

# **BERNARDS TOWNSHIP**

## **ZONING BOARD OF ADJUSTMENT**

**MINUTES** v2  
Regular Meeting  
October 3, 2018

### **CALL TO ORDER**

Chairman Breslin called the meeting to order at 7:35 PM.

### **OPEN MEETING STATEMENT**

Chairman Breslin 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, Genirs, Kleinert, Korn, Mastrangelo, Pozner, Tancredi, Zaidel  
Members Late: NONE  
Members Absent: Lane  
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;  
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion made by Ms. Genirs, seconded by Ms. Mastrangelo, all in favor and carried, the absence of Mr. Lane was excused.

### **APPROVAL OF MINUTES**

#### **September 5, 2018 - Regular Session**

On motion made by Mr. Zaidel, seconded by Ms. Pozner, all in favor and carried, the minutes were approved as written.

### **APPROVAL OF MINUTES**

#### **September 5, 2018 – Executive Session**

It was noted that the Executive Session ended at 10:55 PM, not 9:55 PM. On motion made by Ms. Mastrangelo, seconded by Ms. Pozner, all in favor and carried, the minutes were approved as amended.

### **APPROVAL OF RESOLUTION**

**195 Morristown Road LLC - Resolution - #ZB14-027A**; Block 801, Lot 4.01; 195 Morristown Road;  
Modification of Conditions of Approval, D-1 Use Variance (approved)

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

Roll Call: Aye: Breslin, Genirs, Kleinert, Mastrangelo, Pozner, Tancredi, Zaidel  
Nay: NONE  
Ineligible: Korn

Motion carried.

**APPROVAL OF RESOLUTION**

**The Pingry Corporation – Resolution - #ZB18-017**; Block 11601, Lot 3.01; 131 Martinsville Road; Preliminary/Final Site Plan, "D-3" Conditional Use Variance, Bulk Variance (approved)

Ms. Genirs moved approval of the resolution as drafted. Ms. Mastrangelo seconded.

Roll Call:       Aye:           Breslin, Genirs, Kleinert, Korn, Mastrangelo, Tancredi, Zaidel  
                  Nay:           NONE  
                  Ineligible:   Pozner

Motion carried.

**COMPLETENESS HEARING**

**Chabad Center of Somerset County Inc.; #ZB18-022**; Block 8201, Lot 25; 3048 Valley Road; Preliminary/Final Site Plan, Bulk Variances, "D-3" Conditional Use Variance

Present:           Arnold Chait, Esq., Attorney for the Applicant

Mr. Schley and Mr. Quinn were duly sworn by Mr. Warner.

Arnold Chait, Esq., attorney with *Vogel, Chait, Collins & Schneider PC*, Morristown, NJ, advised the board that he was present on behalf of the applicant. He explained that this was a two (2) phase project which had been approved in 2001 (Phase 1 was subsequently completed) however since that time, the zoning had changed. Referring Mr. Schley's Completeness Review memo dated September 27, 2018, he stated that Item #2, a project re-report/environmental impact assessment, had been submitted. The applicant was requesting a waiver for the only other outstanding checklist item, a Letter of Interpretation (LOI) issued by the New Jersey Department of Environmental Protection (NJDEP), because it was part of the record for the 2001 approval. Mr. Schley stated that the Board had the option of requesting an updated LOI at a later date, if necessary.

Mr. Zaidel moved to grant the waiver and to deem the application complete. Ms. Kleinert seconded.

Roll Call:       Aye:           Breslin, Genirs, Kleinert, Mastrangelo, Pozner, Tancredi, Zaidel  
                  Nay:           NONE  
                  Ineligible:   Korn

Motion carried.

**COMPLETENESS AND PUBLIC HEARING**

**Klyashtorny, Alexander & Julia; #ZB18-023**; Block 2301, Lot 45; 23 Wisteria Way; Bulk Variance

Present:           Julia Klyashtorny, Applicant

Mr. Quinn, Mr. Schley and Mrs. Klyashtorny were duly sworn by Mr. Warner.

Julia Klyashtorny, the Applicant, advised the board that on August 1, 2018, a fire had completely destroyed her house and accessory buildings located at 23 Wisteria Way. She and her husband, Alexander Klyashtorny, sought to construct essentially the same dwelling and accessory structures in the same locations in which they were previously located. Since the zoning ordinances had changed after the original dwelling was built, they were now required to apply for a variance for minimum improvable lot area.

Mrs. Klyashtorny stipulated to all the items in Mr. Schley's General Comments memo dated September 24, 2018.

Hearing no further questions or comments from the board members, Chairman Breslin opened the hearing to the public for questions or comments. Hearing none, he closed that portion of the meeting.

