

## **BERNARDS TOWNSHIP**

### **PLANNING BOARD**

#### **Minutes**

Special Meeting  
Whispering Woods Hearing

August 8, 2017

Chairwoman Piedici called the meeting to order at 7:00 PM.

#### **FLAG SALUTE**

#### **OPEN PUBLIC MEETING STATEMENT**

Chairwoman Piedici read the following open meeting and procedural 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 sent to the Bernardsville News, Bernardsville, NJ, and to the Courier News, Bridgewater, NJ, on July 20, 2017 and was electronically mailed to all those people who have requested individual notice."

#### **ROLL CALL:**

Members Present: Baldassare, Gaziano, Piedici, Ross, Zaidel.

Members Absent: Kleinert, Malay, Moschello.

Also Present: Board Attorney Jonathan Drill, Esq.; Township Planner, David Schley, PP, AICP;  
Board Planner, David Banisch, PP, AICP; Board Engineer, Thomas Quinn, PE;  
Board Secretary, Cyndi Kiefer.

Mr. Baldassare motioned that the absences of Ms. Kleinert, Committeeman Malay and Mr. Moschello be excused. Mayor Gaziano seconded and by unanimous Voice Vote, the motion was carried.

#### **WHISPERING WOODS HEARING**

**Islamic Society of Basking Ridge;** Block 9301, Lot 2; 124 Church Street; Preliminary and Final Site Plan; #PB12-001.

Chairwoman Piedici read the following portion of the agenda into the record:

"Islamic Society of Basking Ridge Inc. (ISBR); Block 9301, Lot 2; Site Plan; #PB12-001 - Application for Preliminary and Final Major Site Plan approval to construct a new House of Worship and related site improvements on property in the R-2 Zone, designated as Lot 2 of Block 9301 on the Tax Map of the Township of Bernards, and located at 124 Church Street in the Liberty Corner section of Bernards Township, New Jersey. This hearing is being conducted in accordance with the requirements of *Whispering Woods v. Middletown Township*, 220 N.J. Super. 161 (Law Div., 1987) to consider terms of settlement of the action filed by the Applicant in the United States District Court for the District of New Jersey entitled 'Islamic Society of Basking Ridge, et al. v. Township of Bernards, et al.' (Case No. 16 Civ. 1369) with respect to the Board's December 8, 2015 denial of the Applicant's application for Preliminary and Final Major Site Plan approval."

"This hearing is being conducted in accordance with the Settlement Agreement between the Islamic Society of Basking Ridge (ISBR) and Mohammad Ali Chaudry, Plaintiffs, v. the Township of Bernards, the Bernards Township Planning Board and its Members in their Official Capacity, Defendants, Case No. 16 Civ. 1369 (MAS)(LHG) and was executed on May 30, 2017. Section 3 of the Settlement Agreement titled, "Whispering Woods Hearing," mandates the sequence for this meeting. Mr. Jon Drill, Planning Board Attorney will now begin the hearing."

Mr. Drill advised the board members and public that in accordance with the Settlement Agreement, at the commencement of the hearing, the Planning Board Attorney had to (1) announce the terms of the Settlement Agreement, (2) submit a copy of the Settlement Agreement into the record and (3) identify for the record the Settlement Site Plan and Accompanying Documents. He then entered a copy of the Settlement Agreement executed on May 30, 2017 into evidence as **Exhibit B-1** and handed it to the Board Secretary, Ms. Kiefer. He noted that the Settlement Agreement was signed on page 14 by Carolyn Gaziano, Mayor of the Township of Bernards and by Hiram B. Carey, III, Esq. on behalf of the Bernards Township Planning Board. There was also a separate page 14 signed by Mohammad Ali Chaudry on behalf of himself and as President of the ISBR.

