

# **BERNARDS TOWNSHIP PLANNING BOARD**

## **MINUTES<sup>v2</sup>**

Regular Meeting

March 7, 2017

Chairman Plaza called the meeting to order at 7:31 p.m.

### **FLAG SALUTE**

### **OPEN MEETING STATEMENT**

Chairman Plaza read the following open meeting and procedural statements:

"In accordance with the requirements of the Open Public Meetings Law of 1975, notice of this regular 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, Bernardsville, NJ, and to the Courier News, Bridgewater, NJ, 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 p.m. and no new witnesses or testimony heard after 10:30 p.m."

### **ROLL CALL:**

Members Present: Axt, Baldassare, Gaziano, Harris, Kleinert, Malay, Moschello,  
Piedici, Plaza, Ross, Zaidel

Members Absent: NONE

Also Present: Board Attorney Jonathan Drill, Township Planner David Schley,  
Board Engineer Thomas Quinn, Board Secretary Cyndi Kiefer

### **APPROVAL OF RESOLUTIONS**

**Resolution** – The Church of our Lady of Perpetual Help (Holy Cross Cemetery); Block 2301, 23; 145 Mt. Airy Road; Modification of Condition/Extension of Time to Revise Plans #PB14-004A (approval).

Chairman Plaza recused himself from the vote.

Motion made by Mr. Baldassare and seconded by Ms. Kleinert to approve the resolution as drafted.

### **Roll Call:**

Aye: Axt, Baldassare, Harris, Kleinert, Malay, Piedici, Moschello

Nay: NONE

Abstain: NONE

Not Eligible: Gaziano, Ross, Zaidel

Motion carried.

**Resolution** – Schuler, Jason and Gillian; Block 1609, Lot 19; 115 North Maple Avenue; Amended Conditional Use #PB14-006A (approval).

Motion made by Ms. Piedici and seconded by Ms. Kleinert to approve the resolution as drafted.

Roll Call:

Aye: Axt, Baldassare, Harris, Kleinert, Moschello, Piedici, Plaza  
Nay: NONE  
Abstain: NONE  
Not Eligible: Gaziano, Malay, Ross, Zaidel

Motion carried.

### **COMPLETENESS REVIEW**

Moye; Block 11401, Lot 1; 11 Mountain Road; Minor Subdivision #PB14-001

Mr. Schley referred to his memo dated February 28, 2017 which noted that there were ten (10) deficient items. The applicant's engineer advised that the items would be submitted and was aware that the application would be deemed *incomplete* at this meeting. Neither the applicant nor his representatives were present at the meeting.

Committeeman Malay motioned to deem the application *incomplete* and Ms. Axt seconded that motion.

Roll Call:

Aye: Axt, Baldassare, Gaziano, Harris, Kleinert, Malay, Moschello, Plaza, Piedici  
Nay: NONE  
Abstain: NONE  
Not Eligible: Ross, Zaidel

Motion carried.

### **CLOSED SESSION**

**Resolution authorizing closed session for the purpose of:** (1) discussion of pending litigation titled The Islamic Society of Basking Ridge et al. v. Township of Bernards et al., Docket No. 3:16-cv-01369-MLC-LHG (the "litigation"); (2) discussion of pending litigation titled United States of America v. Township of Bernards, NJ and Bernards Township Planning Board, and (3) discussion of matters falling within the scope of attorney-client privilege

Chairman Plaza read the resolution into the record.

Committeeman Malay moved approval and Ms. Axt seconded.

Roll Call:

Aye: Axt, Baldassare, Gaziano, Harris, Kleinert, Malay, Moschello, Plaza, Piedici  
Nay: NONE  
Abstain: NONE  
Not Eligible: Ross, Zaidel

Motion carried.

### **CLOSED SESSION**

**Resolution authorizing closed session for the purpose of:** (1) review of previously approved closed session minutes to determine whether any of such minutes can be made

public, and (2) discussion of matters falling within the attorney-client privilege where confidentiality is required for the attorney to exercise his ethical duties as a lawyer, namely provide legal advice regarding the review of the closed session minutes to determine whether any of such minutes can be made public.

Chairman Plaza read the resolution into the public record.

Mr. Baldassare moved approval and Mayor Gaziano seconded.

Roll Call:

Aye: Axt, Baldassare (motion), Gaziano (second), Harris, Kleinert, Malay, Moschello, Plaza, Piedici  
Nay: NONE  
Abstain: NONE  
Not Eligible: Ross, Zaidel

Motion carried.

The open session of the March 7, 2017 Planning Board meeting was adjourned at 7:40 p.m.

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The open session of the March 7, 2017 Planning Board meeting was reconvened at 8:34 p.m.

#### **RESOLUTION AUTHORIZING RELEASE OF CERTAIN CLOSED SESSION MINUTES**

Chairman Plaza read the resolution into the public record.

Committeeman Malay moved approval of the resolution as drafted and Mr. Moschello seconded.

Roll Call:

Aye: Axt, Baldassare, Gaziano, Harris, Kleinert, Malay, Moschello, Plaza, Piedici  
Nay: NONE  
Abstain: NONE  
Not Eligible: Ross, Zaidel

Motion carried.

Mr. Baldassare motioned to cancel the scheduled March 21, 2017 meeting of the Planning Board. Committeeman Malay seconded and by Voice Vote, the motion to cancel was unanimously approved.

