

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES

Special Meeting
March 15, 2018

CALL TO ORDER

Chairman Rhatican called the meeting to order at 7:34 PM.

OPEN MEETING STATEMENT

Chairman Rhatican read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this 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 sent to the Bernardsville News, Bernardsville, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk all on January 11, 2017 and was electronically mailed to all those people who have requested individual notice."

"The following procedure has been adopted by the Bernards Township Board of Adjustment. 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: Breslin, Bellows, Genirs, Kleinert, Pozner, Rhatican, Zaidel.
Members Late: NONE
Members Absent: Lane, Mastrangelo.
Also Present: Board Attorney, Amanda Wolfe; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer.

On motion by Ms. Kleinert, second by Mr. Breslin, the absences of Mr. Lane and Ms. Mastrangelo were excused by unanimous Voice Vote.

APPROVAL OF MINUTES

February 7, 2018 - Regular Session - Mr. Breslin moved approval of the minutes as drafted. Ms. Genirs seconded.

Roll Call:

Aye: Breslin, Bellows, Genirs, Kleinert, Pozner, Zaidel.

Nay: NONE

Motion carried.

February 7, 2018 Closed Session - Ms. Genirs moved approval of the minutes as drafted. Ms. Pozner seconded.

Roll Call:

Aye: Breslin, Bellows, Genirs, Kleinert, Pozner, Zaidel.

Nay: NONE

Motion carried.

APPROVAL OF RESOLUTIONS

Resolution#ZB17-041: Eorio, Daniel & Lyndsey, Block 1602, Lot 12; 157 South Maple Avenue; Bulk Variances; (approved).

Mr. Zaidel moved approval of the resolution as drafted. Ms. Kleinert seconded.

Roll Call:

Aye: Breslin, Bellows, Genirs, Kleinert, Pozner, Zaidel.

Nay: NONE

Motion carried.

Resolution #ZB17-038: Dreyling, E., Aron, J.; Dreyling, Roger & Andrea; Block 7201, Lot 5.01; 128 South Stonehedge Drive; Bulk Variances; (approved).

Mr. Zaidel moved approval of the resolution as drafted. Mr. Breslin seconded.

Roll Call:

Aye: Breslin, Bellows, Kleinert, Pozner, Zaidel.

Nay: NONE

Motion carried.

Resolution #ZB17-040: Dwek, D. & Morris, J.; Block 5901, Lot 23; 5 Joanna Court; Bulk Variances; (approved).

Mr. Breslin moved approval of the resolution as drafted. Ms. Genirs seconded.

Roll Call:

Aye: Breslin, Bellows, Genirs, Kleinert, Pozner, Zaidel.

Nay: NONE

Motion carried.

Resolution #ZB17-042: Brown-Klinger, S. & Musso, M.; Block 2001; Lot 34; 65 South Alward Avenue; Bulk Variances; (approved).

Mr. Breslin moved approval of the resolution as drafted. Ms. Kleinert seconded.

Roll Call:

Aye: Breslin, Bellows, Genirs, Kleinert, Pozner, Zaidel.

Nay: NONE

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Calise, Joseph & April; Block 5901, Lot 8; 40 Sunnybrook Road; Bulk Variances; #ZB17-043.

Chairman Rhatican announced that at the applicant's request, this application shall be carried to the regularly scheduled meeting on April 4, 2018 with no further notice.

PUBLIC HEARING

Li, Wei & Yan, Shu; Block 7902, Lot 22, 65 Goltra Drive; Extension of Prior Approval; #ZB17-016A.

Present: Wei Li & Shu Yan, Applicants

The applicants were duly sworn by Ms. Wolfe.

Mr. Li explained that due to an illness in the family and the impending birth of his child, he had been unable to pursue the project approved in Application #17-016.

Ms. Genirs moved to grant the application for a one year extension of approval to August 9, 2019 as requested by the applicant. Ms. Pozner seconded.

Roll Call:

Aye: Breslin, Bellows, Genirs, Kleinert, Pozner, Rhatican, Zaidel.

Nay: NONE

Abstain: NONE

Motion carried.

Mr. Zaidel moved to approve the Resolution as drafted memorializing the Board's decision to grant the application for extension of approval to August 9, 2019 as requested by the applicant. Ms. Kleinert seconded.

Roll Call:

Aye: Breslin, Bellows, Genirs, Kleinert, Pozner, Rhatican, Zaidel.

Nay: NONE

Abstain: NONE

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Kanofsky, Arie & Tara; Block 5801, Lot 10; 18 Stone Creek Lane; Bulk Variances; #ZB17-039.

Present: Frederick B. Zelle, Esq., Attorney for the Applicants
Stephen E. Parker, PE, Engineer for the Applicants
Arie & Tara Kanofsky, Applicants

The applicants' professional, the Board's professionals and the applicants were duly sworn by Ms. Wolfe.

Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, New Jersey advised the Board that he would be representing the applicants during this hearing. He explained that the applicants proposed to construct an in ground swimming pool and adjoining patio in the rear yard. To offset the proposed additional impervious coverage, the applicants also planned to reconfigure their driveway resulting in a net reduction in total lot coverage however they would still require relief for maximum lot coverage. The applicants were also requesting a variance for pool location (not behind the rear building line of adjacent dwellings). Minimum lot area, minimum lot frontage, minimum lot width, minimum side yard (west) and minimum combined side yards were all pre-existing conditions.

Stephen E. Parker, PE, professional engineer with *Parker Engineering & Surveying, PC*, Somerville, New Jersey, was accepted as an expert in engineering. He described the subject property and the proposal, noting that there were no environmental concerns.

Referring to Comment #1 of Mr. Schley's memo dated March 2, 2018, Mr. Parker opined that because the property was located on a cul-de-sac, there was no place on the subject property where a pool could be located which would conform to the ordinance requiring that it be constructed behind the rear building line of existing dwellings on adjoining lots.

Mr. Parker addressed Mr. Schley's comment regarding landscaping by stating that the applicants had recently planted 40 trees throughout the property as a buffer between the proposed pool and the adjoining properties. Mrs. Kanofsky testified as to the species, size and general locations of the plantings.

Mr. Schley questioned whether the applicants were requesting relief from the stream buffer conservation ordinance requiring establishment of a 75 foot wide stream buffer conservation easement. The lot predates the ordinance however the 1999 subdivision approval required a 50 foot wide conservation easement centered on the stream. Since the applicants would be required to establish a wetlands conservation easement as a condition of approval for this application, very little would be gained by requiring the stream buffer conservation easement also. Mr. Zelle stated that the applicants would request a variance for that relief and that he felt his notice was sufficient to include the variance request.

Mr. Parker stated that the applicants would stipulate to the remainder of the comments in Mr. Schley's memo.

In his March 12, 2018 memo, Mr. Quinn expressed concern that there was just a two (2) foot walkway around the bulk of the perimeter of the pool. Mr. Parker responded that that was the minimum requirement for a pool cover and that the deck would provide seating for the pool. Mr. Quinn also asked about the existing fence and

Mr. Parker replied that the fencing would be modified to meet the pool enclosure requirements. Finally, Mr. Quinn noted that there was no pump and filtering equipment location shown on the plan. Mr. Parker agreed and asked that the applicants be granted an additional 20 square feet of impervious coverage to accommodate the pool equipment adding that even with this increase, there would still be a small net decrease in total impervious coverage with this application.

Mr. Quinn stated that he was satisfied that there would be no construction in any of the environmentally regulated areas.

Chairman Rhatican opened the meeting to the public for questions.

Scott Kessel, 77 Lyons Road, expressed concern about noise and that the property was deficient in improvable area. Mr. Schley noted that improvable lot area pertained only to new dwellings. Mr. Kessel also questioned whether there would be additional lighting since currently one of the spotlights shone directly into his bedroom.

Ratna Gupta, 14 Stone Creek Lane, questioned whether the proposed pool would create additional water runoff to her property. Mr. Parker testified that there would actually be a small decrease in the amount of runoff due to the decrease in total impervious coverage. Mr. Quinn was confident that there would be no additional problems.

Matt Di Giambattista, 23 Lyons Road, expressed concern about the effect on the wetlands. Mr. Parker advised him that a wetlands consultant had confirmed the boundaries of the wetlands.

In response to a question from Mr. Zaidel, the applicants agreed to adhere to the Best Managements Practice for Discharges from Residential Swimming Pools.

In addition, the applicants agreed to address Mr. Kessel's concerns about their spotlight.

The following residents were duly sworn by Ms. Wolfe and commented on the proposed project.

Scott & Susan Kessel, 77 Lyons Road
Ratna Gupta, 14 Stone Creek Lane
Matt Di Giambattista, 57 Lyons Road
Kenneth Price, 49 Lyons Road
Michael Lattmann, 43 Lyons Place

Hearing no further comments from the public, Chairman Rhatican closed that portion of the meeting.

After deliberating, the board members felt that the applicants had satisfied the positive criteria required for both a "c(1)" or "hardship" variance and a "c(2)" or "flexible c" variance. They also felt that the applicants had satisfied the negative criteria.

Mr. Zaidel 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. Breslin seconded.

Roll Call:

Aye:	Breslin, Bellows, Genirs, Kleinert, Pozner, Rhatican, Zaidel.
Nay:	NONE
Abstain:	NONE

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Rockridge Court LLC; Block 2602, Lot 10; 41 Dogwood Way; Bulk Variances; #ZB18-002.