Mr. Drill then listed the documents contained in the Final Settlement Site Plan which were submitted by the Islamic Society of Basking Ridge (ISBR) on July 28, 2017 as follows: (1) Preliminary and Final Site Plan set containing 15 sheets (sheets C-01 through C-13, S-01 and S-02) prepared by *AWZ Engineering Inc.* last revised through July 27, 2017, (2) Vehicle Circulation and Fire Service Plan (Sheet C-13) printed in color prepared by *AWZ Engineering Inc.* revised through July 17, 2017 (It was noted that a black and white print of this sheet is included in the 15-sheet plan set referenced in submission 1 above.), (3) Architectural plan set containing 4 sheets (sheets A-00, A-01, A-03, A-04) prepared by Daniel W. Lincoln, RA, and revised through July 19, 2017, (4) "Topographic and Boundary Survey" prepared by *Sun Land Surveying Inc.* dated October 10, 2011 and revised through August 25, 2015, (5) Stormwater Management Report prepared by *AWZ Engineers Inc.*, dated April 17, 2012 and revised July 25, 2017 (This report includes an "Existing Drainage Area Map" – sheet EDA-1, a "Proposed Drainage Area Map" – sheet PDA-1 and a "Proposed Inlet Area Map – sheet IDA-1 all dated March 30, 2012 and revised through July 27, 2017) and (6) Stormwater Management Facility Operations & Maintenance Manual prepared by *AWZ Engineering Inc.*, dated July 15, 2013 and revised July 17, 2017.

Mr. Drill stated that in accordance with the terms of the Settlement Agreement, he would read verbatim paragraphs (1), (2) and (3) of the Terms of Agreement which began on page 3. He would then read only the titles of paragraphs 4 through 25. He added that signed copies of the Settlement Agreement had been available at the Municipal Clerk's office and also posted on the Township website since June 7, 2017.

Mr. Drill read the first section entitled, "1: Settlement Site Plan" in its entirety into the record. He made a correction to the footnote on page 3 which read, "...The last considered Architectural Drawings...and Sheets A-03, A-04, last revised on December 20, 2013." The "A-04" reference should read "A-00." He commented for the record that the Final Site Plan and Accompanying Documents were received on July 28, 2017 which satisfied the MLUL required 10 day period. The July 28<sup>th</sup> submission was outside the 10 day period called for in Paragraph 1 of the Settlement Agreement but within the 5 day grace period provided for in Paragraph 22.

Mr. Drill read the second paragraph entitled, "2: Settlement Payment" in its entirety into the record.

Mr. Drill read the third paragraph entitled, "3: Whispering Woods Hearing" in its entirety into the record. He noted that this meeting had complied with all the requirements as set forth in the

Settlement Agreement. After he finished reading Section 3(h), Mr. Drill read the following into the record:

"With regard to this clause of the Settlement Agreement, I would like to make clear that public comments and questions during this evening's meeting can address all issues relevant to the site plan application under review, even if those comments or questions involve reference to Islam or Muslims. The Planning Board will conduct this Special Meeting in a manner consistent with the laws of New Jersey and the U.S. Constitution, and will consider any objections in context when and if they are made in a manner consistent with those laws. However, the Planning Board reserves the right to exclude from its consideration any discriminatory or inflammatory statements unrelated to the land use."

Mr. Drill read the titles only of the remaining paragraphs of the Terms of Agreement:

4. Payment of Professional Fees
5. Cooperation
6. RLUIPA, Diversity, and Inclusion Training
7. Law Governing ISBR's Application (He added that the ISBR's application for Preliminary and Final Site Plan Approval including all proceedings pursuant to the Settlement Agreement will be governed by the Township's zoning and land use ordinances which were in effect on April 20, 2012.)
8. Ordinance #2242
9. Legal Challenges to this Agreement or the Settlement Site Plan
10. Enforcement by Judicial Order, Jurisdiction Retained, and Removal
11. Incorporation of Defendant's Resolution with the United States
12. Effective Date
13. Partial Release of Claims by Plaintiff
14. Release of All Claims by Plaintiff and Defendants
15. Dismissal of the Action
16. Claims Not Assigned
17. Independent Judgment and No Other Promises
18. Authority to Enter Agreement
19. Agreement Jointly Prepared
20. Separate and Divisible Terms
21. Entire Agreement and Modifications
22. No Waiver and Cure Period
23. Notice and Submissions
24. Governing Law and Forum
25. Execution in Counterparts

Mr. Drill stated that this completed the required announcements as prescribed by the Settlement Agreement.