#### **PUBLIC HEARING**

Wells Fargo Bank, NA; Block 1802, Lot 1; 59 South Finley Avenue;  
Preliminary & Final Site Plan #PB16-002

Present: Michael R. Peacock, Esq., Counsel for the Applicant  
Steve Cattani, PE, CME, CGP, Engineer for the Applicant

Chairman Plaza, Ms. Piedici, Ms. Axt, Mr. Harris, Ms. Kleinert, and Mr. Schley recused themselves from the hearing and left the room. Chairman Pro Tem Moschello asked the applicant to proceed with his presentation.

Michael R. Peacock, Esq., attorney with *Nehmad, Perillo & Davis PC*, Egg Harbor Twp., NJ, stated that he would be representing the applicant during this hearing. He advised the Board that the bank was seeking preliminary and final site plan approval along with bulk variances to upgrade the exterior lighting to comply with the new statutory requirements for ATM's (17:16K).

Mr. Drill swore in Mr. Quinn and Mr. Cattani.

Steve Cattani, PE, CME, CGP, engineer for *Dynamic Engineering Consultants PC*, Newtown, PA, cited his professional qualifications and education credentials for the Board. He also confirmed that his license was in good standing and was accepted as an expert in engineering by Chairman Pro Tem Moschello.

Mr. Cattani began his presentation with two exhibits. **Exhibit A-1** was an aerial view of the lighting as it currently existed in the area around the ATM. **Exhibit A-2** detailed the proposed lighting program. He explained that the current lighting (0.5 foot-candles) did not meet the new statutory standards that had been set (2 foot-candles within 50 feet/10 foot-candles within 5 feet of the ATM). He added that there would be no additional illumination at the perimeter of the property and there would be no modification to the current perimeter "cobra" fixtures which seemed to be wired back to the street utility poles. He was unsure as to who had jurisdiction over them.

In response to a question from Mr. Zaidel, Mr. Cattani stated that there were commercial uses to the south, east and north of the property. There was a residential use to the west.

Mr. Cattani advised the board members that by statute, the ATM had to be illuminated 24 hours a day with security lighting within a 50 foot radius of the ATM. The façade lighting would be turned off at a specific time.

In order to meet the new standards, the applicant proposed to add two (2) new light fixtures at a height of 18 feet which required relief from the ordinance requiring a maximum of 12 feet when there was a residential use within 250 feet. The relief was sought in order to cut down on the number of poles necessary to provide the required illumination. If the lighting fixtures were lowered, they would require more fixtures. Mr. Cattani assured the Board that the two (2) proposed locations were as far as possible from the residential property.

Mr. Zaidel asked about light spillage and buffering along the western boundary. Mr. Cattani stated that the ATM was currently lit 24 hours a day by the canopy lights. Those lights would also be replaced by LED lighting. He explained that the proposed LED lighting on the two (2) poles and the lighting on the building would be directional lighting to minimize any light spillage. With the 18 foot high fixture, the cone of lighting would be controlled.

Using **Exhibit A-1**, Mr. Cattani also showed the board members that there was an existing thick buffer of vegetation and mature trees along the western boundary. There was little impact now however once the trees leafed out, there would be no impact.

In response to concerns expressed by the board members, Mr. Cattani assured them that the proposed new pole light fixtures would be shielded and that they were necessary since the canopy lighting alone would be unable to meet the new standards. The new statute pre-empted local ordinances and there was no waiver process available. All banks would have to go through this process in order to comply with the new regulations.

Mr. Quinn advised the board members that three (3) lighting fixtures required relief: two on the poles and one (1) on the building itself. There was discussion about removal of the three (3) cobra lights on the utility poles, two (2) of which were on the applicant's property. Mr. Quinn suggested that the two cobra pole lights on the applicant's property be removed. Since there was a question about jurisdiction, he suggested that if they couldn't be removed, the applicant could request that the power company turn them off. Mr. Drill added that this would be a condition of approval and if the applicant was unable to comply because of jurisdictional issues, he would simply come back to the Planning Board with a letter of explanation and have the condition vacated.

Mr. Quinn added that he was in agreement with the applicant's lighting calculations and the height request. He felt that 18 feet would not be intrusive and that the lighting plan as a whole was on the low end of illumination.

Mr. Drill stated that the applicant was requesting C-2 variances for (1) 3 lights to exceed the maximum height allowed and (2) lighting to exceed the maximum .9 foot-candles. Since the state was mandating this requirement for safety purposes, the positive outweighed the negative. He concluded by saying that the state mandate overrode the municipal ordinances.

Chairman Pro Tem Moschello asked the board members if they had any further questions. Hearing none, he asked if there were any questions from the public. Hearing none, he requested that the board members begin their deliberations.

Mr. Zaidel moved approval of the application and Committeeman Malay seconded.

Roll Call:

Aye:	Baldassare, Gaziano, Malay, Moschello, Ross, Zaidel
Nay:	NONE
Abstain:	NONE

Motion carried.

The board members and staff who had recused themselves returned to the room.

### **ADJOURNMENT**

There being no further comments from either the board members or staff, Chairman Plaza requested a motion to adjourn. Mr. Baldassare moved, Committeeman Malay seconded and the by unanimous Voice Vote, the meeting was adjourned at 9:20 pm.

Respectfully submitted,



Cyndi Kiefer, Secretary  
Bernards Township  
Planning Board

