her burden of proof for the negative criteria.

Mr. Surano moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for the variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Ms. Mastrangelo seconded.

Roll Call:

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Montuori, Raffaello; Block 7501, Lot 10; 511 Lyons Road; Bulk Variances for lot area, lot width, front yard setback, combined side yard setback; #ZB17-010.

Present: Raffaello Montuori, Applicant
Nancy Montuori, Applicant's Wife

The Board's professionals and Mr. Montuori were duly sworn in by Mr. Warner.

Raffaello Montuori, the applicant, 23 Ridge Road, Whitehouse Station, NJ, testified that he had received approval from the Zoning Board of Adjustment on September 7, 2016 (#ZB16-014) in order to demolish a portion of an existing single-family dwelling on the subject property and construct an addition. As he began demolition, he discovered that there was more fire and water damage than he initially expected. He was seeking approval to raze the remainder of the house and construct an entirely new dwelling along with a conforming detached two-car garage (720 square feet). He also proposed to demolish an existing barn which would eliminate the existing deficient side yard setback and to relocate the existing driveway thereby eliminating the existing deficient driveway setback.

Mr. Schley stated that the #ZB16-014 application was approved as an addition since the applicant proposed only "partial destruction" of the existing dwelling. So much of the house was removed that it did not qualify as "partial destruction." This was no longer an addition, but an entirely new house which therefore did not qualify for "grandfathering" as far as lot requirements were concerned. The front yard setback and the combined side yard setback remained the same as previously approved. The lot area and lot width also remained the same but required variances because they were no longer grandfathered.

Mr. Warner asked if the narrowness of the property was a more significant nonconformity than the lot size. Mr. Schley opined that it was.

Mr. Montuori submitted a document labeled **Exhibit A-1**, confirming that the proposed improvable lot area satisfied the minimum requirement of 10,000 square feet. In addition, he stipulated, as a condition of approval, to complying with the comments and requirements listed in Mr. Schley's June 2, 2017 memo and Mr. Timko's May 11, 2017 memo.

In response to a question from a board member, Mr. Montuori testified that the pictures submitted with the application were taken by him approximately two months ago and that they represented the property as it currently existed. He also testified that he had not received any negative comments from the neighbors.

Chairman Rhatican asked if there were any further questions from the board members. The public had no comment or questions.

After deliberations, the board members felt that the requested relief could be granted under both the "c(1)" or "hardship" variance positive criteria and the "c(2)" or "flexible c" variance positive criteria. In addition, they felt that the applicant had satisfied his burden of proof for the negative criteria.

Mr. Zaidel moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for the variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Surano seconded.

Roll Call:

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

Motion carried.

COMMENTS FROM MEMBERS

Mr. Zaidel reminded the board members that they must complete the certification required pursuant to the settlement agreement between USDOG and the Township and the Planning Board. Chairman Rhatican added that the board members were required to review the "Religious Land Use and Institutionalized Persons Act" (RLUIPA).

Chairman Rhatican advised the board members that Mr. Timko had resigned as Board Engineer and would be replaced by Thomas Quinn, PE who currently serves as the Planning Board Engineer. He and the board members thanked Mr. Timko for his service.

ADJOURNMENT

Ms. Genirs motioned, Ms. Nungester seconded and by unanimous Voice Vote, the meeting was adjourned at 8:50 PM.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Cyndi Kiefer', is written above a horizontal line.

Cyndi Kiefer, Secretary
Bernards Township
Zoning Board of Adjustment