

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES

Regular Meeting
November 7, 2018

CALL TO ORDER

Vice Chairman Zaidel called the meeting to order at 7:30 PM.

OPEN MEETING STATEMENT

Vice Chairman Zaidel 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: Genirs, Korn, Mastrangelo, Pozner, Tancredi, Zaidel
Members Late: NONE
Members Absent: Breslin, Kleinert, 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 absences of Chairman Breslin, Mr. Lane and Ms. Kleinert were excused.

APPROVAL OF MINUTES

October 3, 2018 - Regular Session – Ms. Mastrangelo moved approval of the minutes as drafted. Ms. Pozner seconded.

Roll Call: Aye: Genirs, Korn, Mastrangelo, Pozner, Tancredi, Zaidel
Nay: NONE
Abstain: NONE

Motion carried.

APPROVAL OF RESOLUTION

Site Acquisitions LLC (Tesla) - Resolution #ZB18-013; Block 8501, Lot 39; 403 King George Road; Preliminary/Final Site Plan, "D-1" Use Variance, Exception (approved)

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

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

Motion carried.

APPROVAL OF RESOLUTION

J. Nan Realty Co., LLC – Resolution #ZB18-011; Block 3603, Lot 1; 18 Columbia Road; Preliminary/Final Site Plan, "D-1" Use Variance, "D-5" Density Variance, Bulk Variances, Exceptions (approved)

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

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

Motion carried.

COMPLETENESS HEARING

E. Hollo t/a Basking Ridge Animal Hospital; #ZB18-025; Block 2801, Lot 23; 340 South Finley Avenue; Amended Site Plan Approval (#ZB13-005)

Present: Frederick B. Zelle, Esq., Attorney for the Applicant

Vice Chairman Zaidel recused himself and left the courtroom.

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

Mr. Schley stated that the applicant had submitted all three (3) items listed as outstanding in his Completeness Review memo dated November 1, 2018.

Ms. Pozner moved to deem the application complete. Ms. Mastrangelo seconded.

Roll Call:	Aye:	Genirs, Korn, Mastrangelo, Pozner, Tancredi
	Nay:	NONE
	Abstain:	NONE

Motion carried.

Vice Chairman Zaidel returned to the courtroom.

EXTENSION OF TIME HEARING

Jani, Salil & Nileem - Resolution #ZB17-022A; Block 4102, Lot 17; 34 Fairview Drive East; Bulk Variances

Present: Salil Jani, Applicant

Ms. Pozner moved to grant the extension of variance approval for one (1) year to October 4, 2019 as requested by the applicants subject to the conditions stipulated to by the applicants. Ms. Genirs seconded.

Roll Call:	Aye:	Genirs, Korn, Mastrangelo, Pozner, Tancredi, Zaidel
	Nay:	NONE
	Abstain:	NONE

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Hoffman, Alyson & Kermit; #ZB18-020; Block 1803, Lot 3; 14 Cedar Street; Bulk Variances

Present: Frederick B. Zelle, Esq., Attorney for the Applicants
John Cilo, PE, Engineer for the Applicants
Tom Petersen, RA, Architect for the Applicants
Alyson & Kermit Hoffman, Applicants

Ms. Mastrangelo recused herself and left the dais.

Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, advised the Board that he was present on behalf of the applicants and gave a brief overview of the subject property noting that it was undersized. Also, because the existing dwelling did not face the street, it had two (2) front yards. The proposed project consisted of a two-story addition and expansion of the existing driveway requiring relief for minimum rear yard setback and maximum lot coverage.

Mrs. Hoffman, Mr. Hoffman, Mr. Cilo, Mr. Petersen, Mr. Schley and Mr. Quinn were duly sworn by Mr. Warner.

Kermit B. Hoffman, Applicant, residing at 89 South Stonehedge Drive, Basking Ridge, opined that the proposed addition would create a more pleasing visual appearance. He explained that the current width of the driveway made it difficult to maneuver and that the extra two (2) feet of width requested would help to alleviate that issue.

Alyson Hoffman, Applicant, residing at 89 South Stone Hedge Drive, Basking Ridge, testified that she had taken the pictures three (3) months earlier and that they accurately depicted the property as it exists today.

Hearing no further questions or comments from the Board, Vice Chairman Zaidel opened the hearing to the public for questions. Hearing none, he closed that portion of the hearing.

John Cilo, PE, having a business address of 12 Bellemont Road, Belle Meade, NJ, was accepted by the Board as an expert in the field of civil engineering after outlining his educational and professional credentials and confirming that his license in the State of New Jersey was current.

Mr. Cilo gave a brief description of the subject property and existing structures. He confirmed that the patio shown on some of the documents submitted with the application was not part of this project.

Mr. Cilo stipulated to the comments made in both Mr. Schley's review memo of October 24, 2018 and Mr. Quinn's review memo of November 6, 2018. Responding to comments by both board professionals concerning incongruities in the lot coverage calculations, Mr. Zelle agreed to amend his request for lot coverage slightly upward in order to accommodate any increases that might arise when the calculations were revised for consistency. He stipulated that the additional square footage would not be added to the plan, but used only if further discrepancies were found.

Tom Petersen, RA, having a business address of 6 Country Lane, Howell, NJ, was accepted by the Board as an expert in the field of architecture after outlining his educational and professional credentials and confirming that his license in the State of New Jersey was current.

Mr. Petersen gave a brief overview of the architectural plans and confirmed that the existing breezeway would remain open. He opined that the addition would make the dwelling more visually consistent with the neighborhood.

Hearing no further questions or comments from the Board or its professionals, Vice Chairman Zaidel opened the hearing to the public for questions or comments. Hearing none, he closed that portion of the hearing.

Mr. Zelle gave a brief summary of the application.

After deliberating, the Board found that the applicants had satisfied the positive and negative criteria required for a "c(1)" or "hardship" variance. Ms. Genirs 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. Tancredi seconded.

Roll Call:	Aye:	Genirs, Korn, Pozner, Tancredi, Zaidel
	Nay:	NONE
	Abstain:	NONE

Motion carried.

Ms. Mastrangelo returned to the dais.

COMPLETENESS AND PUBLIC HEARING

Yglesias, S./Costa, M.; #ZB18-014; Block 8802, Lot 19; 3137 Valley Road; Bulk Variances

Present: Frederick B. Zelley, Esq., Attorney for the Applicants
William G. Hollows, PE, Engineer for the Applicants
Steven T. Yglesias, Applicant

Frederick B. Zelley, Esq., attorney with *Bisogno, Loeffler & Zelley LLC*, Basking Ridge, NJ, advised the Board that he was present on behalf of the applicants and noted that in 2013, the applicants had obtained all required permits for a major renovation project on the subject property. Because of a series of field changes made by Mr. Yglesias during construction, there was an increase in impervious coverage beyond the approved amount. The applicants were requesting relief for maximum lot coverage for the existing structures and for the addition of a new shed, and for minimum rear yard setback for an existing shed.

Mr. Hollows, Mr. Yglesias, Mr. Schley and Mr. Quinn were duly sworn by Mr. Warner.

Exhibit A-1, a set of four (4) photos of the subject house taken that day by Mr. Zelley, was entered into evidence.

Steven T. Yglesias, Applicant, residing at 3137 Valley Road, testified that he had overseen the renovation project on his home which included a second floor addition, a covered patio, a pool and the addition of a third bay to the garage. After the garage was built, he felt that the driveway was not wide enough to maneuver safely in and out of the new third bay so he widened that part of the driveway and also installed a trench drain. In addition to the larger driveway, the pool exceeded the size originally approved. Mr. Schley explained that these discrepancies had shown up in the "as-built" plans and that the applicant was unable to get a Certificate of Occupancy for the project without relief from the Board.

Referring to Comment #2 in Mr. Quinn's review memo dated November 6, 2018, Mr. Yglesias explained that when the existing fence which encroached into adjacent Lot 18 and adjacent Lot 20 had been installed years earlier, many of the property line markers had been missing and he had not been present to supervise the installation.

Mr. Yglesias testified that the existing shed which encroached into the rear yard setback, housed lawn equipment. He noted that there had been no complaints from neighbors and stated that he would like the shed to remain in that location. The proposed new shed would store pool equipment along with a possible half bath inside and a shower outside. He stated that the existing shed could not house both the lawn and pool equipment and confirmed that the new shed would not contain any cooking facilities and or be used as a dwelling.

Hearing no further questions or comments from the Board or its professionals, Vice Chairman Zaidel opened the hearing to the public for questions. Hearing none, he closed that portion of the hearing.

William G. Hollows, PE, PP, PLS, engineer with *Murphy & Hollows Associates LLC*, Stirling, NJ, was accepted by the Board as an expert in the field of civil engineering after outlining his educational and professional credentials and confirming that his license in the State of New Jersey was current. He introduced the following into evidence:

- **Exhibit A-2** – a colorized version of Sheet 2 of 3 of the "Variance Grading Plan" by Murphy & Hollows LLC, dated May 23, 2017, last revised September 18, 2018.
- **Exhibit A-3** - a colorized version of Sheet 3 of 3 of the "Variance Grading Plan" by Murphy & Hollows LLC, dated May 23, 2017, last revised September 18, 2018.
- **Exhibit A-4** - a colorized version of Sheet 1 of 2 of the "Grading Plan" by Murphy & Hollows LLC, dated June 20, 2013, last revised August 27, 2013.
- **Exhibit A-5** – an "Impervious Coverage Table" prepared by William G. Hollows, dated November 7, 2018

Mr. Hollows testified that **Exhibit A-2** showed the current existing conditions on the property. **Exhibit A-3** showed the current conditions with the addition of the proposed deck and new shed. **Exhibit A-4** showed that the "bump out" located farther down the driveway was larger prior to the 2013 renovation. **Exhibit A-5** showed the

2013 proposed coverage, the current existing coverage and the 2018 proposed coverage, noting that the bulk of the overage in coverage was associated with the driveway.

In response to a question from the Board as to why the hot tub coverage was not included in the 2013 proposed coverage calculation, Mr. Yglesias testified that he had temporarily removed the hot tub, which was portable, to prevent damage during construction. He confirmed that it did not appear on the construction drawings.

Mr. Hollows stated that although the pool equipment was not shown on the 2018 drawings, it was included in the chart. He also noted that the pool patio was never constructed.

Mr. Hollows addressed the comments in Mr. Schley's review memo dated October 24, 2018 and Mr. Quinn's review memo dated November 6, 2018 to their satisfaction.

Hearing no further questions from the Board, Vice Chairman Zaidel opened the hearing to the public for questions. Hearing none, he opened the hearing to the public for comments. Hearing none, that portion of the hearing was closed.

Mr. Zelley delivered his summary adding that the applicant would be willing to move the existing shed to a conforming location. A straw poll of the Board determined that the majority would not require that as a condition of approval.

Ms. Mastrangelo 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. Korn seconded.

Roll Call:	Aye:	Korn, Mastrangelo, Zaidel
	Nay:	Genirs, Pozner, Tancredi
	Abstain:	NONE

Motion failed.

Mr. Warner opined that a 3-3 tie on a motion to approve constituted a denial of the application. A brief recess was requested.

* * * *The Open Session was recessed at 9:35 PM and reconvened at 9:40 PM.* * * *

Citing Section NJS 40:55D-9a of the Municipal Land Use Law (MLUL), Mr. Warner confirmed that a tie on a motion to approve constituted a statutory denial of the application and that the decision was binding. Mr. Zelley responded that, for the purpose of a possible appeal, the applicant would not concede that legal point, adding that the applicant reserved the right to submit a new application. Mr. Warner replied that the record would reflect that the applicant was given the opportunity that evening to point to a different authority other than Section NJS 40:55D-9a of the MLUL.

COMPLETENESS AND PUBLIC HEARING

Arisha Inc; #ZB18-021; Block 8501, Lot 39; 403 King George Road; Bulk Variances

Present:	Danielle N. Kinback, Esq., Attorney for the Applicant
	Oliver Young, AIA, Architect for the Applicant
	James W. Higgins, PP, Planner for the Applicant
	Dwar Patel, Franchisee of <i>Dunkin'</i>

Danielle N. Kinback, Esq., attorney with *Bisgaier Hoff LLC*, Haddonfield, NJ, advised the Board that she was present on behalf of the applicant who was the franchisee of the *Dunkin'* store located in the Dewy Meadow shopping center. The applicant proposed to relocate the store to a space in same complex and required variance relief to install an "all-in-one order canopy" sign with two (2) internally lit menu boards.

Mr. Young, Mr. Higgins, Mr. Schley and Mr. Quinn were duly sworn by Mr. Warner. Mr. Warner also stated that the applicant's notice was sufficient.

Oliver Young, AIA, architect with *gk+a Architects PA*, Rutherford, NJ, was accepted by the Board as an expert in the field of architecture after outlining his educational and professional credentials and confirming that his license in the State of New Jersey was current.

Mr. Young introduced into evidence **Exhibit A-1**, a power point presentation, and gave a description of the proposed signage which included directional signs, a height restriction bar and an "all-in-one order canopy" which included the two (2) internally lit menu boards. Dwar Patel, franchisee of the *Dunkin'* store was duly sworn by Mr. Warner and testified that the signs would be lit from 5:00 AM to 10:00 PM.

Mr. Young further testified that there would be no change in traffic circulation. *Dunkin'* directional signs would replace the existing signs from the previous tenant. He added that there were an adequate number of parking spaces including Americans with Disabilities Act (ADA) compliant parking spaces. Finally, he stated that one (1) tree would be removed.

Ms. Kinback confirmed that the back of the menu boards would be grey and would not be illuminated.

Hearing no further questions from the Board, Vice Chairman Zaidel opened the hearing to the public for questions of the witness. Hearing none, he closed that portion of the hearing.

James W. Higgins, PP, having a business address of 823 West Park Avenue, Ocean Township, NJ, was accepted by the Board as an expert in the field of planning after outlining his educational and professional credentials and confirming that his license in the State of New Jersey was current. He presented testimony in regard to the positive and negative criteria for a c(2) or "flexible c" variance.

As a condition of approval, the applicant stipulated to the comments made in Mr. Schley's review memo dated October 24, 2018 and in Mr. Quinn's review memo dated November 6, 2018.

Hearing no further questions from the Board, Vice Chairman Zaidel opened the hearing to the public for questions. Hearing none, he opened the hearing to the public for comments. Hearing none, that portion of the hearing was closed.

After deliberating, the Board felt that the applicant had satisfied both the positive and negative criteria for a "c(2)" or "flexible c" variance. Ms. Pozner moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the variance relief requested by the applicant subject to conditions stipulated to by the applicant and as stated during deliberations. Ms. Mastrangelo seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Horowitz & Frasher LLC; #ZB18-024; Block 2701, Lot 11; 134 South Alward Avenue; Bulk Variances

Present:	Frederick B. Zelle, Esq., Attorney for the Applicant
	Catherine Mueller, PE, Engineer for the Applicant
	Robert I. Horowitz, Managing Partner of the Applicant LLC

Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, stated that he was present on behalf of the applicant who proposed to remove an existing one-story dwelling and construct a new two-story dwelling with an attached three-car garage. The proposal required relief for pre-existing improvable lot area, steep slope disturbance and maximum driveway grade.

Ms. Mueller, Mr. Horowitz, Mr. Schley and Mr. Quinn were duly sworn by Mr. Warner.

Catherine Mueller, PE, CME, engineer with *Page-Mueller Engineering Consultants PC*, Warren, NJ, was accepted by the Board as an expert in the field of civil engineering after outlining her educational and professional credentials and confirming that her license in the State of New Jersey was current.

Ms. Mueller testified that the new dwelling would be placed in almost the same location as the existing dwelling and that the applicant planned to utilize the existing driveway. She noted that the driveway would be widened and even though it exceeded the maximum grade allowable, it was in the most practical location. Conforming locations would increase both lot coverage and the number of trees that would have to be removed.

Referring to Comment #4 in Mr. Schley's review memo dated October 24, 2018, Ms. Mueller confirmed that the applicant planned to construct a side-loaded three-car garage.

Ms. Mastrangelo asked the applicant to stipulate to a tree protection, removal, and replacement plan and the applicant agreed.

Ms. Mueller stated that the applicant would comply with all the comments in the Board professionals' review memos.

Hearing no further questions from the Board, Vice Chairman Zaidel opened the hearing to the public for questions of the witness. Hearing none, he opened the hearing to the public for comments.

Martha Winter, 167 Spencer Road, Basking Ridge, NJ, was duly sworn and expressed support for the project.

There were no further comments and that portion of the hearing was closed.

After deliberating, the Board felt that the applicant had satisfied both the positive and negative criteria for both a c(1) "hardship" variance and a c(2) "flexible c" variance. Ms. Mastrangelo moved to deem the application complete and to direct the Board Attorney to draft a Resolution memorializing the Board's decision to grant the variance relief requested by the applicant subject to conditions stipulated to by the applicant and as stated during deliberations. Ms. Pozner seconded.

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

Motion carried.

COMMENTS FROM MEMBERS OR STAFF

The special meeting scheduled for November 15, 2018 was cancelled for lack of business to conduct.

Ms. Kiefer stated that the annual holiday party would be held prior to the December 5, 2018 meeting.

ADJOURN

On motion by Ms. Mastrangelo, seconded by Ms. Pozner, all in favor and carried, the meeting was adjourned at 11:17 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment