

BERNARDS TOWNSHIP

PLANNING BOARD

MINUTES v3

Regular Meeting
September 8, 2020

Chairwoman Piedici called the meeting to order at 7:31 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.

OATH OF OFFICE

Mr. Drill swore in the following member:

Kathleen Mastrangelo, Class IV Alternate 1, filling unexpired 2-year term of Paul Damurjian expiring 12/31/21

ROLL CALL:

Members Present: Asay, Damurjian, Esposito, Hurley, McNally, Manduke, Mastrangelo, Piedici
Members Absent: Crane (recused), Harris (recused)
Also Present: Board Attorney, Jonathan E. Drill, Esq.; Township Planner, David Schley, PP, AICP;
Board Planner, David Banisch, PP, AICP; Board Secretary, Cyndi Kiefer

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

APPROVAL OF MINUTES

August 18, 2020 – Regular Session- On motion made by Ms. Asay and seconded by Mr. McNally, all eligible in favor and carried, the minutes were adopted as drafted. Abstention for absence: Mastrangelo

PUBLIC HEARING (continued from 08/18/2020)

[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
Jessica Caldwell, PP, AICP, Planner for the Applicants
James Martin, Applicant

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 summary of the application noting that it is a minor subdivision requiring variance relief mainly because the resulting two (2) lots will be deficient in minimum lot frontage or have no lot frontage at all. He stated that because at the previous meeting (08/18/2020), the Board felt that the criteria required for "c(1)" or "hardship" variances had not been satisfied, Jessica Caldwell, PP, AICP, was present at this meeting to provide testimony to satisfy both the positive and negative criteria for the requested relief.

Jessica Caldwell, PP, AICP, LEED GA, principal of the firm of *J. Caldwell & Associates LLC*, Newton, NJ, was accepted by the Board as an expert in the field of professional planning and duly sworn by Mr. Drill.

Ms. Caldwell entered **Exhibit A-1**, an aerial map of the subject area with a parcel overlay, and **Exhibit A-2**, a listing of the blocks and lots shown in the 500-foot buffer area on that map, into evidence. She testified that the exhibits illustrated that the subject property, Lot 4, is significantly larger than all the other lots shown in the R-2 Zone (minimum 2 acres) and she opined that by subdividing Lot 4 into two (2) smaller properties, it would bring the subject lots closer in conformance to the other lots in that zone. In addition, because these larger, R-2 Zone lots back up to Interstate 287, they provide a buffer from the highway for the adjacent smaller R-7 lots (minimum ½ acre). Ms. Caldwell reviewed the variance relief sought by the Applicants including the requirement for lot frontage and articulated that the Township ordinance requiring frontage on a public street mirrors the Municipal Land Use Law. She noted that proposed lot 4.01, which would have no public street frontage, would have significant frontage on the private driveway/access easement and that the driveway would be at maximum capacity. She opined that the private driveway provided a more rural look and was in character with the larger R-2 lots.

Ms. Caldwell provided testimony to satisfy both the positive and negative criteria for “c(2)” or “benefits outweigh detriments” for all the relief sought with the exception of the minimum front yard setback variance required for the existing dwelling. She opined that it qualifies for a “c(1)” or “hardship” variance and provided testimony to support that assumption.

Responding to questions from the Board, Ms. Caldwell clarified her testimony as it pertained to the private driveway/access easement, emergency access and Residential Site Improvement Standards.

Mr. McNally stated, for the record, that the neighbor who had spoken at the 08/18/2020 hearing, Peter McNally, 23 Spruce Street, was not related to him. Ms. Mastrangelo noted that she had visited the site.

Chairwoman Piedici stated that the hearing was open to the public for questions of the witness and provided a telephone number so that those who were not in attendance due to Covid-19 concerns could call in. Hearing none, she closed that portion of the hearing and opened the hearing to the public for comments. Hearing none, that portion was closed.

Mr. Zelly gave a brief summation noting that the subject property could have been subdivided into three (3) lots however, in order to maintain the rural character of the area, the Applicants are only asking for two (2) lots. He opined that in 2006, the Planning Board had approved, based on hardship, an identical minor subdivision application (Guist, PB05-013) which created two (2) of the lots that presently share the private driveway/access easement. Finally, he noted that there had been no negative comments from the fire company or the rescue squad and that any impact on traffic created from a future house on proposed Lot 4.02 (currently undeveloped) would be *di minimus* especially since that lot is the closest to the improved portion of Spruce Street.

A discussion ensued about the lack of a formal maintenance agreement between the property owners along the private driveway and about the number of trees that the Applicants had removed without benefit of a permit, prior to filing this application. The following three (3) straw polls were taken:

- As stated in the 2006 Planning Board Resolution (PB05-013), the private driveway shall be maintained along its *entire length* at 18' in width (currently less than that in areas as verified by the Applicants' professional engineer, Rudolf L. Holzmann). The Board supported this as a condition of approval for the current application.
- Mr. Zelly did not withdraw his initial assertion that the frontage variances requested qualified for “c(1)” or “hardship” relief. The Board did not feel that the relief was justified under “c(1)” criteria.
- The Board felt that the positive and negative criteria had been met for “c(2)” or “benefits outweigh detriments” variance relief subject to the conditions stipulated to by the Applicants.

**TOWNSHIP OF BERNARDS
2019 PLANNING BOARD APPLICATION**

- | | |
|--|---|
| <input checked="" type="checkbox"/> Minor Subdivision | <input type="checkbox"/> Site Plan - Preliminary |
| <input type="checkbox"/> Major Subdivision - Preliminary | <input type="checkbox"/> Site Plan - Final |
| <input type="checkbox"/> Major Subdivision - Final | <input type="checkbox"/> Informal Review |
| <input type="checkbox"/> Conditional Use | <input checked="" type="checkbox"/> Other (specify): <u>"C" Variance for Frontage</u> |

1. APPLICANT: James Martin and Lois Berman

Address: 35 Spruce Street, Basking Ridge, New Jersey 07920

Phone: (home) (908) 766-9863 (work) _____ (mobile) (973) 796-4490

Email (will be used for official notifications): LoLoBerman7@gmail.com

2. OWNER (if different from applicant): Same

Address: _____

Phone: _____ Email (will be used for official notifications): _____

3. ATTORNEY: Frederick B. Zelle / Bisogno, Loeffler & Zelle, L.L.C.

Address: 88 South Finley Avenue, P.O. Box 408, Basking Ridge, New Jersey 07920

Phone: (908) 766-6666 Email (will be used for official notifications): fzelle@baskingridgelaw.com

4. OTHER PROFESSIONALS (Engineer, Architect, etc. Attach additional sheet if necessary):

Name: Rudy Holzmann / Yannaccone, Villa & Aldrich, LLC Profession: Professional Engineer

Address: 460 Main Street, P.O. Box 459, Chester, New Jersey 07930

Phone: (908) 879-6646 Email (will be used for official notifications): r.holzmann@yvallc.com

5. PROPERTY INFORMATION: Block(s): 2001 Lot(s): 4 Zone: R-2

Street Address: 35 Spruce Street Total Area (square feet/acres): 304,911 sf / 7.0 ac

6. ARE THERE ANY PENDING OR PRIOR PLANNING BOARD OR BOARD OF ADJUSTMENT APPLICATIONS INVOLVING THE PROPERTY? No Yes (if yes, explain or attach Board resolution) _____

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? No Yes (if yes, explain) Frontage and front yard setback

8. ARE THERE ANY DEED RESTRICTIONS OR EASEMENTS AFFECTING THE PROPERTY?

No Yes (if yes, explain and attach copy) _____

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: _____

Minor subdivision of 7.0 acre improved lot into 2 lots. Both lots would be conforming except as to frontage and as to the continuing deficient front yard setback of the existing home (on proposed Lot 4.01).

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.): _____

Variance for lot frontage. Ordinance Section 21-15.1(d)(1) and Table 501

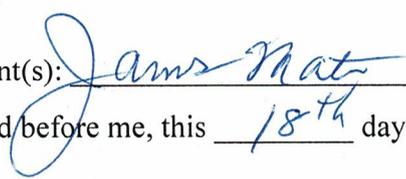
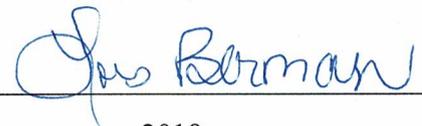
11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: _____

Please see Addendum

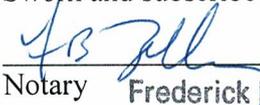
12. NOTARIZED SIGNATURES (ALL APPLICANTS AND OWNERS MUST SIGN):

APPLICANT(S) SIGN HERE:

I/we, James Martin and Lois Berman hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s):  and 

Sworn and subscribed before me, this 18th day of October, 2019.


Notary **Frederick B. Zelle**
An Attorney at Law of the
State of New Jersey

OWNER(S) SIGN HERE (IF APPLICANT IS NOT THE OWNER):

If the application is made by a person or entity other than the property owner, or by less than all of the property owners, then the property owner or the additional owners must complete the following:

I/we, _____ the owner(s) of the property described in this application, hereby authorize _____ to act as my/our agent for purposes of making and prosecuting this application and I/we hereby consent to the variance relief (if any) granted and all conditions of approval thereof.

Signature of owner(s): _____

Sworn and subscribed before me, this _____ day of _____, 2019.

Notary

ADDENDUM TO MARTIN AND BERMAN MINOR SUBDIVISION APPLICATION
BERNARDS TOWNSHIP PLANING BOARD
BLOCK 2001, LOT 4 – 35 SPRUCE STREET

NARRATIVE DESCRIPTION

This application is for a minor subdivision with a “C” variance for frontage. The subject property, 35 Spruce Street, Block 2001, Lot 4, is a 7.0 acre parcel (measured from the edge of the easement access on which it faces) located in the R-2 Zone, at the end of Spruce Street, a dead end street with no *cul de sac*. It fronts on the northern half (25 feet) of the western end of Spruce Street, with the southern half thereof being contiguous to the staff of Lot 25 (a flag lot). There is a private access easement that runs through the said staff (along the eastern edge of the subject property) and then westward along the southern edge of the property, which provides access to Lots 3, 3.01 and 25, as well as to the existing residence on the subject lot. Proposed Lot 4.01 (which would contain the existing home) would continue to have access from the easement, while Proposed Lot 4.02 would essentially have access from the end of Spruce Street.

Both proposed lots would be conforming to the bulk requirements of the zoning ordinance, except that the deficient front yard setback of the existing home would remain unchanged and both lots would not conform to the frontage requirement. As stated, the lot is located at the end of Spruce Street and its total frontage on that street is limited to half of the width of the right of way.

It is respectfully submitted that the variance required would be a “C-1” hardship variance, since the lot’s frontage at the end of Spruce Street is an existing condition over which the Applicant has no control. Granting of the variance would cause no substantial detriment to the public good and would not substantially impair the intent and the purpose of the zone plan and zoning ordinance. There is ample space within the existing frontage for a residential driveway for the proposed new lot and, as stated, the existing home is accessed from the private easement.

With the exception of the variance discussed above, the Applicant believes that no other variance, waiver or exception is required in order to grant the approval requested. However, if the Board directs that additional variance(s), waiver(s) or exception(s) is/are needed, the Applicant may seek the same in accordance with such direction.

Respectfully Submitted,

BISOGNO, LOEFFLER & ZELLEY, LLC


By: Frederick B. Zelle, Esq.
Attorneys for the Applicants
James Martin and Lois Berman

Dated: November 18, 2019