After deliberating, the board members felt that the applicant had satisfied the positive criteria required for a "C-1" or "hardship" variance. They also felt that the applicant had satisfied the negative criteria.

Ms. Genirs moved to deem the application complete and to approve the resolution granting the variance relief requested by the applicant subject to the conditions stipulated to by the applicant and as stated during deliberations ([Klyashtorny Resolution #ZB18-023](#)). Ms. Pozner seconded.

Roll Call:       Aye:           Breslin, Genirs, Kleinert, Mastrangelo, Pozner, Tancredi, Zaidel  
                  Nay:           NONE  
                  Ineligible:   Korn

Motion carried.

### **PUBLIC HEARING**

[Site Acquisitions LLC \(Tesla\); #ZB18-013](#); Block 8501, Lot 39; 403 King George Rd; Preliminary/Final Site Plan, "D-1" Use Variance, "C" Variances, Exception

Present:       Robert A. Kasuba, Esq., Attorney for the Applicant  
                  Paul Trudel, Construction Manager for the Applicant  
                  Henry Misas, Installation Manager for Tesla Brooklyn Service  
                  Andrew Miller, PE, Engineer for the Applicant  
                  Arthur Bernard, PP, Planner for the Applicant  
                  Joseph Korn, Property Manager, Dewy Meadow Shopping Center (site)

Robert A. Kasuba, Esq., attorney with *Bisgaier Hoff LLC*, Haddonfield, NJ, advised the board that he was present on behalf of the applicant, *Site Acquisitions LLC*. He explained that the applicant sought Preliminary and Final Site Plan approval to construct a super charging station (8 parking spaces) exclusively for Tesla electric cars at Dewy Meadow Shopping Center. In addition to site plan approval, the application required a "D-1" use variance, variances for signage, an exception for the minimum size of parking spaces and a modification of Condition #14 of the 2000 Planning Board approval for this site.

**Exhibit A-1**, a hard copy of an eight (8) page power point presentation, was entered into evidence.

Mr. Schley, Mr. Quinn, Mr. Trudel, Mr. Misas, Mr. Miller and Mr. Bernard were duly sworn by Mr. Warner.

Henry Misas, Installation Manager, with *Tesla Brooklyn Service*, New York, NY, gave the board an overview of the project which consisted of eight (8) charging posts that would be utilized exclusively by Tesla vehicles. Mr. Misas stated that this site was strategically located near the intersection of two (2) major highways (Interstates 78 and 287) and that there were no other charging stations located on Interstate 78 between New York City and Allentown, PA. He opined that the charging station would be an amenity to the shopping center since customers could walk around and visit the shops during the 40 minutes required to fully charge their vehicle.

Mr. Misas then described the physical location and appearance of the station as well as the charging process itself. He testified that because there were no moving parts in the station, maintenance would be minimal. Charging would be almost silent and there were no safety issues involved. Although the station would be open 24 hours a day, he did not expect many patrons during evening hours because most people would utilize home chargers then.

In response to a question from Mr. Quinn, Mr. Misas testified that the internally lit Tesla logo signs (one on each of the 8 charging posts) emitted less light than the overall site lighting. He stipulated to modifying the signs so that they were lit only on the front.

In response to a question from Ms. Genirs, Mr. Misas testified that Tesla would be the leaseholder and that the landlord would be responsible for maintaining the parking spaces themselves. If, after the lease expired typically in five (5) years, the site proved to be underperforming, Mr. Misas stipulated to the complete removal of the equipment and to the restoration of the site to its original condition.

Joseph Korn, Property Manager for Dewy Meadow Shopping Center (proposed site), was duly sworn by Mr. Warner. He opined that the charging station would draw people to the shopping center and that they would patronize the existing stores while they waited for their cars to charge. He testified that there were no residents nearby and felt that the Tesla dedicated chargers which required only 40 minutes to fully charge a vehicle would provide a safer

environment than a universal charging station which would require up to eight (8) hours to charge a vehicle. The latter would encourage loitering or overnight parking as opposed to the former which gave the patrons just enough time to have a quick lunch or coffee.

Hearing no further questions from the board members, Chairman Breslin opened the meeting to the public for questions for these two (2) witnesses.

Sandeep Hajare, 77 Haas Road, asked if Tesla had done any studies on the electromagnetic fields resulting from its chargers. Mr. Misas responded that they had been done all over the world and that there had been no issues.

Hearing no further questions from the public, Chairman Breslin closed that portion of the meeting.

Andrew Miller, PE, engineer with *Advantage Engineers*, Columbia, MD, was accepted by the board as an expert in the field of civil engineering after outlining his professional credentials and confirming that his New Jersey license was current.