Chairwoman Piedici read the following list of "interested parties" consisting of property owners within 200 feet of the subject property: Harrison Brook LLC (433 Somerville Road), Tarun Sethi and Charu Sethi (477 Somerville Road), English Farm Associates LP (3613 Valley Road), Mukhtiar Singh (108 Church Street), Christopher J. Quick and Lorretta A. Quick (114 Church Street), Richard K. Kenworthy (131 Church Street), Humberto O. Garcia and Allyson T. Garcia (129 Church Street), David Tancredi and Kelly Tancredi (125 Church Street), David Patterson (121 Church Street), Liberty Corner Fire Company (95 Church Street), Joseph Abbate and Carla Abbate (485 Somerville Road). She advised the "interested parties" that *each* owner would have three (3) minutes to question the professionals'

testimony. The three (3) minutes would include only the question, not the answer and that a timekeeper was seated at a table below. In addition, owners of parcels could not add their three minutes to another owner's three minutes. Once the professionals' testimony had concluded, she would call each owner to the podium for the question period.

Mr. Schley, Mr. Quinn and Mr. Banisch were duly sworn in by Mr. Drill. Each identified themselves for the record.

Chairwoman Piedici asked the board members to leave the dais and to be seated in first rows in the audience in order to better view the visual presentations accompanying Mr. Schley's testimony.

Mr. Schley referred to his memo dated August 4, 2017 and used a portion of Sheet C-03 (Preliminary and Final Site Plan last revised July 27, 2017) which was projected onto the overhead screen to describe 11 changes that had been made in accordance with the Settlement Agreement. The changes were as follows:

1. Total number of parking spaces had been reduced from 107 to 50 and the plan now included an overflow parking area sized to accommodate 14 cars.
2. The easterly detention basin (basin #2) had been reduced in size and shifted away from the east side property line into the area vacated by the prior easterly row of 31 parking spaces.
3. The swale along the east side property line had been revised and two (2) yard inlets had been added within the front yard portion of the swale.
4. The 6' high solid wood fence had been shifted away from the east side property line increasing the fence setback from 2.5' to 7.5' and was no longer connected to the 4' high post and rail fence enclosing the detention basin. The basin, previously enclosed by both fences in combination, was now enclosed solely by the 4' high post and rail fence.
5. The tree plantings proposed along the 6' high solid wood fence had been shifted away from the east side property line, consistent with the shifting of the fence.
6. The row of inkberry shrubs proposed as screening between the westerly row of parking spaces and the adjacent retaining wall had been eliminated. The guiderail along the top of the retaining wall had been changed from a 10" high timber rail to two (2) stacked 12" high timber rails, forming a 24" high timber rail screen on top of the 6" high exposed wall face.
7. The tree plantings proposed as screening along the low (west) side of the retaining wall had been changed from a single row to a double, staggered row.
8. The parking lot and building light fixtures had been changed from metal halide to LED.
9. The granite block curbing around the building and along the outer edges of landscaped areas in the parking lot had been changed from vertical to mountable curb.
10. The fire hydrant behind the front detention basin had been relocated to the west side of the basin and a hydrant had been added behind the building. The fire department connection had been relocated from the front wall of the building to the west side of the entrance driveway.
11. The Settlement Site Plan reflected various other changes in site layout, grading, drainage, landscaping and lighting stemming from the above changes.

Once all the board members returned to the dais, Chairwoman Piedici asked if there were any questions. There were none.

Robert S. Raymar, Esq., attorney with *Hellring Lindeman Goldstein & Siegal LLP* and counsel for the Applicant asked that the professionals' reports be identified for the record. Mr. Drill listed the reports as follows: (1) Memo dated August 3, 2017 from Board Engineer, Thomas J. Quinn, PE, CME, (2) Memo dated August 3, 2017 from Board Planner, David J. Banisch, PP, AICP, (3) Memo dated August 4, 2017 from Township Planner, David Schley, PP, AICP, (4) Supplement Memo dated August 7, 2017

from Mr. Schley, (5) Agency Review Letter dated August 4, 2017 from the Somerset County Planning Board, (6) Extension of the Letter of Interpretation (LOI) dated June 10, 2017 from the New Jersey Department of Environmental Protection which was submitted to the Board by the Applicant and (7) Memo dated July 5, 2017 from the Township of Bernards Fire Official, Andrew Buterbaugh submitted by Mr. Schley. Mr. Drill asked Mr. Raymar if he was aware of any other reports or memos and Mr. Raymar responded that he was not.

Mr. Raymar noted that two of the reports requested that the Applicant accept certain conditions and he wanted the record to reflect that the Applicant accepted those conditions: one was listed in Item 3 of Mr. Quinn's memo dated August 3, 2017 and the others were listed as Items 1 through 6 in the "Specific Comments" section of Mr. Schley's memo dated August 4, 2017.

Mr. Raymar requested that a letter from Michael Barth dated August 8, 2017 to Board Secretary, Cyndi Kiefer along with her response letter dated August 8, 2017 be entered into the record. Mr. Barth's letter was delivered by Express Mail and cc'd to Mr. Raymar but not to Mr. Drill. Ms. Kiefer's response was both emailed and postal mailed to Mr. Barth. Mr. Drill noted that the letters were part of a record that the board members had not seen since such correspondence is not normally distributed to them. He stated the letters would be shown to the board members during a subsequent recess.

Finally, Mr. Raymar submitted an Affidavit of Proof of Publication from the Bernardsville News.

Chairwoman Piedici opened the meeting to "interested parties" for questions and each property owner was individually called and asked to approach the podium with questions.

Joseph Abbate, 485 Somerville Road, Liberty Corner, questioned whether there would be any control over overflow parking in the streets and the proposed landscaping. Mr. Schley responded that concerns about parking on Church Street should be addressed to Somerset County and concerns about parking on Somerville Road should be addressed to the Township Engineer would oversee the parking issue and that a landscaping committee would be appointed to review the landscaping.

None of the other "interested parties" came to the podium.

Hearing no further questions from the "interested parties," Chairwoman Piedici closed that portion of the meeting and opened the meeting to sworn statements by both "interested parties" and "residents." She advised everyone that each would receive a maximum of five (5) minutes to make their comments and that they would be sworn in by Mr. Drill prior to making those comments. Each would also have to swear that they resided in the Township of Bernards.

The following "interested parties" and "residents" were duly sworn in by Mr. Drill provided comments:

Thomas Mahala, 51 Layton Road, Far Hills  
Lloyd Martinson, 4 Carriage Way, Basking Ridge  
Michael C. Macchiarola, 34 Mine Brook Road, Far Hills  
Eileen Fitzpatrick, 277 Mt. Prospect Road, Far Hills  
Jeffrey W. Plaza, 6 Frederick Court, Basking Ridge  
Kevin C. Orr, 20 Squire Court, Basking Ridge  
Loretta Quick, 114 Church Street, Liberty Corner  
Kathleen Mahala, 51 Layton Road, Far Hills  
Cody Smith, 36 Royal Oak Drive, Far Hills  
Michael Barth, 14 Annin Road, Far Hills

Linda Waldruff, 111 Annin Road, Far Hills

After responding to some of the comments that had been made, Mr. Raymar concluded by stating that the current plans were reviewed by the Township's professionals and that there were no unmet requirements either by the Settlement Agreement or the Professionals.

Hearing no further comments, Chairwoman Piedici closed that portion of the meeting and opened the meeting to deliberations.

In response to a question from Mr. Baldassare, all three board professionals agreed that the current plans complied with the Settlement Agreement.

In response to a question from Mr. Baldassare concerning comments about conflict of interest concerns voiced by two members of the public, Mr. Drill stated that those individuals could bring their concerns to a court of law, if they so desired.

Mayor Gaziano asked if Mr. Raymar would stipulate to all the suggestions in Mr. Schley's memo dated August 4, 2017. Mr. Raymar agreed.

During deliberations, Chairwoman Piedici, Mayor Gaziano and Mr. Baldassare all voiced their support for approval of the application.

Mr. Zaidel moved approval of the application as follows:

"Madam Chair, I move to approve the Application and all required relief with the conditions set forth in the professional reports and subject to the Somerset County Planning Board approval and the Bernards Township Sewerage Authority approval and to ratify the settlement."

Mr. Ross seconded the motion.

**Roll Call:**


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|----------|---|
| Aye:     | Baldassare, Gaziano, Piedici, Ross, Zaidel. |
| Nay:     | NONE  |
| Abstain: | NONE  |

Motion carried unanimously.

**ADJOURNMENT**

Mayor Gaziano motioned, Mr. Baldassare seconded and by unanimous Voice Vote, the meeting was adjourned at 9:04 PM.

Respectfully submitted,



Cyndi Kiefer, Secretary  
Township of Bernards  
Planning Board