

# **BERNARDS TOWNSHIP**

## **ZONING BOARD OF ADJUSTMENT**

### **MINUTES**

Regular Meeting  
December 5, 2018

### **CALL TO ORDER**

Chairman Breslin called the meeting to order at 7:36 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, Lane, Pozner, Tancredi, Zaidel  
Members Late: NONE  
Members Absent: Korn, Mastrangelo  
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. Pozner, seconded by Mr. Lane, all in favor and carried, the absences of Mr. Korn and Ms. Mastrangelo were excused.

### **APPROVAL OF MINUTES**

**November 7, 2018 – Regular Session** – Ms. Pozner moved approval of the minutes as drafted. Ms. Genirs seconded.

Roll Call: Aye: Genirs, Pozner, Tancredi, Zaidel  
Nay: NONE  
Abstain: NONE  
Ineligible: Breslin, Kleinert, Lane

Motion carried.

### **APPROVAL OF RESOLUTION**

**Hoffman, Alyson & Kermit – Resolution - #ZB18-020**; Block 1803, Lot 3; 14 Cedar Street; Bulk Variances (granted)

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

Roll Call: Aye: Genirs, Pozner, Tancredi, Zaidel  
Nay: NONE  
Abstain: NONE  
Ineligible: Breslin, Kleinert, Lane

Motion carried.

**APPROVAL OF RESOLUTION**

**Arisha Inc. - Resolution - #ZB18-021**; Block 8501, Lot 39; 403 King George Road; Bulk Variances (granted)

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

Roll Call:       Aye:               Genirs, Pozner, Tancredi, Zaidel  
                  Nay:               NONE  
                  Abstain:       NONE  
                  Ineligible:    Breslin, Kleinert, Lane

Motion carried.

**APPROVAL OF RESOLUTION**

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

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

Roll Call:       Aye:               Genirs, Pozner, Tancredi  
                  Nay:               NONE  
                  Abstain:       NONE  
                  Ineligible:    Breslin, Kleinert, Lane, Zaidel

Motion carried.

**APPROVAL OF RESOLUTION**

**Horowitz & Frasher LLC – Resolution - #ZB18-024**; Block 2701, Lot 11; 134 South Alward Avenue; Bulk Variances (granted)

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

Roll Call:       Aye:               Genirs, Pozner, Tancredi, Zaidel  
                  Nay:               NONE  
                  Abstain:       NONE  
                  Ineligible:    Breslin, Kleinert, Lane

Motion carried.

**COMPLETENESS HEARING**

**Millington Quarry Inc.; #ZB18-026**; Block 6001, Lot 6; 135 Stonehouse Road; Minor Subdivision, Bulk Variance, D-2 Variance

Present: Michael T. Lavigne, Esq., Attorney for the Applicant

Michael T. Lavigne, Esq., attorney with *Fox Rothschild LLP*, Morristown, NJ, advised the Board that he was present on behalf of the applicant corporation. He stated that the applicant wished to subdivide the subject property into two (2) lots, the smaller of which would contain the environmentally restricted areas and require relief for minimum lot width. An existing building used as an office on the larger proposed parcel would require relief for expansion of a non-conforming use (d-2) and for minimum front yard setback (existing). Mr. Lavigne explained that because the property on which the building was located was being reduced by way of subdivision, it intensified the non-conforming use thus necessitating variance relief. He emphasized that there would be no development or land disturbance. The application was simply a minor subdivision.

Referring to Mr. Schley's Completeness Review memo dated November 19, 2018, Mr. Lavigne stated that most of the items had been submitted. He requested waivers for Items #6 (photographs of the property), #7 (wetlands delineation or wetlands absence determination prepared by a qualified consultant) and #9 (plan and detailed calculations showing compliance with the maximum permitted lot yield and minimum improvable lot area standards set forth in Table 401-A).

Mr. Schley was duly sworn by Mr. Warner.

Mr. Schley stated that the Board could choose to waive Item #7 as a checklist requirement and still request it during the public hearing, if necessary.

Mr. Lavigne agreed to submit Items #6 and #9 prior to the next meeting (January 9, 2019) when the application would be scheduled again for a completeness hearing.

Mr. Zaidel moved to grant the submission waiver request for Item #7 and deem the application *incomplete* pending receipt of Items #6 and #9. Ms. Pozner seconded.

Roll Call:	Aye:	Breslin, Genirs, Kleinert, Lane, Pozner, Tancredi, Zaidel
	Nay:	NONE
	Abstain:	NONE
	Ineligible:	NONE

Motion carried.

**PUBLIC HEARING – Extension of Variance Approval**

**Beaudry, Nancy; #ZB17-020A; Block 3703, Lot 3; 96 Lyons Place; Bulk Variances**

Present: Paul D. Mitchell, Esq., Attorney for the Applicant

Paul D. Mitchell, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, advised the Board that he was present on behalf of the applicant. He referred to a letter from Vincent T. Bisogno, Esq., dated October 25, 2018, requesting a one (1) year extension of the variance approval which expired on November 8, 2018 to November 8, 2019. The letter outlined unforeseen difficulties in securing the appropriate permits from the New Jersey Department of Environmental Protection and opined that this process would require several more months.

Mr. Zaidel moved to grant the extension of variance approval and to approve the resolution as drafted. Ms. Kleinert seconded.

Roll Call:	Aye:	Breslin, Genirs, Kleinert, Lane, Pozner, Tancredi, Zaidel
	Nay:	NONE
	Abstain:	NONE
	Ineligible:	NONE

Motion carried.

**Beaudry, Nancy – Resolution - #ZB17-020A**; Block 3703, Lot 3; 96 Lyons Place; Extension of Variance Approval (granted)

**PUBLIC HEARING**

**Chabad Center of Somerset County Inc; #ZB18-022**; Block 8201, Lot 25; 3048 Valley Road; Preliminary/Final Site Plan, Bulk Variances, "D" Variances (Phase 2: Sanctuary, Social Hall)

Present: Arnold H. Chait, Esq., Attorney for the Applicant  
Benjamin Simoff, PE, Traffic Engineer for the Applicant  
Elena Kalman, AIA, Architect for the Applicant  
David A. Smith, PE, Engineer for the Applicant  
Harvey S. Moskowitz, PP, FAICP, PhD, Planner for the Applicant  
Rabbi Mendel Herson, Applicant

Arnold H. Chait, Esq., attorney with *Vogel, Chait, Collins and Schneider PC*, Madison, NJ, advised the Board that he was present on behalf of the applicant. He stated that in 2001, the Bernards Township Planning Board had granted preliminary and final site plan approval for Phase 1 and preliminary site plan approval of this phase, Phase 2. Relying on that approval, the applicant completed Phase 1 and also installed the site improvement items required

for Phase 2 such as the parking lot and lights. Interior supporting facilities such as doors, coat closets and bathrooms were also installed. At the time, a house of worship was a permitted use in this zone however in the interim, it became a conditional use and the bulk requirements changed necessitating variance relief.

Mr. Chait submitted a list of exhibits he planned to introduce into evidence.

The Board's professionals and all of the witnesses for the applicant were duly sworn by Mr. Warner.

Rabbi Mendel Herson, applicant, residing at 3048 Valley Road, Basking Ridge, NJ, gave a brief history of the Chabad's growth since its inception in the 1990's and discussed its uses which include a pre-school program, a Hebrew school and weekly religious services. In the last few years, during the high holy days (the first day of Rosh Hashanah and Yom Kippur), a tent was added for services because of the higher-than-normal attendance. He testified that the proposed Sanctuary would alleviate the need for the tent. Rabbi Herson further testified that community functions, parties and religious celebrations would be held in the proposed Social Hall. Finally, he noted that although both the Sanctuary and the Social Hall were part of the original 2001 approval, this proposal included a mikvah which was not part of that approval.

**Exhibit A-6**, a compendium of 15 photos of the site and its structures was entered into evidence.

Rabbi Herson testified that, as a condition of approval in 2001, during the high holy days when existing on-site parking was insufficient, the parking facilities at the Millington Baptist Church across the street were utilized. In addition, a police officer was required to regulate both motor vehicle and pedestrian traffic to and from the church and synagogue. Mr. Chait entered into evidence **Exhibit A-5**, a Bernards Township Police Patrol Report dated September 19, 2018 which stated that no traffic concerns had been observed at the Chabad during a recent holiday period when the overflow parking facilities were used. Rabbi Herson confirmed that he was unaware of any traffic issues ever resulting from these parking arrangements.

Referring to Mr. Schley's review memo dated November 29, 2018, Mr. Chait stated that the applicant would stipulate, as a condition of approval, to all of those conditions listed in Comment #15 which were originally conditions of the Planning Board's May 8, 2001 resolution of approval.

Mr. Chait reviewed the remainder of the pictures in **Exhibit A-6**, opining that mature vegetation shown would provide ample screening for the proposed addition. He noted that the photographs had been taken by the Associate Rabbi and that they accurately depict site.

In response to questions from the Board, Rabbi Herson discussed the internal traffic flow for drop-off and pick-up for the preschool and Hebrew school. He reviewed the schools' hours of operation along with those related to religious services, testifying that there would be no overlap in activities: religious services are conducted Friday evening and Saturday, pre-school is in session Monday through Friday during the daytime hours, and Hebrew school is in session on Sundays.

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

Benjamin Simoff, PE, engineer with *Simoff Engineering Associates Inc.*, Madison, NJ, was accepted by the Board as an expert in the field of traffic engineering after outlining his professional credentials and confirming that his New Jersey license was current.

Mr. Simoff testified that he had reviewed the 2001 traffic report and that he had conducted a traffic study on a Saturday morning earlier in the month. He concluded that based on his analysis of those observations, the subject property could sufficiently handle the traffic flow. He did not foresee any traffic or pedestrian issues as long as the applicant adheres to the condition requiring the services of a traffic officer during those times when the overflow parking area is utilized. Mr. Chait added that the traffic reports from 2001 anticipated the higher enrollment in the schools similar to what is present today and that Phase 1 and the parking area were built with those expectations. **Exhibit A-8**, a traffic count conducted by Mr. Simoff dated November 3, 2018 consisting of one (1) sheet was entered into evidence.

Rabbi Herson testified that if the overflow parking area at Millington Baptist Church was no longer available, other arrangements would have to be made for off-site parking during the two (2) high holy days. He confirmed that this was currently a verbal agreement and that he would consider requesting a written agreement with the church.

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

Elena Kalman, AIA, architect residing in Stamford, CT., was accepted by the Board as an expert in the field of architecture after outlining her professional credentials and confirming that her New Jersey license was current.

During her description of the exterior of the proposed building, Ms. Kalman noted that not all of the vegetation was shown on the rendering and opined that the existing trees would obscure most of the view of the new structure from the surrounding properties. She testified that the roof mounted utilities would be screened, that there would be no new utilities on the ground and that there would be no signage on the building. Finally, she reviewed the floor plans.

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

David A. Smith, PE, engineer with *Yannaccone, Villa & Aldrich, LLC*, Chester, NJ 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.

Mr. Smith testified that his firm had prepared both the 2001 and 2018 site plans for the Chabad.

In reference to Mr. Quinn's review memo dated December 3, 2018, Mr. Smith agreed to review the new addition as a minor stormwater development and address any issues with drywells or some sort of recharge.

After reviewing the comparison of the zoning requirements in effect in 2001 versus those in effect in 2018, Mr. Chait opined that the much of the variance relief requested with the current application is due to changes made in the zoning requirements since the original approvals in 2001. He added that the proposed sanctuary/social hall project is slightly smaller than that which was previously approved.

Mr. Smith testified that while the total lot coverage approved in 2001 conformed to the zoning regulations at the time, the current proposed lot coverage (which is slightly less than the 2001 figure) requires variance relief. He stated that the applicant is now asking for the higher, previously approved lot coverage percentage to allow for the reconfiguration of Rabbi Herson's driveway which is located on the subject property. He noted that the Somerset County Planning Board had reviewed the application and one of their requirements is the elimination of one (1) of the existing two (2) exits from the driveway because it is located too close to the traffic light. Without the second exit, cars would have to back out into the main road. Mr. Smith proposed adding a parking area to allow the cars to turn around and enter the road head first which he opined was a safer option.

Mr. Smith confirmed that he had made all the revisions requested by the County.

Mr. Smith testified that because of the zoning changes, there is no conforming location in the current building envelope in which to build the sanctuary. He also confirmed that there is an existing easement on the property.

As a condition of approval, Mr. Smith stipulated to all the comments that were under his purview in Mr. Schley's memo, Mr. Quinn's memo and Fire Official, Andrew Buterbaugh's memo (December 5, 2018).

Referring to the Liberty Corner Fire Company's memo dated December 5, 2018, Mr. Smith stipulated to all comments that did not require changes to existing site improvements.

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

\* \* \* *The Open Session was recessed at 10:35 PM and reconvened at 10:46 PM.* \* \* \*

Mr. Warner advised the applicant that, due to the late hour, the Board would not be able to hear the last witness or vote on the application.

Chairman Breslin stated that the application would be carried to the regularly scheduled meeting of January 9, 2019 with no further notice.

**COMMENTS FROM MEMBERS OR STAFF**

Mr. Zaidel showed the Board a new sounding block which was made from the wood of the Great White Oak Tree of Basking Ridge. He added that it had been donated to the Township by the Shade Tree Commission.

**ADJOURN**

By unanimous Voice Vote, the meeting was adjourned at 10:52 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

12/17/18

*Adopted as written 01/09/19*