BERNARDS TOWNSHIP ZONING BOARD OF ADJUSTMENT

MINUTES v2

Re-organization & Regular Meeting January 9, 2019

Ms. Kiefer called the meeting to order at 7:32 PM.

FLAG SALUTE

OPEN MEETING STATEMENT

Ms. Kiefer read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this regular and reorganization 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, Whippany, New Jersey; the Courier News, Bridgewater, New Jersey; and was filed with the Township Clerk all on January 11, 2018, and was mailed electronically to all those people who have requested individual notice."

OATHS OF OFFICE

Counselor Warner swore in the following members:

- David Tancredi, Regular Member, fulfilling unexpired four-year term of K. Mastrangelo expiring 12/31/19
- Karl Kraus, Alternate #1, fulfilling unexpired two-year term of D. Tancredi, expiring 12/31/20
- Beth Pochtar, Alternate #2, two-year term expiring 12/31/20

ROLL CALL:

Members Present: Genirs, Kleinert, Lane, Kraus, Pochtar, Tancredi, Zaidel

Members Late: NONE

Members Absent: Breslin, Pozner

Also Present: Steven K. Warner, Esq., Thomas J. Quinn, PE, CME; Township Planner,

David Schley, PP/AICP; Cyndi Kiefer.

On motion made by Ms. Genirs, seconded by Mr. Zaidel, all in favor and carried, the absences of Mr. Breslin and Ms. Pozner were excused.

REORGANIZATION MEETING

NOMINATIONS FOR CHAIRMAN OF THE BOARD

Ms. Kiefer called for nominations for the office of Chairman of the Board for the year 2019.

A motion was made by Mr. Zaidel nominating Mr. Breslin for the position of Chairman of the Board, term to expire December 31, 2019. Mr. Lane seconded. Hearing nothing further, Ms. Kiefer closed the nominations.

The motion was carried by unanimous Voice Vote.

NOMINATIONS FOR VICE CHAIRMAN OF THE BOARD

Ms. Kiefer called for nominations for the office of Vice Chairman of the Board for the year 2019.

A motion was made by Ms. Genirs nominating Mr. Zaidel for the position of Vice Chairman of the Board, term to expire December 31, 2019. Ms. Kleinert seconded. Hearing nothing further, Ms. Kiefer closed the nominations.

The motion was carried by unanimous Voice Vote.

NOMINATIONS FOR VICE CHAIRMAN PRO TEMP OF THE BOARD

Vice Chairman Zaidel called for nominations for the office of Vice Chairman Pro Temp of the Board for the year 2019.

A motion was made by Ms. Kleinert nominating Ms. Genirs for the position of Vice Chairman Pro Temp, term to expire December 31, 2019. Mr. Tancredi seconded. Hearing nothing further, the nominations were closed.

The motion was carried by unanimous Voice Vote.

EXECUTIVE SESSION

Resolution authorizing a closed session for the purpose of: discussion of the terms and conditions for the Zoning Board of Adjustment Attorney.

On motion made by Ms. Genirs, seconded by Mr. Lane, all in favor and carried, the Open Session of the meeting was recessed at 7:40 PM.

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On motion made by Ms. Kleinert, seconded by Mr. Kraus, all in favor and carried, the Open Session of the meeting was reconvened at 7:46 PM.

APPOINTMENT OF BOARD ENGINEER

Vice Chairman Zaidel read <u>Resolution #19-02 - Professional Services Contract for 2019 Zoning Board of</u>
Adjustment Engineer in its entirety into the record:

BE IT RESOLVED, by the Board of Adjustment of the Township of Bernards (herein "Board"), Somerset County, New Jersey, as follows:

WHEREAS, the Board wishes to engage the services of an engineer to perform engineering services as required for the year 2019, which is a "professional service" as defined by N.J.S.A. 40A:11-2(6), and which is permitted by N.J.S.A. 40A:11-5(1)(a) to be contracted for without public bidding; and

WHEREAS, the Board has special confidence in the firm of EKA Associates, P.A., by reason of the special knowledge and experience demonstrated by the firm and further by reason of the scope of services and schedule of compensation proposed by the firm;

NOW THEREFORE, BE IT RESOLVED that the Board engage the firm of EKA Associates, P.A., as its engineering firm for the year 2019, with Thomas J. Quinn, PE, CME, of that firm designated as the individual specifically authorized to act in the Board's behalf and, in his absence any other engineer in that firm as he may designate.

BE IT FURTHER RESOLVED, that the Chairman is authorized to execute a contract for the services of EKA Associates, P.A., which contract shall be available for inspection at the Municipal Offices during regular business hours.

Moved by Ms. Genirs and seconded by Ms. Kleinert that the resolution be approved.

Roll Call: Aye: Genirs, Kleinert, Lane, Kraus, Pochtar, Tancredi, Zaidel

Nay: NONE Abstain: NONE

Motion carried.

APPOINTMENT OF BOARD PLANNER

Vice Chairman Zaidel called for nominations for Board Planner for the year 2019.

On motion made by Ms. Genirs, seconded by Mr. Lane, all in favor and carried, Township Planner, David Schley, PP/AICP was appointed as Board Planner for the year 2019.

APPOINTMENT OF BOARD SECRETARY

Vice Chairman Zaidel called for appointments for Board Secretary for the year 2019.

On motion made by Ms. Kleinert, seconded by Ms. Genirs, all in favor and carried, Cyndi Kiefer was appointed Board Secretary for the year 2019.

APPOINTMENT OF BOARD ATTORNEY

Noting that this topic was reviewed during Executive Session, Vice Chairman Zaidel read Resolution #19-01 (Professional Services Contract for the Zoning Board of Adjustment Attorney) in its entirety into the record:

BE IT RESOLVED, by the Board of Adjustment of the Township of Bernards (herein "Board"), Somerset County, New Jersey, as follows:

WHEREAS, the Board wishes to engage the services of an attorney to perform legal services as required for the year 2019, which is a "professional service" as defined by N.J.S.A. 40A:11-2(6), and which is permitted by N.J.S.A. 40A:11-5(1)(a) to be contracted for without public bidding; and

WHEREAS, the Board has special confidence in the firm of Ventura, Miesowitz, Keough & Warner P.C.by reason of the special knowledge and experience demonstrated by the firm and further by reason of the scope of services and schedule of compensation proposed by the firm;

NOW THEREFORE, BE IT RESOLVED that the Board engage the firm of Ventura, Miesowitz, Keough & Warner P.C. as its legal counsel for the year 2019, with Steven K. Warner, Esq., of that firm designated as the individual specifically authorized to act in the Board's behalf and, in his absence any other attorney in that firm as he may designate.

BE IT FURTHER RESOLVED, that the Chairman is authorized to execute a contract for the services of Ventura, Miesowitz, Keough & Warner P.C., which contract shall be available for inspection at the Municipal Offices during regular business hours.

Moved by Ms. Genirs and seconded by Ms. Kleinert that the resolution be approved.

Roll Call: Aye: Genirs, Kleinert, Lane, Kraus, Pochtar, Tancredi, Zaidel

Nay: NONE Abstain: NONE

Motion carried.

ADOPTION OF RULES AND REGULATIONS OF THE BOARD

Mr. Warner advised the Board of changes made to Section 4:3-4 "Removal from Panel" regarding recusal.

Vice Chairman Zaidel read Resolution #19-03 Rules and Regulations for the Board in its entirety into the record:

WHEREAS, N.J.S.A. 40:55D-8(1) requires each municipal agency to adopt reasonable rules and regulations for the administration of its functions, powers and duties; and

WHEREAS, N.J.S.A. 40:55D-8(a) further requires that the municipal agency furnish a copy of the adopted rules and regulations to any person upon request; and

WHEREAS, N.J.S.A. 40:55D-8(a) further requires that the municipal agency's rules and regulations thereto be maintained in the office of the administrative officer;

THEREFORE, BE IT RESOLVED, that the attached Rules and Regulations for the Zoning Board of Adjustment of the Township of Bernards be and the same are hereby adopted; and

BE IT FURTHER RESOLVED that copies of this resolution and copies of the attached said rules and regulations be maintained in the office of the Board of Adjustment secretary and the clerk of the Township of Bernards.

Moved by Mr. Lane and seconded by Ms. Kleinert that the resolution be approved and that the Rules and Regulations be adopted as revised.

Roll Call: Aye: Genirs, Kleinert, Lane, Kraus, Pochtar, Tancredi, Zaidel

Nay: NONE Abstain: NONE

Motion carried.

ADOPTION OF SCHEDULED MEETING DATES

The Bernards Township Board of Adjustment meets at 7:30 p.m. on the first Wednesday after the first Monday of every month on a regular basis in the Municipal Building, Collyer Lane, Basking Ridge. If necessary, the Board may schedule additional meetings on the second Thursday after the first Monday, except in July, August, and December.

Ms. Kiefer suggested that, since the Regular Meeting in July fell during the 4th of July week, July 11, 2019 be added as a Special Meeting date.

Vice Chairman Zaidel read <u>Resolution #19-04 Schedule of Meetings for the Year</u> 2019 in its entirety into the record:

PLEASE TAKE NOTICE that the Zoning Board of Adjustment of the Township of Bernards will meet to discuss or act upon public business at 7:30 p.m. on each of the dates in the year 2018 as set forth below, at the Municipal Building, Collyer Lane, Basking Ridge, New Jersey:

Regular Meetings: January 9, 2019 – 2019 Reorganization Meeting

January 8, 2020 – 2020 Reorganization Meeting

February 6 August 7
March 6 September 4
April 3 October 9
May 8 November 6
June 5 December 4

Special Meetings: January 17 June 13

February 14 July 11
March 14 September 12
April 11 October 17
May 16 November 14

Notice of any revisions to the above schedule will be posted, electronically mailed to the newspapers and to those who have so requested as required by law.

Moved by Mr. Tancredi and seconded by Mr. Lane that the foregoing resolution be adopted as revised.

Roll Call: Aye: Genirs, Kleinert, Lane, Kraus, Pochtar, Tancredi, Zaidel

Nay: NONE Abstain: NONE

Motion carried.

ADOPTION OF OFFICIAL NEWSPAPERS

Vice Chairman Zaidel called for designating official newspapers for the publication of all advertisements and notices required by law to be published by the Board.

On motion made by Ms. Genirs, seconded by Ms. Kleinert, all in favor and carried, the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, were designated as the official newspapers for 2019. The Daily Record of Morristown, NJ, and the Star Ledger of Newark, NJ were designated as newspapers which may be given notice by the Board Secretary when the publication schedule of the Bernardsville News or Courier News does not enable it to publish advance notice of special, rescheduled, or emergency meetings.

ADOPTION OF POLICY OF ADEQUATE NOTICE

Vice Chairman Zaidel read Resolution #19-05 Policy of Adequate Notice in its entirety into the record:

WHEREAS, the Open Public Meeting Act, Chapter 231 of the Public Laws of the State of New Jersey requires that henceforth no Public Body shall hold a meeting unless adequate notice thereof has been provided to the public in the manner and under the circumstances therein set forth;

NOW THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Bernards that adequate notice, as defined in said Act, be:

- 1. Posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge;
- 2. Mailed, telephoned, telexed, hand delivered, or electronically delivered to the Bernardsville News, Whippany, and the Courier News, Bridgewater, being designated the official newspapers of the Township. The Daily Record of Morristown, NJ, and the Star Ledger of Newark, NJ are designated as newspapers which may be given notice by the Board Secretary when the publication schedule of the Bernardsville News or Courier News does not enable it to publish advance notice of special, rescheduled, or emergency meetings;
- 3. Filed with the Township Clerk;
- 4. Mailed to any person who has so requested such notice for the forthcoming year via electronic mail;

BE IT FURTHER RESOLVED, that the foregoing notice be posted, mailed and submitted in accordance with said Act.

On motion made by Ms. Genirs, and seconded by Ms. Kleinert, the foregoing resolution was adopted as revised.

Roll Call: Aye: Genirs, Kleinert, Lane, Kraus, Pochtar, Tancredi, Zaidel

Nay: NONE Abstain: NONE

Motion carried.

ADJOURNMENT OF THE REORGANIZATION PORTION OF THE MEETING

On motion by Mr. Lane, seconded by Ms. Genirs, all in favor and carried, the re-organization portion of the meeting was adjourned at 8:01 PM.

REGULAR MEETING

APPROVAL OF MINUTES

<u>December 5, 2018 – Regular Session</u> - Mr. Lane moved approval of the minutes as drafted. Mr. Tancredi seconded.

Roll Call: Aye: Genirs, Kleinert, Lane, Tancredi, Zaidel

Nay: NONE Abstain: NONE

Ineligible: Kraus, Pochtar

Motion carried.

COMPLETENESS HEARING

Millington Quarry Inc.; #ZB18-026; Block 6001, Lot 6; 135 Stonehouse Road; Minor Subdivision, Bulk Variance, D-2 Variance

Present: Michael T. Lavigne, Esq., Attorney for the Applicant

Michael T. Lavigne, Esq., attorney with *Fox Rothschild LLP*, Morristown, NJ, advised the Board that he was present on behalf of the applicant corporation. He described the application as a simple minor subdivision with no development or land disturbance. During the completeness hearing held during the December 5, 2018 meeting, the Board granted a submission waiver for Item #7 (wetlands delineation or wetlands absence determination prepared by a qualified consultant) in Mr. Schley's Completeness Review Memo dated November 19, 2018. Mr. Schley confirmed that the remaining two (2) outstanding items (#6 – photographs of the property and #9 – a plan and detailed calculations showing compliance with the maximum permitted lot yield and minimum improvable lot area standards) had been submitted.

Mr. Lane moved to deem the application complete. Ms. Kleinert seconded.

Roll Call: Aye: Genirs, Kleinert, Kraus, Lane, Pochtar, Tancredi, Zaidel

Nay: NONE Abstain: NONE

Motion carried.

Mr. Lavigne was advised that a public hearing for this application would be scheduled for March 6, 2019.

COMPLETENESS AND PUBLIC HEARING

Mowen, William & Lisette; #ZB18-019; Block 8101, Lot 41; 95 Blackburn Road; Bulk Variance

Present: William & Lisette Mowen, Applicants

Mr. Warner stated that notice served and published by the applicants was sufficient.

William and Lisette Mowen, both residing at 95 Blackburn Road were duly sworn by Mr. Warner. Mr. Mowen testified that, unbeknownst to him, when he purchased the property it already exceeded the maximum impervious lot coverage. He replaced the existing open deck with a new deck which had an overhead structure making it a closed deck. Whereas the square footage of the open deck did not count towards total lot coverage, the square footage of the closed deck did count, thus exacerbating the existing overage. In order to obtain a construction permit for the new closed deck he submitted a plan showing that the shed, paver patio and a portion of the driveway would be removed in order to bring the property into compliance. The shed was removed, however on the advice of the contractor, the patio and portions of the driveway were replaced by gravel under the erroneous assumption that graveled areas did not count towards lot coverage.

Mr. Mowen proposed to completely remove the gravel patio and replace it with grass however he requested that the Board allow him to replace the gravel in the driveway with pavers to maintain safe maneuverability and functionality. To mitigate the impact from the remaining coverage excess, he proposed to install a dry well. Mr. Warner opined that these measures would bring the property back to approximately the same lot coverage percentage as existed when the property was purchased by the Mowens.

Mrs. Mowen testified that she had taken the photographs submitted with the application and that they accurately depict the property as it currently exists.

Mr. Mowen stipulated, as a condition of approval, to all comments in both Mr. Schley's memo dated January 3, 2019 and Mr. Quinn's memo dated January 8, 2019. In addition, Mr. Mowen agreed to identify the portion of the roof runoff that would be directed to the drywell. After a short discussion, the applicant asked for a slightly higher amount of coverage than originally requested in order to accommodate a walkway between the deck and the driveway.

Hearing no further questions from the Board or its professionals, Vice Chairman Zaidel opened the meeting to the public for questions or comments. Hearing none, he closed that portion.

After deliberating, the members felt that the applicants had satisfied the positive criteria required for a "c(2)" or "flexible c" variance. They also felt that the applicants had satisfied the negative criteria.

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 variance relief requested by the applicants subject to the conditions stipulated to by the applicants and as stated during deliberations. Mr. Lane seconded.

Roll Call: Aye: Genirs, Kleinert, Lane, Tancredi, Zaidel.

Nay: NONE Abstain: NONE

Ineligible: Kraus, Pochtar

Motion carried.

* * * The Open Session was recessed at 8:29 PM and reconvened at 8:37 PM. * * *

PUBLIC HEARING (carried from 12/5/18)

<u>Chabad Center of Somerset County Inc; #ZB18-022</u>; Block 8201, Lot 25; 3048 Valley Road; Preliminary/Final Site Plan, Bulk Variances, D-3 Conditional Use Variance

Present: Arnold H. Chait, Esq., Attorney for the Applicant

David A. Smith, PE, Engineer for the Applicant

Harvey S. Moskowitz, PP, FAICP, PhD, Planner for the Applicant

Rabbi Mendel Herson, Applicant

Arnold H. Chait, Esq., attorney with *Vogel, Chait, Collins and Schneider PC,* Madison, NJ, advised the Board that he was present on behalf of the applicant. Mr. Warner advised him that there were six (6) members eligible to vote after confirming with Ms. Kiefer that each member had either been present at the December 5, 2018 meeting or had signed documents certifying that they had viewed that meeting or read the transcript. Mr. Chait elected to proceed with the application and to defer a decision until after the conclusion of testimony as to whether or not to carry the vote to a future meeting when a full Board was present.

Mr. Chait stated that there had been a significant amount of dialogue with the Liberty Corner Fire Company since the December 5, 2018 meeting. Mr. Warner reminded David A. Smith, PE, engineer with *Yannaccone, Villa & Aldrich, LLC,* Chester, NJ that he had been sworn at the December 5, 2018 hearing and was still under oath. Mr. Smith confirmed that the ten (10) items listed in the January 8, 2019 memo from Andrew Buterbaugh, IAAI-FIT, Bernards Township Fire Official were satisfactory to the applicant.

Exhibit A-9, a one-page sketch of the proposed reconfiguration of the driveway at the Rabbi's house and **Exhibit A-10**, one page of calculations of the proposed impervious coverage, both prepared by Mr. Smith and dated January 7, 2019, were entered into evidence. Mr. Smith stated that the coverage calculations presented in **Exhibit A-10** replaced those in the table on page 3 of the site plan. He testified that the current numbers were slightly higher than those proposed in 2001 due to the addition of three (3) parking spaces and explained that the additional spaces were necessary to maintain safe maneuverability now that the second means of egress was being eliminated to comply with the Somerset County Planning Board's decision. He confirmed that those parking spaces were strictly for residential use by the Rabbi.

Mr. Smith confirmed that the applicant would comply with the conditions of approval stated in the December 5, 2018 Somerset County Planning Board memo.

Mr. Smith agreed to adjust the drywell to accommodate the additional impervious coverage.

Mr. Chait stated that he had no further questions for Mr. Smith.

Hearing no further questions from either the Board or its professionals, Vice Chairman Zaidel opened the meeting to the public for questions. Hearing none, he closed that portion.

Harvey S. Moskowitz, PP, FAICP, PhD, planner for the applicant, was accepted by the Board as an expert in the field of planning after outlining his professional credentials and confirming that his New Jersey license was current. He was duly sworn by Mr. Warner.

Mr. Moskowitz gave a brief history of the development of the subject property. He noted that the 2001 site plan approval was similar to approvals for other properties with more than one (1) building in that preliminary and final site plan approval was given to one building (Phase 1- classrooms/office building) and preliminary site plan approval was given for construction of the remaining buildings (Phase 2- sanctuary). Typically, during the construction of the initial phase, all the infrastructure such as parking, lighting and landscaping is installed for all phases in anticipation of the final approval of the remaining development and those items were completed for this application. He opined that the construction of that infrastructure showed that the applicant intended to move forward at some point in the future with Phase 2 (sanctuary) and added that the Board has had 19 years to ascertain how the site functions. He noted that in those 19 years, there were no issues with traffic and no negative impact on the surrounding areas and uses.

A discussion ensued about the ownership of the property to the east on which the Assistant Rabbi's house is located. Mr. Moskowitz opined that that property provided additional buffering for the subject property. Mr. Warner noted that even though both properties were under common control (Rabbi Mendel Herson), each was owned by a separate legal entity and ownership of that easterly property could change at any time.

Mr. Moskowitz reviewed uses of the surrounding properties and roadways in support of his view that this was an ideal site for a house of worship. He testified that in 2001, when the original approvals were granted, this was a permitted use and that the proposed structures met the existing bulk standards. In 2013, the ordinances were changed, and a house of worship became a conditional use. The bulk standards were also changed. Opining that this was an inherently beneficial use which logically fit in the area, he stated that strict adherence to the new bulk standards would create an undue hardship (peculiar and unusual condition of the subject property because of its shape and large conservation easement) for the applicant in that the Phase 2 (sanctuary) could not be built. He did not see any detriment to the surrounding properties or to the municipality as a whole. He also felt that granting the variances was consistent with the intent of the zone plan.

In reviewing Mr. Schley's memo dated November 29, 2018, it was agreed that items #5, #6 and #7 (setback requirements) were pre-existing conditions and would not require variances because they were not being exacerbated by the current application. Mr. Warner opined that item #1 (exceeding maximum floor area ratio) should be considered a "d(4)" variance and items #2, #3 and #4 (bulk conditions) should be considered "d(3)" variances. Mr. Chait agreed. Mr. Schley agreed that item #8 (setback for a recreational area) should also be considered a pre-existing condition since the recreation area was created in 2001 when there were no recreation standards and there was no change proposed for the area. Variances for item #9 (minimum number of parking spaces) were approved in 2001 and the parking areas were installed as approved. As far as item #10 (minimum buffer width), Mr. Schley was unsure as to why the insufficient buffer was not addressed in 2001 however there was an agreement that it would qualify as "c(1)" variance. Mr. Schley stated that the items listed in his memo had been adequately addressed.

Hearing no further questions from either the Board or its professionals, Vice Chairman Zaidel opened the meeting to the public for questions or comments. Hearing none, he closed that portion.

Mr. Chait stated that he had no further witnesses or testimony. He then gave a summary of the application and the actions taken by the applicant since the 2001 approvals showing his intent to carry Phase 2 of the project through to completion. He stated that the subsequent ordinance changes did not extinguish the approvals granted in 2001 and that strict adherence to the current bulk standards would make construction of the sanctuary impossible.

Mr. Warner advised that the "d" variances required a supermajority of five (5) affirmative votes and that since there were only six (6) eligible members, the actual vote could be carried until such a time when a full Board of seven (7) was present. Mr. Chait stated that he wanted to move forward with a vote that evening.

After deliberating, the members felt that the applicant had satisfied the positive criteria required for a "c(1)" or "hardship" variance, a "c(2)" or "flexible c" variance and for the "d(3) – deviation from a standard pertaining to a conditional use" variances and "d(4) – floor area ratio" variance. They also felt that the applicant had satisfied the negative criteria.

Mr. Lane moved to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for Preliminary and Final Site Plan Approval for Phase 2 and for variance relief requested by the applicant subject to the conditions stipulated to by the applicant and as stated during deliberations. Ms. Genirs seconded.

Roll Call: Aye: Genirs, Kleinert, Lane, Pochtar, Tancredi, Zaidel.

Nay: NONE Abstain: NONE Ineligible: Kraus

Motion carried.

COMMENTS FROM MEMBERS OR STAFF - None

ADJOURNMENT

On motion made by Ms. Genirs, seconded by Ms. Kleinert, all in favor and carried, the meeting was adjourned at 10:20 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary Township of Bernards Zoning Board of Adjustment

01/29/19v2ds

Approved as written 02/06/19.