

# **BERNARDS TOWNSHIP**

## **PLANNING BOARD**

### **MINUTES v2**

Regular Meeting

August 18, 2020

Chairwoman Piedici called the meeting to order at 7:33 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 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 sent to the Bernardsville News, Whippany, NJ, and to the Courier News, Bridgewater, NJ, on January 8, 2020; and was electronically mailed to those people who have requested individual notice.

The following procedure has been adopted by the Bernards Township Planning Board. There will be no new cases heard after 10:00 PM and no new witnesses or testimony heard after 10:30 PM.

### **ROLL CALL:**

Members Present: Asay, Damurjian, \*Esposito, Hurley, McNally, Manduke, Piedici

Members Absent: Crane (recused), Harris (recused), Mastrangelo

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

\*Present via Telephone

Moved by Ms. Asay seconded by Ms. Manduke, all in favor and carried, that the absences of Mr. Crane and Committeewoman Harris be excused. Moved by Mr. Hurley, seconded by Mr. McNally, all in favor and carried, that the absence of Ms. Mastrangelo be excused.

### **APPROVAL OF MINUTES**

[July 7, 2020 – Regular Session](#) - On motion made by Ms. Asay and seconded by Ms. Manduke all eligible in favor and carried, the minutes were adopted as drafted. Abstention for absence: Piedici

### **PUBLIC HEARING**

[Moye, William & Carol](#); Block 11401, Lot 11; 11 Mountain Road; Minor Subdivision, Bulk Variances; #PB17-001

Chairwoman Piedici announced that this application shall be carried to a future date yet to be determined.

### **PUBLIC HEARING**

[Martin, J./Berman, L.](#); Block 2001, Lot 4; 35 Spruce Street; Minor Subdivision, Bulk Variance; PB19-006

Present: Frederick B. Zelle, Attorney for the Applicants  
Rudolf L. Holzmann, PE, Engineer for the Applicants  
James Martin, Applicant

Chairwoman Piedici, Mr. Damurjian and Mr. Hurley stated that they had visited the site and gave their observations.

Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicants. He gave a brief description of the application noting that while the subject property is located in the R-2 Zone (minimum 2-acre lot size), the entire neighborhood to the east is

in the R-7 Zone (minimum ½ acre lot size). The two (2) lots resulting from the proposed subdivision (approximately 4.0 acres and 3.5 acres) would be oversized for both zones. Variance relief is required for minimum front yard setback for proposed Lot 4.01 (with an existing dwelling) and for minimum lot frontage along a public right-of way for both proposed Lots 4.01 and 4.02. Finally, relief must be sought for proposed Lot 4.01 since it would have no frontage on a public street as required by ordinance. He explained that Spruce Street ends at the existing property (Lot 4) which has 25 feet of frontage along a public street. The remainder of the lot frontage is located along a private access easement (gravel driveway) that has been legal for many years. Finally, Mr. Zelley noted that depending on the orientation of the house on Lot 5, a side yard setback might be required for the new dwelling on proposed Lot 4.02.

Mr. Holzmann, Mr. Martin and the Board's Professionals were duly sworn by Mr. Drill.

Rudolf L. Holzmann, PE, engineer with the firm of *Yannaccone, Villa & Aldrich LLC*, Chester, NJ, was accepted by the Board as an expert in civil engineering. He gave a brief description of the property noting that it was irregularly shaped and over seven (7) acres in size. There are no steep slopes, wetlands, buffers or regulated streams. There is one existing dwelling, a barn and a shed.

Mr. Holzmann noted that in addition to existing Lot 4, Lots 25, 3.01 and 3 also use the private access easement/gravel driveway.

Mr. Holzmann discussed the proposed subdivision and variances required for each resulting lot. He stated that because proposed Lot 4.02 requires variances, the ordinance requires that a house be shown on the plans. The mirror-image footprint of the existing house is shown conceptually on the plans since the Applicant does not plan to develop the lot. He provided testimony about tree removal and replacement and stormwater management.

A discussion ensued about the common easement/gravel driveway that is used by Lots 3, 3.01, 25 and 4 (if approved, this would also be the access for proposed Lots 4.01 and 4.02). Mr. Holzmann testified that there is no other access for these lots and that the private easement would provide adequate access for emergency vehicles. Mr. Zelley noted that this easement is part of the subdivision that created the four (4) original lots. James Martin, Applicant residing at 35 Spruce Street, testified that each property owner maintains the easement area that is adjacent to their property. In response to a question from Mr. Drill, Mr. Berman said that there are no written agreements between the property owners and that there has never been an issue with compliance. Mr. Schley noted that during the last subdivision (2006) which added the lot at the end of the easement, there was no formal maintenance agreement and the Planning Board did not require it.

Chairwoman Piedici noted that because there would now be five (5) dwellings using the common driveway, an exception to the Residential Site Improvement Standards (RSIS) would be required since private driveways with more than four (4) dwellings are subject to those regulations. Mr. Holzmann agreed.

Mr. Holzmann addressed the comments in Mr. Schley's memo dated 08/07/2020 and those made in Mr. Banisch's memo dated 08/14/2020.

A discussion ensued about a comment in the Environmental Commission's memo dated 06/23/2020 which noted that a critical forest habitat for the wood thrush, a species of special concern, exists along portions of both proposed lots. Via straw poll, the Board unanimously decided not to impose a condition delineating an area of no disturbance for those areas.

Hearing no further questions from the Board or its Professionals, Chairwoman Piedici opened the meeting to the public for questions of the witness.

Peter McNally, 23 Spruce Street, asked about the type of landscape screening that would be provided. Chairwoman Piedici stated that a landscaping committee composed of board members would ensure that adequate buffering is provided. The Applicant will be required to serve notice as to when that committee will be visiting the site so that neighbors' input could be included. Mr. McNally also expressed concern about traffic and roadside parking during construction of the new dwelling. Mr. Drill advised that the Applicant

could stipulate to a condition which would delineate an area on site for construction equipment parking to alleviate the parking concerns.

Michael J. Kirkwood, 28 Ash Street, asked why a mirror-image of the existing house was used in the plans. Mr. Holzmann responded that the Applicant had to submit an architectural plan in order to comply with the ordinance and that the actual dwelling might vary. Mr. Zelley added that any house built would have to conform to the zoning ordinances. The Applicant stipulated that any dwelling constructed on Lot 4.02 could be no closer than 60.3 feet to the property line of Lot 5 which is more than what is required by ordinance.

Hearing no further questions from either the Board, its Professionals or the public, Chairwoman Piedici opened the meeting to the public for comments.

Peter McNally, 23 Spruce Street, was duly sworn by Mr. Drill. He remarked that his property overlooks the subject property which up until recently, was densely wooded. Mr. Schley stated that he had included a comment in his memo stating that the plans should be revised to include replacement trees for all previously removed living trees.

Kathleen Kirkwood, 28 Ash Street, was duly sworn by Mr. Drill and commented on the negative effect the tree removal had had on her privacy.

Hearing no further comments, that portion of the hearing was closed.

A discussion ensued as to whether to include a cap on the square footage of any proposed dwelling on proposed Lot 4.02. A straw poll was conducted and the Board decided not to impose a limit.

By unanimous straw poll, the Board indicated that it felt that the Applicant had not satisfied the negative or positive criteria for either a "c-1 hardship" variance or "c-2 benefits outweigh detriments" variance required in order grant the requested variance relief.

After deliberations, Ms. Asay moved to deny the application. Ms. Manduke seconded. Mr. Zelley asked for a recess to confer with his client.

\* \* \* *The Open Session was recessed at 9:40 PM and reconvened at 9:48 PM.* \* \* \*

Mr. Zelley asked the Board for a continuance to the September 8, 2020 meeting so that a planner could be brought in to provide further testimony. Via straw poll, the Board agreed with Mr. Drill's assertion that since there had been deliberations and motions, the application would be denied if the Applicant appeared without a planner. Ms. Asay and Ms. Manduke amended their motions accordingly.

Mr. Zelley agreed to an extension of time to act to November 30, 2020.

**COMMENTS FROM STAFF OR BOARD MEMBERS** - None

**ADJOURN**

Ms. Asay moved, Mr. McNally seconded, all in favor and carried, and the meeting was adjourned at 9:55 PM.

Respectfully submitted,

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Cyndi Kiefer, Secretary  
Township of Bernards  
Planning Board

*Adopted as drafted 09-08-2020*

08/31/2020 dskpjd