**Exhibit A-2**, a compendium consisting of Sheets T-1, Z-1, Z-2, C-1 and C-2 of the Site Plans prepared by Advantage Engineers (Andrew Miller, PE) and last revised September 26, 2018, was entered into evidence.

Mr. Miller gave a brief description of the location of the proposed project on the site and the physical appearance of the charging station itself. He testified that the applicant would comply with all the comments contained in Mr. Quinn's memo dated October 1, 2018 and confirmed that even if all eight (8) parking spots were in use, there would still be adequate parking for the remainder of the shopping center. If required, utilities would be relocated.

Referring to Specific Comment #6 in Mr. Schley's memo dated September 27, 2018, Mr. Miller stated that if any trees had to be removed, the applicant would comply with the applicable township ordinances. He agreed that after construction was complete, the site would be reviewed to evaluate how much pruning should be done and if any additional landscaping would be required.

Mr. Miller stipulated to the remainder of the comments in the memo.

Hearing no further questions from the board members, Chairman Breslin opened the hearing to the public for questions for this witness. Hearing none, he closed that portion of the meeting.

Arthur Bernard, PP, planner with a business address of Lambertville, NJ, was accepted by the Board as an expert in the field of planning. He testified that the applicant's proposal required three (3) variances (including a "D-1" use variance) and one site plan exception, discussing the positive and negative criteria associated with each. He noted that the application promoted many of the goals of the township's 2010 Master Plan.

Referring to Specific Comment #11 in his memo dated September 27, 2018, Mr. Schley noted that Condition #14 of the 2000 Planning Board approval prohibited 24 hour operation and that a modification would be required. He also noted that Condition #14 of that approval prohibited off-site signage. Mr. Kasuba stated that none was proposed.

After further discussion, the applicant stipulated that any repairs or maintenance would be conducted during business hours unless there was an emergency situation.

Hearing no further questions or comments from the board members, Chairman Breslin opened the hearing to the public for questions or comments. Hearing none, he closed that portion of the meeting.

Mr. Kasuba summarized the application and the required relief, stating that the applicant would stipulate to all the conditions discussed during the hearing.

After deliberating, the board members felt that the applicant had satisfied, with the Medici "enhanced quality of proofs," both the positive and negative criteria required for a "D-1" use variance and had also reconciled the deviation from the Master Plan. In addition, the board members felt that the applicant had satisfied the positive and negative criteria for "C-1" or "flexible c" variances. Finally, the board members felt that the applicant had

demonstrated good cause for granting preliminary and final site plan approval, for the exception and for the modification of Condition #14.

Ms. Genirs moved to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for site plan approval, variance relief, exception for parking space size and modification of a condition as requested by the applicant subject to the conditions stipulated to by the applicant and as stated during deliberations. Ms. Mastrangelo seconded.

Roll Call:       Aye:           Breslin, Genirs, Kleinert, Mastrangelo, Pozner, Tancredi, Zaidel  
                  Nay:           NONE  
                  Ineligible:   Korn

Motion carried.

The Open Session of the October 3, 2018 meeting of Zoning Board of Adjustment was recessed at 9:38 PM.

\* \* \* \* \*

The Open Session was reconvened at 9:46 PM.

#### **PUBLIC HEARING**

**J. Nan Realty Co., LLC; #ZB18-011**; Block 3603, Lot 1; 18 Columbia Rd; Preliminary/Final Site Plan, "D-1" Use Variance, "D-5" Density Variance, Bulk Variances (*continued from August 8, 2018*)

Present:           Frederick B. Zelle, Esq., Attorney for the Applicant  
                      David E. Fantina, PE, Engineer for the Applicant  
                      James T. Kyle, PP, AICP, Planner for the Applicant  
                      John W. Utz, Jr., Managing Member, J. Nan Realty Co., Inc., Applicant

Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, advised the board that he was present on behalf of the applicant. After giving a synopsis of the application, he noted that the applicant had revised the design of the proposed 4-family residence based on the comments made during testimony presented at the August 8, 2018 meeting.

Mr. Warner reminded the applicant, the applicant's professionals and the board's professionals that they had been duly sworn during the August 8, 2018 hearing.

John W. Utz, Jr., residing at 77 Whitenack Road, Basking Ridge, was re-introduced to the board as the Managing Member of *J. Nan Realty Co., LLC* (applicant). He testified that the garages had been moved towards the back of the building, creating longer driveways and a larger area on the second floor of each end unit and that new area could accommodate the washer, dryer and mechanicals. He noted that the HVAC systems could also be located in the attic or the basement although no decision had been made as to whether or not there would be basements.

In response to a question from Ms. Kleinert, Mr. Utz confirmed that the overhangs would be removed.

Hearing no further questions from the board members, Chairman Breslin opened the hearing to the public for questions. Hearing none, he closed that portion of the meeting.

David E. Fantina, PE, having an address of 15 Sunset Drive, Bernardsville, NJ, testified that numerous changes had been made to the plans. By moving the garages back, there would be ample room to park two (2) cars, one behind the other, in the driveway without the vehicles jutting into the road. The front steps were removed thus eliminating the grade changes. An additional trash enclosure area was created for a total of two (2), one at either end of the building, and each tenant would be responsible for bringing their trash out to the curb on the appropriate day. He added that many other technical changes had been made.

Mr. Fantina confirmed that the applicant was still requesting a variance for the right-of-way (ROW) even though it was still shown on the plans, opining that there was no reason to believe that the township would widen the road or otherwise utilize the ROW.

In reference to Comment #5 in Mr. Quinn's memo dated October 2, 2018, Mr. Fantina testified that the applicant would apply for a new Wetlands Transition Area Waiver (TAW) issued by the New Jersey Department of Environmental Protection (NJDEP) if this application was approved.

Mr. Quinn noted that, based on the topography at the end of the road, there would be a fair amount of stormwater runoff moving straight towards the proposed building creating a drainage issue especially since the predominant part of the building faced the road. Mr. Fantina concurred and affirmed that it was an issue which had to be resolved.

Mr. Fantina addressed the remainder of the comments as listed and stipulated to same.

Referring to Mr. Schley's memo dated September 24, 2018, Mr. Fantina testified that the applicant would stipulate to the comments made. A discussion ensued as to the location of the trash enclosures vis-à-vis the driveways, given that the tenants would have to navigate around the cars in the driveway in order to bring their trash to the street. Mr. Fantina confirmed that this was an issue that would have to be resolved.

In response to a discussion about a barrier free parking space (Comment #16) as may be required by law for this project, Mr. Zellely stipulated to providing a dedicated van accessible parking space, confirming that that would result in the loss of one (1) parking space.

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

Hearing no further questions or comments from the board members, Chairman Breslin opened the hearing to the public for questions. Hearing none, he closed that portion of the meeting.

James T. Kyle, PP, AICP, planner with *Kyle Planning and Design*, Hopewell, NJ, was accepted as an expert in the field of professional planning by the board after outlining his professional credentials and confirming that his license was current.

**Exhibit A-3**, an aerial photograph taken in 2015 of the subject property and surrounding area with the lot lines drawn in, was entered into evidence.

Using **Exhibit A-3**, Mr. Kyle gave an overview of the subject property, the surrounding structures, their proximity to the train station and Lyons Mall and the applicable zoning affecting the area. He described the exceptions and relief required and discussed the associated positive and negative criteria for each.

Ms. Mastrangelo questioned the walkability of the site in relation to the mall and train station.

Mr. Fantina testified that the applicant would plant trees as required by ordinance thus eliminating two of the exceptions requested.

Hearing no further questions or comments from the board members, Chairman Breslin opened the hearing to the public for questions or comments. Hearing none, he closed that portion of the meeting.

Mr. Zellely felt that no summary was necessary.

After deliberating, the board members felt that the applicant had satisfied, with the Medici "enhanced quality of proofs," both the positive and negative criteria required for a "D-1" use variance and had also reconciled the deviation from the Master Plan. In addition, the board members felt that the applicant had satisfied the positive and negative criteria for a "D-5" or "density" variance, a "C-1" or "hardship" variance and a "C-2" or "flexible c" variance. Finally, the board members felt that the applicant had demonstrated good cause for granting the exceptions as outlined during testimony.

Mr. Zaidel moved to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the application for variance relief and exceptions as requested by the applicant subject to the conditions stipulated to by the applicant and as stated during deliberations. Mr. Tancredi seconded.

Roll Call:       Aye:               Breslin, Genirs, Kleinert, Pozner, Tancredi, Zaidel  
                  Nay:               Mastrangelo  
                  Ineligible:       Korn

Motion carried.

**COMMENTS FROM MEMBERS OR STAFF**

Ms. Genirs and Ms. Kleinert commented that, on the video, it was extremely difficult to hear the board members' voices and reminded everyone to speak clearly into the microphones.

The special meeting scheduled for October 11, 2018 was cancelled since there was no business to conduct during that meeting.

**ADJOURN**

On motion by Ms. Mastrangelo and seconded by Ms. Pozner, all in favor and carried, the meeting was adjourned at 11:07 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

10/30/18 ds