Present:	Frederick B. Zelle, Esq., Attorney for the Applicant Catherine A. Mueller, PE, Engineer for the Applicant
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Robert I. Horowitz, Managing Member, Rockridge Court LLC, Applicant Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, New Jersey advised the board members that he would be representing the applicant during this hearing. The applicant proposed to raze the existing dwelling and shed and build a new house. The existing pool and tennis court, both nonconforming (not behind the rear building lines of adjacent dwellings and located in a front yard, respectively), were to remain. In addition, the applicant sought relief for minimum improvable lot. Mr. Zelle noted that there was no additional land to be acquired to minimize or eliminate that deficiency. The applicant also sought relief for minimum front yard setback. Because of the location of the pool, the proposed house could not be moved back any farther on the property and a small portion of the front porch and steps protruded into the front yard setback. Finally the applicant's request for relief from maximum lot coverage was completely due to the tennis court. Without the court, the lot coverage would be below the maximum permitted.

The applicant's professional, the Board's professionals and Mr. Horowitz were duly sworn by Ms. Wolfe.

Robert I. Horowitz, Managing Member of *Rockridge Court LLC*, Chatham, NJ, testified that the proposed house had been designed to best fit the subject property and surrounding neighborhood. Both the existing pool and tennis court had been inspected and it was decided that they would remain.

The following exhibits were entered into evidence in support of the application:

Exhibit A-1 - 2018 Residential Property Square Footage Assessment Data dated 03/01/18

Exhibit A-2 - 17 X 11 Color Photo of House on 142 Culberson Road

Exhibit A-3 - 17 X 11 Color Photo of House on 44 Dogwood Way

Exhibit A-4 - 17 X 11 Color Photo of House on 30 Dogwood Way

Exhibit A-5 - Colorized Version of Variance Plan for 41 Dogwood Way, Page-Mueller Engineering Consultants PC, Page 1 of 2, Dated January 26, 2018.

Mr. Horowitz described the neighborhood as one in transition with many of the homes either modernized or replaced completely.

In response to a question from Mr. Zaidel, Mr. Horowitz testified that part of the thought process for the house design included retaining the tennis court. Because it is surrounded by a thick buffer of trees, the court is barely visible from the road. He stipulated to Comment #4 in Mr. Schley's memo dated March 2, 2018 regarding the restriction of the use of both the pool and tennis court to the occupants of the property and their guests. In addition, there would be no lighting for either.

Mr. Schley added that the coverage relief should be for the life of the tennis court only. If the court was removed, the maximum lot coverage of 15% would then apply. Mr. Horowitz agreed.

Mr. Horowitz stipulated, as conditions of approval, to the remainder of the comments in Mr. Schley's memo.

There were no questions from the public for the witness.

Catherine A. Mueller, PE, engineer with *Page-Mueller Engineering Consultants, PC*, Warren, New Jersey, was accepted as an expert in the field of civil engineering.

Ms. Mueller began her testimony by describing the subject property, the proposed application and the associated stormwater management plans. There was discussion as to whether the existing fence around the tennis court would remain or be replaced. Mr. Horowitz testified that if necessary, it would be replaced with black posts and black mesh.

Ms. Mueller stipulated to all the comments in Mr. Schley's memo and Mr. Quinn's memo of March 12, 2018.

There were no questions or comments from the public and Chairman Rhatican closed that portion of the hearing.

After deliberating, the board members felt that the applicant had satisfied the positive criteria required for both a "c(1)" or "hardship" variance and a "c(2)" or "flexible c" variance. They also felt that the applicant had satisfied the negative criteria.

Ms. Kleinert 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 applicant subject to the conditions stipulated to by the applicant and as stated during deliberations. Ms. Genirs seconded.

Roll Call:

Aye: Breslin, Bellows, Genirs, Kleinert, Pozner, Rhatican, Zaidel.
Nay: NONE
Abstain: NONE

Motion carried.

**REPORT AND RECOMMENDATIONS OF THE ZONING BOARD OF ADJUSTMENT FOR THE PERIOD
JANUARY 1, 2017 THROUGH DECEMBER 31, 2017**

Mr. Schley noted that although this report did not make any recommendations to the Township Committee, there had been 11 applications containing lot coverage variances in 2017 which was a steep increase over previous years. He suggested that if the trend continued in 2018, the Board might want to review the issue further.

Mr. Breslin moved to adopt the report as drafted and Mr. Zaidel seconded.

Roll Call:

Aye: Breslin, Bellows, Genirs, Kleinert, Pozner, Rhatican, Zaidel.
Nay: NONE
Abstain: NONE

Motion carried.

COMMENTS FROM MEMBERS OR STAFF

Mr. Schley advised the Board that Verizon Corporate Services Group Inc. had submitted an application to amend a previous approval (#ZB16-026). Joseph A. Fishinger, jr., PE, PP, PTOE, engineer with *NV5, Inc.*, Parsippany, New Jersey had served as the Board's Traffic Engineer for the original application and Mr. Schley suggested that the Board retain his services again for this application. Chairman Rhatican agreed.

ADJOURNMENT

Having no further business to conduct, Chairman Rhatican asked for a motion to adjourn. Mr. Breslin moved and by unanimous Voice Vote, the meeting was adjourned at 9:55 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment